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The views expressed in the papers incorporated in the Journal are of the authors and not of the National Human Rights Commission.

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PREFACE

The English Journal of National Human Rights Commission is now more than a decade old as its first issue was released in 2002. This issue of 2013 English Journal comes at a time when the National Human Rights Commission has completed its journey of two decades.

In view of functions mandated for the Commission under Section 12 of its Statute, protection and promotion of civil and political rights as well as social, economic and cultural rights has remained the central concern of the Commission during the last twenty years. In the light of its wide mandate and range of the activities undertaken by the Commission, the 2013 Journal makes an effort to bring together various issues important to the Commission since they are intended towards upholding the dignity and improving the quality of life of the people of the country. In a society as diverse as ours, resolution of problems and securing the rights of the scheduled castes, scheduled tribes, minorities, women, children, differently-abled persons and other vulnerable groups has always remained in the forefront of its agenda.

The 2013 Journal delves into some of these issues. Of particular interest to the readers of this Journal will be a retrospective of the National Human Rights Commission. Besides, there are informative articles on right to health, right to food, right to education, human rights education, rights of women including marginalized women, convention against torture, juvenile delinquency and combating corruption and promoting good governance. All these articles are based in the context of Indian situation.

As in earlier years, there is a separate section on important statements, decisions and recommendations made by the Commission on key human rights issues concerning leprosy, human rights education, right to food, violence against women and missing children. The Journal also contains a section on book review.

The Commission sincerely hopes that the Journal will stimulate thinking and generate action for research and training on many key issues concerning human rights.

New Delhi
10 December, 2013

(Justice Shri K.G. Balakrishnan)

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SECRETARY GENERAL
NHRC

FROM THE EDITOR'S DESK

The English Journal brought out by the National Human Rights Commission since 2002 has always stimulated and promoted discourse and research on various contemporary human rights issues. As per the Section 12 (h) of the Protection of Human Rights Act, 1993, the National Human Rights Commission has an important task in spreading human rights literacy among various sections of society and promote awareness through publications, the media, conferences, seminars, trainings and other available means.

On 12th October, 2013 the Commission completed 20 years of its existence. Keeping this in view, an article bringing out a retrospective on the work carried out during these twenty years has been included in this edition. The Journal also focuses on important issues like right to health, right to food, human rights education, rights of vulnerable and marginalized women, juvenile delinquency besides the important issue of India's ratification of the UN Convention against Torture. Keeping in view the present context, an article is also devoted to corruption and good governance. Besides, a number of important recommendations

emanating out of the National Conferences on various human rights issues organized by the Commission during 2012-2013 have also been included. A review of the book entitled "Seven Social Sins–The Contemporary Relevance by Professor J.S. Rajput" has also been added.

I sincerely hope that the 2013 Journal will broaden knowledge and awareness about human rights and stimulate further thought on key issues concerning human rights.

New Delhi
10 December, 2013

(Dr. Parvinder Sohi Behuria)

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GENDER EQUALITY AND HUMAN RIGHTS

Contemporary Women' Issues, Marginalised Women and Human Rights

*Mrs. Justice Sujata Manohar**

Few concepts are as frequently invoked as the concept of human rights in any socio-legal discourse on the status of women. Now that women's human rights are as much on the human rights agenda as other human right, it is being increasingly realized that the denial of human rights to women, especially denial to women of full enjoyment of the right to equality, the rights to education, employment and the right to healthcare severely affects a nation's socio-economic development, and the establishment of a just and fair civilization where all can freely exercise their fundamental rights in a well-regulated political order. These rights need to be examined in the current 'culture' of violence against women.

Talking about human rights, Amartya Sen says, "There is something deeply attractive in the idea that every person anywhere in the world, irrespective of citizenship or territorial legislation, has some basic rights, which others should respect."(Elements of a Theory of Human Rights-2004, 'Philosophy and Public Affairs'-Vol. 32, No.4). This 'ethical' element of human rights requires action for implementation of human rights that goes far beyond legislation. It needs public education, monitoring of violations, appropriate social action including even agitation, appropriate economic policies and transformation of social values. International human rights treaties and instruments have formulated these rights. The

* Former Judge, Supreme Court of India and Former Member, National Human Rights Commission

treaties reflect international acceptance of these human rights and may lead to domestic courts incorporating some of their provisions in the domestic legal framework or judicial decision-making. These treaties certainly lay down a path of action for national and international Human Rights bodies.

Women are a vulnerable segment of our society. They have been traditionally discriminated against. The international convention which explicitly addresses gender issues and advances human rights of women is the U.N. Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted in 1979. It has often been described as a Bill of Rights for women. It defines what constitutes discrimination and sets out guarantees to women of equality and freedom from discrimination by the State and by private actors in all areas of public and private life. It enjoins equality in the field of civil and political rights as well as in the enjoyment of economic, social and cultural rights, thus bridging the traditional divide between civil and political rights versus social, economic and cultural rights. CEDAW requires State parties to ensure women's equal access to, and equal opportunities in, political and public life – including the right to vote and the right to stand for election, as well as the right to education, health and employment. It is the only human rights treaty which affirms reproductive rights of women and pinpoints culture and tradition as influential forces shaping gender roles and family relations. Some of its provisions require immediate action, while others require the States to formulate programmes of action. Under Article 18, the States must submit regular reports to the CEDAW committee on the steps they have taken to discharge their obligations. In the fulfillment of all these obligations by the State as well as private actors, national human rights commissions have to play a major role – advisory, promotional, educative and as a monitoring body.

Violence and Women's Rights:

Article 2 of CEDAW under which the State parties have agreed to pursue a policy of nondiscrimination against women has been explained by CEDAW committee as inclusive of gender-based violence. The Beijing

Platform of Action (paragraph 112) describes violence against women as nullifying women's human rights and fundamental freedoms; and as an obstacle to the achievements of equality, development and peace. The violence which women face could be domestic violence in its various manifestations including harmful cultural or traditional practices such as dowry or female genital mutilation, female infanticide and female foeticide, "honour" killings, denial and neglect of health care, sexual abuse, physical violence, debt bondage or trafficking and women and girls being infected with HIV/AIDS or STD in the course of sexual abuse.

In the public domain, kidnapping, acid attacks, rape, sexual harassment at the workplace or anywhere else, trafficking including sale of women and girls in sexual slavery or hard labour are some forms of violence that result in a severe denial to women of basic human rights that ensure a life with dignity including the right to equality and non-discrimination, the right to health care and the protection of reproductive rights.

The current media focus is on violence against women. The inhuman rape of a young physiotherapy student on a Delhi bus raised obvious questions about the safety of women even in the Capital city of the country, questions about lack of effective police patrolling and protection to young women and absence of effective and speedy punitive action against the wrongdoers. It led to the Report of Justice J.S. Verma Committee, quick enactment of the Criminal Law Amendment Act 2013 preceded by an Ordinance and led to a quick trial of the offenders.

Another crime against women that is on the increase is throwing acid on a young woman's face if she spurns the advances of a man. It is a crime that effectively destroys a woman and her future. The enactment of amendments to the criminal law will not have the desired effect unless the criminals are quickly apprehended by the police, evidence is gathered by the police efficiently and presented before the court followed by a speedy trial and appropriate punishment for the convict.

Another statute which was enacted in the same month, Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act, 2013 now finally gives a legislative format to replace the Vishakha judgment of 1998. Despite the experience of the last 15 years after the Vishakha judgement, no provision has been made in the statute for amalgamating the inquiry by the local or internal committee with an inquiry under the Service Rules. In fact the opposite has been enacted. What is worse, the traditional mindset is reflected in the provision for punishment for a false or malicious complaint.

The current public concern for the safety of women is justified. Crimes against women have increased. While 35,000 cases of such crimes were pending in courts in 2008, the number has risen by 40 per cent in 2013 as per information recently given under the RTI. In our country violence against women starts from conception of a female baby. A recent newspaper report says that female foeticides have reduced the child sex ratio in Mumbai, for example, to 874 girls born for every 1000 boys. Haryana has the worst sex ratio among the States: 879 girls for 1000 boys. This in turn has resulted in young women from other states being purchased as slaves and brought to Haryana to 'serve' men.

Access to education, even when sponsored by the State, now involves security concerns for young women, resulting in denial of training, higher education and employment opportunities for women. Sexual harassment at the workplace remains an occupational hazard, the new Act against sexual harassment notwithstanding. Women's employment in rural areas has also sharply declined. A sample survey conducted this year by the National Sample Survey Organization states that 9.1 million jobs were lost by rural women, and this loss was of longer term and better paying jobs. Urban employment of women has, however, slightly improved. But economic disadvantage resulting from discriminatory property rights, women's lack of mobility to take advantage of better paid jobs, their lack of training and skills required for better paid jobs, and social discrimination in employment and opportunity for promotion, continue to make women vulnerable.

Social values and customs that make women vulnerable to domestic violence continue. Dowry, dowry related murders and other crimes

continue. India is also at the top of the international maternal mortality and morbidity charts. CEDAW has considered violence targeted at women because they are women, as denial of equality, resulting in women's inability to exercise basic human rights. The UN Declaration on Elimination of Violence against Women made in 1993 describes violence against women as any act of gender- based violence that results in, or is likely to result in, physical or sexual or psychological harm or suffering to women, including threats of such acts, coercion, arbitrary deprivation of liberty, whether occurring in public or in private life. The Declaration has emphasized the linkages between inequality, discrimination against women and women-specific violence, whether domestic or in public arena. Article 2 of CEDAW which enjoins State parties to condemn discrimination against women in all its forms has been explained by the CEDAW committee in its general recommendation 19 [in 1992] as stating that the definition of discrimination includes gender-based violence, that is to say, violence that is directed against a woman because she is a woman or which affects women disproportionately.

The 2003 Protocol on the Rights of Women in Africa to the African Charter of Human and Peoples' Rights also emphasizes this linkage between violence against women and denial of women's rights. The Inter-American Convention on Prevention, Punishment and Eradication of Violence against Women, 1994 includes violence against women as discrimination and denial of equality. The Beijing Platform of Action [paragraph 112] describes violence against women as nullifying women's human rights and fundamental freedoms and as an obstacle to the achievement of equality and development, and peace.

Harmful cultural or traditional practices and more recent practices generated by these such as female foeticide, old practices like female infanticide, 'honour' killing, dowry deaths, sexual abuse of girls by family members, rape, sexual slavery, debt bondage–violence on a large scale, poses a challenge before the country and its human rights institutions. The large scale denial of a young woman's right to choose her marriage partner–especially of another caste or community, has dishonoured the country with 'honour' killings and verdicts of Khap panchayats.

The Inter American Court of Human Rights in 1988 in the famous case of Valesquez Rodriguez, has held that the State has an obligation to prevent gross violation of Human Rights – whether it is by a State agency or by a private party. The Constitutional Court of South Africa, in the case of ***State v Baloyi*** considered domestic violence as a denial of equality. National Human Rights Commission in India receives a large number of complaints that the police does not register complaints of domestic violence against women – treating it as a domestic matter despite law to prevent such violence. Obviously a major programme of sensitization is required before law enforcement agencies will work to stop and punish such violence.

Challenge of Culture and Traditions

One of the important challenges to the universality of women's human rights comes in the form of cultural relativism such as ancient values, tribal values, clash of civilizations and so on which try to question the basic premise that human rights are universal and indivisible and this premise is applicable as much to women's rights as to men's rights. Unfortunately, the issues that cultural relativism protects are mainly related to women's rights (or rather their absence) within the family, starting with restrictions on the clothes they can wear in public, being subjected to violence such as physical or psychological abuse, female genital mutilation, dowry deaths, 'honour' killings, or a discriminatory family law which does not give women the same rights of inheritance, divorce, or custody of children or an equal right to property. What one needs to appreciate is that historically, violence against women is a manifestation of an unequal power relation between men and women which has led to domination over and discrimination against women and has led to the prevention of full advancement of women. Denial of rights cannot be considered as culture. Even otherwise, cultures also need to change and improve to protect human rights of their own groups.

Education and Employment

Education and employment leading to economic empowerment of women are key areas for women's human rights. Article 11 of CEDAW enjoins

State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. CEDAW committee's General Recommendations 22, 23 and 24 under Article 11 state that equality in employment can be seriously impaired when women are subjected to gender specific violence such as sexual harassment at the workplace. The Indian Supreme Court in the case of Vishakha v. State of Rajasthan [1997 6 SCC 241] held sexual harassment as a major form of discrimination against women relying upon the above international treaties.

Apart from adverse consequences at the place of work, a woman if she complains about sexual harassment is likely to face from her family/ husband opposition to her going to work. In the alternative she may have to quit her existing job and settle for another job which may or may not be as lucrative or satisfying.

Education is closely linked with employment. The complaints before the National Human Rights Commission in India showed that women students enrolled for higher education under the guidance of a senior teacher, at times face sexual harassment from the teacher or the guide. Apart from women in employment, the maximum complaints of sexual harassment are from women students in universities. This seriously affects a woman's right to education and results in deprivation of the right to employment. Many areas of employment at higher levels require high educational qualifications. Impediments in securing higher educational qualifications directly affect a woman's future prospects in the field of employment.

Women in villages and small towns often have no access to higher education. They may have to travel long distances in order to go to a high school. Lack of security and prevalence of attacks against young girls such as molestation or rape often force parents to prevent girls from going to high schools which may be located at a distance from the house. In one of the states in India an initiative by a private organization which supplied bicycles to girls for going to high school dramatically improved the rate of girls joining high schools. For accessing university education young women need to shift to cities where they need to secure safe

accommodation and safe transport. Prevalence of insecurity, lack of police protection, threats of violence often prevent young women from going to a university in another city. This has a long-term impact on a woman's prospects of employment. The same is the case with women who need to move to a city for employment. As a result women are compelled to accept jobs which are locally available and they lack the mobility required for securing better jobs. Women who lack education usually end up in private placements for domestic work or manual labour-agricultural or otherwise, where they are vulnerable to violence.

In areas of employment which are eminently suited to women such as IT industry, women may have to work late hours. Safe and secure mode of travel becomes an essential prerequisite for women to avail of opportunities in this field. Even where the employer provides transport there have been cases of women having been raped or molested when travelling alone late at night.

Thus the right to go to work, the right to select appropriate work depending on qualifications, the right to secure such qualifications, the right to promotions and the right to access the place of employment are all affected by the threat of gender- specific violence. In this sense violence adds to other types of discrimination faced by women at work.

Domestic violence also affects employment prospects of women. Women who are victims of such violence have health problems-both physical and psychological, they may not be able to do their work properly, may remain absent from work far more than others and may suffer from depression.

Marginalised Women

In considering the fulfillment of CEDAW promise to the women of our country, we cannot afford to ignore the vulnerable and marginalised women. Now that women's human rights movement has moved beyond discrimination to violence against women as a major denial of their human rights, the marginalised and vulnerable women need to be given urgent protection against violence.

Who are these marginalised women? These are poor, illiterate women in rural areas or in urban slums, often belonging to backward classes, who are economically exploited and made to work at lower wages and sexually exploited in feudal settings. The marginalised also include widows who are shunned on happy occasions and are customarily denied good food, good clothing and social respect. They include women in "Homes" for the mentally challenged who are ill treated, ill fed and sexually exploited, or women in Rescue Homes and Rehabilitation Centres who continue to be trafficked and re-trafficked. Women who are forced into prostitution by traffickers and who do not have the benefit of adequate laws and socio-legal infrastructure to pull them out of the trafficker's clutches end up being re-trafficked. Women suffering from disabilities are doubly disadvantaged. They are likely to be subjected to violence and exploitation even in special institutions meant for their care such as mental homes. Custodial violence and sexual exploitation is common when women are in so-called protective homes or rescue homes.

A UN study on Women, Peace and Security [submitted by the Secretary General pursuant to Security Council resolution No. 1325(2000)] says, while describing the condition of women in times of conflict that civilian women and girls face different risks and dangers in armed conflicts compared to those faced by civilian men and boys. Sexual violence and rape are a part of strategy of warfare. Women and adolescent girls in conflict situations have been tortured for holding prominent political, or community positions, for speaking out against opposing groups or for resisting violence against themselves and their families. Vulnerability of women will also therefore depend upon the socio-political circumstances.

Widows

Widows have been victims of social, cultural and religious discrimination for centuries. They were also victims of legal discrimination till the Hindu Succession Act, 1956 made them heirs to the husband with full right over the property so inherited. Other personal laws also treat a widow as an heir to her husband, though under Muslim law, her share is only half that of her son.

There are, however, customary laws or tribal customs having the force of law that deny to a widow and a daughter a right to inherit family land. In the case of ***Madhu Kishwar vs. Union of India*** *(1996 5 SCC 125)* the Supreme Court upheld such a custom. It is now absolutely essential that NHRC and other SHRCs demand a change in discriminatory customs or property laws as India's obligation under CEDAW.

Despite changes in the law and social perception, the plight of widows is still of great concern to all workers in the field of human rights. A glaring example of their neglect even by their children, is of about 3000 widows of Vrindavan, Mathura and Benaras. They are brought to "holy" places like Vrindavan, Mathura and Benaras for pilgrimage and abandoned there by their sons/relatives, leaving them totally destitute, without any shelter, food, or money. NHRC in the early 2000s persuaded the State of UP to give them better pension, monitored their living condition in Dharmashalas in Vrindavan and arranged for their health care through Helpage, India. Fortunately the recommendations of NHRC were taken seriously by the authorities and measures recommended were mostly taken at that time. But the basic underlying problem of discarding "unwanted" widows and the social values that support such discrimination, still remain. There is an urgent need to arouse social conscience for exposing the different layers of discrimination and marginalization that widows face.

Women with Disabilities

Women with disabilities constitute an even more deprived group of women. ILO study on gender estimates that there are 300 million women with disabilities in the world. Of these 20 million women with disabilities are in India. One in four households in developing countries has a family member with a physical or mental impairment. Half of these are women and girls. As Sathi Alur (Spastic Society of India) puts it, "In every sphere of life, women with disabilities in developing world experience a triple bind; they are discriminated because they are women, because they are disabled and because they are from the developing world." There are fewer education opportunities for disabled girls. A girl with a disability in a poor family is even more disadvantaged. She may be kept hidden so as

not to damage the marriage prospects of siblings, or she may be turned out of the house to beg. She is not wanted in the family or outside. Girls and women with a disability also experience a high incidence of abuse – physical, emotional and sexual. Unemployment among disabled women is close to 100%, although some of them are now finding employment.

Most women with a mental disability are left to the mercy of the destitute women's homes or charitable missions. A recent newspaper report says that a woman in a regional mental hospital has spent 63 years there although she has completely recovered from her illness. No effort has been made by any family member to contact her or keep in touch with her. Records of mental hospitals at Agra, Gwalior and Ranchi show many such women who are abandoned by their families although they are capable of functioning within the family.

Conditions within mental 'Homes' leave much to be desired. Many such 'Homes' do not have even minimal living conditions, food, clothes or medicines; and sexual exploitation of women in such "Homes" is rampant. Their shelter homes urgently need proper supervision by Human Rights institutions and NGOs. It is also necessary to frame a model Human Rights Policy framework for women with disabilities. This model can be disseminated to the States for adoption and implementation as State disability policy which must be monitored and continuously evaluated.

The right to education of girls with a disability needs to be enforced. Girls with disabilities should, as far as possible, be assimilated in the normal education stream – with special facilities provided where necessary. Barrier-free facilities, accessible infrastructure - in schools, health centers, transport system- are required. NHRC can also prepare training modules to sensitize the administrators, Education authorities, legal, medical and other professionals to the rights of such women and girls and their responsibilities towards them. Employment opportunities must be created for the disabled. NGOs as well as administrators need to work together to promote a rights- based approach to persons with disability.

Education

Right to education is now a fundamental right. Education is the basic requirement for empowerment. Yet Malalas of the world face the threat of a bullet in their head if they try to exercise this right. The right to education is also linked with prohibition of child marriages. The current attempt to show child marriages as sanctioned by religion and as included in the right to profess religion is unfortunate. A child is a child irrespective of any religion. Similarly attempts to justify child marriages as providing "safety" to the girl child are equally unacceptable. Safety must be provided in other ways.

Trafficking in Women and Children

Several international human rights instruments and the Constitution of India prohibit trafficking in human beings, slavery, serfdom and forced labour. Yet a large number of women are forced into prostitution by traffickers who often operate across state borders, targeting the most vulnerable group of women and children – the poor and uneducated, those unaware of their legal rights, those belonging to low economic or social status or those engaged in marginal poorly paid work. A large percentage of victims are forced into prostitution, while others are placed in domestic servitude, begging and other forms of exploitation. Coercive tactics, deception, fraud, isolation and violence are used to "control" the victims.

The Immoral Traffic Prevention Act, 1956 as amended in 1986, does not focus on the human rights of victims, or deterrent punishment of traffickers; nor does it promote human rights of victims or sensitive handling of rescue or rehabilitation operations. The rehabilitation homes do not provide medical and psychological support to traumatized victims, do not equip them for employment or financial self-help and often are a re-trafficking source. Even Palermo Protocol, i.e. U N Protocol to Prevent, Suppress & Punish Trafficking in Persons, especially women and children, focuses on the crime aspect of trafficking rather than on the Human Rights of victims and the need to make it possible through appropriate

measures, for the victims to enjoy them. In 2005 NHRC published after four years of research and investigation, with the help of UNIFEM and the Institute of Social Sciences, a pioneering action research on trafficking and its multilayered and multidimensional problems. The key objective was to have a better understanding of trafficking in the country, to pinpoint vulnerabilities and provide strategies to strengthen the vulnerable and to frame policies and programmes to prevent trafficking, to target traffickers and to create effective rescue and rehabilitation programmes. Much still remains to be done. This is an area where all human rights bodies can do effective work to educate and to promote comprehensive programmes for empowerment of vulnerable women and girls.

Conclusion

Much remains to be done to secure to the women of this country their human rights and their constitutional freedoms. Harmful customs, traditions and attitudes need to be changed. Laws and law enforcement agencies need to be sensitized and a secure society needs to be established where women can function freely, exercise their volition and contribute to the development of the nation. The National Human Rights Commission has a difficult yet essential task before it of being the agent of this change.

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Education for Gender Equality

*Prof. J.S. Rajput**

Context

The 20th century realised the urgency of extending education to one and all and simultaneously also resolved to achieve it through sustained global Jomtien efforts.[1] As nations proceeded to implement their policies on universalisation of initial education for those outside the realm of education, they came across acute multi-faceted social, cultural and religious hurdles in bringing children, particularly girls, to schools and to participate in education. Apprehensions, taboos, futility and unfounded apprehensions became the prominent ingredients in the arguments of those resisting endeavors to educate girls. India faced all of it as it became independent and after specific steps were initiated to extend the outreach of education to every child as specifically mandated by the Constitution of India. The cultural history of India is full of illustrious names of women who were second to none in scholarship and knowledge. Indian scriptures accord a very high place to women. It was however overtaken several aberrations that led to innumerable sufferings being inflicted upon women. It however is globally acknowledged that it is the place of women in a particular society and the respect and equality they receive that indicates the levels of humanization and civilization in that society. It also remains a fact that historical events led to confinement of girls to homes and hearth and for

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1 World Declaration on Education for All, Jomtien, Thailand, published by UNESCO, 1990

a vast majority, educating them became a taboo. They suffered and India suffered. The post-independence resistance to sending girls to schools was considerable; in spite of very clear perceptions of India's luminaries, leaders and social reformers that no society could indeed march ahead on the path of progress and development with illiteracy thrust upon its women. Amongst those who understood India and its Soul, people are well familiar with Swami Vivekananda and Mahatma Gandhi. Swami Vivekananda was very clear[2]:

> *"In India there are two great evils: Trampling on women and grinding the poor through caste restrictions".*
>
> *"They (Indian women) have many and grave problems, but none that are not to be solved by that magic word 'education'".*
>
> *"Educate your women first and leave them to themselves; they will tell you what reforms are necessary for them".*
>
> *"It is very difficult to understand why in this country so much difference s made between men and women, whereas the Vedanta declares that one and the same conscious self is present in all beings. …. Is there any sex-distinction in Atman (self)? Out with the differentiation between man and women – all is Atman."*

He often asked people 'earnestly' to 'open girl's schools in every village and try to uplift them'. He was convinced 'If the women are raised, then their children will by their noble actions glorify the name of the country – then will culture, knowledge, power and devotion awaken in the land'.

Mahatma Gandhi gave the lead in the pre-independence days, developed the model of Basic Education, refined it with inputs from Dr. Zakir Husain and others, got it implemented and presented the results to the nation, indicating its success and the potential to give education and skills to both boys and girls; also men and women without inflicting any stressful economic burden on them. In the oft-quoted speech at the Chatham Lines; in which Gandhiji very rightly claimed that India was far

2 My India: The India Eternal, Swami Vivekananda, Ramakrishna Mission Institute of Culture, Calcutta, July 2000.

more literate before the arrival of the British, he mentioned about his plans being ready for being implemented after independence: to open schools, for both boys and girls, in every village of India!

This description could only be a peripheral reflection on the huge efforts put in by both men and women in the area of women education. So many other names could be cited and efforts and innovations recalled in this area. The change, though stressful and often painful, has indeed been very significant. In India, every parent is now convinced that both boys and girls must get education. It is now well established that girls are no more out of school because of social or parental resistance. They are still out of schools, higher education and employment market in large numbers because of several factors beyond the control of parents.

Some of these are:

1. Absence of school within reasonable distance.
2. Lack of basic facilities like drinking water and; particularly; separate toilets.
3. Economic pressures, parental migration, insecurity of livelihood.
4. Domestic chores, looking after the siblings, absence of functional crèches.
5. Uncongenial home environment.
6. Irregular functioning of the school.
7. Absence of lady teachers.
8. Loss of credibility of government schools.
9. Child marriages.
10. Non-appreciation of their workforce participation. In farm production their participation is around 55-66 per cent which often gets ignored.
11. Apprehensions of insecurity and sexual harassment in institutions and work place

12. The traditional practice of saving on education to organize dowry for the girl's marriage.
13. Domestic discord, unsuitable home environment, drinking habits of males.
14. Ignorance of supportive government schemes and provisions.

There are several encouraging signs that could accelerate the march towards gender equality. As per the 2011 Census, female literacy rates stand at 65.46 as against 82.14 for the males and the overall 74.04. In UP and Bihar the Female literacy rates are 59.3 and 53.3 only and these are a matter of considerable concern. Certain unethical practices, known to one and all, somehow are permitted to persist and these impact the data on enrolment and literacy rates. Fall in the primary school enrolment has recently been reported, based on the data compiled by the NEUPA – the National University of Educational Planning and Administration. From 13.7 crore in 2011-12 it has come down to 13.4 crore in 2012-13. It may appear marginal but points out some significant trends. This decline in Bihar is 11.6%. Bihar abounds in dual enrolments at primary level: children study in private schools but also remain enrolled in government schools to avail of the free benefits, and also to help the teachers who may otherwise get transferred! During this period, upper primary enrolment has risen from 6.19 Crore to 6.49 Crore. Data also shows that 92.14 lakh children in the 6-14 age group are still out of school. The percentage of schools with separate girl's toilets has increased from 72.16 to 88.32 during this period. Enrolment of girls has increased in both primary and upper primary level.[3] This increase is achieved in spite of the fact that 'among children up to 15 years, there are 1.8 crore fewer girls than boys – the sex ratio at 914 girls per 1000 boys remaining the same as a decade ago[4]. Has education not impacted the parents and young married couples to shun sex determination tests and permit no discrimination against girls on any

3 Akshya Mukul, Upper primary school Enrolment rises by 4.8%, The Times of India, September 14, 2013, New Delhi.

4 Subodh Verma, Sex ratio skew worsens with age: Girls lose out on food, healthcare, The Sunday Times, September 8; 2013, New Delhi.

count in homes and families? Some other numbers could give an idea of the change in numbers of girls in education could be relevant. In 195-51, the percentage of girl's enrolment to total enrolment was 28.1 at primary, 16.1 at upper primary and 13.3 at secondary/senior secondary. The corresponding figures in 2007-08 were 47.5, 45.8 and 43.4. Another interesting data could be the rise in the number of lady teachers. At primary stage there were only 82000 lady teachers as against 456 000 male teachers. In 2007-08 the corresponding numbers were 1207000 and 2315000. For the Upper Primary, during the same period, the numbers rose from 13,000 to 717,000. At the secondary stage the rise was from a mere twenty thousand to 795, 000. The numbers of female teachers are rising but this rise is to be accelerated further. The 2011-12 data presented by the District Information System for Education (DISE), around 1.28 lakh out of 10,75,407 government elementary schools across the country still do not have toilets and 61,000 lack drinking water facilities. Official claims are that of 84.68 per cent of the girl's toilets as functional as against 65.87% for boys. Even these numbers are huge in the context of RTE; an analysis by NEUPA indicates "that many of the schools which have toilets and drinking water facilities, the infrastructure is as good as non-existent as they are not functional. In Andhra, 74.6% schools have separate boy's toilets but only 21.57% are functional. For girls the claim is of 61.38% functional toilets.

All this data that indicates substantial deficiencies in gender equality in practical terms contain a great message to curriculum developers and text book writers. Civilized societies are supposed to rejoice equally when either a boy or a girl is born. Even if traditionally the birth of a male child was preferably aspired for, one expected educated persons to be emotionally and intellectually strong enough to rejoice equally whether the newborn is a boy or a girl. Several parts of India have known that for centuries that the birth of a girl child is not as welcome as that of a boy who is the future bread winner and the inheritor of family legacy. Missing women, the term coined by Amratya Sen refers to the excess mortality rate amongst females. It also includes female fetuses aborted after pre-natal medical confirmation. "Missing women at birth are mainly found

in Uttar Pradesh, Punjab, Haryana, Rajasthan and Maharashtra. Punjab and Haryana are exceptionally were represented relative to their population. Most of the missing girls who die in childhood are found in Bihar, Madhya Pradesh and Uttar Pradesh"[5]. What is commonly known is also alarming. Inadequate and unapproachable health services, poor health and hygiene in rural areas and particularly amongst economically weaker parents could be an inherent contributor to deaths of girl child at birth or within a couple of years after birth. What is more astounding is the increase of female infanticide amongst educated and well-off families. Punjab is one of the illustrative examples.

Several schemes have been launched by the Ministry of Human Resources Development that take particular note of the girl child and their upward mobility to higher and professional education. The launch of the National Mission for the Empowerment of Women generated high hopes. Its focus is on advocacy activities to fuel the demand for benefits that are stipulated for women, their economic empowerment, progressive elimination of violence against women, gender mainstreaming of programmes and policies and, their social empowerment through particular emphasis on health and education. The issue of empowerment of women is primarily dependent on education reaching them. However several supportive measures like the ones contained amongst the objectives of the National Mission shall have to be undertaken to enable them to reap the benefits of education. The content of education and the extent of skills acquired shall make a big difference. So much has yet to be achieved on the social front that continues to persist with traditional interpretations of the 'differences amongst men and women, and continues to justify the inequalities that have persisted all along.

Education, in its content and process, must acknowledge the equality of sexes and shun all discriminations. One recalls having solved sums in the 1950's of the last century like: "Three men perform a task in six days while the same is completed by five women in five days. How much time

5 "The Age Distribution of Missing Women in India', Siwan Anderson, Debraj Ray, 2012, *Economic and Political Weekly*, December 1, 2012, Vol. XLVII pp 87; 91.

would be needed if they work together?" What more one needed to perpetuate prejudices? All that changed with the advent of the NCERT and the Report of the Kothari Commission in 1966-64. The gender sensitivity aspect has been examined with every curriculum changes in 1978, 1988, 2000 and 2005; each one of which resulted in the preparation of new textbooks. The NCERT trained textbook writers and curriculum developers in states/UTs on how to examine textbooks and other teaching learning materials[6]. Recently, MHRD has written to State/UT governments to "modify their existing school curricula and textbooks to include gender positive material". That would require authors who have internalized the significance of the task assigned and further, are free from 'urban middle class biases'. Curricular changes, teacher training and suggestions that it also 'incorporates subjects related to self-defense, human body and protection, social health, etc.' are on right lines but certain other critical elements are also necessary. What is being done to train government functionaries including police personnel to deal with due sensitivity the issues that concern women? Why such a huge sense of insecurity engulfs women from reposing confidence in those who could really make a difference to their self-esteem? A corrupt, insensitive, unimaginative system of governance requires multi-faceted transformation to make the 'change' happen. Even well-educated women suffer violence in homes, work places and even while commuting! Experts have identified four significant dimensions that need to be attended to empower women: cognitive acquisitions, psychological strength, economic security and political support. These are common elements that would determine the curriculum for one and all. Over and above that, it is the political will that could accelerate the change. There too, an attitudinal transformation is necessary. That, everyone knows, is a tough proposition. Between the dastardly tragedy of December 16, 2012 and judgment day on September 13, 2013, more than thousand rapes have been reported in Delhi. It is shamefully obnoxious and despicable behavior in a civilized society. Every component of the society and the system of governance has to realize its responsibility and the need to act; and act at the earliest.

6 J.S. Rajput, "Curriculum needs external support for gender equality", *The Sunday Standard*, September 15, 2013, P. 8 (magazine), New Delhi.

Emergence of Policies and Perspectives

Several articles of the Constitution of India guarantee equality of sexes and empower the state to provide for special provisions that may be needed for the welfare of women and make the working environment conducive to them. Articles 14, 15, 15(3), 16 and 21(A) are *particularly relevant in the context of equality and education.*

Article 14. Equality before Law: The State shall not deny any person equality before the law or equal protection of the laws within the territory of India.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

1. The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –
   (a) access to shop, public restaurants, hotels and places of public entertainment; or
   (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children.

Further, Article 16 stipulates equality of opportunity in matters 'relating to employment or appointment to any office under the State'. Article 39 mandates equal pay for equal work; Article 42 pertains to humane conditions in work place and the provisions of maternity leave. Article 51(A) mentions eleven fundamental duties, one of which enjoins upon every citizen to 'renounce practices derogatory to the dignity of women'. Article 21-A, now after the RTE Act, relates to free and compulsory

education to all children in the age group 6-14 years. Proper implementation of the RTE Act, as is well known, remains the key provision. Only adequately educated individuals could be made properly conscious of their rights and duties, the two organically linked elements the extent and level of internalization of this linkage determines the quality of human life in every society.

The Government of India has, from time to time, appointed several committees and made special provisions for girls and women based upon the recommendations it received from various experts and professional bodies. The National Committee on Women's Education presided over by Durgabai Deshmukh in 1959 had recommended general education on par with boys, including professional and vocational skills 'that equip them fully for their duties both in home and outside'. The Kothari Commission made a very significant point: education of girls and women was the key to social transformation! It had recorded a futuristic vision by recommending common ten-year curriculum 'both for boys and girls'! The National Policy on Education 1986 revised in 1992 summarizes the concerns identified over the years and the experiences gained during the implementation of various policies and programmes. The following from the policy would present a comprehensive picture of approach to education:

> *4.2 '*Education will be used as an agent of basic change in the status of woman. In order to *neutralize the accumulated distortions of the past; there will be a well-conceived edge in favourof women. The National Education System will play a positive, interventionist role in the empowerment of women. It will foster the development of new values through redesigned curricula, textbooks, the training and orientation of teachers, decision-makers and administrators, and the active involvement of educational institutions. This will be an act of faith and social engineering. Women's studies will be promoted as a part of various courses and educational institutions encouraged to take up active programmes to further women's development.*
>
> *4.3 The removal of women's illiteracy and obstacles inhibiting their access to, and retention in, elementary education will receive overriding priority,*

through provision of special support services, setting of time targets, and effective monitoring. Major emphasis will be laid on women's participation in vocational, technical and professional education at different levels. The policy of non-discrimination will be pursued vigorously to eliminate sex stereotyping in vocational and professional courses and to promote women's participation in non-traditional occupations, as well as in existing and emergent technologies".

After the NPE 86/92, practically every scheme contained in the Programme of Action document explicitly emphasized the need to take special care of girl's education. The ambitious Operation Blackboard Scheme which extended support in equipment and teachers to every primary; and later elementary, school in the country had particularly emphasized on recruitment of lady teachers, insisting that in a two teacher school, one of them must be a lady. That a similar recommendation had to be made by the CABE Committee in 2005 and reiterated in the Eleventh Plan indicates systemic failures over prolonged periods. The Sarva Shiksha Abhiyan (SSA), like the Operation Blackboard, stipulated fifty percent lady teachers. The reasons remain the same as earlier:[7] "One of the most prominent of the reasons is that many parents will not send their daughters to school if there are no women teachers. The other is that women are found to be more conscientious and caring as teachers." Perusal of the numbers of teachers indicates significant increase in the number of teachers in schools. Even those who are in the system suffer several problems and concerns which require a very sensitive, alert and responsive system of educational management and administration. The implementation strategy requires a very well thought of area specific work plan with inbuilt monitoring mechanisms. In this regard the National Curriculum Framework for School Education,[8] brought out by the NCERT in year 2000 observed: "Emphasis in education has moved from 'Equality of educational Opportunity' (NPE 1968) to Education for Women's Equality and Empowerment (1986). As a result, the curricular

7 Kavita A, Sharma, Empowering Women through Education: Women as Agents of Change, in Women and Development: Self, Society and empowerment, 2012, Primus Books New Delhi, p 75.

8 National Curriculum Framework for School education, NCERT, 2000, New Delhi, p 9.

and training strategies for the education for girls now demand more attention….removing all gender discrimination and gender bias in school curriculum, textbooks and the process of transaction is absolutely necessary". This Curriculum Framework emphasized "the need to develop and implement gender inclusive and gender sensitive curricular strategies to nurture a generation of girls and boys who are equally competent and are sensitive to each one another, and grow up in caring and sharing mode, and not as adversaries[9]." It is indeed encouraging to note that of the 64 lakh school teachers in schools, 29 lakh are women. The percentage of women teachers has been increasing steadily in recent years. From 43.46% in 2008-09, it rose to 44.83 in 2009-10 and 45.51 in 2010-2011[10]. This trend picked up after the NPE 1986/92 the scheme of Operation Blackboard could be credited with accelerating it. Removal of certain well-known hurdles could further enhance these percentages. However, there are around 7 lakh vacant posts of teachers in schools and an equal number consists of para teachers whose salaries are a pittance. Women are the worst sufferers in uncertain work conditions because as para teachers they have to depend on the mercy of individuals for extension or regularization. The systems of governance must pay special attention to such instances which, in way, amount to harassment and exploitation. In most of the teacher training institutions, girls outnumber boys amongst student teachers. There are studies that indicate positive impacts of the growing number of women teachers.

To look after the issues of women, with particular emphasis, in higher education, several Departments of Women Studies were set up to conduct researches and surveys that would help better understanding of women issues and lead to more pragmatic and comprehensive policies for women not only in education but in other sectors as well. Practically in every five-year plan, women's education was "placed at the forefront of the development programmes in these Plans.[11]" A large number of schemes

9 National curriculum Framework for School Education, 2000, NCERT, New Delhi.

10 Hemali Chhapia, Times News Service, Times of India, September 5, 2012.

11 Anita Nuna and Poonam Agrawal, "Post Independence Perspective on Girls Education, Dialogue", A Journal of Astha Bharati, New Delhi, p. 162 , Vol. 12, No. 4 April-June 2011.

and programmes emerged practically after every Five-Year Plan in the context of women and their education. One of the significant events was the Setting up of a Central Advisory Board of Education (CABE) Committee on girls education and the Common School System in 2005. "It recommended free and compulsory education for girls up to the age of 18 years and emphasized that there should be 'no hidden costs' in girl's education. The Committee gave thrust to initiate measures to promote girls education of such nature, force and magnitude that enables girls to overcome the obstacles posed by factors such as poverty, domestic/sibling responsibilities, girl child labour, low preference to girls education, preference to marriage over education, etc. It also recommended women teachers and women attendants in every institution with provision of suitable working conditions for them so that they can perform their duties effectively, especially in rural areas[12]." If such a recommendation is made, rather reiterated once again, it does indicate that most of our well-intentioned formulations in policies and programmes have not yet reached the beneficiaries because of a plethora of impediments that too stand well identified. The Eleventh Five year Plan states the obvious: education is the key instrument for inclusive growth, that opening of easily accessible secondary schools for girls and also coeducational is the critical necessity, particularly as the number of girls willing to move ahead from elementary to secondary stage is increasing appreciably. Perusal of the rise of female literacy rates gives some idea of how far India has moved ahead in educating its women.

The Table below gives the rise of literacy rates for males, females and the population along with the percentage difference between males and females. This difference though least of all the other periods, still continues to be remain at the very high level of 16.68 per cent.

12 Ibid, pp 161-162.

Table 1 The Rise of Literacy in the Post-Independence Period.

Census year	Persons	Males	Females	Male-Female gap
1951	18.33	27.16	8.86	18.3
1961	28.3	40.4	15.35	25.05
1971	34.45	45.96	21.97	23.98
1981	43.57	56.38	29.76	26.62
1991	52.21	64.13	39.29	24.84
2001	65.38	75.85	54.16	21.7
2011	74.04	82.14	65.46	16.68

Mere getting of basic education or even higher education does not guarantee equality of opportunity to women in a male-dominated world. Even good education may not give them power unless it is augmented by attitudinal transformation within the community and the society on one hand and the male of the species on the other. Even in the educationally advanced countries, good professional education does not guarantee equality of opportunity in the work place. The following illustrates this position:[13]

> *'In her new book 'Lean In', Sheryl Sandberg, Facebook's chief operating officer, recounts a warning she delivered to Harvard Business School students in 2011. 'About one-third of the women in this audience will be working full time in 15 years,' she told them. And almost all of you will be working for the guy you are sitting next to.*
>
> *"Women surpassed men as a percentage of college students in the late 1980s, and by 2009 had become the majority of master's degree students and doctoral candidates. The majority of Americans older than 25 with college degrees are, today, women. Yet just 4.2 percent of Fortune 500 CEOs are women So why hasn't women's success in the academy led them to more leadership positions in the world of work".*

13 Garance Franke-Ruta, Why Isn

Even well educated women may not be getting what is their fundamental right: complete power over their own body, mind and right to unsubjugated motivation and jest for life. Curriculum developers and writers of textual materials at each stage of education require inputs of in-depth surveys and studies in the problems and concerns of girls and women. Violence against women is a serious area of concern for education system.

Violence Against Women

Education must help individuals to develop problem-solving skills, apart from so much more. Women need these in far greater measure as they do not face a very congenial and respectful environment as they move out of the four walls of their homes. In the year 2012-13, Indian media has reported umpteen cases of terrible violence against girls and women. These could shame any society. These, simultaneously also indicate how inadequate is our understanding of the psychological relationships between the two sexes and why violence continues in such a huge measure when the global society is moving ahead to transform itself in to a knowledge society! People incessantly talk of creating a peaceful world but keep on manufacturing deadly weapons. The violence perpetuates on the battlefield on one hand and it continues to haunt women right from their homes to places of work. Why does it happen? Education has to understand it and find solutions and implementable strategies to counter it.

The worst form of this violence is sexual in intent, nature and manifestation. Even after the JS Verma Committee Report and subsequent changes in provisions to deal with such crimes, not much deterrent impact is visible in the society. There is a great mismatch between what young persons get by way of sex education and what the sex-explosion consistently being dished out by media round the clock! Urbanization, migration for jobs, loneliness in an alien environment just cannot be ignored in the context of sexual violence. The insensitivity that persists amongst the police and judiciary often makes the victim shun going to them to get their genuine grievances redressed. In matters of sexual violations, it is only that the victim and families are gathering courage to

come out and complain in spite of the hurdles that all of them anticipate. This trend could be attributed to the expansion of education. Even now, women suffer silently in innumerable cases from their well wishers, friends of the family, relatives, and so many others known to them. The alertness in the society and the growing family support encouraged by updated legal provisions are bringing the cases of violence to light. One wishes justice also becomes swift and exemplary. Schools and colleges now have special committees to look after cases of harassment to women which includes violence against them. Supreme Court, in the well known Vishaka vs. State of Rajasthan Case (1997) had laid down detailed guidelines for all the places of work where women could face harassment. The judgment clearly and emphatically asserted 'Working women have a right to work with dignity and safe from sexual harassment'.

Interpreting Differences

Not much long ago, there was a widespread acceptability of racial differences. This belief in racial superiority and inferiority led to innumerable wars and battles which stand recorded in the history of civilizational growth. The atoneable practices of untouchability, slavery and apartheid were a consequence of such fabricated beliefs. Now, even after the abolition of slavery, apartheid and caste discrimination, these do persist in certain modified forms though to a far lesser extent. Science has exploded the myth of racial superiority but racial confrontations are no exception. Gender differences, however, are clear and obvious. The role of man and women in reproductive functions is different as they are physiologically different. In a man's world, the arguments run like this:[14]

> *Man is the superior sex, because he is both physically and intellectually superior to women He is better in leadership, courage creativity, idealistic and abstract thinking, is more aggressive, more dominant, more adventurous and more ambitious. Woman, on the other hand, is the 'weaker sex', 'Abla', inferior to man in physical strength and intellectual capacities, but more loving, more submissive and more interested in concrete things rather than abstract thinking, in preservation rather than*

14 The *Concept of Equality*, Susmita Bhattacharya, Writers Workshop, Calcutta, 2002, p. 64.

revolutionary changes, in child bearing and home making rather than intellectual and artistic creations.

All this appear bordering on absurdity to someone who has lived in a cocooned, educated, culturally advanced family and has grown up in an enlightened environment. It would be relevant to recall how girls were being persuaded to opt out of science and mathematics after fifth grade or so because they were not 'intellectually equipped' to cope up with the rigors of learning these two subjects. These were recommended only for boys. It required the vision and courage of a Dr. D.S. Kothari to emphatically recommend that girls were in no way deficient from boys and had an equal right to study science and mathematics along with them. Based upon the Report of the National Commission on Education (1966-64), headed by Dr. Kothari, the 1968 National Policy on Education prescribed ten-year common school curriculum; for both boys and girls; without any discrimination. How forthright this one recommendation was is proved by the millions of girls who have excelled in science, technology, medicine, ICT and every other area. In Board and University examinations, girls invariably do better than men; Girls themselves have broken umpteen myths that were imposed upon them for centuries highlighting they were different. Girls have proved Swami Vivekananda: educated women shall find themselves solutions to their problems!

The latter half of the 20th century has opened various avenues and vistas for girls and women to prove their worth. There are, however countries that do not permit women to get a driving license. An innocent 14 year girl Malala Yusufzai is attacked to kill, fortunately survives and becomes a global icon. Yes, most of the men have realized they have to work for the upliftment of women to have harmonious and peaceful families, which in turn shall lead to a harmonious and peaceful world.

There could be innumerable other premises that are still being offered in defense of men's superiority that invariably points out the necessity of "training women from childhood for their special job and should be encouraged, and even forced whenever necessary to stick to it.[15]".Even in educated families, girls are not usually encouraged to become self-

15 Ibid, p. 65.

dependent while it is a must for boys. Slowly, here again, girls themselves have moved out to the world of work, have courageously confronted problems that arise solely because of crimes against women and have proved their potential. This number must increase as that alone would break the entrenched stereotypes in families and societies.

Over the years, migration to cities and towns is on the rise. Those who move with their families and become part of the urban labour force could be seen in thousands and thousands. They lead a real tough life, suffer illegal wage cuts from the contractors, are bereft of the benefits of the welfare schemes because ignorance or corruption or both. Most of them have no faith in government schools and private schools are beyond their reach. In such families the worst sufferer is the girl child. If both the parents work as daily wagers, the safety and security of the children, particularly of girls, stands compromised. The social sector support to such children in urban slums and project sites remains inadequate. No builders, contractors take the provisions of providing facilities like crèches, health care and transport facilities to schools for the children of hired workers. Access to education is still comparatively far difficult to the girl child than the male of the species**.** The factors that impede their participation vary on regional, cultural, social and economic considerations on one hand and the apathy of the system on the other.

Strategies for Empowerment Through Education

While evolving specific strategies, one has to comprehensively understand the prevailing conditions and the existing potentialities for eliciting support from sections of the populace. The recent instance of 14-year old MalalaYusufzai who was shot at for going to school and asking others to study says so much about the *enormity* of empowering girls through the education route. She is now a role model that has endeared herself globally. Manal al-Sharif is another example of inherent courage; what Indian culture calls *Shakti*. A citizen of Saudi Arabia, she writes about her upbringing[16]: "I was taught that if I left home, I would be fully responsible

[16] Manal addressed the Oslo Freedom Forum, 8 May, 2012, and delivered the speech which the *Readers Digest* India published in its August 2013 issue, pp 118 to 123.

for any evil that befell me because men cannot be expected to control their instincts. …I was made to stay home….For Saudi extremists I was *awra*. The word means a sinful thing, an intimate part of the body you should not show. It is against the law to disclose it. By the time I was ten, I was covering myself fully." … We were voiceless. We were faceless. We were nameless. And we were completely invisible." Her rebellion began with daring to drive a car on Riyadh roads with a valid international driving license. It was unimaginable there! She was arrested and jailed. But the fire within was ignited. Here are her golden words;

> *We believe in full citizenship for women, because a child cannot be free if his mother is not free. A husband cannot be free if his wife is not free. Parents are not free if their daughters are not free. Society is nothing if its women are nothing.*
>
> *Such example could be located in different situations, conditions and circumstances and could lead to formulation of specific strategies, some of which are mentioned below. Education policies must realize that education helps girls and women to recognize their potential and personality, their social, cultural and economic rights. It enhances their self-image, bestows them with self-assurance, enables them to resist exploitation, oppression and being relegated to a second-class citizen in home or at work place.*

1 Even after the RTE Act, non-enrolment of girls in schools remains visible in certain situations like migrant workers, inaccessible areas, absence of crèches and Balwadis, etc. A pragmatic view has to be taken; the system must continuously monitor no enrolments, delineate specific impeders and try to find solutions taking parents into confidence. Mere provision of punitive action against parents is not sufficient.

2 There is a tendency on the part of the bureaucracy, functionaries of the education departments and the management systems to take the provisions of toilets lightly. Millions of girls drop out of schools at the age of 11-12 years solely because of non-availability of separate functional toilets.

3 Absence of lady teachers, particularly in distant, far flung and rural areas is another main cause of girls opting out early and are, thus, deprived of moving to higher education. Repeated assurances contained in the policies and programmes need speedy and sincere implementation. A well educated girl impacts the village or the community far more effectively than boys. She could be an asset in achieving attitudinal transformation on various aspects including the education of girls and need to give them equality in homes as well.

4 Every educational plan and its implementation must internalize and specifically articulate that the goals of universal education, egalitarian society, equality and development just cannot be attained without every girl being brought to the fold of elementary education and further, every impediment towards her moving to higher education is removed by the state and the society. Presence of women in sectors that require higher level skills invigorates the work culture.

5 Prevention of crimes against women must get explicit priority in the curriculum in schools and the teacher training institutions. Specific mention of the constitutional guarantees that pertain to women rights must also become the part of legal and constitutional literacy that must be imparted before the boy or the girl leaves school. Studies in these areas should also be encouraged at the university level through special courses and elective papers. Researches deserve sponsorship and the outcomes may lead to better understanding and refinements in policy renewals.

6 Education must prepare women for entrepreneurship, self-employment and for taking up skilled and professional assignments. Women's access to employment could be substantially increased if specific arrangements are put in place to provide skill orientation to any girl or women who may be interested in acquiring or augmenting professional skills.

7 Good education and its appropriate utilization by one woman impacts scores of others. Names like Vandana Siva, Kiran Bedi, Ila Bhatt,

Kalpana Chawla, Sania Mirza or Saina Nehwal cast an impact on innumerable girls and their families. So do women in colleges, universities, in ICT, in the corporate sector and other upcoming avenues.

8 The deficiency of trained teachers in rural and tribal areas requires some fresh thinking. It should be possible to pick up girls from a tribal district after Class Eight, recruit them as probationary teachers, train for four/ five years in residential training schools with free boarding lodging and a stipend. One could be rest assured at least 90 per cent of them will join a school even after marriage which do not take them to too distant a place. This strategy could be implemented even in existing DIETS most of which, in rural and tribal areas, have large campuses and even huge accommodation to function as residential institutions.

9 Provision of government teacher training institutions for girls in rural and tribal areas could make a big impact as it would substantially reduce dropouts and enhance retention. It would greatly generate people's confidence in girl's education if girls are brought to these institutions after eight years of schooling, are treated as probationary teachers, looked after fully by the State and given a small stipend. This would greatly reduce non-availability of trained teachers in these areas and also the perpetual teacher absenteeism.

10 Married women often suffer abuse and violence in their matrimonial homes without sharing it with their parental homes. Apart from the family, it must find appropriate place in the school curriculum how important are the family ties even when girls and boys grow up. Girls must be acquainted with the lasting value of family ties and necessity of interacting and 'sharing' with their mother and also with other near and dear ones.

11 There is a need to create a national level women's body to monitor media portrayal of women and children in print media, television and films on a daily basis. Unscrupulous exploitation of women and

children depicted in films, intended solely for commercial gains, frequently ignore the distracting influences that manifest in severe aberrations in the society. It could set up monitoring cells in educational institutions and keep in touch with teachers and parents to ascertain their response.

12 It is an unfortunate fact that a large number of families continue to give first preference to the boy child. Girls lose out even on health care and food. Schools, teachers and voluntary organizations could combine to vanish these unhealthy traditional practices.

13 Education must take note of the fact that urban sex ratios are more skewed than those in rural areas. The point of concern is: have all the provisions for preventing sex discrimination tests have made little impact on educated urban population? Has education not impacted this aspect?

14 Educational endeavors need augmentation from media, opinion makers, professionals particularly the medical practitioners who need to come together and assist schools and institutions.

Media, opinion leaders and the icons of the people and young persons could also supplement and augment the educational efforts. An intensive networking could result in tangible outcomes. Let it be reiterated that good quality education remains the strongest strategy to empower women and give them their due place in each and every aspect of human endeavour.

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RIGHT TO HEALTH

Right to Health in India: Contemporary Issues and Concerns

*Dr. Abhijit Das**

Introduction

A lot of things have changed in the field of health since India became independent. Much of the time the only health indicator which seems to be of concern seems to be the country's population. This is the only number displayed on the boards of important national institutions like the offices of Ministry of Health and Family Welfare office, and the All India Institute of Medical Sciences in New Delhi. And most people see the very high increase of our population from about 30 crore at the time of independence to over 120 crore now as 'bad news'. But many other numbers have changed as well, and we seldom give them much thought. The average life expectancy of an Indian was a little over 32 years in 1947 and has now doubled to over 65 years for both women and men. The death rate, which was as high as 27 people for every thousand persons has come down to less than 9, and where every third child out of twenty born died before the age of one year, now it is less than 1child. Over these years we have many more doctors, nurses and hospitals, and the healthcare system is able to save many more lives with the new technologies that are now available. Our country has emerged as a major source of production of medicines and is probably the cheapest in the world. Our healthcare systems are so good now, that people not only from our

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neighbouring and poorer countries, but also those from the western affluent countries, come to India for health care. These are among the 'good news'.

Some readers may by now start feeling a little uncomfortable that this is not the complete picture and I will not be surprised. Their experience of the health related situation could be very different. They may have experienced how expensive the private medical care system is. Others may have had to pay bribes in so-called free public hospitals. Many may have seen that there are no doctors available in rural health centres. Others may feel that it is not 'right' that the poor are unable to get health care services from Indian hospitals while the rich from foreign countries are freely able to get care because they can pay. In their experiences with the health care system, many may have felt helpless as they didn't know why they were given the treatment they were given, because the busy doctors never explained, others may have felt 'pushed' to accepting a treatment they didn't want because the doctor never asked them what they wanted. Moving away from personal experiences we sometimes read or hear about dogs in the labour room, of ambulances which arrive after the patient died, of the government doctors who keep the poor women in the labour waiting all day long because they are busy with patients in their private chamber and a host of other incidents which appear to be 'wrong'.

On closer examination most healthcare related circumstances do not seem the same for all people. First there seems to a difference in the health system's approach to different people, for example nurses as well as doctors are often dismissive towards the not so well dressed while being pleasant towards the well turned out and English speaking patient in the same hospital. Second there is also the difference in survival rates, for example, children born in the villages of Uttar Pradesh survive much less than those born in the condominiums of Noida not far away. To some these differences may seem 'natural and normal' to others they may feel 'unfair'. The concept of 'fairness', and the quest for 'equality' among human beings, underpins our understanding of 'human rights'. It influences the way we see and respond to the world around us, including in the domain of health. This article will trace the evolution of the 'right

to health', how this right is articulated and implemented both globally and in India and conclude with a review of its contemporary status in India.

Evolution of the Modern Human Right to Health

The modern idea of 'human rights' was concretised soon after the Second World War. To many among the victorious Allied forces, Hitler's treatment of the Jews was not only wrong but also unacceptable. Many of the atrocities unearthed during the Nuremberg trials were 'scientific experiments' conducted by Nazi doctors. Today these are considered torture. This difference in our understanding of how we can or should treat any fellow human being, and especially how a country treats its citizens is the basis of 'human rights'. Human rights have been identified and then elaborated through a series of covenants and treaties within the United Nations system. Soon after the Nuremberg trials followed the Universal Declaration of Human Rights (UDHR) – a declaration of how individuals in the world should be treated. On the 10th of December 1948 the United Nations accepted the UDHR which begins with declaration that '*all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.'* The UDHR also affirms that the concept and respect of human rights is the basis for freedom, justice and peace in the world. The right to health is included as Article 25 of the UDHR, and declares that "(E)veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The second part of this Article makes reference to the care needs of mothers and children.

A few months earlier on the 7th of April 1948 the Constitution of the World Health Assembly was adopted, and this included '(T)he enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition' as one of its core

principles. While the need for including right to health within the overall framework of human rights was felt from the beginning of the articulation of rights, an understanding of the ways in which this could be practically done has emerged much later.

Human rights are often categorised as first and second generation rights, or as positive and negative rights. Health is seen as a second generation or positive right. What it means in real terms is that achievement of the right to health requires the state to take some deliberate actions/ make provisions so that a person can enjoy these rights. These could be arrangements for hospitals, or for making safe drinking water available, or provide vaccines for children. The right to education also falls into this category. This is in contrast to the right to freedom of speech or of assembly where there the individual needs no state support to either speak or to make friends and associates. This category is often referred to as civil and political rights, while the rights related to health or education are referred to as economic, social and cultural rights. The UN has two separate Covenants the ICCPR[1] and ICESCR[2] which came into effect in 1966 and 1967 and together with the UDHR these three documents comprise the International Bill of Rights. This gives the three the status of International Law and all states/countries that sign onto these documents become duty bound to follow the letter and principle of these laws. Right to health is included as Article 12 of the ICESCR. The nature of the right to highest attainable standard of health was however not clearly explained till 2000 when the General Comment 14 was issued. This clarified that the right to health included

a) individual freedoms like the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.

b) right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.

1 ICCPR stands for International Covenant on Civil Political Rights

2 ICESCR stands for International Covenant on Economic Social and Cultural Rights

The system of health protection included a range of appropriate services which were to be available, accessible, (culturally) acceptable and of high quality. Non discrimination and equal treatment is fundamental to the exercise of this right. The acceptance of this right by a country calls for it to adopt laws, policies and plans to meet the health needs of its citizens. The right to health is often confused with the right to healthcare, which is a limited concept and is restricted to services which are directly related to health, ie. primarily curative and preventive health services . With the right to health all underlying determinants of health including nutritious food, safe water, clean air, safe workplace environment and harmful traditions and practices are included within the ambit of this right. However the right to health, was not made a mandatory obligation of governments because it was also realised that it would be difficult for poorer countries to make the same provisions as developed countries, and thus a principle of progressive realisation was included within the operational principles. But a concept of 'core obligations' were also introduced, to ensure that countries were obliged to provide a minimum set of provisions for its citizens. India is a signatory to the ICESCR.

Right to Health in India

At the same time that the UN was deliberating the UDHR, the Indian Constituent Assembly was deliberating the nature and remit of Constitutional or fundamental rights for the Indian citizens. Using principles similar to that of the first and second generation rights – two different sets of obligations were included within the Indian Constitution. The first included the 'fundamental rights' which were rights for which the state or governmental obligations were absolute and the second category were the 'directive principles' which were to be progressively realised. The constitutional provision for right to health is not very explicit and is included within Articles 42 and 47. Article 42 makes "(P)rovision for just and humane conditions of work and maternity relief- The State shall make provision for securing just and humane conditions of work and for maternity relief". Article 47 makes it the "(D)uty of the State to raise the level of nutrition and the standard of living and to improve

public health- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health" . However since these are part of the directive principles, these are neither mandatory nor can they be basis for bringing a lapse to the notice of the court.

However the Supreme Court of India, through its progressive interpretation of the Constitution has effectively included the right to health as an integral part of the right to life (Article 21) which is a fundamental right. Through a number of cases like the Bandhua Mukti Morcha vs Union of India, Consumer Education and Resource Centre Vs Union of India, State of Punjab and Others v. Mohinder Singh, Parmanand Katara Vs Union of India, Paschim Baga Khet Mazdoor Samiti Vs State of West Bengal and others, the Supreme Court has held that various conditions which make up the right to health like

- all the necessities of life such as adequate nutrition, clothing.
- clean drinking water and sanitation facilities.
- humane working conditions and health services.
- medical care professional obligation of doctors, both public and private to extend his services with due expertise for protecting life.
- to provide timely medical treatment to a person as legal and mandatory obligations of the state[3].

Constitutional Right to Health: A global review

While International human rights law mandates right to health as an integral part of human rights, at the country level, constitutions have a natural and much greater legitimacy. A review of constitutional provisions

3 This paragraph draws from Legal Position on Right to Health Care Part II available at http://www.cehat.org/rthc/paper3.htm

(Kinney and Clarke 2004) around right to health found that 67.5 percent of the 159 country constitutions reviewed had some provisions around the right to health.

The study found that many of the countries which had their constitutions framed after the second world war had the right to health included within it, while some countries which had older constitutions, like Netherlands, Belgium, Canada had revisions in the 1980 – 90 period incorporating health related provisions. Interestingly some poor countries, like Haiti, had an elaborate articulation of the right to health, while many countries with substantial financial and programmatic attention to health care did not have any constitutional mandate. The second group includes rich European countries like Germany, Norway, France and Denmark.

In a separate review (Backman et al 2008) the health systems of 194 countries were reviewed to understand whether they included 'right to health' features. The features which were considered part of this approach include the following :

- Legal recognition and legal obligation – this includes both constitutional recommendation and case laws as in the case of India
- Standards and Quality– details about what the society can expect in term of health care and other provisions like safe drinking water, blood safety, essential medicines as well as availability of health workers and so on.
- Participation – provisions for the participation of all relevant stakeholders including disadvantaged groups, ordinary citizens / general population. Examples include the health conferences/ assemblies in Brazil, Peru and Thailand.
- Transparency – freely available information about health sector provisions and performance like quality, availability and pricing of essential medicines, private and public sector performance and so on.

- Equity, equality and non-discrimination - provisions to ensure outreach and inclusion to the most marginalised eg. provisions for women, children, adolescents, marginalised population groups.
- Respect for cultural differences
- Referral systems
- Planning, monitoring and accountability
- Coordination systems and international coordination

The review found that a large majority of countries (121) did not include a constitutional provision. Most countries lacked a comprehensive health plan, and without disaggregated data attention to discrimination was difficult to monitor and accountability mechanisms were found to be weak in most countries. In conclusion the paper finds that the current state of information and data was inadequate to either find whether states were fulfilling their core obligations or whether there were any steps towards progressive realisation.

Right to health and the evolution of the Indian health system

The Indian health system is undergoing many changes both in operational and conceptual terms. Fundamentally India has a very mixed and complicated health system with a mixture of traditional and modern practices and belief systems. India has the distinction of both formal and informal traditional systems being used widely, and the formal traditional systems are now incorporated within public policy architecture through a separate Department of AYUSH (Ayurvedic, Unani, Siddha and Homoeopathy). There are separate medical colleges training health care providers in each of these different disciplines. Today many primary health centres across rural India provide modern medicine and traditional medicines concurrently, indicating a strong respect for local preferences, a key component of a right based approach. However local health traditions are not limited to the formal practitioners and include faith healers, herbal healers, bone setters and others and these systems still remain outside the ambit of policy discussions.

The broad outlines of India public health system was drawn up a little prior to independence by the Bhore committee (1946)[4]. The PHC (Primary Health Centre) based template of the Bhore committee report, with the aim of universal coverage and population-based parameters remains in place even now. However more than 70 years later it has not been able to meet health rights of its citizens. In the 1960's the health system became distracted by the compulsions of population control and progressively the Family Planning and Family Welfare component overwhelmed the health component of the programme, leading to the establishment of a new and better resourced Department of Family Welfare. The family planning programme with its population control focus with targets and incentives introduced a period of human rights violations being committed by the health sector. These included among others coercive sterilisations and gross negligence. Some aspects of those days continue through camps, target and incentive based sterilisation programmes in some states even today.

In the 1990's and later it was realised that this obsession had neither yielded the anticipated results, and the overall public funding available to health care had become very little. While the trend in most countries was that public expenditure was the greatest component in health care expenditure, in India, it constituted only about 20 per cent[5]. The private health care industry had started booming in the face of economic reforms starting from 1980's and in 2000 it was found that health care cost had become the second largest cause of rural impoverishment and a large number of families became poor because of one episode of hospitalisation in the family. This pointed to a gross violation of the principles of economic accessibility, a core component of the right to health.

From the late 1990s onwards a series of changes, often conflicting, were introduced in the health system both at the national and state levels. According to constitutional provisions, health remains a state subject, while public health and family planning remain in the concurrent domain,

4 Health Survey and Development Committee was established in 1943 and was chaired by Sir Joseph Bhore.

5 Information available from National Health Accounts, India 2001 -02

i.e. part of both central and state jurisdiction. In the changes subsequent to 2000 the area of agreement has been that the state investment in health has to increase from an abysmally low 0.9 per cent of GDP in 2000. However what is uncertain has been the route of providing services. Sometimes the privatisation has been seen as the route, while at other times the public sector has been seen as most important. At one point, public sector improvement was seen through a user-fees model, but now free service at the point of delivery is being seen as the alternative. At this time the consensus appears to be that the public sector has to be the main financer of health services, while the provisioning could be through different methods like public provisioning, contracting-in of providers, health insurance or other methods which include private sector engagement. The National Rural Health Mission (NRHM), the Rashtriya Swasthya Bima Yojana[6] (RSBY) a health insurance scheme for non-formal sector workers, various state level health insurance schemes for secondary and tertiary care like the Aarogyashri Scheme[7] and others remain key platforms and mechanisms for delivering public services to the poor.

The concept of Universal Health Coverage has been recently discussed and deliberated through a specially constituted committee of the Planning Commission of India (High Level Expert Group or HLEG) and its report (HLEG 2011), which includes financial, managerial and regulatory guidelines remains the strongest articulation of a right to health approach in the country. However the report which was supposed to provide the basic architecture of the health chapter of the 12th Five Year Plan remains largely ignored in the 12th Plan document.

Implementing a right to health informed programme in India : contemporary concerns and recommendations

As India's development story is being hailed across the world there are many questions being raised about the differential nature of growth

6 A health insurance scheme for the poor from the Ministry of Labour and Employment which provides benefits upto Rs 30,000 for hospitalization. For additional details see www.rsby.gov.in

7 A health insurance scheme for tertiary care for the poor run by the state government in Andhra Pradesh. Similar schemes are also run by Karnataka and Tamil Nadu.

experienced by different sections of the population. Many authorities have raised concerns about an increasing gap between the rich and the poor. Against such a backdrop, the discussion about rights becomes specially relevant because rights lay down the minimum conditions for all. This section discusses the current status of right to health in the country reviewing the contemporary health scenario using the framework of state obligations ie. respect, protect and fulfil.

Health financing, health expenditure and out-of-pocket expenses

Health care is expensive and economic barriers are one of the greatest barriers to fulfilling the right to health. Low investment has meant low staff salaries, large vacancies, lack of maintenance and upgradation of facilities and so on In order to improve the situation the National Rural Health Mission introduced a mechanism through which the national and state governments progressively increased their annual health outlays. The 12th Five Year Plan has also accepted this in principle projecting an overall increase to 1.87% compared to the HLEG reports call for an increase to 2.5% of GDP. The main challenge is to reduce out of pocket expenditure at the point of care through free medicines and free care for a range of health conditions up to the secondary and tertiary level. The expansion of insurance programmes like the RSBY (currently funded through the Ministry of Labour and Employment) is often seen as an answer but some recent reviews (Narayana 2010, Nandi et al. 2012) have raised questions. Provision of free medicines has started to emerge as a possible policy solution with Rajasthan taking the lead[8]. This provision has the potential to reduce out-of-pocket expenditures significantly, and can thus be an important indicator for tracking fulfilment of the right to health.

Standards and Regulation

Legal protection through recourse to courts of law are a necessary but very inadequate protection for health related rights. Health rights violations

8 Rajasthan launched its free medicine scheme on October 2, 2011. For a report see *The Hindu*, October 3, 2011 Rajasthan launches free medicine scheme http://www.thehindu.com/todays-paper/tp-national/rajasthan-launches-free-medicine-scheme/article2507562.ece

affect the poorest the most, and they are also the most ill-equipped to approach courts and pursue litigation. The articulation of standards and setting in place of regulatory compliance procedures are a much better way to ensure the protection of the right to health. Unfortunately the regulatory framework related to health is very weak, and despite some rhetoric little has been done to strengthen this aspect even though the country is served by a vast private sector. To understand the implications of this weak regulatory framework around health we can consider the following example. We have regulatory mechanisms which are supposed to inform the process of manufacture and distribution of medicines. But many of these procedures are not complied with either by manufacturers or by those who sell medicines. There is little inspection or oversight. And we have frequent reports of counterfeit or fake medicines which in some cases lead to death of the patient. On the other hand almost all medicines are available over the counter without any prescriptions, leading to inappropriate use of medicines. India aspires to be a 'developed' country, but in all developed countries 'over the counter' medicines and 'prescription' medicines are strictly segregated.

Some, but not all states have laws related setting up clinics, nursing homes and other health establishments. Where there are laws these are violated, and the violators include prominent doctors, against whom no one dare complain. A pertinent example of regulation is the PCPNDT Act which regulates the use of technology for detection of the sex of a foetus. The law was passed in 1994, but before the Supreme Court took up a PIL in 2000, no state had set up the relevant regulatory mechanisms. It took more than 10 years after the law was enacted for the first conviction[9], and all the while the sex ratio among the new born continued to decline.

The overall regulation of medical practice is through the Medical Council of India, but the corrupt nature of the regulatory body was revealed recently when the Director was caught red handed accepting a bribe to grant permission to a private medical college[10]. The Clinical

9 The first conviction under PNDT Act took place in Haryana in 2005

10 MCI Director Ketan Desai was caught taking a bribe by the CBI on April 22, 2010

Establishment Act (2010) was recently passed making it mandatory for all clinics, nursing homes, laboratories etc. to be registered. Some states have started adopting this law and it is hoped that it will lead to some measure of regulation.

As our country is moving into a free market paradigm many service sectors have designated regulatory authorities being set up eg. Insurance Regulatory Authority of India (IRAI), Telecommunications Regulatory Authority of India (TRAI) (for the Insurance and Telecommunication sectors respectively) since the role of the government is now being seen as a regulator rather than a provider of services. However there is only a very nascent conversation on the issue of a health regulator authority. A draft National Health Bill had been proposed through the website of the Ministry of Health and Family Welfare which included reference to a similar authority. It is essential that the discussions around a National Health Authority which consolidates the regulatory standards and oversight mechanisms be reinitiated. It may be appropriate for the National Human Rights Commission to take a lead in this matter.

Monitoring Health Equity

Inclusive growth and focus on the most marginalised have emerged as important components of the policy rhetoric in India, and this is very desirable from a rights perspective, because it addresses discrimination . In the recent past, especially in the last five years, there has been an exceptional focus on maternal health. One indicator that has received a lot of attention has been the rate of Institutional Delivery, and many states have reported that the figures have increased two to three times or more in this period, and there has been a sense of achievement all across the health sector. However an equity-focussed analysis will reveal many gaps. NRHM included equity parameters in its design viz. focus on some states with poor indicators and flexible financial poor to ensure that the plans could be adapted to needs of specific districts were two such measures. However the NRHM also adopted a 'uniform' policy solution - institutional delivery, reinforcing it through incentives both for the

community health volunteer (ASHA) and the woman undergoing delivery (Janani Suraksha Yojana or JSY). Today a differential pattern is visible which indicates that the maternal health related indicators have done better in those states and in those districts where there were facilities for emergency obstetric care services like blood supply or the ability to conduct emergency caesarean section operations exist. The lack of poor quality of institutional delivery services have been pointed out in many reports and after seven years of NRHM there are many districts where the institutional delivery rates continue to be very low. The unfortunate part of the story is that in all districts across the country, services for women delivering at home, through training of traditional birth attendants has been discontinued... Thus many women who are poor, mostly dalit or tribal, and living in remote villages who have their delivery at home are denied health support and consequently their right to health remain unfulfilled and unprotected.

Availability of Essential Medicines

Medicines are an important component of the right to health and comprise about 70 per cent of outpatient care costs. Even though India has emerged as a global powerhouse in medicine production that the prices of drugs are very variable in India with different brands of the same drug priced differently by different producers. The ratio of the highest and the lowest price of the same drug is often enormous – ranging from twice to more than ten times. There is a list of essential medicines which come under pricing controlbut this list has been cut down on many occasions. The recent 'Glivec'[11] case highlights the extent to which pharma companies will go to maintain their artificially high costs. The Supreme Court order is very salutary in this case, and highlights a country's priority to support the right to health of its citizens.

The government of India had started an initiative called the *Jan Aushadhi* a few years ago to reduce the cost of essential medicines by

11 The Supreme Court of India dismissed an appeal by the Swiss drug maker Novartis to extend its patent for the updated form of an older drug imatinib (Glivec) in India in April 2013

procuring these medicines in bulk and selling them through government supported outlets. Its implementation has not been very successful. The recent step taken by the Rajasthan government to make all medicines provided through the government hospitals free is a very welcome step. However two additional steps are necessary to make essential medicines available cheaply. The first is to ensure that all medicines under the WHO essential medicines list are only marketed under their generic or chemical name, and price of these medicines has to be controlled, or a ceiling fixed by the government.

Medical ethics and patient rights

A person who visits a doctor nowadays, either in a government or private hospital, often comes out with a prescription which has a long list of tests. Seldom does the doctor or any person associated with the clinic explain why these tests are necessary, or which are essential and which are optional. I recently came across a situation where the doctor had prescribed a series of expensive tests without conducting any physical examination. On asking why these tests were necessary, and whether some essential clinical tests had been performed I was told I would not understand. On mentioning that I too was a doctor, I was rudely told that I was not from the specialised discipline. This was not only a case of medical arrogance but unethical practice. The ancient Greek founder of medicine Hippocrates had realised that doctors have an enormous power of knowledge and skill to help a person, and conversely the ability to harm a person as well. He instituted the Hippocrates oath for doctors, which in its basic form is a pledge for doctors to knowingly do no harm to the patient, not to wilfully withhold knowledge or support, and to act in the best interest of the patient. In its current form medical ethics also calls upon doctors to explain what are the treatment options and the benefits and risks of different treatment options. The doctor needs to be constantly aware of the immense knowledge and power asymmetry between the doctor and patient and support the patient to take the best possible choice. Unfortunately medical ethics are not taught to young doctors, and ethical reviews and prescription audits are seldom held in hospitals. Thus we

have a situation in India where unnecessary test and unnecessary medicines are often prescribed leading to inflated medical costs.

Patient rights are also an ignored area in India. While the discipline of medical social work exists in schools of social work, this professional is absent from most hospitals. The HIV/AIDS programme introduced the counsellor, but the practice of counselling patients about their options and choices is not practiced routinely in any other discipline. As corporate medical care is becoming more popular in India, hospitals have started introducing coffee shops, florists, nutritionists, patient liaison executives but clinical counsellors or medical social workers are seldom part of the routine services offered to patients.

Another area which is emerging as an area of concern with regard to ethics and rights is the area of clinical research. India is emerging as an important place for clinical and drug trials. Many of these take place among the poor in urban and rural India. These procedural anomalies were highlighted when it came to light that a few tribal girls died after participating in a trial with HPV vaccines[12]. The case shows that principles of informed consent require more vigorous attention among vulnerable populations.

Attention to Social Determinants

Attention to social determinants of health differentiates right to health approach from a somewhat limited attention to the right to healthcare alone. On the one hand these include factors like safe drinking water and sanitation and hygiene, and on the other they also include food availability and nutritional intake as well as the social status of a person which determine their access to these factors. For a long time the attention to these factors was low and it was very recently that the World Health Organisation set up a Commission on Social Determinants of Health[13]

12 For more details see Vaccine trial's ethics criticized : Collapsed trial fuels unfounded vaccine fears Nature 474, 427-428 (2011) | doi:10.1038/474427a

13 For more details see Closing the Gap in a Generation : Health equity through actions on social determinants of health, Final Report 2008

which reported that it is often these determinants rather than the availability of medical care, that affect the longevity and health of individuals and population groups. The role of water and sanitation in health has been known for over two hundred years, but the attention to these factors for health concerns continues to be very low. The campaign against polio is a good example. Polio is spread through a virus which spreads from the contamination of drinking water by stool or faecal matter. The global polio campaign was launched in India very vigorously and thousands of crores of rupees was spent in explaining the virtue of the vaccine, administering the vaccine and in testing the stool of children with suspicious paralysis. However not one additional rupee was spent on improving the water supply and sanitation of the poor crowded localities in smaller cities of Uttar Pradesh where this disease was the most rampant. Today hopefully the children from these poorer parts of India are free from polio, but lakhs continue to die from diarrhoea because the water and sanitation condition is probably worsening

The importance of food as a right is evident from the Supreme Court interventions in the 'right to food' case. The government is supporting the availability of food for the poorest of the poor through a number of schemes like the Integrated Child Development Scheme (ICDS), the Mid Day Meal Scheme and the very recent National Food Security Act. The progress on the 'right to food' shows the role that citizens can have to compel the government to take steps to fulfil its human rights obligations. Another social determinant that the National Human Rights Commission has taken cognizance of within the framework of right to health has been the issue of silicosis among workers in mines. The Supreme Court has also addressed the issue of air pollution by banning old cars which spew a lot of pollutants from operating in big cities like Delhi. However the overall emphasis on social determinants is low and is not part of the core mandate of the Health department.

Governance and Accountability Mechanisms

Accountability is a distinguishing characteristic of a rights based approach. It is the one feature which allows the citizen to ask questions about the

intentions and performance of the state. If the state has a strong and well performing health programme and the citizens by and large healthy and satisfied, the need to ask questions is diminished. However, it is only when the state has provisions for citizens to ask questions, and mechanisms through which it explains its actions, the conditions for a rights based approach are satisfied. Governance is the mechanism through which a system deliberates, implements and reviews its actions. In India the health governance system is complex, in parts chaotic, and results in poor management, slipshod execution and reviews rarely inform practice in a direct or systematic way. India has a three tiered governance structure, with the third tier or local self government hardly being an effective mechanism of governance having insufficient mandate, capacity or resources. Health falls in the constitutional 'state' list of subjects, while family planning is in the concurrent list. This means that actual planning and implementation of health related issues falls within the jurisdiction of the state administration. The national government extends its influence at the level of the state through National Programmes which are substantially funded by the Centre, but the final call is that of the state government. Thus, it is the national government which is the signatory on International treaties and accountable for India's human rights performance, but the ultimate responsibility of meeting the right to health is with the state governments who have no explicit international obligations. Thus different states have differential outlays on health, different laws, different salary scales for its doctors and nurses, different names for its clinics and hospitals and different ways in which various health services are financed and provided.

Within this complex governance mechanism around health, administrative accountability mechanisms are weak. However the High Court and Supreme Court have emerged as important platforms, and the Public Interest Litigation an important mechanism for ensuring accountability. Some landmark cases have already been alluded to, and some others which are particularly important from a rights perspective include:

- Ramakant Rai and others vs Union of India[14] (Supreme Court) for establishing quality standards and quality compliance mechanisms in the context of the national family planning programme
- Laxmi Mandal vs NCT Delhi[15] (Delhi High Court) for establishing reproductive rights as part of the overall right to health and human rights and for making free medical care for pregnancy and delivery mandatory

However, as mentioned earlier, courts are not the most efficient method to ensure accountability. The National Rural Health Mission had included a three-pronged accountability approach but that has not been fully operationalised. Common review missions are organised annually and there is an increasing frequency of large-scale health surveys. But the community monitoring component of this three-pronged approach has been implemented in a very limited manner. However what is most important is that the overall triangulation between the three different sources of information has never been attempted. For a complex governance arena like the health sector it is perhaps appropriate to set up a periodic 'reporting - observations – explanations' mechanism as used in the International human rights arena. The National Human Rights Commission can play the role of the UN Human Rights Council or that of different treaty monitoring bodies in this case, and civil society organisations can be encouraged to submit 'shadow reports'. This mechanism can be supplemented by the Health Regulatory Authority of India which would regulate the functioning of the private sector hospitals and a revitalised Medical Council providing oversight to individual practitioners. A State level ombudsperson with district level complaints and grievance redressal mechanism should also be established to ensure that decentralised and simple mechanisms are universally available without taking recourse to courts and litigation.

14 Ramakant Rai v Union of India, WP (C) No 209 of 2003

15 Laxmi Mandal v NCT Delhi, WP 8853/ 2008

Closing thoughts

India is a very large and complex country and it is currently undergoing a fundamental transition. On the one hand, it is moving slowly out of the group of poor and less developed countries to the group of middle income, industrialised countries. On the other hand, an old, mature but very inequitable cultural social system is set to transform itself into a more egalitarian social which continues to embrace its deep cultural roots. The healthcare system is also going through similar upheavals and changes. A right to health approach provides us with an opportunity to keep us rooted to our traditions, even with respect to health care, while welcoming the opportunities, ideas and technological innovations that become available with modernity and the new global world. We need to adapt and learn from what we see, keeping in view both out own cultural consciousness and our interest in equity and rights. We will necessarily need to do things differently. Recently I was in a meeting where an international public health functionary argued that we should not set up mechanisms in poor countries which do not exist in the developed world, it will introduce unnecessary complexities. My response is that we need a greater focus on entitlement awareness and more robust accountability methods in the poorer countries because the individual citizen in such countries is more marginalised, more vulnerable and far less capable of taking unsupported individual action to protect their own rights. We are in the early stages of this process of transition and I hope we continue to provide the support that is necessary so that each citizen of India can enjoy the same 'right to health'.

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Maternal Health: Promotion and Protection of Human Rights of Women

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Context of Maternal Health in India

India has made considerable progress in bringing down its maternal death rate over the last two decades. The countdown to 2015 report has recorded the decline in Maternal Mortality Ratios (MMR) in India as follows:

- MMR in 1990 – 600 deaths per 100,000 live births.
- MMR in 2000 – 390 deaths per 100,000 live births (decreased by 4.1%).
- MMR in 2010 – 200 deaths per 100,000 live births (decreased by 6.3%).

(World Health Organization & United Nations Children's Fund 2013).

India has been able to lower the actual number of pregnancies for each woman by making family planning services widely available and if required enabling women to medically terminate their pregnancies, thereby reducing women's risk of maternal death. In addition, a number of steps have been taken in the last seven years within the National Rural Health Mission (2005-2012) to improve care during pregnancy and childbirth through health system interventions, as well as encouraging women to

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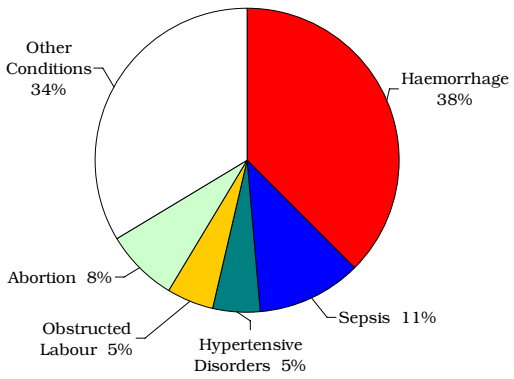
register their pregnancies, and deliver safely in health facilities (Government of India 2005). More recently, the entire package of care for maternal and new-born health has been made free through the *Janani Shishu Suraksha Karyakram* (JSSK) which includes free transportation to the health facilities, thereby reducing cost-barriers to seeking care (GOI 2011).

Despite these laudable initiatives, India may just miss the Millennium Development Goal for reducing maternal mortality by three-quarters between 1990 and 2015. In spite of the efforts made so far, tens of thousands of women will still continue to die each year, for reasons entirely preventable given the state of India's economic progress and the current scientific and medical knowledge available. In fact, globally, India is closer to the bottom of the pile, while countries with far less resources such as Nepal, Bangladesh and Cambodia, have managed to substantially reduce their maternal mortality within the last two decades (WHO & UNICEF 2013). This regrettable situation remains despite India being a destination for medical tourism, in that its tertiary care hospitals provide world-class medical care to citizens of developed as well as developing countries.

Why do Women Die?

The Global Burden of Disease estimates for South Asia suggest that the major causes of maternal death are: heavy bleeding or haemorrhage (31%),

Chart 3: Causes of Maternal Death in India



Source: RGI, 2006

infection or sepsis (14%), hypertension (14%), abortion (14%) and obstructed labour (10%). (Registrar General of India 2006) The causes of maternal death in India have been investigated some years ago in large-scale studies by the Registrar General of India. There too it emerged that the largest proportion of women die due haemorrhage (38%). The higher haemorrhage percentage is also consistent with the high background rates of anaemia reported among Indian women. The main causes of maternal death from 2001-2003 Special Survey of Deaths are shown in the pie-diagram below (RGI 2006).

It is notable that a very large proportion of deaths are caused by 'other conditions' which are non-obstetric: these may include malaria, tuberculosis, extreme anaemia, hepatitis, sickle-cell anaemia (prevalent in tribal communities) or even violence against women. In addition there are a number of morbidities or serious illnesses that women face due to pregnancy and childbirth, some of which can cause a lifetime of suffering if left untreated. Hardee et. al (2012) have highlighted the following major morbidities that are both acute and chronic - anaemia, maternal depression, infertility, fistula, uterine rupture and scarring, and genital and uterine prolapse. For every woman who dies of pregnancy-related causes, an estimated 20 women experience acute or chronic morbidity (Hardee et al. 2012 quoting Reichenheim et al. 2009). For India this is a staggering 1,120,000 (1.12 million) women experiencing illness in addition to the estimated 56,000 who lose their lives each year. Many types of morbidity continue beyond the traditional cut-off date of post-partum care, which is usually six weeks after childbirth.

It is common for women to suffer from co-morbidities, such as obstetric fistula that leads to infertility and depression; peri-natal child death and near-miss maternal complications are also seen as causes. Rates of maternal depression vary widely around the world, and have been reported as 15-28% in Africa and Asia (Husain et al. 2000 quoted in Hardee et al. 2012). In addition, the issue of violence against women during and after pregnancy has also been inadequately examined so far. In some small-scale studies in India it has been linked to the issue of son-preference.

Beyond the obvious bio-medical causes of maternal ill-health and death lies a whole matrix of reasons related to the social determinants of health, including the gender-unequal power relations that affect women's health, as well as health system causes. For example, a fundamental question of rights and risks around pregnancy and maternity is whether women wanted to be pregnant in the first place. The data from the NFHS-3 indicates that very large numbers of women in India are married and pregnant while they are still minors: at the national level one in every five girls (19%) aged 15-17 years is married, and 47.5% the girls aged 18-19 are married. Predictably they are unable to negotiate contraception: 24% of girls aged 18 years and 36% of the girls aged 19 years were pregnant or had already given birth to a child at the time of the survey (Parasuraman et al. 2009). A key reason behind repeated and frequent pregnancies is often women's inability to obtain and negotiate contraception with their male partners, as well as the desire for sons. Gupta et al. (2006) conclude from NFHS-3 findings that son preference remains a barrier to more rapid decline in fertility. Only about half of women with two daughters and no sons want to stop childbearing, as against 90 per cent with two sons and no daughter want to stop childbearing.

The health system causes behind high maternal mortality in India have been reported upon by the former UN Special Rapporteur (UN SR) on the Right to Health, Dr. Paul Hunt, following this Mission to India to study maternal mortality towards the end of 2007. In his report (HRC/A/14/20, April 2010) the UN SR highlights some major health system concerns, one of which was the 'profoundly inequitable access' to skilled maternal care (including emergency obstetric care), given the lack of human resources on rural and disadvantaged areas. He highlighted the 'extremely weak technical capacity for managing maternal health programmes' within the governments at states and Centre. In relation to this he pointed out that India's current monitoring, accountability and redress mechanisms in relation to public and private sector are 'not fit for purpose'; and that women are dying in pregnancy and childbirth, uncounted and unreported.

He indicated that the lack of significant progress towards establishing an appropriate effective regulatory framework for the private health sector is a breach of India's Right to Health obligations, especially when 90% of the 1.4 million health practitioners are located in the private sector. (Human Rights Council, 2010)

Which Women Die?

Unfortunately, even today, programme managers in most Indian states do not have specific information about the group's most vulnerable to maternal mortality and morbidity. There is however some evidence indicating the social profile of those women who are most likely to receive least care during pregnancy and childbirth. According to the National Family Health Survey-3 data (2005-06), women not receiving antenatal care tend disproportionately to be older women, women having children of higher birth orders, Scheduled Tribe women, women with no education, and women in households with a low wealth index (International Institute for Population Sciences, 2007). Similarly, the women least likely to have their delivery assisted by a skilled provider, or attend health facilities during labour and childbirth are the poorest, those with no education, belong to the Scheduled Tribes, live in rural areas and have more than four children (*ibid.*:208, 215)

The Registrar General, India has been studying the maternal mortality ratio since 1997, but data on maternal deaths is not disaggregated by class, religion or educational background, only by age and location. The shows the age-wise break-up of maternal deaths for 2001-03 (see Table 1). With 41% of maternal deaths occurring in the age group 15-24, younger women are far more likely to lose their lives to maternal mortality, possibly because this is the period of highest fertility in India as well. (RGI, 2006) Despite laws prohibiting marriage before 18 years and making sex before the age of 16 punishable by law, several thousand young girls aged 15-19 die every year due to pregnancy, abortion or childbirth.

Table 1: Age Distribution of Maternal Deaths from 2001-3: Special Survey of Deaths

Age groups	*Proportion*
15-19	12%
20-24	29%
25-29	21%
30-34	20%
35-39	12%
40-44	4%
45-49	1%

(*Source:* RGI 2006:22, Table 4)

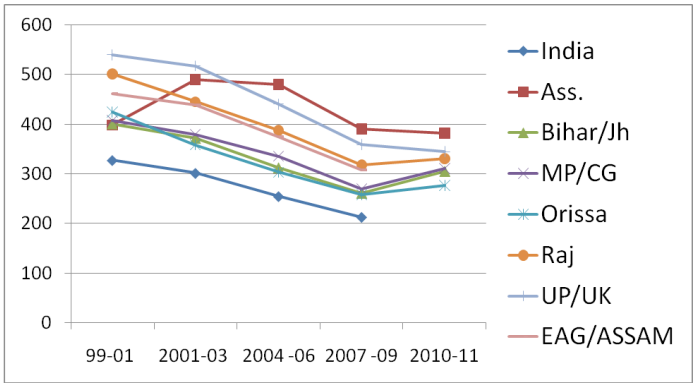
The RGI data provides state-wise estimates[1], which indicate the states where women are most likely to have maternal deaths. About two-thirds of maternal deaths occur in a handful of the states that have 47 per cent of the births - Bihar and Jharkand, Orissa, Madhya Pradesh and Chhattisgarh, Rajasthan, Uttar Pradesh and Uttaranchal (the Empowered Action Group or EAG states) and in Assam (See Table 2). Overall the decline in MMR across the states may be seen in Graph 1.

Table 2: Decline in MMR across the EAG states of India

States	**MMR 2001-03**	**MMR 2004-06**	**MMR 2007-09**	**AHS 2010-11**
INDIA Total	301	254	212	
Assam	490	480	390	381
Bihar /Jharkhand	371	312	261	305/278
Madhya Pradesh / Chhattisgarh	379	335	269	310/275
Orissa	358	303	258	277
Rajasthan	445	388	318	331
Uttar Pradesh/ Uttarakhand	517	440	359	345/188

1 Owing to the difficulty of studying the large samples needed (100,000 live births).

Graph 1- Decline in MMR across the EAG states of India



Sources of data: Registrar General, India, Ministry of Home Affairs (SRS Estimates), May 2009 and the Annual Health Survey (AHS) of 2010-11 (GOI, 2011).

Since EAG states and Assam' account for nearly 65 per cent of the maternal deaths, it is not surprising that the DLHS-3 data (Facility Survey) of 2007-08 for these very states also indicated the sub-optimal conditions of primary health services that women access (IIPS 2010). (See Tables 3 & 4).

Tables 3 & 4: DLHS-3 data on the preparedness of health facilities (SC, PHC and CHC) for routine and emergency maternal care

Conditions for Safe Delivery DLHS3

Conditions for Safe Delivery	Bihar	MP	Ori	Raj	UP
SC with additional ANM	27.6	8.2	51.5	21.8	3.3
ANM living in SC	20.3	48.5	43.3	55.1	37.2
PHCs functioning on 24 hours basis	64.5	73	49.1	56.9	45.5
PHCs having newborn care services	9	23	8.7	13.6	11
PHCs having referral services	44	49	18	18	17
PHCs conducted at least 10 deliveries last one month	20	52	12	24	19.4

Conditions for EmOC DLHS3

	Bihar	MP	Ori	Raj	UP
CHCs having Ob/Gyn	43.9	20.8	88.2	21.5	29.9
CHCs having functional OT	86.4	70.7	59.4	60.3	88.5
CHCs designated as FRUs	87.9	61.4	53.7	52.7	55.8
CHCs offering caesarean section	13.6	8.1	8.3	9.6	3.2
CHCs having 24.7 new born case services	63.6	52.9	28.3	46.5	40.1
CHCs having blood storage facility	0	3.9	8.3	7.9	0.7

Of more concern is that most CHCs visited are still functioning at the level of PHCs unable to make the transition to regular full occupancy in patient care and a wide range of specialist services. CRM 1(2007)

Thus, while overall, women in India are less likely to die in childbirth than two decades earlier, maternal death or serious illness remains a possibility for many women across the country. Not all women are at equal risk: younger women and some social categories with poorer access to maternal care services remain more vulnerable to die during pregnancy and post childbirth. In addition the location of the pregnant woman is a powerful factor influencing the risk of losing her life. We may conclude that maternal mortality and morbidity are clearly problems exacerbated by inequitable circumstances.

What has been done by Government?

As noted at the outset, the Government of India has taken strong steps to reduce maternal mortality and morbidity over the last several years, most notably since 2005. The launch of the National Rural Health Mission

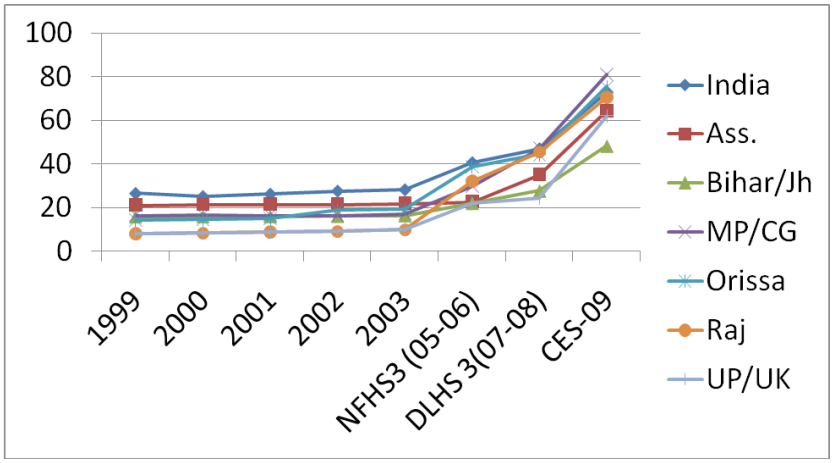
(2005-2012) was combined with the *Janani Suraksha Yojana* (JSY or Mothers' Protection Scheme) and the training of hundreds of thousands of rural women as ASHA volunteers (Accredited Social Health Activists). The ASHA volunteers were meant to promote early registration of pregnancies, encourage and accompany women to hospitals during labour, and conduct post-partum visits. This was further strengthened by another scheme to ensure free maternal and newborn health services called the *Janani Shishu Suraksha Karyakram* (JSSK[2] or Mother and Child Protection Programme), launched in July 2011.

In congruence with the MDG indicator, the government of India has laid emphasis on maternal mortality reduction through improving access to 'skilled attendance at childbirth' through the JSY conditional cash transfer to encourage women to come to hospitals during labour and the support of the ASHA workers. Beyond strengthening the "demand side" the government has also made efforts to improve the "supply side" by bringing in additional doctors and nurses on a contractual basis, allocating resources for infrastructural improvements, encouraging decentralized planning and budgeting to respond to local needs and more recently instituting maternal death reviews in all states (GOI 2005). However, health system strengthening processes have their own pace especially when health is a State subject, and there are clear limitations to interventions by the Central Government.

Compared to 53% home births in NFHS-3 data, in 2005-06 (IIPS, 2007) the JSY-ASHA combined approach appears to have led to a steep increase in the proportion of women attending hospitals during childbirth, as Graph 2 below indicates.

2 Under the JSSK, women are provided: free meals while in hospital for 2 days after delivery, free drop back facility 2 days after delivery, free caesarean operations and blood, free referral services, free treatment of postpartum complications until 40 days after delivery, and free treatment for the newborn till 30 days after birth

Graph 2: Increase in the proportion of institutional births in EAG states of India and Assam 1999-2009



Sources: IIPS 2007, IIPS 2010, 2009

Although India started out by adopting a target of "100% institutional delivery" in 2005, this was soon revised with the realization that it was not immediately feasible for 25 million births each year, given the paucity of skilled providers, the inadequately prepared hospitals and the reality of home deliveries in many areas.

What about Home Births?

Unfortunately, the policy emphasis on childbirth in hospital has had two casualties: one a comparative neglect of the continuum of quality care[3], and the other making quite invisible the reality of home-births in India. Owing to the JSY related incentives, the entire focus of the health system and departmental personnel remained geared towards getting increasing numbers of women into hospitals during labour. This led to neglect of the safety concerns of those pregnant women who for any reason, did not, or could not, reach a hospital in labour: there was no supplementary programme in the community to prepare birth attendants who could support safe childbirth and manage basic emergency care, not even in the

3 Screening for danger signs during ANC, enhanced access to safe abortion services, quality of care in health facilities and post-partum care beyond the hospital stay.

remotest areas. For the pregnant women who for any reason went through childbirth at home, there was no trained attendant available; the traditional midwives have been systematically discouraged and demoralized by the health system, and there is no system of quick referral in case of obstetric complication.

The Cost of Maternity

Recent studies have indicated that the vast majority of working women in India (96%) are working in the informal sector; as such they are not covered by any labour legislation (NCEUS 2007). This means that between 142 and 148 million women have no social protection when they absent themselves from work for pregnancy and childbirth. Each episode of maternity for such women therefore means a total loss of wages for the number of days of rest, something they can ill-afford. Pregnancy and childbirth for such families becomes a period of crisis when the family incomes are lowered and the household expenditure is exacerbated; small-scale studies indicate this can push families in an already precarious economic condition into indebtedness (SAHAYOG 2012). The Government of India does not have any wage-equivalent social support[4] to women for pregnancy and childcare; however it urges women to breastfeed exclusively for six months.

One of the fundamental flaws pointed out in the report of the UN SR Paul Hunt (HRC 2010) was India's inadequate budgeting for health, which has never reached even 2% of its GDP despite election promises. Although the recent health spending has been substantially strengthened through the National Rural Health Mission (since 2005), with provisions for decentralized budgeting, the heavily delayed fund-flow pattern ensures that the monies remain unspent year after year. The resources could be used for further strengthening the health programmes and attracting

4 As this article goes into print the National Food Security Bill is being debated in Parliament. One version of it promises maternity benefits upto Rs 6000 based on schemes of the government. Unfortunately the scheme currently being piloted by the Women and Child Department provides benefits only to women who have two children or less. This effectively disqualifies almost two-thirds of vulnerable groups like Dalits, tribals and poorer women.

doctors to serve in the rural areas. The lack of such qualified personnel in peripheral hospitals compels the rural poor to seek out expensive private care during emergencies, which impoverishes them further (HRC 2010).

Why is Maternal Health a Human Rights Concern?

Maternal health in India is a human rights issue because the current situation is putting the well-being, health and lives of millions of women at risk, and includes violations of human principles of inclusion/non-discrimination, participation, transparency and accountability. As the preceding section makes clear, maternal deaths in India are not inevitable, nor are they a matter of fate. As pointed out by the UN SR in his report, these deaths are almost entirely preventable, given India's state of medical and scientific expertise, and presence of a large trained medical workforce. In addition, the data above indicates that deaths are not random – they are taking place selectively among certain sections of India's population that are already vulnerable owing to social marginalization, poverty and location in the states with the poorest health services. Moreover the very act of becoming pregnant is not entirely volitional, since it is occurring among minors, and older women who do not have access to contraception and abortion services or decision-making.

While the government's pragmatic focus on maternal well-being is extremely laudable, it has still not put in place any safety measures for the eight million pregnant women still estimated to be giving birth at home; every woman is expected to reach the hospital no matter how far or how difficult the journey. Neither is hospital-based care entirely able to save lives: the poor quality of services for managing obstetric complications in the states with highest maternal mortality is a matter of concern. The report of the former UN Special Rapporteur on the Right to Health on maternal mortality in India points out 'a scheme which gives incentives to pregnant women to use facilities which do not have services the women need is offensive, unethical and in violation of their rights to the highest attainable standard of health.' He also pointed out that 'institutional deliveries are not a proxy for access to skilled attendance at birth, nor life-saving care.'(*ibid*.:13)

Although maternal death reviews (MDR) have begun in most states, they appear limited to the larger hospitals, and there is almost no record of the deaths at the lower levels like Primary Health Centres and Community Health Centres. There was no system of recording maternal deaths in the community till quite recently; in fact till date community-based maternal death reviews have not been institutionalized in most of the states. Barring the exception of states like Tamil Nadu that published reports about their findings and the actions to be taken, the MDR findings and analysis are not made public in India. Accountability within the human rights framework includes a guarantee of non-repetition, but here the MDR findings are not shared and neither are key system improvements announced. Merely carrying out the MDR does not enhance the accountability of the health system to prevent similar deaths in future.

Civil society organizations working with health and related social determinants have been documenting maternal deaths over the last several years across many states of India. Groups working in states with poorly-functioning health systems such as Uttar Pradesh, Jharkhand, Rajasthan, Chhattisgarh, Madhya Pradesh, as well as the 'better-performing' states like Gujarat, Andhra Pradesh, Karnataka, have been compiling and analyzing data. During recent discussions among these groups[5] it emerged across several states that serious violations of women's human rights are taking place within hospital-based care. As indicated in the earlier section, the worst cases are emerging from the most vulnerable and marginalized sections of society, including tribal women, Dalit women and poor women from either urban slums or rural areas. The recorded maternal death cases indicate the hostile environment poor families often encounter after reaching hospitals, and their struggles to ensure skilled care for the women. In additions to the health system shortcomings mentioned above, there are many documented cases of women from these disempowered groups facing a health system that is insensitive about their human rights, including the right to respectful and high quality health services. These include

5 Seminar organized by the National Alliance for Maternal Health and Human Rights, "Chronicles of Deaths Foretold," October 8-9, 2012, New Delhi. Reflections were based on findings that have also been published elsewhere, such as Dasgupta 2007, Sri et al 2011, Iyer et al 2013, Bannerjee et al 2013

harassment for informal payments, verbal and physical abuse (including abuse referring to caste and religion), denial of care or delay in providing care, multiple and unsupported referrals, and extremely unethical behavior during maternal deaths.

Case One

SN36, was a poor Muslim woman with four children living in Kanpur city, Uttar Pradesh. Her husband was a rickshaw puller but did not have a BPL card. SN had hoped that her fifth child too would be born at home like all her earlier ones, but when her labour pains suddenly stopped, her husband promptly took her to Dufferin hospital in Kanpur. The doctor on duty, before she would begin the treatment, asked him to arrange for money (around ₹ 2,000/-) and getting some essential tests and an ultrasonography done. The husband somehow took his wife to the District Hospital for these tests which cost him ₹ 100/-. When he returned to Dufferin hospital, the doctor again refused to begin treatment without being paid some more money. So he left his wife in the corridor of the hospital to try and arrange for some cash. By the time he returned with the cash, SN was dead. (Case documented by Healthwatch Forum UP & SAHAYOG, 2011)

Although there is emphasis on early registration of pregnancies, the documented cases show that components of ante-natal care are very limited in most states, comprising just the tetanus toxoid injections and perhaps a supply of iron-folic acid tablets. The frontline health providers (ANMs and ASHA workers) are poorly skilled and overworked they are unable to screen women with high-risk symptoms, neither are they able to refer women with post-partum complications in time to appropriate health facilities. (Sri et al 2011, Bannerjee et al 2013)

Cases Two & Three

- This Santhali (tribal) woman was 28 years old and was gravidae four. She was taken to the CHC as she had headache, body ache, fits, swollen face, hands and legs. The CHC referred her to the District Hospital.

At the District Hospital she was referred to JNMCH (Medical College Hospital in Bihar). The family had exhausted all their resources at this point and could not travel to Bhagalpur, Bihar. So, she was kept at the district hospital where IV and injections were administered. She finally died two hours after she reached the district hospital on 6 June 2011

- Another tribal woman aged 30 years had a still birth at home on 1 May 2011. After two weeks, she suffered from fever and was treated by a local informal medical practitioner. The treatment helped her but after a few days, she started bleeding. The poor family gave her some herbal medicines and performed rituals to treat her ailment. On 25 May at 3 am when the bleeding augmented, her family called for a private vehicle that arrived at their house at 9 am. They reached the Godda district hospital around 11am. After 2-3 hours of minor treatment, she was referred to JNMCH, Bhagalpur. She was referred because she needed blood transfusion due to excessive bleeding but the district hospital does not have a blood bank or transfusion facility. The tertiary care hospital, JNMCH in Bhagalpur, Bihar, is located 70 km away from the district hospital. After arranging for a vehicle and money, around 5 pm, they left for Bhagalpur. However, after covering 13 km, she died on the way to Bhagalpur. (Bannerjee et al., 2013 Case examples 3 and 8)

Quality of care remains elusive in peripheral hospitals, including irrational practices using oxytocin injections, inability to diagnose or manage obstetric complications, and inadequate protocols for referral of serious complications (Center for Reproductive Rights 2008). There is no systematic protocol followed for referral, and women are often just advised to "go elsewhere". In alignment with the policy formula of aiming for "100% institutional delivery", the doctors in government health facilities have adopted a negative approach to the community, whom they frequently blame for 'bringing women in late' when there is any complication. The absence of strong monitoring mechanisms is compounded by lack of any effective grievance redress mechanism that poor families can access.

Despite substantial injection of funds from the Central government, maternal health services are still poorly resourced and badly managed in most of the states with highest maternal deaths. There is not only a lack of doctors and skilled nurses, but also poor deployment, training and almost complete lack of supervision that contributes to a culture of impunity. Nurses routinely ask for informal payments even from the poorest families, and harass them even after the baby is born. Despite the promises of the JSSK scheme, the poor do not receive free maternal health services (SAHAYOG & Mahila Swasthya Adhikar Manch 2012).

Maternal mortality in India at its current level is an unacceptable violation of women's human rights: their right to life, the right to the highest attainable standard of health (including available, accessible, acceptable and high quality services), their right to be free from cruel inhuman and degrading treatment and the right to equality and non-discrimination. It is also a violation of women's reproductive rights, including the right to attain the highest attainable standard of sexual and reproductive health. It is a violation of the constitutional rights enshrined in Articles 14, 15 (rights to equality and non-discrimination) and Article 21 (Right to Life) of the Constitution of India. (CRR 2008).

Action by Key Stakeholders

The key stakeholders in this issue include the duty bearers (including the guardianship institutions) the rights holders, and the human rights defenders.

The *human rights defenders* who are actively working on this issue in India include the legal group Human Rights Law Network, and members of civil society networks[6] like the National Alliance for Maternal Health and Human Rights (NAMHHR), the Commonhealth network, as well as some members of the right to health movement Jan Swasthya Abhiyan. These groups have forged synergies in trying draw policy attention to the issue, repeatedly calling for greater accountability for maternal deaths in

6 More details about these networks and their activities at - http://namhhr.blogspot.com, www.commonhealth.in and www.phm-india.org

India. There are also local advocacy groups within the various states that are actively monitoring the issue and advocating for improved and more accountable health services. In terms of the '*rights holders*' there are no national federations related to this issue; however in the state of Uttar Pradesh there is an organization of rural women leaders called the Women's Health Rights Forum (*Mahila Swasthya Adhikar Manch*)[7] who can be seen as a "user community" that monitors the maternal health services in the state (SAHAYOG & MSAM 2012).

Several *duty bearers* are implicated in the protection of women's human rights to maternal health and well-being: these would include the government policy makers and programme planners (Ministers, senior bureaucrats and technocrats), and the health service providers (district health officials, local frontline providers, hospital staff). The pre-service and in-service training of the frontline workers urgently need to incorporate an understanding of gender, caste, religion and other social factors affecting maternal health, as well as human rights obligations and standards. It is unfortunate that so far the extent of violations of women's human rights have not received sufficient attention from the duty bearers in policy-making positions. Although the UNSR report was tabled in the UN Human Rights Council (April 2010), the government of India has not completely accepted all the aspects of the report, and many recommendations have not yet been taken up although some have been addressed.

The role of the *guardianship institutions* (human rights bodies, courts and judiciary) has been somewhat more positive. Some recent cases in the high courts in India have highlighted the concerns about the nature of maternal health services being provided to women. A number of cases have been filed by the Human Rights Law Network in states with high maternal mortality such as Bihar, Uttar Pradesh, Madhya Pradesh and Jharkhand, highlighting the deplorable condition of maternity services available for poor rural women. While some interim relief has been obtained in the Madhya Pradesh case (*Sandesh Bansal vs. Union of India and*

7 More details available at http://www.sahayogindia.org/maternal-health-and-rights/local/

Ors, 2008), the other cases have not proceeded to their conclusion, except in Delhi. (CRR 2011)

After hearing two separate petitions involving extremely indigent women of Delhi, *Laxmi Mandal vs. Deen Dayal Harinagar Hospital and Ors* (Delhi High Court, 2008) and *Jaitun vs. Maternal Home Municipal Corporation of Delhi Jangpura and Ors* (Delhi High Court 2009), Hon. Justice S. Muralidhar stated in his Consolidated Case orders (2010), " No woman, more so a pregnant woman, should be denied facility or treatment at any stage irrespective of her social and economic background… this is where the inalienable right to health which is so inherent in the right to life gets enforced." He emphasized that the Indian Government is obligated to ensure maternal health services under the judicially-recognized constitutional rights to health and reproductive rights as well as under its international legal commitments, citing the UDHR, the CEDAW as well as the ICESCR (*ibid.*:17-20)

As India is poised to move beyond the MDGs and ushers in the ambitious National Health Mission to improve the health of its people in both rural and urban areas, it is time that the human rights community in India, including national human rights institutions, ombudspersons and the judiciary, realized the serious nature of human rights violations being faced by pregnant women, and initiated a process of monitoring and action based on human rights principles, in order to avert more preventable maternal deaths.

Ways Forward: Technical Guidance on Addressing Maternal Health as a Human Rights Issue

The recent report prepared by the Office of the High Commissioner for Human Rights (OHCHR), called the *Technical Guidance on the application of a human rights based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality* (HRC document A/HRC/21/22, hereinafter TG) was prepared on the basis of inter-agency discussions in the UN, and multi-disciplinary consultations among academics, civil society advocates, and practitioners. The OHCHR TG

was the culmination of a process over several years that deepened global understanding of maternal mortality and morbidity as a human rights issue.

The Human Rights Council (HRC) of the United Nations officially recognized that maternal mortality and morbidity (MMM) is a serious human rights issue, through a series of resolutions since 2009. In June 2009 through its Resolution 11/8 (HRC, 2009), governments expressed grave concern for the unacceptably high rates of MMM, acknowledged that this is a human rights issue; and called upon governments to 'redouble' existing efforts, and to incorporate human rights based approaches (HRBA) in policies and programmes to eliminate preventable MMM (*ibid.* para 4). In 2010, it commissioned the OHCHR to conduct a study to examine the international human rights framework and standards on MMM; subsequently in a follow-up UN HRC Resolution further requested the OHCHR study initiatives undertaken by states that exemplify good practices in adopting a human rights based approach to eliminating MMM (CRR 2011:13-16). This second study was welcomed in another resolution that once again directed the OHCHR (September 2011 resolution number A.HRC/18/L.8) to prepare a concise technical guidance on the application of HRBA in policies and programmes to eliminate preventable MMM. This TG was presented in the HRC by the High Commissioner in September 2012 and launched in a high-level side event.[8]

The main idea behind the technical guidance (TG) is to assist policymakers in improving women's health and their enjoyment of rights by offering guidance on devising, implementing and monitoring policies and programmes to reduce maternal mortality and morbidity, and fostering accountability in accordance with human rights standards. While aimed primarily at policy makers, the guidance has the potential to be used by a wide variety of stakeholders. The guidance begins with general principles about a human rights based approach which include:

8 More details available at http://www2.ohchr.org/english/issues/women/TechnicalGuidance.htm. Following the side event, in the same session, the HRC directed the OHCHR to prepare a report on the implementation of the TG within two years

- Recognition that a human rights-based approach is premised upon empowering women to claim their rights, and not merely avoiding maternal death or morbidity;
- The need for attention to the social determinants of women's health, including structural factors which perpetuate discrimination against women;
- Special attention is also required for marginalized and excluded groups, who suffer multiple forms of discrimination, and higher rates of maternal mortality and morbidity as a result;
- Applying a rights-based approach to the reduction of maternal mortality and morbidity depends upon a just, as well as effective, health system – this means that claims for sexual and reproductive health services and information are understood as rights;
- A human rights based approach sees women as active agents who are entitled to participate in a comprehensive and meaningful manner in decisions that affect their sexual and reproductive health;
- Accountability is a thread that runs throughout the application of a human rights based approach, and must be built into strategies and plans to address maternal mortality;
- Human rights obligations related to maternal mortality and morbidity requires that health goods, services and information are available, accessible (including financially accessible), acceptable, and of good quality;
- States are obliged to ensure that third parties do not interfere with the enjoyment of sexual and reproductive health rights. (HRC 2012)

The technical guidance describes the process applying human rights based approaches to the policy cycle; providing details on what should be included in a national action plan on Health from a human rights perspective, such as essential medicines and services, specific measures to address discrimination, and capacity building measures for duty bearers. It also

highlights process requirements such as the need to undertake a situational analysis, carrying out an ex ante impact assessment, and devising the plan in consultation with and with the full participation of affected populations. The technical guidance offers specific advice on assessing whether the maximum of available resources is being allocated to the realization of the right to health, and on ensuring transparent and participatory budgetary processes. (*ibid.*)

In the section on implementation, the guidance proposes a diagnostic exercise that is required to understand what is happening to whom and where; why it is happening; who or what institution is responsible for such factors, and for addressing the problem; and how action should be taken. This process of identifying barriers to implementation will only be effective with meaningful participation of local affected populations and front line health workers, who understand and see problems in implementation from a different perspective than policy makers in capital cities. (*ibid.*)

Accountability is the lynchpin of a human rights based approach, and it is relevant in all stages of planning outlined above. Effective monitoring, including the use of appropriate indicators, is critical to ensuring accountability. While availability of data is an important consideration, human rights gives impetus for more robust data collection for indicators like access to emergency obstetric care, which is a core obligation under human rights law. The guidance explains several forms of review and oversight, pointing to the various levels of accountability which are required, and which reach beyond the health sector. Accountability mechanisms need effective remedies which have the potential to address structural causes behind the violation, and can lead to necessary legal and policy changes. (*ibid*)

Conclusion

Although the data for the country as a whole shows encouraging trends of reducing maternal mortality, maternal death or serious illness remains a possibility for millions of women across the country. It reflects

inequitable access to maternal care services and there is a pattern of deaths among the most vulnerable social groups such as the very poor, those without education, tribal women and those living in rural areas. Services today are not uniformly available, accessible, acceptable, and of high quality; neither are robust accountability mechanisms in operation.

Maternal mortality in India at its current level is an unacceptable violation of women's human rights including their right to life and the highest attainable standard of health. Addressing maternal health as a human rights issue in India would require first a thorough review of the recommendations suggested by the former UN SR in his report of 2010. In addition to this, the government must ensure compliance to the various orders passed by the judiciary as mentioned above. Finally, the Government of India may consider the implementation of the *OHCHR Technical Guidance* (UN HRC 2012) in order to apply human rights based approaches for the prevention of maternal mortality and morbidity.

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RIGHT TO FOOD

Food Security in India

*N.C. Saxena**

Persistent Food Insecurity– Some Evidence

There are two prominent but conflicting trends in India: impressive economic growth, and at the same time stagnation in key social indicators, particularly among the disadvantaged populations (by region, social groups, and gender). Despite recent slowdown, India is still one of the fastest growing economies in the world, and has achieved a compound annual growth of more than 6.5 per cent in GDP in the last two decades, which was maintained even during periods of crisis, such as the Asian Crisis of 1997 or the economic meltdown of 2008. However high growth achieved through private enterprise has not been translated into satisfactory progress on reducing poverty and hunger.

According to the Planning Commission (2013), around 22 per cent of India's population, i.e 269 million people, still lived below the poverty line in 2011-12. Using the multi-dimensional poverty index of UNDP, India ranks at 75 among 109 countries in 2011, much worse than the other BRIC countries - indicating extent of deprivation in terms of living standards, health, and education (Gulati *et al.* 2012). According to the latest Global Hunger Index Report, India continues to be in the category of those nations where hunger is 'alarming' (IFPRI 2011). What is worse, despite high growth, hunger index in India between 1996 and 2011 has gone up from 22.9 to 23.7, while 78 out of the 81 developing countries

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studied, including Pakistan, Nepal, Bangladesh, Vietnam, Kenya, Nigeria, Myanmar, Uganda, Zimbabwe and Malawi, have all succeeded in reducing hunger. Another evidence of continuing hunger in India is the hunger and malnutrition report (popularly known as Hungama) released by the Prime Minister in January 2012 showing that the number of malnourished children in the 112 rural districts of India was 42 per cent whereas stunting was even higher at 59 per cent (Hungama 2012).

The national average for per capita calorie intake for the rural region in 2009-10 was 2020 calories, while it was 1946 calories for the urban region. Significantly, in both cases, the minimum calorie requirement (2400 calories in the rural regions and 2100 calories in the urban regions) was not met in a single state of India in 2009-10 (Chandrasekhar 2012).

As regards changes in expenditure on food over the years, two trends are noticeable. First, while consumption expenditures in both rural and urban regions rose, this was not reflected in a commensurate rise in expenditure on food. As shown in Table 1, the growth in food expenditure has been significantly lower than the increase in overall expenditure on all goods during the period of analysis.

Table 1: Growth in real average per capita expenditure on all goods and on food real average per capita expenditure (in Rs) at 1993-94 prices

Years	Average per Capita Expenditure		Average Per Capita Food Expenditure	
	Rural	Urban	Rural	Urban
1993-94	281.4	458.0	177.8	250.3
2009-10	347.5	637.8	184.8	244.9
Annual rate of growth 1993-94 to 2009-10	1.3	2.1	0.2	-0.1

(Gupta 2012)

Thus the average per capita food expenditure during the period 1993 to 2010 increased only by 0.2 per cent annually in rural India, and fell slightly by 0.1 per cent per annum in the urban areas. One may argue that

this could indicate shift to a more sedentary lifestyle needing less calories. However, the second trend negates this hypothesis for the poor, as the decile-wise data (Table 2) clearly shows that the hard working poor consume much less cereal (the cheapest form of food) than the non-poor. It also shows a declining trend in the annual per capita consumption of cereals, for all classes of people.

The above table clearly shows that as India moved to greater prosperity in the last twenty years the cereal consumption of the rural rich went down, but there was no increase for the poor. At any given point of time the cereal intake of the bottom 10 per cent in rural India continues to be at least 20 per cent less than the cereal intake of the top decile of the population, despite better access of the latter group to fruits, vegetables and meat products. Their sedentary lifestyle too should be taken into account while assessing the difference between the two groups. For the upper segment of population the decline may be attributed to a diversification in food consumption, easy access to supply of other high value agricultural commodities, changed tastes and preferences, and consumption of more expensive non-foodgrain products. Higher economic growth and per capita incomes thus contribute to reduction in per capita demand for cereals for the rich.

Table 2: Trends in per capita cereal consumption across expenditure groups in rural India (kg per month)

Year	monthly per capita cereal consumption (kg) in population percentile class		
	Poorest 0-10	**Middle 40-50**	**Richest 90-100**
1993-94	10.52	13.33	15.39
1999-2000	10.45	12.89	13.96
2004-05	10.39	12.16	13.14
2009-10	10.17	11.48	12.07

NSS 66th Round, Report No. 538(66/1.0/1)

However for those who are around the poverty line, this has to be understood as a distress phenomenon, as with marginal increase in their incomes over time they are forced to cut down on their food consumption

to meet other pressing demands that were not considered important in the past. For instance, as more schools open, the poor too wish to send their children to schools, where expenses are incurred on clothes, books, etc. despite the school fees being met by government. These expenses would thus become a new item on the household budget, and food expenditure may be curtailed to make room for it. Fighting sickness leads to another chunk of essential expenses, for which opportunities did not exist in the past, as there were no doctors in the vicinity. The share of fuel and light in total consumer expenditure has risen from under 6 per cent to 10 per cent in both rural and urban areas between 1972-73 and 2004-05. Finally, the rural labour masses have to spend on transport in order to earn their livelihoods. The food budget of the poor has been squeezed out because the cost of meeting the minimum non-food requirements has increased (Sen 2005). Thus, it is not possible for households around the poverty line to purchase their initial food basket within their current food budget.

There are also issues at the macro-level. According to the central government's Economic Survey 2012-13, foodgrain production in India has gone down from 208 kg per annum per capita in 1996-97 to 200 kg in 2011-12, which was a year of bumper production. From the reduced production, India has been exporting on an average 7 million tonnes of cereals per annum, causing availability to decline further from 510 g per day per capita in 1991 to 439 g in 2012. This has adversely affected the cereal intake of the bottom 30 per cent which, as shown above, continues to be 20 per cent less than the cereal intake of the top decile of the population. Their expenditure on health, education, liquor, tobacco, transport and fuel has also gone up. Food is still needed, but not demanded as they get used to eating less food and in the process get stunted and malnourished. Endemic hunger (often hidden) continues to afflict a large proportion of the Indian population.

A survey (Mander 2008) of 474 destitute people in eight villages found that intense food shortages often demand the most unreasonable choices, such as between food and medicines, between eating to save a

life and relieving unbearable pain. Most hungry people reported that their most hazardous tumble into pauperisation was because they, or a loved one, fell gravely ill. Many old people simply try to wait out an attack of illness, and if that does not work they consult a local untrained practitioner, who demands his fees in advance, never guaranteeing cure. They do this by cutting back their food intake even further.

The evidence discussed above thus clearly point to the existence of food insecurity at the micro-level in terms of either lack of economic access to food or lack of absorption of food for a healthy life. Endemic hunger continues to afflict a large proportion of Indian population.

FAO[1] (2009) defines food security as 'Food security exists when all people, at all times, have physical and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.' In other words, an adequate supply of food at the national level does not in itself guarantee household level food security. Concerns about insufficient food access of the poor should therefore make the policy makers focus more on making cheap food available to the poor, whereas long-term measures should take care of income distribution, expenditure inequalities, market imperfections, and increased agricultural production and incomes of the poorest in poorer regions in achieving food security objectives.

Intervention through Government Programmes

The Indian State implements massive food, livelihood and social security programmes – some of the largest in the world – which theoretically support vulnerable people from even before their birth to their survivors after death (Saxena 2011). On paper, expectant mothers are fed in ICDS centres, along with infants, children up to the age of six, and adolescent girls. Children in school get school meals. As adults, women receive maternity support, bread earners are guaranteed 100 days of wage employment in public works; and if identified as poor, they can buy

1 http://www.fao.org/docrep/013/al936e/al936e00.pdf

subsidised cereals from a massive network of half a million ration shops. The aged – and in many states widows and disabled people – are given pensions. And if an earning adult dies prematurely, the survivor is entitled to a lumpsum payment of Rs ten thousand.

This looks good on paper but the ground reality is different. These programmes are plagued by corruption, leakages, error in selection, delays, poor allocations and little accountability. They also tend to discriminate against and exclude those who most need them, by social barriers of gender, age, caste, ethnicity, faith and disability; and State hostility to urban poor migrants, street and slum residents, and unorganised workers. In Rangpur Pahadi, a slum area just two kms away from Vasant Kunj (Delhi), people living since 1984 have not been given even voter ID or any ration card. Thus their very existence is denied by the Delhi Government! Therefore, not only do we need to identify the destitutes and run special programmes for them, but improve monitoring and accountability for all programmes that impinge on hunger.

In addition to problems of governance and delivery that affect all programmes, the two food-based programmes – PDS and ICDS – are particularly doing quite poorly. We shall discuss these programmes in some detail below:

PDS

With a network of more than 5 lakh Fair Price Shops (FPS) claiming to distribute annually commodities worth more than ₹ 50,000 crore to about 16 crore families[2], the PDS in India is perhaps the largest distribution network of its type in the world. PDS is operated under the joint responsibility of the central and state governments, with the former responsible for procurement, storage, transportation (upto the district headquarters) and bulk allocation of foodgrains.

The state governments are responsible for distributing these foodgrains to consumers through a network of Fair Price Shops. This

2 Many of them get kerosene only

responsibility includes identification of families below poverty line (BPL), issue of BPL cards, and supervision and monitoring of the functioning of the Fair Price Shops. States are also responsible for movement of foodgrains from the district headquarters to the PDS shop, which requires storage at the sub-district level. As food was always a non-plan subject, such an infrastructure is often weak in the poorer states.

Changes in production, procurement and offtake of foodgrains over the years are shown in Table 3.

Table 3: Production, procurement & offtake of foodgrains (in million tonnes)

	1997-98	2007-08	2009-10	2011-12	2012-13
Food subsidy in billion Rs	79	313	582	728	850
Production of foodgrains	192	231	218	259	255
Procurement of foodgrains	23.6	51.6	55	63.4	69.1
Distribution through FPS	17	33.5	43.3	50.9	51.4
Welfare schemes	2.1	3.9	4.3	4.1	4.3

PDS was universal, but was substituted in 1997 by the Targeted PDS (TPDS), specifically aimed at BPL people in all parts of the country. However the entitlement was increased gradually from 10 kg of foodgrains per month per household to 35 kg by 2003-4. The additional allocations are made at APL (above poverty line) rates to the non-poor from December, 1997 subject to availability of foodgrains in the central pool and the constraints of food subsidy. The central issue price (CIP) for wheat and rice has remained unchanged since April 2000.

Table 4: BPL/APL central issue price (Rs/kg)[3]

Category	Date	Wheat	Rice (common)
BPL	1.6.1997	2.5	3.5
-do-	1.4.2000	4.15	5.65
APL	1.6.1997	4.5	5.5
-do-	1.4.2000	6.1	7.95

3 Information in tables and figures, wherever source is not indicated, is based on the Monthly bulletins issued by the Department of Food, GoI from time to time.

Antyodaya

In order to make TPDS more focused and targeted towards the poorest, the Antyodaya Anna Yojana (AAY) was launched in December 2000 for one crore poorest of the poor families providing them foodgrains at a highly subsidized rate of ₹ 2 per kg for wheat and ₹ 3 per kg for rice. The States/UTs are required to bear the distribution cost, including margin to dealers[4] and retailers as well as the transportation cost. The scale of issue that was initially 25 kg per family per month has been increased to 35 kg with effect from 1 April, 2002. The AAY Scheme has been expanded in stages and by 2005 covered 2.5 crore households.

Evaluation

Weaknesses in the distribution system include ration cards being mortgaged to ration shop owners, large errors of exclusion of BPL families and inclusion of APL families, prevalence of ghost BPL cards, with weaknesses in the delivery mechanism leading to large-scale leakages and diversion of subsidised grains to markets and unintended beneficiaries. A section of the APL households does not lift its ration quota and thus a part of the entitlement of these households leaks out of the PDS supply chain.

As per the 2004-5 NSS round, households in the bottom quintile obtained only 17 per cent of their foodgrains consumption from PDS for the country as a whole. The percentage varied from 2 per cent for Bihar, 6 per cent for UP to 50 per cent for Tamil Nadu and 68 per cent for Karnataka (Dev and Sharma 2010). Himanshu and Sen (2011) also note that though leakage of rice and wheat implied by NSSO estimated consumption and amounts released for PDS have come down from 55 per cent in 2004-5 to 43 per cent in 2007-8, but the leakages are still substantial.

Errors of Exclusion and Inclusion

According to the XI Five Year Plan (volume 2, chapter 4), there are huge exclusion and inclusion errors in identifying the poor, as can be seen from the following Table.

4 In actual practice, very few states give margin to the dealers, thus forcing them to corrupt practices.

Table 5: Distribution of cardholders among poor and non-poor

	% poor with no ration card	% poor with BPL/AAY cards	% BPL/AAY cards with non-poor
Rajasthan	5.0	23.6	65.2
UP	16.4	22.9	48.7
Bihar	25.5	21.2	45.1
Assam	25.7	23.3	56
Jharkhand	22.1	31.9	42.4
Orissa	29.3	54.8	38.1
Chhattisgarh	24.1	47.9	47
MP	30	41.9	46.2
All India	**19.1**	**36**	**59.8**

Thus more than half of the poor either have no card or have been given APL cards, and are thus excluded from the BPL benefits. These must presumably be the most poor tribal groups, women headed households, and people living in remote hamlets where administration does not reach. Thus the people most deserving of government help are deprived of such assistance. On the other hand, almost 60% of the BPL or Antyodaya cards have been given to households belonging to the non-poor category.

The Supreme Court appointed a Commission headed by Justice Wadhwa to appraise PDS in the field. The Commission too noticed large irregularities, as described below.

Justice Wadhwa's Observations in 2009

Rajasthan : Unsatisfactory, many irregularities, irregular lifting of grain, no lifting and bulk lifting, PDS in the state has collapsed.

Jharkhand : The distribution mechanism has continued in the hands of the most corrupt and inefficient Bihar State Food and Supply Corporation (BSFC). If the FPS owners do not pay Rs. 10 per bag to the godown manager, he gives rotten grains to FPS.

Bihar : Diversion and black-marketing of food grains by FPS dealers. Strong nexus between officials of the department and FPS dealers. Ghost and bogus ration cards is a major problem in the state.

Orissa : Private storage agents are the major source of diversion in the State of Orissa as there is virtually no control or checking on their activities. The appointment of storage agent was susceptible to high political influence.

Gujarat : FPS owners in the state bribe the officials every month. Ghost and bogus ration cards is a major problem in the state.

Justice Wadhwa's conclusions are summarised below:

- collusion between persons involved in the PDS supply chain resulting in leakage and large-scale diversion of food grains;
- flawed system of appointment of FPS dealers;
- errors of inclusion and exclusion which deny targeted beneficiaries of their entitlement and resulting in faulty identification of target groups;
- virtually non-existent vigilance machinery at the grassroot level;
- too many categories for entitlement resulting in dilution of targeting of deserving beneficiaries;
- long drawn and ineffective procedure for dealing with malpractices that allows the guilty to get away;
- too many functionaries involved in the process resulting in dilution of accountability and fixing of responsibility;
- lack of adequate supervision over PDS operations at the field level and laxity which often does not result in any punishment to persons found negligent at the supervisory and higher levels for negligence in supervision. In the normal course the supervisors should also be held responsible as any diversion results in wastage of public resources

- undue political interference; and lastly
- a corrupt implementing machinery and all in all a sleepy and sloppy programme where there is freedom to play with its great objectives with impunity to derive unlawful pecuniary benefits.

Malnutrition and Underweight Children

Less well understood than hunger is the nagging problem of undernutrition amongst children that leads to their not achieving normal height and weight for their age. What is worse is the fact that India has made little progress in reducing malnutrition in the last ten years (Haddad, 2009).

Child malnutrition starts very early in life, and often it is an inter-generational issue. Adolescent girls who are themselves underweight give birth to low weight babies. The child rearing practices in India unfortunately are highly unscientific, feeding colostrum to the newborn, exclusive breastfeeding for first six months of a child's life, and complementary feeding several times a day after six months are not commonly practised. In the 100 districts studied in the Hungama report 51 per cent mothers did not feed colostrum to the newborn soon after birth and 58 per cent mothers fed water to their infants before six months. Besides, due to bad quality of water and lack of toilets children are exposed to stomach infections, develop diarrhoea, and start losing weight. Then the mothers have to work long hours away from home without any support system, and are unable to afford healthcare.

A recent comprehensive evaluation of ICDS (Planning Commission 2011) has concluded that despite the fact that outlay for the ICDS was increased from Rs 121 billion in the X Plan (2002-07) to Rs 444 billion in the XI Plan (2007-12), the outcomes were most disappointing. Only 19 per cent of the mothers reported that the Anganwadi Centre[5] (AWC) provides nutrition counselling to parents. More than 40 per cent of the

5 There are about 1.3 million such centres in India, generally one or two room structures, where children gather for about four hours every morning for various ICDS activities.

funds meant for supplementary nutrition (SN) are siphoned off, for FY 2008-9 the amount of SN allocation diverted is estimated at Rs 2900 crore. Although 81 per cent of children below six years of age were living in an area covered by the Anganwadi centres, only 31 per cent children received SN and only 12 per cent children received it regularly (Planning Commission 2012b). Only 38 per cent of pregnant women and lactating mothers, and 10 per cent of adolescent girls received supplementary nutrition.

However, the commonly-held assumption is that food insecurity is the primary or even sole cause of malnutrition. Even the National Food Security Act provides that every pregnant woman and lactating mother shall be entitled to one free meal a day during pregnancy and six months after the childbirth; and maternity benefit of rupees one thousand per month for a period of six months. However the focus is still on food, and not on health and care related interventions.

Improve Reporting System

ICDS also faces substantial operational challenges, such as lack of accountability due to lack of oversight and irresponsible reporting system. It appears that state governments actively encourage reporting of inflated figures from the districts, which renders monitoring ineffective and accountability meaningless. Objective evaluation by NFHS-3 shows that 40.4 per cent children are underweight, of which 15.8 per cent are severely malnourished. However, the state governments report 13 per cent children as underweight, and only 0.4 per cent as severely malnourished (IAMR *2011*). One District Collector, when confronted with this kind of bogus figures, told me that reporting correct data is "a high-risk and low-reward activity"! Prime Minister may call government's performance as a 'national shame', but he has not been able to persuade the states to accept that the problem exists!

A recent evaluation of ICDS in Gorakhpur by the National Human Rights Commission (http://nhrc.nic.in/Reports/misc/SKTiwari_Gorakhpur.pdf) showed that despite Supreme Court orders to provide hot cooked meals, all centres supplied only packaged ready-to-

eat food, which had only 100 calories, as against a norm of 500 calories, and 63 per cent of food and funds were misappropriated. The food being unpalatable, half of it ends up as cattle feed. However, such reports, though few, are never discussed in state Assemblies, as they meet now for less than 30 days a year. We need a new law making it compulsory for Parliament and Assemblies to meet for at least 150 days a year.

Government of India should discourage the distribution of manufactured 'ready-to-eat' food, as it leads to grand corruption at the Ministerial level, but unfortunately it has encouraged such tendering by laying down the minimum nutritional norms for "take-home rations" (a permissible alternative to cooked meals for young children), including micronutrient fortification "as per 50% of recommended daily allowance", thus providing a dangerous foothold for food manufacturers and contractors, who are constantly trying to invade child nutrition programmes for profit making purposes.

Food Security Act, 2013

Inaugurating the budget session of the Parliament on June 4, 2009 President of India declared that a National Food Security Act would be formulated whereby each BPL family would be entitled by law to get 25 kg of rice or wheat per month at ₹ 3 a kg, a promise made by the Congress Party before general elections 2009. The National Food Security Bill (NFSB) was examined by the Standing Committee of the Parliament, and approved by the Cabinet. In September, 2013 the Bill has been passed as an Act. Some states, run by the Congress Party, announced to implement the provisions of the Ordinance wef 20th August, 2013.

The Act seeks to 'provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith and incidental thereto'. It extends to the whole of India but may come into force on different dates for different States. Similarly not all provisions of this Act may be enforced simultaneously.

The Act promises to provide 5 kg of foodgrains per person per month to Priority households, and 35 kg per household per month to Antyodaya households. The total number of Priority and Antyodaya households (called eligible households) shall not be more than 75 per cent of the rural population and 50 per cent of the urban population, thus covering about 18 crore households as opposed to only 6.5 crore right now. Their state-wise number has been determined by GOI but identification of eligible households is left to state governments.

The enhanced entitlement would need about 55 million tonnes of grain annually, as against annual procurement of 60-65 million tonnes in the last three years (Table 3), thus leaving sufficient quantity for other programmes like mid-day meals and emergency. It is hoped that government will also push up direct purchase of paddy in states like Bihar, UP, and MP where the paddy farmers are largely dependent on rice millers who pay a pittance thus depriving farmers in these states the benefit of minimum support price that Haryana and Punjab farmers enjoy. This will not only benefit the farmers in backward states, but will also considerably enhance the total annual procurement.

Food subsidy in the short run would certainly go up from 85,000 to ₹ 1,25,000 crore in a full year. The impact of subsidy on fiscal deficit can be contained by reducing non-merit subsidies on fertilisers, cooking gas, and higher education. As government stocks will come down from the present high of 75 million tonnes to a manageable 30-35 MT, storage costs would come down. But greater reduction in subsidy would be achieved by abolishing the dual pricing system, which is impossible to implement, and sell government stocks to the fair price shop dealer at the market price, say ₹ 20 for wheat. The consumer would go to him with only two rupees in cash as before and his UID card to buy a kg of wheat but the rest Rs 18 would get transferred to the shopkeeper through the card. This will vastly reduce leakages and subsidy as well as improve the dealer's attitude towards the buyer.

Fiscal deficit is high in India because the tax-GDP ratio is only 15 per cent, far below other middle-income countries like Brazil (34.2), South

Africa (31.2), Turkey (32.5), Russia (32.3), or even low income countries like Ghana (22.4) and Kenya (18.3). To contain the deficit one needs to improve tax collection and not cut down on development expenditure for the poor.

The main beneficiaries of the Act and their entitlement are summarised in Table 6.

Table 6: Provisions for Nutritional Security and Entitlements in the Act to Special Groups

Target Group	Entitlement
Holders of Antyodaya cards	35 kg per household as before, wheat/rice/coarse grain and millets at Rs 2/3/1 per kg
Up to 75% of rural population & up to 50% urban population minus those covered above	kg per unit of wheat/rice/coarse grain and millets at 5 Rs 2/3/1 per kg
Pregnant woman/ Lactating Mother	Meal, free of charge, during pregnancy and six months after child birth, Maternity benefit of Rs 1000 per month for a period of six months
Children (6 months-6 yrs)	Age appropriate meal, free of charge, through the local anganwadi
Children suffering from malnutrition	Meals through the local anganwadi, free of charge
Children (6 years-14 yrs)	One mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, up to class VIII, so as to meet the nutritional standards

The following provisions that were part of the 2011 draft have now been removed from the Act.

Destitute persons	At least one meal every day, free of charge
Homeless persons	Affordable meals at community kitchens
Emergency and disaster affected persons.	Two meals, free of charge, for a period up to 3 months from date of disaster
Persons living in starvation	Free meals, two times a day, for 6 months from date of identification

Source: NFS Act 2013 and NFSB 2011

Food Commissions : The Act provides for the creation of State Food Commissions, which will monitor and evaluate the implementation of the Act, give advice to the states governments and their agencies, and inquire into violations of entitlements. The Food Commissions have powers to impose penalties and fines up to ₹ 5,000.

Transparency and Grievance Redressal : All PDS-related records will be placed in the public domain and records will be available for inspection to the public. Information and communication technology (including end-to-end computerisation of the PDS) will be promoted to ensure transparent recording of transactions at all levels. Periodic social audits of the PDS and other welfare schemes will be conducted. A two-tier grievance redressal structure will be created at the district and State level, which will be facilitated by call centres and help lines.

Emerging Challenges

Inter-State Allocations

However, there are problems with the Act. Of these, the most important challenge is to decide the inter-state allocation of foodgrains for PDS as per the requirements of the Act. At present this allocation is arbitrary and is neither based on population nor poverty, as illustrated for some of the states in Table 7:

Table 7: Percentage share of some states in the all India Total

	Share in population 2011	Share in poverty 2009-10	Share in annual PDS allotment 2010-11	Revised share as given in the Act
Andhra	7	5.0	7.7	5.8
Assam	2.6	3.3	3.5	3.1
Bihar	8.6	15.3	7.5	10.1
Kerala	2.8	1.1	2.9	2.6
Punjab	2.3	1.2	1.6	1.6
Orissa	3.5	4.3	4.7	3.8
TN	6	3.4	7.8	6.7
UP	16.5	20.8	14.6	17.5
India	100	100	100	100

Thus poorer states like UP and Bihar get much less food allotment than their share in poverty, whereas it is just the opposite for the southern states. The southern and north-eastern states (also J&K, Delhi) may find no increase in their absolute allotment. This is the reason why Tamil Nadu was opposing the Ordinance. But it is not that there is nothing in the Act which is beneficial to Tamil Nadu. The current price of rice at ₹ 5.65 per kg that the State pays to GOI will be reduced to ₹ 3 per kg resulting in a lot of saving to the State.

The incentive to push reforms and reduce errors of inclusion and exclusion would be weak in these states, as there is no increase in their quota. On the other hand, states like Bihar and UP are not able to lift even the existing allocation because of lack of capacity and therefore would have to really exert a great deal to ensure that the increased allocation for their states reaches the desired beneficiaries.

Identification of the Eligible Households

Even after the Act, actual distribution cannot begin unless the 67 per cent eligible households are identified. The SECC (socio-economic caste survey) results will not be finally available for all the states, especially the larger states like UP, Bihar and Tamil Nadu, until the middle of 2014. Section 10 of the Act gives 365 days to the states to complete the process of identification of the eligible households. Even in those states where the process began in 2010, the list has not been shared with the households (except in Haryana and Tripura), after that they will file appeals. All this will take about six more months. Thus the SECC process is likely to remain incomplete at the end of 365 days in some states.

Moreover the SECC determined results on identification may have credibility and legitimacy problems because its veracity is dependent on each state applying uniform standards of integrity, which unfortunately is not the case today. There has been a lot of secrecy in doing the survey, and people even in states like Haryana, where the lists on paper have been shared with the people and finalised, no one knows whether he is in or out. There could be a great deal of disenchantment and anger when actual

distribution of grain begins. The present procedure for selection of BPL beneficiaries is opaque, bureaucratic, and does not involve *gram sabhas*. The basis on which village-wise cap on the maximum number of entitled beneficiaries is fixed, is not clear and not well defined. It would have been better if *gram sabhas* were involved in the survey process.

The methodology can also be questioned as the SECC indicators favour those states such as Punjab that have a higher ratio of landless and SCs and discriminate against states like Uttarakhand which are poorer because they have a large number of non-productive tiny holdings but lower ratio of SCs and the landless.

PDS Reforms

Section 12 of the Act provides that central and state governments shall endeavour to progressively undertake various PDS reforms, including: doorstep delivery of foodgrains; ICT applications and end-to-end computerisation; leveraging Aadhaar (UID) for unique identification of entitled beneficiaries; full transparency of records; preference to public institutions or bodies in licensing of fair price shops; management of fair price shops by women or their collectives; diversification of commodities distributed under the PDS; full transparency of records; and "introducing schemes such as cash transfer, food coupons or other schemes to the targeted beneficiaries in lieu of their foodgrain entitlements" as prescribed by the central government.

The progress on these reforms is extremely slow, though not in all states. Fortunately some states have tried to improve the PDS. It had always worked quite well in Tamil Nadu, Kerala, Himachal Pradesh and Andhra Pradesh, but now states like Chhattisgarh, Orissa and Rajasthan (Khera 2011) have undertaken state-level PDS reforms by extending coverage, improving delivery and increasing transparency. The best results are seen in Chhattisgarh (see box) because of replacement of private dealers by panchayats, increased commissions, coverage of more than 80 per cent families under the scheme as opposed to only 40 per cent who are officially recognised as BPL by GOI, and regular monitoring and

grievance redressal mechanism that leads to swift action if foodgrain does not reach the people.

Public Distribution System in Chhattisgarh

A survey of PDS in two districts of Chhattisgarh revealed that 88 per cent of the respondents were satisfied with the functioning of their ration shops and were getting their foodgrains regularly at the correct prices. Government has shifted the management of ration shops from private dealers to community-based organisations such as gram panchayats, self-help groups (SHGs) and cooperatives. To reduce leakages, the government decided to dispense with private players and directly deliver foodgrains to ration shops in government trucks painted yellow. Transition from a targeted to a "quasi-universal" PDS, one that covers approximately 80 per cent of the state's rural population not only helped in improving the functioning of the PDS by giving a majority of the people in villages a stake in their local ration shop, but also reduced exclusion errors that occurred due to the faulty targeting system used by the central government. The other steps are: increasing the commission paid to ration shopowners from Rs 8 to Rs 30 per quintal of rice, procuring more foodgrains from farmers in the state to encourage them to raise outputs, making electronic weighing scales mandatory in all ration shops, and conducting verification drives to identify and cancel bogus ration cards (Puri 2012).

Food Ministry should 'own' the PDS : The Centre cannot close its eyes to large-scale fraud in PDS by taking a narrow 'Constitutional' position that implementation is the state's responsibility. Food Ministry should have a greater sense of ownership of the scheme, and improve its oversight mechanisms. For instance, it should start an annual impact study of the PDS, especially in the poorer states.

In some cases, where GOI Ministries (such as in Education and lately Health) have intensified their monitoring efforts and started frequent Third Party evaluations of their respective centrally sponsored schemes, such as SSA and NRHM, results in the field are more satisfactory than in the Ministries, such as Tribal Affairs, Food & Public Distribution, and Women & Child Development, where they are content with just release of funds

or foodgrain with little monitoring of outcomes. Thus a large number of flagship programmes, such as PDS, Forest Rights Act, and ICDS, are being run where neither the GOI nor the states are bothered with their proper implementation, consumer satisfaction, and initiating remedial action. States have neither the will nor capacity for professional evaluation of such schemes, based on which corrective action can be taken; thus this task has to be led by GOI. If the present state of affairs is allowed to continue, the lobby within GOI that wishes to reduce safety net expenditure, and in particular food subsidy bill, would become stronger to the detriment of the interests of the poor.

Therefore the proposed Act should not pass on the entire monitoring responsibility to the state governments, and GOI should take a lead in timely and frequent evaluations.

Selecting the FPS Dealer: In many states the selection needs approval by the Minister or a committee of MLAs and thus the process is highly subjective and opaque. There is no involvement of civil society or consumers in the selection, nor involvement for them in the operation of FPS (Fair Price Shop). It is far better to give shops to panchayats, women's self-help groups, or cooperatives. In case it is not feasible, FPS should be allotted to people who are already running a viable shop in the area. This will ensure that the shop remains open on all working days. The present system of choosing unemployed youth etc. acts against the interests of the consumers, as the selected candidates do not possess entrepreneurial capabilities, and end up by selling the shop to others. In Delhi most dealers run more than ten shops, although the shop may be in some one else's name.

Making it obligatory for dealers to sell non-cereal items: Dealers should be asked to improve their viability by selling items of mass consumption other than wheat and rice. Gujarat has made FPS multi-product shops, but no such order exists in many states. The dealers' psychology at present is that "everything is prohibited unless specifically permitted". Making it obligatory for dealers to sell non-cereal items will ensure better communication between the dealer and the card holders.

The existing shopkeeper may be given a year's time to start selling other items, and the annual turnover from those items should be at least twice from the allotted foodgrains. If he/she fails to fulfil this condition, his licence may be cancelled.

How would UID help?

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

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

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

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

Preventing leakages through Direct Benefit Transfer : In this context, the recently announced policy of cash transfers for some 29 schemes — excluding food and fertilizers' subsidy —in 51 districts in 15 states from 1st January, 2013 is a bold step in the right direction (Gulati *et al.* 2012). Under the new system, a cash transfer will happen only when a person has an Aadhaar number, so the wastages from money being transferred to fraudulent or non-existent person is eliminated. The money has to be deposited directly into a beneficiary's bank account. Given the relatively low level of penetration of bank branches, particularly in rural areas, a business correspondent armed with micro-ATMs linked with the banking system would render the service.

'Dilli Annashree Yojana' recently announced by the Delhi Government is the first such initiative to provide food security through cash transfers. The scheme will facilitate the transfer of cash benefit directly to the bank accounts of the beneficiaries using an Aadhar-enabled no-frills bank account, which can be accessed only by the senior-most woman member of the vulnerable household. These cash transfers signal a paradigm shift in the use of instruments from price policy to income policy to achieve equity goals. There would certainly be some technical or exclusion glitches in the beginning but there will be ample savings (in the form of reduced leakages) eventually to revamp the entire infrastructure. Inclusion of food subsidy too in its ambit would further be a right step.

The work done under the RSBY scheme can also be leveraged. The scheme as on date has enrolled more than 26 million BPL households

covering more than 100 million beneficiaries and has been providing them primary healthcare services. The smart card issued under the scheme has details of all the household members, unlike the smart cards to be issued under NPR or UIDAI which has data for a specific individual only. However, the drawback of RSBY is that there are no bank accounts linked to the smart card as the beneficiary is not provided with any cash. The money is directly paid to the participating institutions providing health services to the beneficiaries.

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

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

Summing up

The right to food cuts across programmes of many sectors—including health, nutrition, agriculture, livelihoods, gender, and water. This means that in any context, at least half a dozen ministries will be operating programmes that have some impact on availability, access, and absorption of food. Converging all of these under a central leadership is critical. Brazil converged as many as 31 programmes which are now overseen by the Ministry of Food Security and Combating Hunger. It is imperative that our proposed legislation brings together all these programmes on a single converged platform.

Passing the Act is only a necessary but not sufficient condition for reducing hunger. India requires a significant increase of targeted investments in irrigation, rural electrification, nutrition programmes, clinics,

disease control, rural roads, and sanitation, accompanied by systemic reforms that will overhaul the present system of service delivery, including issues of control and oversight. This in turn requires improving the governance, productivity and accountability of government machinery.

In the ultimate analysis, the constraints to food insecurity and hunger are rooted in bad policies, faulty design, lack of appropriate monitoring and evaluation, poor governance and lack of political will. Action is needed on all the fronts. Economic growth alone is insufficient to bring about significant reductions in the prevalence of malnourishment among children, or increase in food intake of the poor. Without a major shake up in policy and an improvement in the effectiveness of its implementation, the attainment of the goal of 'food security for all' by India seems unlikely.

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Children's Rights to Food: Constitutional, Legal Protection and Nutritional Empowerment

*Dr. Vandana Prasad**

Introduction

While children have been treated in India variably; as subjects of affection, nurture, care and even adoration and divinity; as with other groups suffering from relative powerlessness and invisibility, they have simultaneously been the victims of neglect and abuse. Being relatively recent and less explicit in practice, the concept of child rights suffers from an instinctive paternalism towards children favouring a 'welfare' approach and resistance to the notion of rights in general. This is further complicated by the valid primacy of parents and families as custodians of these rights who exert their own judgments, interpretations and decisions that have impact on all aspects of children's lives.

In fact, it is really only in 1989, with the Convention on the Rights of the Child (CRC 1989) that child rights have become an explicit domain for international covenants on human rights. Considering that all human rights should and do apply to children, children still continue to be referred to in the utilitarian sense as 'citizens of the future' whom we should invest in for societal returns, rather than citizens of the 'present' with full rights at any given point of time following their birth.

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In this context, 'The Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993' has important implications for child rights since it reiterates the commitment to CRC implementation (VD 1993: Points 21, 46). It exhorts States to national action plans for the implementation of the CRC and specifically mentions that "By means of these national action plans and through international efforts, particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education" (VD 1993: Point 47). Thus, it acknowledges nutrition as a priority area for child rights.

Malnutrition amongst Indian children has been a subject of intense discussion amongst national and international agencies working towards the actualization of Child Rights. Declared a 'National Shame' by the Prime Minister, and widely acknowledged as a pervasive problem afflicting just under half the population of children under six (Government of India 2008), and one that has been slow to decline despite high economic growth, the discussions, debates and advocacy on strategies needed for best impact (WGCU6 2007), have led to shifts in policy and programme resulting in important gains. These include provisions forhealth and nutrition in the recent reworked National Policy for Children (GoI2013a), the recently launched 'ICDS restructuring' programme (GoI 2013b), the establishment of NRCs for facility-based services for children with Severe Acute Malnutrition through the National Rural Health Mission (NRHM) (GoI 2005), and some fledgling efforts by civil society organizations as well as state governments towards Community Based Management of Malnutrition (Govt.of Maharashtra 2005, Govt.of Madhya Pradesh 2010; Govt.of Odisha 2011; PHRN 2012).

The right to food has been taken for granted as a basic right, yet India has been struggling to give it a constitutional basiswith the still-pending National Food Security Bill (NFSB). Within the overall right to food, children's rights to food occupy a peculiar and specific domain, considering that children's nutritional needs are very different at each age

group, especially in early childhood, and that special processes are required to ensure that these needs are met, such as arrangements for care and support to care-givers.

Age Specific Nutritional Requirements and Requisite Supportive Interventions

Birth to Six Months

Exclusive breastfeeding: supported through breastfeeding counseling, maternity entitlements, creches, nutrition and health care for lactating mother.

Six Months to Three Years

Calorie-dense protein-rich diverse food containing sufficient micronutrients, continued breast feeding: supported through nutritious Take *Home Rations (THR), nutrition counseling for appropriate,frequent home-feeding, growth monitoring, health care*

Three Years to Six Years

Adequate and good quality diverse meals with sufficiency of animal-based proteins and vitamins and minerals: supported by nutritious hot cooked meals at pre-school / Early Childhood Care and Development(ECCD) centres, continuing nutrition counseling, growth monitoring, health care

Young Children and Adolescents

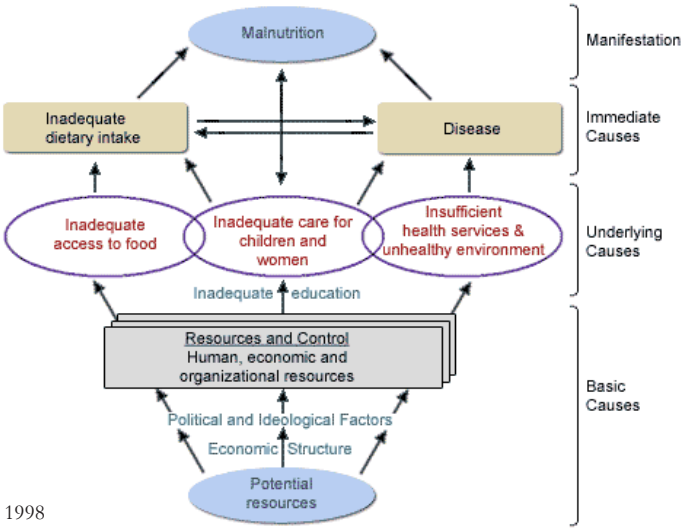
Adequate and good quality diverse meals with sufficiency of animal-based proteins and vitamins and minerals supported by nutritious hot cooked mid-day meals at school, nutrition and health education

Infections are rampant in this critical age group and thus adequate good quality food, health care services, safe water and sanitation and appropriate care through well informed and well supported care givers become the key determinants of child nutrition alongside the more distal determinants of poverty and gender.Malnutrition per se, and associated recurrent infections further hamper the child's ability to absorb nutrients.

Key principles for nutritional interventions using a rights-approach necessitates provisioning for every child regardless of age and status of malnutrition (universalisation), continuity of care and attention to equity and quality. It is also largely agreed that this is best achieved through decentralization, community ownership and the use of public goods and services.

Conceptual Framework for Malnutrition in Children (adapted from UNICEF)

Any legal intervention in favour of children's rights to food must be constructed keeping in mind the key principles outlined above and the age-specific requirements of children to food and nutrition. For example, while legal entitlements to PDS may serve some overall purpose in enhancing the food security of the family, they would not be sufficient to make an impact on the food security of a breast feeding infant directly. A more direct impact would be made by additionally ensuring universal maternity entitlements. Thus, an effort needs to be made to encompass both proximal and distal determinants of malnutrition where children are concerned.



Source: UNICEF 1998

Current Legal Entitlements: the Supreme Court Rulings on Children's Right to Food

Currently, the legal backing to children's rights to food is derived from rulings in the Supreme Court Case (PUCL vs Union of India and Others Civil Writ Petition 196 of 2001) that essentially guarantee relevant services through the ICDS and provide some directions related to the processes to be followed in ensuring these services, as below (Right to Food Campaign 2013):

Supreme Court Orders; Relevant Extracts| Key Directions

Order of 13 December 2006

1. Government of India shall sanction and operationalize a minimum of 14 lakhAWCs in a phased and even manner starting forthwith and ending December 2008. In doing so, the Central Government shall identify SC and ST hamlets/habitations for AWCs on a priority basis.
2. Government of India shall ensure that population norms for opening of AWCs must not be revised upward under any circumstances. While maintaining the upper limit of one AWC per 1000 population, the minimum limit for opening of a new AWC is a population of 300 may be kept in view. Further, rural communities and slum dwellers should be entitled to an "Anganwadi on demand" (not later than three months) from the date of demand in cases where a settlement has at least 40 children under six but no Anganwadi.
3. The universalisation of the ICDS involves extending all ICDS services (Supplementary nutrition, growth monitoring, nutrition and health education, immunization, referral and pre-school education) to every child under the age of 6, all pregnant women and lactating mothers and all adolescent girls.
4. The order holds the Chief Secretaries of the different States and Union Territories responsible for the proper implementation of the ICDS.

Order of 7 October 2004

The order discusses measures such as increasing the number of anganwadis from six lakhs to fourteen lakhs, increasing the norms for supplementary nutrition, abolition of contractors in provision of food, provision of detailed information on ICDS in the website and ensuring full utilization of available finances.

Order of 28 November 2001

1. Directs the State Govts./ Union Territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under - Each child up to 6 years of age to get 300 calories and 8-10 grams of protein; Each adolescent girl to get 500 calories and 20-25 grams of protein; Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein; Each malnourished child to get 600 calories and 16-20 grams of protein.
2. Have a disbursement centre in every settlement.

As is evident, the rulings are comprehensive and explicit on nutritional guarantees as well as on the systems and processes for delivery and the intention for universalisation.

Children's Right to Food in the NFSB; Recommendations and Concerns

The NFSB has gone through several iterations in its transition, from a draft put forward by the NAC to several drafts put up by the Ministry of Consumer Affairs, Food and Public Distribution. An advanced draft was put up to the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution for examination.

As far as the issue of children's right to food in the NFSB is concerned, lacunae have been perceived at all stages and civil society has been concertedly advocating for legal provisions that would show a mature understanding and a firm commitment to the guaranteeing good quality

food to all children and making arrangements for prevention and management of malnutrition.

The National Commission for Protection of Child Rights, as part of its mandate under section 13 (1) of the Commissions for Protection of Child Rights (CPCR) Act, 2005 has been closely monitoring the progress of this legislation and making inputs into it. Thus, detailed written and oral depositions were made to the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution that essentially emphasized the following points:

1. Universal and unconditional maternity entitlements and crèches are required to support exclusive and continuing breastfeeding of children from birth to two years (six months of exclusive breastfeeding and continued breastfeeding upto two years)
2. There should be a provision for 'crèche on demand' where there is such demand from at least 15 children under six in a habitation. Age appropriate and nutritious morning snack and evening snack, over and above a mid day meal should be provided for all children in the crèche/day care centre.
3. The provisions of the ICDS need to be converted into legal entitlements.
4. The SC rulings in the Right to Food Case (PUCL vs.UOI &Ors. Writ Petition (Civil) 196 of 2001) need to be acknowledged and incorporated into the NFSB.
5. Every anganwadi centre should fulfill norms and standards as specified in a schedule of the Act.
6. The Act should direct the appropriate government to take steps to fulfill such norms and standards within a period of one year from the date of its commencement.
7. Meals provided at the local anganwadi, should meet nutritional standards at a minimum as specified in a schedule of the Act.

8. There shall be provision for an anganwadi centre on demand in accordance with the Supreme Court orders, and this shall be verified by the gram panchayat. Once the certification of the GP is received an anganwadi centre is to be provided for within a period of 60 days by the government.
9. Specific facilities/institutions/ mechanisms to treat/manage child malnutrition need to be set up. Nutrition rehabilitation centres (NRCs) should be set up in every primary health centre.
10. All severely malnourished children should be entitled for treatment for as long as necessary to restore them to good health.
11. Community based management using locally produced therapeutic foods should be followed for uncomplicated cases of severe acute malnutrition that do not require NRC based treatment after due examination by medical staff.
12. The Commission was of the view that one midday meal free of charge, everyday should be provided all through schooling so as to meet nutritional standards specified in a schedule of the Act.
13. NCPCR sought special focus on the inclusion of children with special nutritional vulnerabilities such as children under 6 yrs, children with physical disabilities, children suffering from chronic illness(including HIV and TB), child labourers, migrant children, street children, children of migrant labour, children of manual scavengers, children of sex workers, children affected by terrorism, communal violence, riots, natural disasters, domestic violence, trafficking, maltreatment, torture and exploitation, and children in need of special care and protection including children in conflict with law, children without family and children of prisoners.
14. It suggested that NCPCRs and SCPCRs could be entrusted with the task of monitoring the Act from the perspective of children's rights to food.
15. It also made detailed recommendations for a mechanism of grievance redressal.

However, the report of the Parliamentary Standing Committee did not reflect any of these concerns. It also appeared not to acknowledge the relationship of food insecurity to malnutrition, and the mandate of this Act to ensure the prevention of malnutrition. The ICDS was kept outside the Act's purview altogether and in a sense, the recommendations did not cover even existing legal guarantees provided by the Supreme Court Rulings leave alone expand them. Some retrogressive restrictions that went against universalisation from the child's point of view, such as the application of the two-child norm to maternity entitlements, also crept into the recommendations. In doing so, the Committee ignored the importance of exclusive breast-feeding of babies for the first six months of life which is a vital and indispensable factor for survival and growth of children. Further, the Committee specified that the maternity benefits would be availed by the pregnant woman after 'three months into pregnancy', thus preventing these entitlements from coming into play for the entire period of six months post-delivery. This would make them infructuousas a support to exclusive breast feeding for six months, as well as inequitable with the entitlements that already exist for women working in the organized sector.

Recommendations: Sixth Pay Commission

(a) The existing ceiling of 135 days ***Maternity Leave*** *provided in Rule 43(1) of Central Civil Services (Leave) Rules, 1972 shall be enhanced to 180 days. (b) Leave of the kind due and admissible (including commuted leave for a period not exceeding 60 days and leave not due) that can be granted in continuation with* ***Maternity Leave*** *provided in Rule 43(4)(b) shall be increased to 2 years. (c) Women employees having minor children may be granted* ***Child Care*** *Leave by an authority competent to grant leave, for a maximum period of two years (i.e. 730 days) during their entire service for taking care of upto two children whether for rearing or to look after any of their needs like examination, sickness etc.* ***Child Care Leave*** *shall not be admissible if the child is eighteen years of age or older. During the period of such leave, the women employees shall be paid leave salary equal to the pay drawn immediately*

before proceeding on leave. It may be availed of in more than one spell. Child Care Leave shall not be debited against the leave account. Child Care Leave may also be allowed for the third year as leave not due (without production of medical certificate). It may be combined with leave of the kind due and admissible.

Source: GOI (2008), *Sixth Central Pay Commission*, Ministry of Finance.

Thus, recommendations were made to the government to reconsider the NFSB from the point of view of children's rights to food (and nutrition).

National Food Security Bill (NFSB) 2013

As it now stands, the NFSB 2013 put out to parliament has reinstated universal and unconditional maternity entitlements and incorporated the supplementary food related provisions of the ICDS (GOI 2013c:points 4,5,6). It lays down some standards for anganwadicentres such as facilities for "cooking meals, drinking water and sanitation". It has also specified some nutritional norms for the supplementary nutrition of all children as well as specifically for malnourished children. However, on the flipside, the schedule on nutritional standards contains a caveat that take-home rations must be fortified with micronutrients upto 50% of RDA. Demonstrating this may prove impossible for decentralized community-owned production by women's groups, leaving a vast and lucrative market open for profit-making nutraceuticals.

With respect to providing legal impetus to food diversity and quality in the interests of *nutritional* security, millets have found due space in the entitlements listed under the Public Distribution System, but not pulses and oils, which has been a part of long standing demands by peoples' movements on right to food.

As far as the MDM is concerned, its scope is retained without expansion to cover children from 6-14 years only.

The Bill has still not been passed by Parliament and the ordinance which was being considered in its lieu has also not been passed. Thus, the

legal protection to children's rights to food remains still within the rulings of the Supreme Court. It is also relevant to note that we do not have a specific Act for the Right to Health which continues to be derived through the interpretation of Article 21 of the Constitution. Thus, the health related interventions that are considered critical to achieving nutritional security of children also do not have a specific legal backing.

Children's Rights to Food in the Union Budget 2013-14

Juxtaposed against the backdrop of this imminent Act, it is worthwhile to examine what kind of budgetary allocations are currently being made for programmes related to child nutrition. This is specially relevant since one of the criticisms against the proposed NFSBill is that it does not specify financial allocations by way of, for example, a fixed minimum proportion of the GDP to be allocated..

The country has been witnessing a constant barrage of criticism and concern over child protection and development issues; from rising crimes against children, to intractable malnutrition, to the sorry state of health and child care services, schools and anganwadis. In the face of this concern, it seemed eminently reasonable to expect a visible focus on expanding services for children and improving their quality in the recently declared union budget. However, the union budget not only fails to deliver any scope for expansion and improvement, it actually makes cuts in critical areas and, in others, barely allows for covering inflation.

According to an analysis by HAQ Centre for Child Rights (HAQ 2013), the overall percentage share of budget for children in the Union Budget is down from 4.76 per cent in 2012-13, to 4.64%; a reduction of 0.12 percentage points; that for over 30 per cent of the population of this country that is also the most vulnerable.

Within this overall decline, it has been shocking to note that the decline has been almost 8 per cent in the area of child protection and that Inclusive Education for the Disabled at Secondary Education (IEDSS) has declined by 28.57 per cent, alongside declines in health (about 1%).

The recent Comptroller & Auditor General (CAG) audit of the ICDS (CAG 2013) has once again reinforced the many shortfalls in the anganwadiprogramme ranging from lack of infrastructure to lack of quality of services. While it seems that the ICDS has received a considerable increase of 11% to ₹ 17,700 crore, this is far short of the annual ₹ 24,600 crore budget which would be required to achieve the lauded 'ICDS restructuring' programme announced in the 12th Plan.

In response to the many deficiencies of the ICDS programme as pointed out by numerous reviews by agencies such as National Institute of Public Cooperation and Child Development (NIPCCD), National Council of Applied Economic Research (NCAER), and now the CAG(NIPCCD 2006, GoI 2011, CAG 2013), the ICDS restructuring programme was announced in the 12th Plan in a bid to cover "programmatic, institutional and management gaps" and it was decided to put the ICDS in "mission mode" much like NRHM and the Sarva Shiksha Abhiyan.

The restructuring was also a result of an understanding that the current programme is not able to cater to children under the age of three or make a sufficient impact on prevention of malnutrition, which is most grave in this age group. Thus, components of an extra worker for the under threes in select districts, anganwadi-cum-creches (5%) as well as SnehaShivirs were envisaged to enhance the care to under-threes and malnourished children. This would roll out in 200 districts in Phase I to start with in the first year, and additional funds of Rs. 1.83 lakh cores were sought by the Ministry for the entire scheme in the 12th plan. The cabinet approved a reduced amount of ₹ 1.2 lakhcrores for five years. Now, the annual budget has in fact, further reduced the annual amount by 6900 crores for th e current year, and, in the face of a major budgetary cut, the fate of the ICDS Mission and the overall restructuring and strengthening of the ICDS once again teeters in the balance.

Similarly, a multi-sector nutrition augmentation programme for mother and child was introducedin 2012-13 to cover 200 high burden districts. In 2013-14 budget, the number ofdistricts to be covered is reduced to 100.

While Mid Day Meal (MDM) received an increased allocation against 2012-13, the 10 per cent increase does not even cover the cost of food inflation.

In a sense, where entitlements for children were concerned, the parliamentary standing committee on the NFSB had already created a prelude to the coming disappointment of the annual budget which does not reflect a priority towards children's rights to food.

Conclusion

Legal underpinnings for children's rights to food continue to be precarious though the overall trends seem to suggest that policy makers do perceive the pulse of the populace and the need to show a visible commitment to food security in the form of a Food Security Act. The process is fraught with lack of consensus in terms of scope and a key problem that persists even in the most recent iteration of the Bill is the lack of acknowledgement of universalisation as a key aspect of human rights legislation. In fact, the Act is being treated more as a guarantee of minimum entitlements than ahuman rights legislation per se. Within this, nutritional rights are still not well defined. Where children are concerned, certain key institutions, such as the ICDS and crèches are still to find adequate space in law, in the same manner as schools have found in the Right to Education Act. Unless, institutional frameworks are adequately set up, adequate financial allocations committed and the required human resource is considered part of the regular workforce (in the same way as teachers in the Right to Education), the elaborate requirements of prevention and management of malnutrition and overall food security for children may not gain the impetus it deserves and requires. The law would do well to define these systemic elements so that the country puts its money where its children are instead of making hollow policy declarations that are insidiously made ineffective by highly inadequate financial allocations and institutionalisation.

Nevertheless, there are significant and landmark achievements in the proposed legislation such as the universal right to maternity benefits which

need to be lauded and protected till the Act is passed. Continued advocacy is required to ensure that the current provisions of the Bill are not diluted and that Central and State governments invest adequate resources as well as supplement the still limited provisions of the current Bill through law and policy to cover the deficits of decades of neglect of this important human rights issue.

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HUMAN RIGHTS EDUCATION

Relevance of Human Rights Education and Promotion of Human Rights

*Prof. Ranbir Singh**

Nancy Flowers, in *The Human Rights Education Handbook*, defines Human Rights Education (HRE) as "all learning that develops the knowledge, skills and values of human rights." Human Rights Education involves the learner's valuing and understanding of these principles, which are typically "problematized" for that particular society. At the national levels we can observe quite different approaches to the use of HRE in addressing widespread human rights and development challenges. In developing countries, for instance, HRE is often linked with economic and community development, and women's rights. In post-totalitarian or authoritarian countries, human rights education is commonly associated with the development of civil society and the infrastructures related to the rule of law and protection of individual and minority rights. In older democracies, it is often conjoined favorably with the national power structure but geared towards reform in specific areas, such as penal reform, economic rights and refugee issues. Human rights education also seems to be playing a specialized role in post-conflict societies.[1]

These examples focus on human rights problems and issues at the community level. Human rights education involves a combination of looking within and looking without. Human rights learning is necessarily focused on the individual – the knowledge, values and skills that pertain

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1 http://usinfo.state.gov/journals/itdhr/0302/ijde/tibbitts.htm

to the application of the human rights value system in interpersonal relationships with family and community members. Nancy Flowers and others talk about some of these "human development" skills that recognise one's own biases, accept differences, take responsibility for defending the rights of others, as well as mediation and conflict resolution in *The Human Rights Education Handbook*. Yet those organizing human rights education programming must take into account the social, cultural, political and economic contexts for their work, and the potential such education will have for social transformation.[2]

In fact, education has a complex and demanding role to play in upholding human rights, supporting human development and promoting civil society. In order for human rights education – and human rights thinking – to be a lasting contribution to human rights thinking – to be a lasting contribution to human rights cultures in our respective countries, we need to truly understand the distinct models of human rights education that are found in practice, and to clarify their link with social change strategies……. HRE is ultimately about action for building human rights cultures in our own communities, and programming must be evaluated on its ability to contribute to this general goal.[3]

To be successful in diverse, developing nations, human rights education should ideally be linked to tolerance promotion, conflict resolution and problem solving, and be grounded in the reality of the local environment. This view, prevalent among human rights education experts, particularly applies to new democracies such as South Africa.[4]

To be meaningful, human rights education (HRE) must be part of a total programme embracing conflict resolution and tolerance promotion, especially in diverse nations.

In the real world, Parlevliet says "You can't just spell out human rights principles and hope people will adopt them. You have to relate

2 Ibid.
3 Ibid.
4 http://usinfo.state.gov/journals/itdhr/0302/ijde/tibbitts.htm

them to local cultures and how they will help to bring about greater tolerance, equality and integrity among people of different backgrounds with different interests. Human rights and conflict resolution are connected," she adds, "In the short term, violent and destructive conflict can lead to human rights violations. In the long term, a sustained denial of human rights can lead to conflict. It is a direct relationship."[5]

Human rights education does not work in communities fraught with conflict unless it is part of a comprehensive approach, Parlevliet continues. "In fact, such education can be counterproductive and lead to greater conflict if people become aware of rights which are not realized. In this respect, human rights education can increase the potential for conflict." It is in this sense she adds, that "human rights education and conflict resolution are connected," noting that it is particularly significant in the townships, where there are many conflicts "relating to developmental issues."[6]

Why Human Rights Education?

Human rights are highly inspirational and also highly practical, embodying the hopes and ideals of most human beings and also empowering people to achieve them. Human rights education shares those inspirational and practical aspects. It sets standards but also produces change. Effective human rights education can:

- Produce changes in values and attitude
- Produce changes in behavior
- Produce empowerment for social justice
- Develop attitudes of solidarity across issues, communities, and nations
- Develop knowledge and analytical skills
- Encourage participatory education.
- Active Citizenship

5 Ibid.

6 Ibid.

Human rights education is essential to active citizenship in a democratic and pluralistic civil society. Citizens need to be able to think critically, make moral choices, take principled positions on issues, and devise democratic courses of action. Participation in the democratic process means, among other things, an understanding and conscious commitment to the fundamental values of human rights and democracy, such as equality and fairness, and being able to recognize problems such as racism, sexism, and other injustices as violations of those values. Active citizenship also means participation in the democratic process, motivated by a sense of personal responsibility for promoting and protecting the rights of all. But to be engaged in this way, citizens must first be informed[7].

Learning About Human Rights

Learning about human rights is largely cognitive, including human rights history, documents, and implementation mechanisms. All segments of society need to understand the provisions of the UDHR and how these international standards affect governments and individuals. They also need to understand the interdependence of rights, both civil, and political and social, economic, and cultural. Human rights should be the "4th R," a fundamental of everyone's essential education, along with reading, writing, and "arithmetic."[8]

Some groups, especially in formal education, emphasise cognitive and attitudinal goals for human rights education. For example, the 1985 recommendations of the Council of Europe on the "Teaching and Learning of Human Rights in Schools" [Recommendation R(85)7] give primary importance to historical and legalistic learning and seem to add "action skills" as an afterthought[9]:

1. Knowledge of the major "signposts" in the historical development of human rights.

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7 See http://www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/part1D.html Why Human Rights Education

8 See http://www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/part1c.html Human Rights Education Handbook, "Par-I C. why? The Goal of Human Rights Education?"

9 See http://www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/part1c.html

2. Knowledge of the range of contemporary declarations, conventions, and covenants.
3. Knowledge of some major infringements of human rights.
4. Understanding of the basic conceptions of human rights (including also discrimination, equality, etc.).
5. Understanding of the relationship between individual, group, and national rights.
6. Appreciation of one's own prejudices and the development of tolerance.
7. Appreciation of the rights of others.
8. Sympathy for those who are denied rights.
9. Intellectual skills for collecting and analyzing information.
10. Action skills.[10]

The action skills described are mainly interpersonal, such as "recognizing and accepting differences," "establishing positive and non-oppressive personal relationships," and "resolving conflict in a non-violent way." Recommended skills more relevant to social change are "taking responsibility" and "participating in decisions," which imply participation, planning, and decision making. The final recommendation for social skills is "understanding the use of the mechanisms for the protection of human rights at local, regional, European and world levels," which epitomizes the priority human rights education in schools gives cognitive learning, especially of the legal bases of human rights.

Like the recommendation for European schools, the Expectations of Excellence: Curriculum Standards for Social Studies of the US National Council for the Social Studies stresses cognitive learning. These standards make many references to the ideals, principles, and practices of citizenship in a democratic republic and these specific recommendations for learning

10 Quoted in Richard Pierre Claude, *Methodologies for Human Rights Education*. New York: Peoples Decade for Human Rights Education,1997. Available on line at www.hre.org/index.html

about human rights. Schools in general are conservative. As the principal institution for the socialization of children, as well as the source of basic education, they usually embody the values of the communities in which they exist. In addition, they may reflect government efforts to use schools to pursue political objectives, such as shaping attitudes on patriotism, religion, family planning, alcohol and drug use, and minorities. Some governments necessarily regard teaching human rights in schools as contrary to their own interests.

However, even educational authorities that enthusiastically promote human rights education tend to focus on citizenship, historical and legal learning, and interpersonal relations. They, as well as parents, are wary of having the schools used for perceived "political purposes" and are unreceptive to programmes that seem to manipulate students to take social action beyond the classroom. Furthermore, while educators have recognized methods for delivering, testing, and evaluating cognitive learning, few feel as comfortable with learning that aims at attitude change. For all these reasons, human rights education in most schools remains primarily limited to "learning about human rights."

Education for human rights means understanding and embracing the principles of human equality and dignity and the commitment to respect and protect the rights of all people. It has little to do with what we know; the "test" for this kind of learning is how we act.

This more personal objective includes values clarification, attitudinal change, development of solidarity, and the skills for advocacy and action, such as analyzing situations in human rights terms and strategizing appropriate responses to injustice. Only a few people may become full-time activists, but everyone needs to know that human rights can be promoted and defended on an individual, collective, and institutional level and be taught to practice human rights principles in his or her daily lives. And everyone needs to understand that human rights are linked with responsibilities: to observe human rights principles in one's own life and to defend and respect the rights of others.

The ultimate goal of education for human rights is empowerment, giving people the knowledge and skills to take control of their own lives and the decisions that affect them. Some educators regard this goal as too political for schools and appropriate only to non-formal education. Others see it as essential for becoming a responsible and engaged citizen and building civil society.[11]

One Practice, Many Goals

In this new field, the goals and the content needed to meet these goals are under continual and generally creative debate. Among the goals that motivate most human rights educators are:

- developing critical analysis of their life situation
- changing attitudes
- changing behaviors
- clarifying values
- developing solidarity
- analyzing situations in human rights terms
- strategizing and implementing appropriate responses to injustice

The Audience for Human Rights Education: Who needs human rights education? The simple answer is, of course, everyone. However, human rights education is especially critical for some groups:

Young children and their parents: Educational research shows conclusively that attitudes about equality and human dignity are largely set before the age of ten. Human rights education cannot start too young. Indeed, some of the most creative and effective human rights educators are found in pre-school and primary classes.

Teachers, principals, and educators of all kinds: No one should be licensed to enter the teaching profession without a fundamental grounding in

11 Flowers, Nancy (2000) *The Human Rights Education Handbook*, Human Rights Resource Center, University of Minnesota.

human rights, especially the Convention on the Rights of the Child (CRC). What a difference might be made in children's lives if teachers consistently honored the child's right to express opinions and obtain information (CRC Article 13) or imposed school discipline consistent with the child's human dignity (CRC Article 28).

Veteran teachers present a particular challenge because human rights education involves not only new information, but also introduces attitudes and methodologies that may challenge their accustomed authority in the classroom. Nevertheless, most teachers around the world share a common trait: a genuine concern for children. This motivation and a systematic in-service training program linked to recertification or promotion can achieve a basic knowledge of human rights for all teachers.

Teachers do not work in isolation. To succeed, human rights education requires the endorsement and support of the whole educational system, including those who oversee continuing education, who license or certify teachers, who set curriculum standards and content, and who evaluate students, teachers, and schools. These officials are as unlikely as anyone else to have knowledge of human rights, and they too need to achieve "human rights literacy."

Doctors and nurses, lawyers and judges, social workers, journalists, police, and military officials: Some people urgently need to understand human rights because of the power they wield or the positions of responsibility they hold, but even social elites seldom receive human rights education, formally or informally. Human rights courses should be fundamental to the curriculum of medical schools, law schools, universities, police and military academies, and other professional training institutions.

Especially vulnerable populations: Human rights education must not be limited to formal schooling. Many people never attend school. Many live far from administrative centers. Yet they, as well as refugees, minorities, migrant workers, indigenous peoples, the disabled, and the poor, are often among the most powerless and vulnerable to abuse. Such people have no less right to know their rights and far greater need.

Only by working in collaboration with these vulnerable groups can human rights educators develop programmes that accommodate their needs and situations. The techniques of popular education—music, street theater, comic books, alternative media, and itinerant storytellers—can help to connect human rights to people's lived experience.

Activists and non-profit organizations: Many human rights activists are not solidly grounded in the human rights framework and many human rights scholars know next to nothing about the strategies of advocacy. Few people working in nongovernmental organizations (NGOs) recognize that they may be engaged in human rights work, and even human rights advocates usually acquire their knowledge and skills by self-teaching and direct experience. Especially in the United States, where social and economic justice is rarely framed in human rights language, many activists who work on issues like fair wages, health care, and housing, fail to understand their work in a human rights context or recognize their solidarity with other workers for social and economic justice.

Public office holders, whether elected or appointed: In a democracy no one can serve the interests of the people who does not understand and support human rights. People should require all candidates for election, from the head of state to the local council member, to make a public commitment to human rights. And human rights should be included in the orientation of all new office holders.

Power holders: This group includes members of the business and banking community, landowners, traditional and religious leaders, and anyone whose decisions and policies affect many peoples' lives. As possessors of power, they are often highly resistant, regarding human rights as a threat to their position and often working directly or indirectly to impede human rights education. To reach those in power, human rights need to be presented as benefiting the community and themselves, offering long-term stability and furthering development.[12]

12 See http://www1.umn.edu/humanrts/edumat/hreduseries/hrhandbook/part1D.html Human Rights Education Digest "Part I: D: For Whom? The Need for Human Rights Education."

Human Rights Education and Role of University Grants Commission

The University Grants Commission (UGC) in 1998 released its IXth Plan Approach Paper which contained the UGC's policy regarding promotion of Human Rights Education in universities and colleges across the country. As per UGC, the existing status of Human Rights Education in universities and colleges in the country reflects the "lack of intensity and understanding of Human Rights Education in its present form" and that "it needs to be strengthened." The Approach Paper outlined objectives and strategies for Human Rights Education in the country some of which are enumerated below:

1. Mere knowledge about human rights is not sufficient. An understanding as to how human rights can easily become vulnerable to abuse of various structures and processes of power is crucial;
2. HRE also has to cover all modalities which could sensitise a person, awaken his / her conscience and develop an attitude of mind imbibing respect for human rights of others;
3. HRE needs field experience and action oriented ways of learning and teaching;
4. Collecting, collating and classifying the data and experiences that NGOs and groups working in the field have already acquired can be an important aspect of HRE and may lead to create new knowledge and research;
5. HRE must encompass in it a strong research component. Any teaching of or about human rights need to be backed up by strong multi-disciplinary research on various aspects of human rights and their complexities;
6. Dissemination of HRE through training and public information by carrying out awareness and other programmes through audio-visual aids and distance mode of education need to be used amongst other tools and inputs;

7. The extension programmes in the colleges need special attention and emphasis with a view to giving them human rights orientation;
8. The Legal Aid Programmes in the colleges could be more vigorously utilized by the law schools for the benefit of the needy to render legal advise and assistance for human rights enforcement;
9. Co-ordination with and by the National Human Rights Commission for a more purposeful use of extension programmes of the universities and colleges is necessary.
10. Three alternative approaches for promoting Human Rights Education could be pursued simultaneously, viz. (i) Introducing separate courses on Human Rights; (ii) Human Rights issues to be incorporated in courses already being taught; and (iii) Re-orientation of all courses so that the human rights components is not seen as an adjunct to the existing syllabi, instead the academic packages should be so offered as to have "people" as the central theme;
11. Setting up of the proposed human rights courts in each district all over the country could open up avenues of self-employment for a substantial number of students. Inclusion of human rights as one of the subjects in national competitive examinations also deserves consideration.
12. There is a need to convince all Union and State Ministries and Departments especially those which provide service to the people like the Railways, the Post and Telecommunications and Electricity as well as all law courts and prisons and law enforcement agencies to appoint human rights experts as advisors and trainers.

Human Rights Education in an International Context

Human rights education has emerged as one of the most important means for developing a human rights culture. Although since 1948 human rights legislation has been increasingly elaborated on at both the international and European levels, and most human rights documents endorse human rights education, the potential of human rights education has so far

remained unrealised. Insufficient political will, lack of resources and inadequate teaching materials have limited the effectiveness of human rights education. However, the development of human rights-related non-governmental organisations in the last decades and the democratic transition in dozens of countries in Central and Eastern Europe have given the human rights education movement a vital impetus. International organisations have played an essential role in developing more effective and consistent human rights education strategies at the national level.

The UN Decade for Human Rights Education

Since the adoption of the Universal Declaration, the United Nations General Assembly has called on Member States and all segments of society to disseminate and educate about this fundamental document. In 1993 the World Conference on Human Rights in Vienna reaffirmed the importance of human rights education, training and public information, declaring it "essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace."[13] In response to an appeal by this World Conference, the General Assembly proclaimed the period 1995 to 2004 the UN Decade for Human Rights Education.

In proclaiming the United Nations Decade for Human Rights Education in December 1994, the General Assembly defined human rights education as "a life-long process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies."[14] The Assembly emphasized that the responsibility for human rights education rested with all elements of society - government, nongovernmental organizations, professional associations, and all other sectors of civil society, as well as individuals.

The Plan of Action for the Decade further defines human rights education as "training, dissemination and information efforts aimed at the

13 Vienna Declaration and Programme of Action, Part I, pars 33-34 and Part II, pars. 78-82.

14 General Assembly Resolution 49/184, 23 December 1994.

building of a universal culture of human rights through the imparting of knowledge and skills and the molding of attitudes which are directed to:

a) The strengthening of respect for human rights and fundamental freedoms;

b) The full development of the human personality and the sense of its dignity;

c) The promotion of understanding, tolerance, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;

d) The enabling of all persons to participate effectively in a free society;

e) The furtherance of the activities of the United Nations for the maintenance of peace."

During this Decade, the UN is urging and supporting all its Member States to make information about human rights available to everyone through both the formal school system and popular and adult education. International human rights documents provide inspiring goals for human rights education. For example, the first words of the Universal Declaration of Human Rights (UDHR) proclaim that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." However, to achieve, freedom, justice, and peace, people must also address concrete social and economic needs, such as poverty and discrimination, and political crises, such as war and political repression. Thus effective human rights education has two essential objectives: learning about human rights and learning for human rights.[15]

United Nations World Programme for Human Rights Education

In December 1994 the UN General Assembly proclaimed 1995-2004 the United Nations Decade for Human Rights Education. The official

15 Plan of Action of the United Nations Decade for Human Rights Education (1995-2004), para. 2

recommendation recognizes human rights education as key for the promotion and achievement of stable and harmonious relations among communities and for the fostering of mutual understanding, tolerance and peace. It calls on all states and institutions to include human rights, humanitarian law, democracy and the rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.[16]

As a follow-up to the Decade in December 2004 the UN General Assembly proclaimed a World Programme for Human Rights Education (2005-ongoing). Building on the achievements of the United Nations Decade for Human Rights Education, this worldwide programme seeks to help make human rights a reality in every community. The Action Plan of the World Programme for 2005-2007 focuses on the primary and secondary education systems and proposes concrete strategies and practical ideas for implementing human rights education on national level.[17]

The UN Decade of Education for Sustainable Development

The UN Decade of Education for Sustainable Development (2005-2014) links environmental development and human rights education, emphasising that education is essential for people to have the skills and capacities they need to address environment and development issues.[18]

Cyber School Bus: A Special UN Project for Children

CyberSchoolBus is a global web-based teaching and learning project of the United Nations that aims to engage children in human rights issues. The CyberSchoolBus collects inspiring stories of classes or schools defending and promoting human rights in their own communities, neighbourhoods and cities. These stories become part of a global atlas of student actions compiled and published on the internet by the UN Cyber School Bus.

16 United Nations World Conference on Human Rights, 1993, Vienna Declaration and Programme of Action, para. 33 of Section 1

17 See www.ohchr.org/english/issues/education/training/programme.htm

18 See http://portal.unesco.org/education/en/ev.php URL_ID=27234& URL_DODO_TOPIC&URL_SECTION=201.html

UNESCO

UNESCO had a key role in the development, implementation and evaluation of the projects foreseen during the UN Decade for Human Rights Education. Bearing in mind that learning should focus on the acquisition of values, attitudes and skills required meeting the emerging challenges of contemporary societies, UNESCO contributes to the development of national strategies in human rights education, develops learning materials and works on advocacy and networking. UNESCO continues to have a key role in the implementation of the World Programme for Human Rights Education UNESCO's work on human rights education was confirmed in the Dakar Framework for Action (2000-2015), a new global priority programme developed at the World Education Forum in 2000. The Framework affirms the need to implement 'quality education' internationally, which is defined as going beyond the traditional school curriculum to include a human rights approach and to address new areas such as cultural diversity, multilingualism in education, peace, non-violence, sustainable development and life skills.[19]

UNICEF

For sixty years UNICEF has been a global force for children, and today it is present in 191 countries of the world. It works in partnership with a broad coalition of UN agencies, governments, NGOs, and local grassroots organizations to help build a world where the rights of every child are realised. UNICEF's work is guided by the Convention on the Rights of the Child.[20]

In May 2002 a special session of the UN General Assembly produced A World Fit for Children, which sets a new agenda for the world's children for the next decade. It recognizes that governments, NGOs and children and adolescents themselves all have a key role to play to ensure that all

19 The Dakar Framework for Action – Education for All: meeting with our commitments, World Education Forum, Dakar, Senegal, 26-28 April, 2000: www.unesco.org/education/efa/ed_for_all/framework.shtml

20 See http://www.eycb.coe.int/compasito/chapter_2/1_wha.html

children enjoy the rights guaranteed to them in the Convention on the Rights of the Child (CRC). To this end educational programmes, materials and the learning environment itself should "reflect fully the protection and promotion of human rights and the values of peace, tolerance and gender equity."[21]

UNICEF has many programmes that contribute to furthering human rights education internationally, regionally and in individual countries. Voices of Youth is a child-friendly website of UNICEF providing information about questions related to children's life on global level and interactive games to promote children's rights.[22] The UNICEF Innocenti Research Centre develops and produces research on children's situation internationally in the belief that awareness and understanding of children's rights improves children's situation everywhere in the world.[23]

Council of Europe

For the Member States of the Council of Europe human rights are more than just a part of their legal framework; they should be an integral part of education of children, young people and adults. Recommendation No. R (85) 7 of the Committee of Ministers on Teaching and Learning about Human Rights in Schools emphasises that all young people should learn about human rights as part of their preparation for life in a pluralistic democracy; and this approach is slowly being incorporated into different European countries and institutions.[24]

Parliamentary Assembly Recommendation 1346 (1997) on human rights education proposes a whole range of actions for strengthening human rights education in Europe.

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21 See www.unicef.org/specialsession/documentation/ documents/A-S27-19-Rev1E-annex.pdf

22 See www.unicef.org/voy

23 See www.unicef-irc.org

24 Recommendation No R (85) 7 of the Committee of Ministers: https: //wcd.coe.intcom.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=686452&SecMode=1&Admin=0&Usage=4&InstranetImage=45239

The Assembly further recommends that the Committee of Ministers consider human rights education as a priority for the intergovernmental work of the Council of Europe in the years to come..." [25] The Council of Europe works closely with the United Nations Office of the High Commissioner for Human Rights (OHCHR), UNESCO, the European Commission and other international organizations in the field of human rights education and education for democratic citizenship. For example the Council of Europe has a special role in monitoring the implementation of the World Programme for Human Rights Education (2005-2007) at the European level. This work includes the development of a concrete framework for action and the strengthening of partnerships and cooperation between the international and grass-roots levels.

In 2007 the Council of Europe initiated a project to design a framework policy document on education for democratic citizenship and human rights education. The acceptance of such a comprehensive document will establish commitment from the member states and will make their efforts measurable. Such a progressive instrument will be a strong recognition of non-formal organizations working in the field and provide standards for a wider international environment.[26]

Human Rights Education Youth Programme

The Human Rights Education Youth Programme was initiated in 2000 as a priority of the Youth Sector of the Council of Europe. Its main aim has been to bring human rights education into the mainstream of youth work. The first three years served the crucial function of developing educational tools and training possibilities for young people and building a network of partners in national and local level. In the second three-year period, the programme emphasized empowering young people, in particular vulnerable groups, and developing strategies to address racism, xenophobia, discrimination and gender-based violence. Since 2000 several new educational tools have been developed, various long-term and

25 Council of Europe's Parliamentary Assembly Recommendation 1346 (1997) on human rights education, point 12.

26 See http://www.eycb.coe.int/compasito/chapter_2/1_wha.html

advanced training courses implemented, and hundreds of pilot projects funded all over Europe. 'Compass – a manual on human rights education with young people', an important educational resource of the programme, has been translated into some 20 different languages since its publication in 2001. Through a cascading effect the programme has reached hundreds of NGOs all over Europe that were supported by pilot projects offered by the European Youth Foundation. Human rights education has become key in youth work in Europe and has had fruitful effects on formal education as well. Since 2006 the programme has also developed a special focus on intercultural dialogue as well.

Education for Democratic Citizenship (EDC)

Human rights education is a key component in education for democratic citizenship, another approach to give children, youth and adults the knowledge, skills and attitudes that will help them to play an effective role in their communities. Since 1997 the Council of Europe's Programme on Education for Democratic Citizenship has developed concepts, definitions and political strategies and instituted networks to further this work. The Year of Citizenship through Education in 2005 strengthened the commitment of member states to introduce education for democratic citizenship into their educational policies. The programme now aims to ensure sustainability by supporting these policy developments, research and good practises in teacher training and democratic governance. 'Exploring Children's Rights: lesson sequences for primary schools', a new publication of the programme, provides concrete ideas on how to elaborate children's rights in the classroom.[27]

Building a Europe for and with Children

Building a Europe for and with Children (2006-2008) is a programme of the Council that aims to help decision makers and stakeholders establish national strategies and policies to guarantee an integrated approach to

27 Gollob, Rolf and Kraft, Peter, Exploring Children's Rights: lesson sequences for primary schools: Strasbourg, Education for Democratic Citizenship, 2006.

promoting children's rights and protecting children from various forms of violence. Under the auspices of the Programme, the Council is revising its existing legal frameworks and instruments and is setting up new standards to better ensure children's rights in Europe. It is also initiating communication campaigns and education and training programmes to help governments and NGOs develop more effective child policies.

Non-governmental Organisations

Non-governmental organisations have an irreplaceable role in the development of a worldwide culture of human rights, particularly at the national and local level, as governments often do not live up to expectations when it comes to the integration of human rights education into the curriculum. As highly committed groups with special expertise, they have contributed to the development of the human rights legislation and are careful watchdogs of the realisation of human rights at the national level. Some global human rights organisations like Amnesty International work systematically on awareness raising on human rights education and produces educational programmes worldwide. People's Decade of Human Rights Education (PDHRE-International) develops programmes and provides a website on human rights education relevant to people's daily lives in the context of their struggles for social and economic justice and democracy.

Some organisations such as the Human Rights Education Associates (HREA), Democracy and Human Rights Education in Europe (DARE) and many youth organisations concentrate on human rights education: they support human rights learning and the training of activists and professionals, develop educational materials and seek to raise the profile of education for democratic citizenship and human rights.

Other organisations concentrate on educating about children's rights. For some such as Save the Children or Fondation Terre des homes (Tdh) this is key to their worldwide mission; others like the Children's Rights Information Network serve hundreds of child-related NGOs by collecting and disseminating information. At the local and national level, many non-

governmental organisations in Europe and worldwide organize human rights education programmes and projects involving children and young people.

Clearly there are many kinds of human rights education and a wide spectrum of institutions and individuals seeking to promote rights learning. However, these diverse efforts have a great deal in common. All are grounded in the international human rights framework of law and seek to empower people to realize human rights in their daily lives in concrete and practical ways. They also share the values and principles of human rights, which are summed up in the preamble to the UDHR: "the inherent dignity and...equal and inalienable rights of all members of the human family."[28]

Role of NHRC in Human Rights Education

It is but natural to pen down a few words of the stellar role played by the National Human Rights Commission in promoting Human Rights Education and Training. The Protection of Human Rights Act 1993 has given the NHRC a mandate 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" [Section 12(h)].

NHRC has mobilized Human Rights Education in various Educational institutions, organizing workshops and bringing out publications and hand books etc. NHRC played a pivotal role in highlighting the teaching of 'Human Rights' in various universities which led to the UGC formulating a scheme for providing financial assistance for organizing various programmes like seminars, workshops, etc., including providing certificate, diploma and degree programmes in Human Rights.

I would like to conclude by what Nehru said:

28 Manual on human rights education for children by Council of Europa at Page No.34

> *"The first task of the Constituent Assembly" Nehru told its members is "to free India through a new Constitution, feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity."*

Human Rights Education for all at all levels is essentially the sine qua non for which every citizen of India should work for, to ensure justice, social, economic and political; for we the people of India, the words of wisdom engraved in our Preamble.

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TWENTY YEARS OF NHRC

National Human Rights Commission : A Retrospective

Shri Chaman Lal * *and Dr. Savita Bhakhry*** **

The National Human Rights Commission (NHRC) established under the Protection of Human Rights Act, 1993 (PHRA) completes 20 years on 12 October 2013. Age of 20 marks entry well into the world of adulthood. It offers an appropriate occasion to review the performance of the Commission and assess its evolution in relation to its mandated obligations and expectations of the people.

The Statement of the 'Objects and Reasons' of the Human Rights Act, called for the 'better protection of human rights and matters connected therewith or incidental thereto'. It was a tacit endorsement of the popular belief that the country was facing adverse international attention for the increasing incidence of human rights violations and the establishment of the NHRC was thought to be an essential response to the criticism which the Government considered 'politically motivated'. There is no acknowledgement of the fact that the need for an external system of overseeing had arisen from the total failure of the in-house mechanisms to deal with complaints of violations of rights and abuse of power by the public functionaries.

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** Deputy Secretary (Research), NHRC.

Paris Principles and Autonomy of NHRC

The guiding principles for establishing and maintaining independent and effective National Human Rights Institutions (NHRIs) have been laid down in the UN 'Principles Relating to the Status of National Institutions' called 'Paris Principles' (1991). The PHRA meets the norms of these principles in terms of Commission's composition, method of appointment of the chairperson and members and their terms of office and broad range of its functions. The Act also ensures broad autonomy of the Commission in respect of all operational and financial matters.

Based on the report of the Ahmadi Committee, an expert body headed by a former Chief Justice of India, the Commission recommended to the Government 34 amendments in the Act in 1999 in order to bring it in greater conformity with the Paris Principles. eleven amendments, six substitutions and one new insertion have been made in the original Act vide the Protection of Human Rights (Amendment) Act, 2006.

The Commission's proposal to change the prescribed qualifications of the non-judicial members from 'knowledge of or practical experience' to the requirement of 'working or having worked in the field of human rights', aimed at breaking the monopoly of retired bureaucrats over these posts did not find favour with the Government.

The increasing vulnerability of women and members of minority communities in the matter of human rights demands that the Act should be amended to provide for mandatory inclusion of a woman Member and a Member representing one of the minority communities. This will further ensure that the Commission's composition reflects the pluralistic character of society as urged by the Paris Principles.

The Handling of Complaints

The main function of the Commission in popular perception and undoubtedly the decisive measure of its credibility is to inquire into complaints of human rights violations by public servants through their acts of commission, omission, abetment and negligence. A complaint to

the Commission may be made either by the victim or any other person on behalf of the victim. The Act also provides for *suo motu* cognizance of complaints by the Commission.

The number of complaints received by the Commission grew exponentially from a low figure of 169 in 1993-1994 to 68,713 in 2002-2003, the 10th year of its age. The number kept increasing and crossed 1,00,000 in 2007-2008. Last year (2012-2013) 1,06,990 complaints were registered by the Commission. The annual average can be seen to have shot up from 15,352 in the first five years (1993-1994 to 1997-1998) to 60,100 in the second, 80,823 in the third and 91,616 in the fourth (2008-2009 to 2012-2013). No other institution in the country having a statutory basis can match with the Commission in terms of its case load which has now stabilized around 1,00,000.

A simple analysis of the registration figures for the period from October 1993 to 31 March 2013 brings out following interesting facts:

(i) 54.11 per cent of the total number of complaints (12,31,787) have been dismissed *in limine* for lack of jurisdiction or other grounds of rejection. 22.24 per cent were disposed with directions. 23.65 per cent were taken up for enquiry by the Commission during 1993-1994 to 2006-2007. With average transfer of 9.93 per cent of the complaints to the SHRCs from 2007-2008 onwards the proportion of complaints taken up for enquiry by the Commission has fallen to 19.14 per cent.

(ii) The percentage of dismissal *in limine* has come down from 79.78 per cent in the first ten years (1993-1994 to 2002-2003) to 42.98 per cent in the second ten years (2003-2004 to 2012-2013). This can be taken as an indicator of better understanding of the people about the Commission's jurisdiction and functions.

(iii) Considering the figures of total registration (4,58,082) in the last five years (2008-2009 to 2012-2013), Hindi speaking States – Uttar Pradesh, Bihar, Haryana, Rajasthan, Delhi and Maharashtra account for 78.07 per cent of the total (3,56,737). The share of four South

Indian States – Andhra Pradesh, Tamil Nadu, Kerala and Karnataka - with total registration of 24,097 complaints is just 5.26 per cent. The proportion of Eastern and North-Eastern States will be found to be equally low. It may not be wrong to conclude that with its headquarters at Delhi and no outside branches despite a specific authorization for it in the Act, the Commission is not being equally accessed by different parts of the country. *Hunuz Dilli door ast!*

(iv) Complaints against police form the bulk of the total number of complaints, averaging around 40 per cent in the first ten years of the Commission. The figure is showing a slight drop consequent to the spreading of human rights literacy and increase in number of complaints against public servants other than Police personnel. In the year 2011-2012, the Police accounted for 34,469 complaints (36.42 per cent) of the total number of complaints (94,635). The figure dropped to 33.18 per cent with 35,495 of a total of 1,06,990 complaints in 2012-2013.

(v) Defence Forces have borne just 0.1 per cent share of the total with 2,014 complaints in the total of 12,66,388 (till 25 July 2013). The share of the Para-Military Forces (BSF, CRPF, ITBP, etc.) comes to the same – 0.16 per cent with 2,035 complaints in the same period. This can be attributed to the reluctance of the people to lodge complaints against the personnel of armed forces caused most probably by the popular perception about the Commission's limited jurisdiction over them.

(vi) Based on the registration figures under Police head during the last three years (2010-2011 to 2012-2013), the Commission has identified four States and one Union Territory – Uttar Pradesh, Haryana, Bihar, Rajasthan and Delhi – and also pinpointed the worst 29 districts.

(vii) Uttar Pradesh has throughout been on the top in terms of number of complaints received by the Commission. Delhi has set itself firmly on the second position. For the third, fourth and fifth places,

Haryana, Bihar, Rajasthan, Madhya Pradesh and Maharashtra are seen to be contesting.

(viii) The proportion of petitions in which allegations are proved and relief recommended is less than half of the total number of petitions taken up for inquiry by the Commission which itself is around 20 per cent of the complaints registered. The proportion of cases in which allegations were not substantiated was 56.6 per cent (4,432 out of a total of 7,825) and 60.5 per cent (4,093 out of a total of 6,760) in 2010-11 and 2011-12 respectively.

(ix) A sample check of the closure reports of completed enquiries reveals that the punishment is not at all commensurate with the gravity of the proved violations of human rights in a number of cases.

Suo Motu Cognizance

It is sadly observed that the proportion of the special provision of *suo motu* cognizance, which is a measure of the Commission's initiative and proactive character is less than one percent – just 0.08 per cent to be precise – as computed from the registration of the last five years (2008-2009 to 2012-2013), when the provision was used in 374 cases out of a total registration of 4,60,401.

Investigation

The Commission has an Investigation wing of its own headed by an officer of the rank of Director General of Police. Besides, carrying out investigation of custodial death cases, the Investigation wing is involved in Spot Inquiries, Fact Finding Cases and Rapid Action Cases. The following comparative statement presents a satisfactory picture of the case load of the Investigation wing of the Commission:

Investigation	Total	Annual Average (Oct. 1993 – March 2003)	Annual Average (April 2003 – March 2013
Custodial death cases	6,693	29	626
Spot enquiries	817	83 *(Data available for 3 years 2000-01 to 2002-03)*	55
Fact Finding Cases	27,764	953	1,825
Rapid action cases *(introduced from 2007-2008)*	1,488 – Annual Average : 238		

There has been substantial increase in the case load of the Investigation wing in the second decennial over the first. The annual average has gone up from 29 to 626 in respect of custodial death cases and 953 to 1,825 in fact finding cases. The annual average of spot enquiries 61.66 (from April 2000) and Rapid Action Cases (238) introduced in March 2007 are commensurate with the sanctioned strength of the Investigation wing.

The complaint handling mechanism allowing investigation of complaints by government investigating agencies only has often been criticized by the NGOs and rights activists. They want inclusion of civil society, knowledgeable and experienced persons from legal community, academics and NGO sector to be associated with Commission's investigation. They feel the Commission is not doing justice to the complainants by referring their petitions to the very police which is primarily responsible for the violations of their rights. The Commission perhaps needs to look into this aspect.

Custodial Violence

Custodial violence, particularly death in custody, has been a key concern of the Commission from the very beginning. As early as in December 1993, the Commission instructed the Chief Secretaries of all States to ensure that all cases of custodial death and custodial rape are reported to the Commission with in 24 hours of occurrence, failing which an adverse

inference of 'cover-up' would be drawn by the Commission. The Commission made postmortem examination (PME) mandatory in all cases of custodial death, police as well as jail and enforced the submission of detailed reports together with an autopsy report in a revised format prescribed by the Commission in this behalf. Magisterial enquiry has also been made compulsory in all cases of police and jail death. This has had the desired effect of ensuring timely intimation to the Commission of deaths in Police and Jail custody from all States. Following facts collected from the Commission will be found very useful in studying the situation:

(i) A total of 2,860 custodial deaths in Police custody (PCD) and 21,964 in Judicial custody (JCD) have been reported by various States since the Commission's inception in October 1993 to March 2013. It gives an annual average of 147 Police and 1,126 judicial deaths.

(ii) The comparative figures for the period October 1993 to March 2003 (first decennial) and April 2003 to March 2013 (second decennial) are 151 and 143 Police and 747 and 1,487 Jail deaths respectively.

(iii) Maharashtra, Andhra Pradesh, Uttar Pradesh, Assam and Gujarat have been identified as the worst States in respect of deaths in Police custody and Maharashtra, Bihar, Tamil Nadu, Andhra Pradesh and West Bengal for Jail deaths.

Every case of custodial death is examined by the Commission in the light of the PME and its videograph and detailed report including the findings of the magisterial enquiry. Important cases of custodial death are also investigated by the Commission's Investigation wing. Investigation of a total of 741 PCD and 5,952 JCD cases by the Commission's Investigation wing from October 1993 to March 2013 shows 25.5 per cent of the total of PCD and 26.6 per cent of JCD category. Monetary compensation is recommended for the victims' families in all cases of custodial deaths where such examination discloses the violation of human rights or negligence in prevention of such violation. Although every case of custodial death does not necessarily disclose such violation and many

reports received from the State authorities are closed without ordering any monetary relief, the Commission's annual reports mention the number of Police and Jail custody deaths on the basis of initial intimation without taking the outcome of detailed examination into consideration. Information collected from the Commission shows that monetary compensation has been recommended in 16.7 per cent of the total PCDs (488 out of 2,920) and 4.5 per cent of JCDs (1,011 out of 22,489) from October 1993 till 31 July 2013.

The Commission's method of reporting the incidence of custodial death, to an extent, seems to be flawed as it gives an exaggerated picture of the incidence which is widely quoted by national and international human rights NGOs. It would, therefore, be proper if the number of custodial deaths intimated to the Commission and the number found to have on completion of inquiries disclosed the violation or negligence in prevention of violation of human rights are mentioned separately. This will reduce, if not altogether eliminate, the variation in the figures of PCD and JCD being reported by the Commission and the National Crime Records Bureau.

Monetary Relief to Victim

The original act empowered the Commission to recommend immediate interim relief to the complainant after the completion of the inquiry. The 2006 amendment has enhanced the Commission's powers to recommend immediate interim relief at any stage of inquiry and also compensation or damages after its conclusion. The Commission has proved its effectiveness beyond doubt in the discharge of this obligation. It has recommended and also ensured actual payment of compensation to the tune of ₹ 70,41,53,500/- in 3,214 cases involving 28 States and 5 Union Territories. In addition, ₹ 27,94,00,000/- has been recommended for the victims' families in the Punjab Mass Cremation case in 2007-2008 after getting 1,513 bodies identified. However, the Commission has not been able till now to get confirmation and details of payment of compensation to the next-of-kin of the identified victims of the Punjab Mass Cremation case ordered more than five years ago.

On 31 December 2010, the Commission recommended compensation to be paid to all victims of endosulfan matter of Kerala at the rate of ₹ 5,00,000/- for those who died or are bed-ridden or mentally affected as a result of endosulfan and ₹ 3,00,000/- to those who suffered other kind of disabilities. The Kerala Government had confirmed 178 deaths and some 5,000 people otherwise affected by the use of endosulfan, till date the payment to the victims and their families has not been awarded.

The case of ISRO scientist S. Nambinarayan falsely implicated in an espionage case deserves specific mention. He was arrested on 30 November 1994 and remained in detention for 18 months before being released on bail on 19 January 1995 by the Kerala High Court. After the CBI submitted Final Report in the case on 13 April 1996, the State Government issued a notification for reinvestigation of the case by the State Police. S. Nambinarayan had to move the Supreme Court after failing to get any relief from the High Court. The Supreme Court in its judgment dated 29 April 1998 quashed the Government notification and held the Government action a malafide exercise of power. The Commission, on consideration of S. Nambinarayan's petition dated 14 October 1998, recommended compensation of ₹ 10 lakh in this 'unusual case of gross violation of human rights of a reputed scientist'. Following the quashing of the Commission's order by a single bench of the Kerala High Court, the Commission filed an appeal and got its order dated 14 March 2001 upheld by the Division Bench on 7 September 2012. While proof of payment of ₹ 10 lakh as compensation to the complainant has been received, the status of its recommendation regarding identification of the Police personnel who were responsible for violations and action taken against them is yet to be known from the State Government.

It would be interesting to note that Uttar Pradesh, Bihar, Haryana, Maharashtra and Delhi account for 60 per cent of the cases (1,928) and 48 per cent of the total amount of compensation ordered by the Commission (₹ 33,79,98,000).

Conditions in Jails, Hospitals and Protection Homes

One of the mandatory functions of the Commission is to visit jails, hospitals and protection homes to study the living conditions of the inmates and make recommendations thereon. Jails have been a special concern of the Commission since its inception. Based on visits of the Special Rapporteur, Custodial Justice Cell (CJC) to jails, the Commission has from 1999 onwards, been analyzing the jail conditions in various States in terms of prisoners' rights to basic needs – accommodation, food, clothing, health care and sanitation, communication, access to justice and rehabilitation. The Commission has also been carrying out six monthly analyses of the prison statistics to highlight the problems of congestion, slow trials and specific problems of the convicts and undertrial prisoners. The State-wise reports included in the Commission's annual reports present a summary of the strengths and weaknesses of the prison system with recommendations for improvement. The Action Taken Reports submitted by the State authorities show a satisfactory level of compliance of the Commission's recommendations. This important activity of the Commission is seen to have slowed down in recent years. The post of Special Rapporteur, CJC, has been lying vacant since September 2011.

The Commission has been regularly stressing the need for prison reforms and advocating revision of the Indian Prison Act, 1894 and the corresponding State Jail Manuals which are still governing the functioning of Indian prisons. A Draft Prison Bill finalized by the Commission in consultation with various stakeholders and experts was circulated among all the States in 1994-1995. However, the Commission's efforts have not produced any significant results so far despite the involvement of the Ministry of Home Affairs in the exercise. While the enactment of a new Indian Prison Act is still pending, the Bureau of Police Research and Development, has revised the Jail Manual largely in accordance with the guidelines given by the Commission in the Draft Prison Bill and a number of States have adopted the same as replacement of the old archaic jail manuals. This has brought about appreciable changes in the working of jails in some States and improved the human rights situation of the

prisoners. Since complaints against the Jail Department constitute the second largest bulk of complaints after Police, the Commission needs to strengthen its CJC and renew its efforts for prison reforms.

As regards visits to hospitals, the Commission's interest in its early years remained confined to the mental health institutions only. It is laudable that the Special Rapporteurs of the Commission have started taking interest in the functioning of general hospitals along with mental health institutions. From 2008 onwards, the Commission, has further made it an integral part of the Selected 28 Backward District Programme for spreading human rights awareness.

Observation Homes and Special Homes for children in conflict with law and institutions for children in need of care and protection do not seem to have received much attention from the Commission. Increasing involvement of juveniles in heinous crimes such as murder, rape, dacoity; slow process of the juvenile justice system and dismal conditions of different types of homes, call for the Commission's special intervention in this area even though its specific responsibility lies with the National Commission for Protection of Child Rights. The Commission should therefore take up monitoring of the implementation of the Juvenile Justice Act and ensure that widely reported deficiencies of infrastructure, qualified manpower, absence or inadequacy of counselling and rehabilitation facilities are removed and the children are properly equipped for the ultimate purpose of their integration with society. This is all the more necessary in the context of the public outrage over the involvement of a juvenile in the Delhi rape case of December 2012 leading to country-wide debate for change in the age criterion for defining juvenile status.

Terrorism

One of the mandatory obligations of the Commission is 'to review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures'. Although the Commission, essentially a watchdog of the citizens' rights and liberties, is generally perceived as an adversary by the police and other law enforcement

agencies, this feeling of hostility gets exacerbated in conflict situations such as terrorism, insurgency and left wing extremism (naxalism) which necessitate large-scale deployment of security forces in aid of civil power and result in gross violations of the rights of the affected population.

The frenzy of war on terror, unleashed by the events of 9/11 (US), 24/7 (UK) and 26/11 (Mumbai) has generated a disturbing reasoning in the minds of many people, including responsible persons in government, administration, academia and media that respect for human rights indicates a tacit support of terrorism. NHRC and other human rights bodies/ activists are being increasingly blamed for weakening the morale of police and security forces and the resolve of the Government to fight the menace of terrorism.

The Commission has been consistently expressing its stand on terrorism, describing it as a threat to peace and the rule of law and therefore an enemy of human rights. Every annual report of the Commission can be seen to contain an unequivocal condemnation of terrorism and assertion of the nation's need to fight and defeat it. However, the Commission considers it its duty to clarify that this has to be achieved within the framework of our Constitution and other laws and in sync with our international treaty obligations. This is where the desired impact is wanting and the Commission's efforts need to be strengthened.

The Commission has unfortunately not been able to convince the police and security force personnel that the protection of citizen's rights and preservation of the security of the country are not incompatible and that the mission of the rule of law, the ultimate purpose of governance, is to balance the dignity of the individual and the unity and integrity of the nation without sacrificing either. The Commission's attempts at the sensitization of the police and security force personnel are concentrated at the directional and supervisory level officers most of whom are themselves distant from and therefore unfamiliar with ground realities of the functional level. The Commission needs to explore reasons behind the poorly equipped, ill-trained and inadequately supervised rank and file

losing faith in the efficacy of 'fair means' and opting instead for methods which expose them to criminal liability and prosecution.

Fake Encounters

The widely known phenomenon of fake encounters is an ugly reality of anti-terrorist operations in our country. Fake encounters are considered an operational necessity, legally impermissible but morally justified by most police personnel and also the general public. Fake encounters are occurring with such sickening frequency that occasional reports of genuine encounters are also viewed with suspicion by the general public. The Commission had, in March 1997, issued detailed guidelines for the reporting of encounter deaths. These guidelines say that every case of killing in a police encounter must be registered as a crime of culpable homicide not amounting to murder (304 IPC) against the police party involved and investigated by an independent investigating agency such as State CB-CID. Its purpose was to test the truth of the police version/ plea of having acted in exercise of the right of self-defence or using the provision of section 46 of the Cr.P.C. permitting the use of force in effecting arrest of the accused persons. Similar instructions were issued by the Andhra Pradesh High Court around the same time, first by a single bench and later on appeal by a Divisional Bench. The Andhra Pradesh Government took this matter to the Supreme Court where it is pending.

Realising that its guidelines of 1997 have become defunct without being given a fair trial by the police in various States, the Commission modified the guidelines in May 2010. District Superintendents of Police have been made responsible to report to the Commission in a prescribed format all cases of deaths in police action within 48 hours of their occurrence. Magisterial enquiry has been made mandatory in all these cases. The District Police chief is required to send a second report within 3 months together with the postmortem examination report, inquest report and the findings of the magisterial enquiry.

The statement obtained from the Commission shows that for the period up to 31 July 2013, intimation of 2114 police encounters, 53 defence

forces encounters and 25 para-military forces (PMF) encounters (total 2,192) was received by the Commission. In the same period, 1,857 complaints alleging fake encounters – 1,753 involving police, 39 defence forces and 65 PMF – were also received. The Commission recommended a total compensation of ₹ 1,25,00,000/- in 225 cases of police encounter, ₹ 15,00,000/- in cases of defence forces encounters and ₹ 36,50,000/- in 6 cases of PMF encounters after consideration of intimated/alleged cases. The States of Uttar Pradesh, Bihar, Andhra Pradesh, Maharashtra, Manipur and Assam account for 70 per cent of the total number of police encounter cases. Alleged fake encounters by defence forces have been reported largely from Jammu & Kashmir, Assam and Manipur. Manipur, West Bengal, Chhattisgarh and Jammu & Kashmir figure prominently in the list of alleged fake encounters involving PMF personnel.

While the Commission's achievements in exposing the cases of fake encounter deaths and recommending compensation to the victims' families (actually paid in most cases) are commendable, the silence of its records/ data bank, about the identification of the Police/Defence/PMF personnel involved in these crimes and penal action taken/initiated against them calls for further action on the part of the Commission to take these matters to their logical conclusion and do full justice to the victims.

It is not enough for the Commission to condemn terrorism and point out State obligation to fight and defeat it using all legislative, administrative and military means and satisfying the test of just, fair and reasonable procedures and the principles of necessity and proportionality. A serious study of the terrorist movements in our country will show the Commission that their underlying causes are rooted in the apathy of the Government and inaction of the administration. The Commission may also give due thought to the fact that a recourse to terrorism also means the failure of the polity to have evolved peaceful democratic methods of resolving these conflicts. Another issue worthy of the Commission's consideration concerns the inappropriateness, if not utter folly of the State response to terrorism which often results in aggravating the situation instead of correcting it and adds to the violation of people's rights. The tendency

of the government to view every problem from the angle of law and order and take every protest or dissent as a threat to national security and opt for militarization of police in suppression of its civil character, inhuman working and living conditions of the police and security forces personnel in lower ranks who are actually engaged in fight against terrorism and growing condonation of police highhandedness and brutality by the public sick of terrorist violence are some of the hot and sensitive issues which the Commission must address through informed dialogue and larger public consultation in order to formulate the form and extent of its involvement in the issue of major threats to internal security – terrorism, insurgency and left-wing extremism.

Armed Forces

Armed forces are defined in the PHRA as meaning the naval, military and air forces and including any other armed forces of the Union such as BSF, CRPF, ITBP, etc. Armed forces enjoy some kind of a privileged status under the Act in the matter of complaints of human rights violations by their personnel. The Commission has full powers to make inquiries which may include investigation by the Commission's own investigation wing or any investigation agency of the Central or State Government such as CBI, State CB-CID, into complaints of violations of human rights by all public servants but not into such complaints against the members of the armed forces. The procedure for dealing with complaints of human rights violations by the armed force personnel separately laid down in Section 19 of PHRA, limits the Commission's powers to obtaining a report from the Central Government and making recommendations after considering the same without holding further inquiry or investigation. The Commission has rightly felt from the beginning that this protected status of the armed forces, which are frequently and intensely involved in situations of human rights violations diminishes the credibility of the NHRC and undermines its responsibility to promote human rights. The Commission's repeated requests to remove this anomaly and give it the authority to enquire into human rights violations by the armed forces have evoked the standard reply from the Government that "the procedure

which has been delineated by the PHRA in respect of the armed forces should be followed". The Commission has not been able to get the application of its instructions regarding mandatory intimation within 24 hours of all cases of custodial rapes and deaths extended to the armed forces. Needless to add that the Commission's guidelines regarding encounter deaths are also inapplicable to the armed forces. However, the Commission has succeeded after a protracted struggle to make the Ministry of Home Affairs and Ministry of Defence agree that its powers to recommend payment of immediate interim relief to the victims and their families under Section 18(3) of PHRA would cover the Armed Forces. Finally the Commission's proposal for an amendment in the definition of the armed forces as given in PHRA, so as to restrict it to the naval, military and air forces' and delink the paramilitary forces from the provision of protected status has not been accepted by the Government. Special status of the armed forces in regard to the Commission's powers of inquiry is responsible for the popular perception about the Commission being toothless in dealing with allegations of human rights violations by the armed forces.

Police Reforms

The Commission was quick to realize from its early experience of handling of the complaints that the human rights issue is linked to good governance and need for systemic reforms in all the segments of the criminal justice system – the Police, the Prisons and the administration of the criminal justice system. In 1995-1996 itself, the Commission took note of the recommendations of the Dharam Vira National Police Commission (NPC) pending for action with the Government since 1979. The NPC comprising the brightest minds in administration, police and academia had suggested an almost total overhaul of the police, redefining its role, responsibilities, powers and procedures in order to bring it in conformity with the norms of democratic policing. The Commission has served a great public cause by getting itself impleaded in 1996 in the police reforms PIL Prakash Singh vs. Union of India. It was largely as a result of the vigorous pursuing of the matter that the Apex Court issued directions in

September 2007 on implementation of the major recommendations of the NPC such as the setting up of the State Security Commissions, Selection Procedure and fixed minimum tenure of DGPs, separation of law and order and crime work, setting up of the Police Establishment Board, setting up of the Police Complaint Authority and enactment of a Model Police Act to replace the archaic Indian Police Act, 1861.

Compliance by States, slow and lukewarm, is being monitored by the Commission.

Review of Legislation

The PHRA entrusts to the Commission an important responsibility of reviewing the 'safeguards provided by or under the Constitution and any other law for the time being in force for the protection of human rights and recommend measures for their effective implementation'. The Commission has till March 2013 reviewed as many as 16 Acts, Bills or Ordinances including the Child Marriage Restraint Act, 1929; Terrorist and Disruptive Activities (Prevention) Act, 1985; Prevention of Terrorism Ordinance, 2001; National Rural Employment Guarantee Bill, 2004; Land Acquisition (Amendment) Bill, 2007; Prevention of Torture Bill, 2009, Mental Health Care Bill, 2011; and the Rights of Persons with Disabilities Bill, 2012 and commented on their human rights content.

The Commission deserves due credit for the enactment of the Prohibition of Child Marriage Act, 2006 and the Right of Children to Free and Compulsory Education Act, 2009.

The Commission showed its independence and courage in opposing the extension of TADA despite the fact that the Supreme Court had upheld its constitutional validity. The Commission was the guiding force and a powerful participant in the public campaign for its non-renewal after its life expired on 23 May 1995. The Commission, later, forcefully opposed its resurrection in the form of the Prevention of Terrorism Ordinance but gracefully accepted the passage of POTA as manifestation of the collective wisdom of Parliament and charted its role as a watchdog to guard against the misuse/abuse of its provisions.

Moved by the widespread public opposition to the Armed Forces Special Powers Act, 1958 (AFSPA), the Commission got itself impleaded in the proceedings pending before the Supreme Court in 1997. It held a free and frank discussion with all stakeholders, including Commanders of Armed Forces, Secretaries of Defence and Home Ministries, NGOs and civil society organizations and placed its views before the Supreme Court. The Court accepted the Dos' and Don'ts, issued by the Army Chief to ensure avoidance of human rights violations by defence personnel and issued Guidelines for the use of the Act vide its order dated 27 November 1997. Much water has flown down the rivers of the country since then and the condemnation of AFSPA has intensified.

The Commission has, however, not taken full cognizance of the nation wide protests against the legislation, fuelled by the fast-unto-death undertaken by Irom Sharmila since 2002 in Manipur. The Act remains on statute despite the recommendations of the Jeevan Reddy Committee to withdraw this 'instrument of intimidation and repression' from the North-East. The Commission does not seem to have taken notice of the statement of the former Home Minister P. Chidambaram that the Government is not able to concede people's demand because the army is not willing to accept even a partial withdrawal of the AFSPA which they hold operationally essential for their working in disturbed areas. Considering the protests against the continuance of this law in Jammu & Kashmir and the North-East and also its failure to have produced any worthwhile results in fight against militancy despite the claims of the Army and security forces, there is a strong case for the Commission to re-open this issue through a wider public consultation.

Another piece of legislation which has not received the Commission's serious attention is the sedition law which is being misused frequently in many parts of the country to silence the voices of protest and dissent. The Commission's silence over the detention and prosecution of Binayak Sen has disappointed many human rights activists the world over.

International Treaty Obligations

The Commission has a mandated obligation to study treaties and other international instruments on human rights and make recommendations for their effective implementation. India is party to 8 international treaties, drawn up under the auspices of the UN but has ratified only six of these so far.

NHRC is credited with persuading the Government of India to sign the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 October 1997 after a lot of advocacy at the level of Prime Minister. However, the ratification initiated in 2009 by bringing an Anti-Torture Bill in Parliament is still pending. The Bill, full of flaws and deficiencies from the human rights angle was hurriedly passed by the *Lok Sabha*. The wide spread public criticism of the Draft Bill by the human rights activists stalled its passage in the *Rajya Sabha* resulting in its reference to the Select Committee. It is learnt that the Select Committee in consultation with the human rights bodies has removed most of the deficiencies. The Commission is pursuing the passage of the Bill, an essential step towards its much awaited ratification. The Commission is morally obliged to pursue the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance, 2006 which India has signed on 6 February 2007.

Now that the Child Labour (Prohibition and Regulation) Act, 1986 is being amended to prohibit child labour totally upto the age of 14 and regulate it in the 14-18 group, the Commission is expected to urge the Government to ratify the ILO Convention No. 182 (1999) which prohibits worst forms of child labour upto the age of 18.

Protection of Human Rights Defenders

The PHRA obliges the Commission to 'encourage the efforts of non-governmental organizations and institutions working in the field of human rights'. The Commission has institutionalized this obligation through constitution of a Core Group of NGOs' in July 2001 which was reconstituted in 2006 and 2011 to induct new organizations. Although,

increasing involvement of the NGO sector is evident in Commission's activities in the areas of human rights education, human rights awareness, prisoners' rights, mental health institutions, etc., the ad hoc collaboration needs to be institutionalised.

The Commission recognises its special obligation of providing support and protection to the human rights defenders (HRDs) in accordance with the provisions of the UN Declaration on Human Rights Defenders, 1990. Acting on the recommendations of a national workshop on HRDs organized by the Commission in Delhi in October 2009, a 24 hour Focal Point on HRDs has been set up in the NHRC to deal with complaints alleging harassment of HRDs by or at the instance of public authorities. This has been followed by visits to a number of States for the purpose of field interactions with known HRDs and sensitization of government functionaries.

The most notable case handled by the Commission in this category relates to a complaint of harassment of a Dalit woman of District Banda, Uttar Pradesh by Police brought to the notice of the Commission through a petition dated 28 May 1999 submitted by one Lalit Uniyal. Following the successful completion of Commission's inquiry leading to suspension and initiation of prosecution of a Sub-Inspector, Banda Police implicated Lalit Uniyal in a fake case under the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in October 1999. The Commission, on receipt of a petition from Lalit Uniyal got the matter inquired by the State CID in November 1999. The CID report confirmed that the registration of the case against Lalit Uniyal was a 'vindictive act on the part of the local police'. The Commission got the FIR quashed in May 2001. However, the Commission's tentative opinion to order compensation to the HRD Lalit Uniyal was dropped for want of a favourable response from the Uttar Pradesh Government.

The Commission's annual report for 2011-2012 introduces an additional chapter on 'Human Rights Defenders'. It mentions handling of 63 complaints concerning alleged harassment of HRDs and disposal of 17. The illustrative list of 12 cases makes a very dismal reading. These

cases pertain to complaints received during the period from 3 April 2010 to 14 December 2011. The charges made in the complaints are: implication in false cases, serious threats, unlawful detention and inaction in cases of exposure of corruption. There are two cases of alleged killings of RTI activists and a whistle blower exposing corruption and one case of acid attack on an activist. All these cases were reported pending on 31 March 2012 for want of response/report from the Government. The only thing significant was the transfer of a case of acid attack reported on 26 August 2011 to State CID on 12 October 2011.

Perusal of another list of 11 recent cases considered important by the Commission makes an equally distressing reading. These cases pertain to Madhya Pradesh (4), Delhi (1), Tamil Nadu (2), Bihar (1), West Bengal (1), Assam (1) and Maharashtra (1). The charges made in the complaints relate to implication in false cases, illegal detention and include a case of kidnapping and murder of an ULFA woman suspect. All these cases are shown as pending on 31 March 2013. Only in one case of false implication of HRDs reported from Tamil Nadu, the Commission sent its team to investigate and has moved an intervention application in a pending matter before the Madurai Bench of the Madras High Court. The Delhi case deserves specific mention. After the completion of the enquiry into a complaint dated 31 October 2011, alleging assault by Police causing grievous hurt to the complainant Shrijee Bhawasar, the Commission recommended payment of compensation of ₹ 50,000/- on 31 December 2012. The proof of payment required to be furnished within 6 weeks, i.e., by 15 January 2013, is pending even in the last week of August 2013. If this is the fate of the cases considered important by the Commission, one can imagine the plight of the routine complaints of harassment of the human rights defenders.

Economic, Social and Cultural Rights

The PHRA defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. This has the effect of circumscribing the Commission's jurisdiction

to the Fundamental Rights of the individual which fall in the category of the civil and political rights. The Commission has right from its inception felt compelled to undo this restriction in order to do justice to its extensive mandate and people's expectations.

The Commission takes serious note of the universal recognition of the two sets of rights – civil and political rights and economic, social and cultural rights, being indivisible, inter-related and inter-dependent. It has been influenced in its thinking and actions by the Supreme Court interpretation of the word 'Life' in the 'Right to Life and Personal Liberty' in Article 21 of the Constitution, to mean 'life with dignity and not mere survival or animal existence'. The Commission has, therefore, right from its start, taken an expansive view of the human rights definition and held economic, social and cultural (ESC) rights as essential pre-requisites for the enjoyment of civil and political rights and creation of a just and humane social order and therefore lying well within its jurisdiction. The Commission is supported in this approach by its experience of handling complaints alleging injustice and exploitation of the vulnerable section of society and disadvantaged communities. Some of the important human rights concerns of the Commission in the area of ESC rights are described in the succeeding paras.

Right to Health

Viewing the right to health as an integral component of a citizen's right to life guaranteed by the Constitution, the Commission has been deeply involved in the protection and promotion of this right. It has been consistently emphasizing the significance of the right to health in terms of its availability, accessibility and affordability to all citizens, particularly those belonging to the economically disadvantaged sections of society.

The Commission's involvement with the right to health started in 1996-1997 with identification of maternal anaemia caused by iron and iodine deficiencies as an important human rights issue. In 2000, the Commission created a Core Advisory Group on Health and organized a workshop on 'Health and Human Rights in India with Special Reference

to Maternal Anemia'. Another workshop organized in 2000 was 'Human Rights and HIV/AIDS'. It held a major regional consultation on 'Public Health and Human Rights' in April 2001, dealing, *inter alia*, with access to health care, tobacco control and nutrition.

In the year 2004, the Commission held five 'Public Hearings on the Right to Health Care', across the country where specific problems presented by over 1,000 persons from marginalized sections of society were effectively addressed. These were followed up with a national level hearing which identified a range of issues, such as health rights of women and children, rights of mentally ill persons, the right to essential drugs, HIV/AIDS, occupational and environmental human rights, strengthening of the public health system and regulation of the private medical sector. The national level public hearing resulted in formulation of a National Action Plan (NAP) which recommended the enactment of a National Public Health Service Act. The Commission reviewed the implementation of its recommendations on various health issues in the review meeting of the Core Group on Health in March 2006, which was followed by a National Review Meeting on Health held in March 2007. A number of recommendations made in the National Review Meeting have been included in the Twelfth Five Year Plan strategy, particularly those relating to Child and Reproductive Health. As a major outcome of the National Review Meeting, the Commission has taken-up issues of silicosis, endosulfan, fluorosis and prenatal sex selection as its special concerns and formulated its strategy to tackle them.

The Commission's involvement in the issue of silicosis, an incurable occupational lung disease caused by the victims' exposure to silica dust, shows its deep concern for the downtrodden. Moved by the high mortality and morbidity rates of workers engaged in mining, tunneling, stone work, sand blasting and manufacturing of ceramic, glass and abrasive powders, the Commission constituted an Expert Group which has identified silicosis-prone industries and recommended a series of preventive, curative and rehabilitative measures to deal with the problem. Besides conducting regional meetings all over the country and recommending relief for the

victims, the Commission has submitted a special report for being tabled in the Parliament.

Mental Health

Human rights of the mentally ill persons have been a key concern of the Commission since its early years. The Commission has been involved in monitoring the functioning of the Government mental health institutions at Agra, Gwalior and Ranchi under the orders of the Supreme Court issued on 11 November 1997. The Supreme Court spelt out the contours of this monitoring based on the report of a high level committee of Government of India for bringing about improvements in diagnostic and therapeutic facilities, occupational therapy, rehabilitative measures, administration and management of the institutions. Based on the report of its Research Project 'Quality Assurance in Mental Health' undertaken in collaboration with NIMHANS in 1999, the Commission has been in extension of the Supreme Court mandate, reviewing the working of other government mental health institutions through visits of its members and the Special Rapporteurs. The Commission's intervention has resulted in the discharge of a number of persons languishing in the mental hospitals for years and quashing of criminal trials against three mentally ill undertrial prisoners. The pathetic case of one Lalung Machung released on 31 March 2005 after spending 54 years in the Tezpur Mental Health Institution, including 38 years after being declared fit for discharge shook the conscience of the entire nation through editorials and feature stories appearing in the national media.

While the Commission's monitoring of the working of mental health institutions at Agra, Gwalior and Ranchi has produced the desired results because of its powers to issue legally enforceable recommendations, as authorized by the Supreme Court, conditions in other State mental health institutions are still found to be poor because of infrastructure deficiencies and problems of administration and management. The NHRC has, therefore, brought them to the notice of the Supreme Court through a Writ Petition filed in 2012.

The Supreme Court has in July 2013 sought replies of the Central and State Governments to a number of specific issues raised in the petition. The expected verdict will make a significant addition to the great success stories of the Commission.

Right to Food

A PIL alleging starvation deaths in Koraput, Bolongir and Kalahandi (KBK) areas of Odisha was filed in the Supreme Court in 1997 by the Indian Council of Legal Aid and Advice. After learning that the NHRC was already seized of the matter brought to its notice by the then Union Agriculture Minister, the court directed the petitioners to approach the NHRC to seek immediate interim measures for the prevention of starvation in the affected region. It also authorized the Commission to issue legally enforceable recommendations for relief and development after ascertaining full facts and assessing the situation.

The Commission handled the issue of starvation deaths in a holistic manner holding that the right to 'freedom from hunger' an integral part of the right to life guaranteed by Article 21 of the Constitution has to be read with the obligations placed on the State by Article 38 (securing social, economic and political justice), Article 39 (securing adequate means of livelihood for all citizens) and Article 47 (raising the level of nutrition and standard of living of all people).

The Commission carried out an in depth examination of the case through a series of hearings held in a unique mode of collaboration with the State Government and issued detailed instructions for relief and development measures and laid down a robust scheme of quarterly reporting and monitoring.

The short-term measures of interim relief were designed with the idea of their subsequent merger into long-term plans of sustainable development to end the scourge of deprivation, malnutrition and cyclical starvation in KBK region. These covered the areas of rural water supply and sanitation, primary health care, literacy, social security schemes, free

kitchens, public distribution scheme, social conservation measures, rural development schemes, afforestation, land reforms and development of Scheduled Caste (SC) and Scheduled Tribe (ST) communities. The Commission monitored the attainment of physical and financial targets under various heads from the quarterly Performance Appraisal Reports regularly submitted by the State Government and duly verified by the visits of the Commission's Special Rapporteur to the KBK Districts numbering eight. It also held a number of court hearings for this purpose. The matter was closed in August 2006 with directions for continued execution of the Long-Term Action Plan and monitoring through a system of community surveillance and public audit.

It will not be wrong to infer that the Commission's involvement in the Odisha starvation death case and its holistic handling of the issue was a forerunner to the national campaign for the Right to Food which has culminated in the passage of the Right to Food Bill, 2013 by Parliament in August 2013.

Rights of Persons with Disabilities

The Commission has adopted a multi-pronged approach to deal with the rights of persons with disabilities that includes redressal of individual complaints, legislative and policy reforms and spreading of awareness regarding the rights of disabled persons. It has been taking special interest in urging the adoption and vigorous implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It has intervened effectively in a number of cases of harassment, intolerance or discrimination on grounds of disabilities and provided relief to the victims. In a landmark case, a medical student who lost eyesight during the course of his MBBS studies was enabled to complete his studies and take final examination despite unhelpful attitude of the official agencies including the Indian Medical Council.

With the constitution of a Core Group on Disability and appointment of a Special Rapporteur on Disability in 2002, the Commission's involvement in the rights of disabled persons has further deepened. The

Commission played a major role in the drafting of the UN Convention on the Rights of Persons with Disabilities (CRPD), 2006 lobbying effectively for the incorporation of Article 33 providing for national implementation and monitoring mechanism. The Commission's advocacy resulted in relatively much faster ratification of the Convention by the Government in October 2007.

The Disability Core Group reconstituted in 2009-2010 has met only twice – in June 2011 and August 2013. This reflects a lack of concern particularly unacceptable in the context of the new Draft laws on Disability and Mental Health Care, which aim at bringing the existing legislations in harmony with the UNCRPD. The post of the Special Rapporteur on Disability too has been lying vacant since December 2011.

The reports of the visits of Special Rapporteur to various States have identified the following issues for the Commission's intervention:

- clearing of huge backlogs of reservation in identified jobs in various States
- special recruitment of women with disabilities
- a comprehensive plan to ensure annual screening of children with disabilities
- rationalization of disability pensions and unemployment allowance across various States
- need to undertake a study to evaluate the impact of various Central Government schemes on the lives of persons with disabilities and suggest ways to make them more effective.

Rights of Scheduled Castes and Scheduled Tribes

The Commission has been handling with utmost sensitivity the complaints alleging discrimination, violence, atrocities and highhandedness against the members of Scheduled Castes (SCs) and Schedule Tribes (STs) by public servants. Being deeply concerned about the increasing incidence

of violence and atrocities against persons belonging to SCs and STs despite a plethora of legal and administrative measures, the Commission requested Shri K.B. Saxena, a retired IAS officer known for his interest in the uplift of the downtrodden to make a status report on atrocities committed on the SCs and the initiatives which NHRC could take to check them. The Saxena Report submitted in November 2002 and released by the Commission in October 2004, delineates the genesis and anatomy of violence and atrocities against SCs, assesses the use and efficacy of the existing constitutional, legislative and administrative measures and proposes a three pronged strategy of protection, compensatory discrimination and development. It makes comprehensive recommendations numbering 150 for the NHRC and concerning Central Ministries and State Governments. It summaries a list of initiatives which could be taken up immediately by NHRC, and Ministries of Home Affairs, Social Justice & Empowerment, Rural Development, Personnel and Training, Human Resource Development, Women & Child Development, Tribal Affairs, Labour and the Planning Commission.

Some of the important recommendations of the Saxena Report are:

- identification of atrocity and untouchability prone areas and preparation of a plan of action
- constitution of special courts and appointment of special prosecutors
- holding of annual workshops of District Magistrates and Superintendents of Police
- assignment of women officers to all atrocity prone areas
- identification of credible NGOs in each District
- sensitization of panchayat officials
- institution of annual awards for best police station and districts.

Although the Commission has forwarded the copies of Saxena Report to all the State Governments and Central Ministries concerned, there is

hardly any evidence of monitoring of these recommendations by the Dalit Cell constituted in the Commission for this purpose.

Instead of identifying the atrocities-prone areas, as recommended by the Saxena Report, the Commission is seen to have combined this with its 'Human Rights Awareness and Facilitating Assessment and Enforcement of Human Rights Programme' started from 2007-2008 in Selected 28 Backward Districts. These districts have been selected from the list of recipients of the Backward Region Grant Fund - one from each State. The main objective of the programme is to spread awareness among the people on focused human rights issues like food security, education, health, custodial justice, etc. by undertaking visits to schools, health facilities, police stations, prisons, panchayats, PDS shops and organizing a workshop. The Commission has visited 17 of these Districts since 2008.

The Commission visited District Wayanad of Kerala in September 2009 and made an on-the-ground assessment on the rights of SCs and STs. It made comprehensive (52) recommendations under the heads land and housing, food, health, livelihood, education and custodial justice. The second visit of the Commission to this District made from 26 February to 1 March 2013 proved useful in detecting a number of deficiencies and discrepancies in the earlier ATRs and getting the pending actions expedited.

A commendable, albeit late, initiative of the Commission started in 2012, relates to the Saxena report's recommendation that the Commission organize at least one open hearing a year in identified States to entertain the grievances of the victims of atrocities and the difficulties encountered by the human rights bodies/activists. The Commission has, so far, held five open hearings at Puri, Ahmedabad, Chennai, Jaipur, Nagpur and Maharashtra in 2012-2013.

Although disposal of 819 out of a total of 1,832 complaints heard at these hearings gives a satisfactory disposal rate of 44.7 per cent, the outcome of the specific cases addressed at these hearings is not very encouraging as satisfactory action taken report has been received in just

two cases of Nagpur – one regarding delay in payment of retirement benefits to a female *safaikaramchari* and the other relating to the stoppage of employment of heirs of *safaikaramcharis* in Maharashtra due to Government decision to outsource the cleanliness services. Three serious complaints regarding non-receipt of scholarship money by SC students in 213 secondary schools in District Sholapur in 2011-2012, Government reluctance to accord recognition to a primary and secondary school at Pangaon meant exclusively for SC children, and kidnapping and rape of a minor SC girl and murder of her brother heard at Nagpur have not got any significant response from the authorities concerned. With regard to Chennai also, the ATR on the Commission's recommendations dated 30 October 2012 for payment of monetary compensation to a female labourer within eight weeks was still awaited on 31 August 2013.

Effective handling of complaints received at public hearings is the surest way of establishing the credibility of the Commission.

The hope that the Commission would intervene effectively in checking atrocities, eliminating discrimination and other disabilities and act as a catalyst to activate the system to discharge its mandated responsibilities can be realised only by a 'robust enforcement of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and its vigorous monitoring.

The Commission should undertake special studies in a few selected atrocities/untouchability prone Districts to scrutinize the handling and final outcome of 4-5 recent complaints in each. The scrutiny should aim at assessing the fairness of registration, thoroughness of investigation and seriousness of prosecution. It should be possible to identify the officials responsible for shoddy investigations and unsuccessful prosecutions and make use of the provisions of Section 4 of the Act, which criminalizes wilful neglect of duties under the Act and prescribes mandatory punishment to the erring officials. The provision meant to act as the best deterrent against dereliction of duty arising mostly from the biases and prejudices of most public servants against the members of SCs and STs has hardly been used anywhere in the country.

Elimination of Manual Scavenging

Viewing the inhuman and degrading practice of manual handling of night soil as the worst affront to human dignity, the Commission took up the monitoring of implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 in its early years in October 1996. The Chairperson addressed demi-official letters to Chief Ministers of all States and Union Ministers for Urban Affairs and Employment, Defence, Railways and Human Resource Development suggesting the various measures required to be taken for enforcement of the Central Act. The appeal was reiterated in Chairperson's letter addressed to all the Chief Ministers in January 1997. In yet another communication sent by the Chairperson, the Chief Ministers/Administrators of all States/ Union Territories were urged to ensure replacement of all dry latrines by pour-flush latrines and totally ban the construction of any dwelling house or building which does not have pour-flush latrines. The response received from the various States presented a very poor picture of the Act's implementation.

Based on the deliberations of a national workshop on manual scavenging and sanitation organized by the Commission in New Delhi on 11 March 2011, the Commission forwarded to all the States/Union Territories and concerned central ministries a new set of 16 recommendations. Besides reiterating various measures required for the enforcement of the Act, the new recommendations comprehensively cover the economic rehabilitation of retrenched manual scavengers and education of their children. Preceding the Supreme Court verdict of July 2011 on the ongoing indignities/injustices suffered by the cleaners of 'drains, sewers and septic tanks', the Commission's recommendations emphasize the need for mechanizing the cleaning of septic tanks and drains and modernizing the sanitation facilities of Indian Railways to minimize manual intervention.

The Commission has also recommended automatic inclusion of released manual scavengers in the BPL category with entitlement of

schooling and scholarship for their children and Government security cover for their families.

Response to the Commission's recommendations was received from only 11 States and 4 Union Territories till 31 March 2013. None of the States/Union Territories has taken the Commission's recommendations with due seriousness including those (4 States & 1 Union Territory) which have reported that they are free from manual scavenging. Despite its persistent efforts, the Commission has not been able to make any significant headway in the matter of elimination of manual scavenging. It is hoped the recent passage of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012, which expands the definition of manual scavenging to bring cleaners of drains, sewers and septic tanks in its ambit and provides for mandatory rehabilitation of released manual scavengers would offer a better scope for effective intervention of the Commission in what constitutes one of the worst 'ancient wrongs' of Indian society.

Bonded Labour

Eradication of bonded labour has been a core concern of the Commission from its early years. It has been overseeing the implementation of the Bonded Labour (Abolition) System, Act, 1976 (BLSA) as a special responsibility entrusted to it by a 1997 Supreme Court remit. All States/ Union Territories are required to submit to the Commission six monthly reports on identification, release and rehabilitation of bonded labourers. Besides enquiring individual complaints from victims belonging largely to SC and ST communities, the Commission has been reviewing the bonded labour situation in the 18 bonded labour prone States identified by the Union Labour Ministry.

The State-wise reviews have invariably presented a poor picture of implementation of the Act in terms of the functioning of the District Vigilance Committees, and exercise of judicial powers with provision of summary trial provided to the District Magistrates under the Act. Prosecution of offenders is found to have been totally neglected in all

States. An Expert Group constituted by the Commission in 2000 gave a comprehensive report on the efficacy of the existing legislation and enforcement machinery and made a series of recommendations for strengthening the system. One of the important, rather the most important recommendation of the Expert Group was to incorporate in the BLSA through an appropriate amendment a provision similar to that of Section 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to deal with the cases of wilful disregard of duties under the Act highlighted by the State-wise reviews. There has been no worthwhile follow up by the Commission.

The centrally sponsored scheme for the rehabilitation of the released bonded labourers was revised by the Government in 2000 and special grants were introduced for survey and evaluation purposes. Monitoring of these measures does not seem to have received adequate attention. While, a large number of bonded labourers are reported to have been released as a result of the Commission's intervention, and most of them have received the rehabilitatory grant of Rs. 20,000/- per person, very few have been sustainably rehabilitated in accordance with the Supreme Court directions of 13 May 1994 regarding land-based agricultural, non-land based agricultural and skill/craft based rehabilitation.

Although the Commission has been rightly stressing the importance of vigorous implementation of the Minimum Wages Act, 1948 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 in checking the evil of bonded labour, it has not taken any concrete steps to enforce compliance. The problem of bonded labour persists in newer forms and manifestations despite anti-bonded labour measures and Commission's monitoring.

Rights of Children

The Commission has been deeply involved in the issues of children's rights, particularly the child labour from its early years. It succeeded in 1998-1999 in getting the employment of children below the age of 14 years by the Government servants prohibited through appropriate

amendments made in the Central and many of the State Civil Services (Conduct) Rules. A good share of the credit for the 86th Constitutional Amendment (2002) and the consequent enactment of the Rights of Children to Free and Compulsory Education Act, 2009 (RTE) belongs to the Commission for its persistent advocacy of the right to free and compulsory education to all children upto the age of 14 years.

The Commission has been actively involved in monitoring the implementation of the Child Labour (Prohibition and Regulation) Act, 1986 and Supreme Court directions in famous M. C. Mehta case of 1997 and the working of the National Child Labour Projects (NCLPs) of the Union Labour Ministry in various States. It has been persistently questioning the absurd distinction of 'hazardous' and 'non-hazardous' child labour, holding a firm view that 'hazardous' should be considered in relation to child and not the industry or occupation arguing thereby that all child labour falls in the hazardous category only and should therefore be totally banned. The Commission can derive legitimate pride from the fact that with the enactment of the RTE, the arguments advanced by it in its report after report have been accepted and the Child Labour Act is being amended accordingly.

Some other significant initiatives of the Commission on the issues of children's rights are:

- The review of the Child Marriage Restraint Act, 1929, resulting in the enactment of the Prohibition of the Child Marriage Act, 2006.
- Action Research on Trafficking in Women and Children in India and release of a Judicial Handbook on Combating Trafficking of Women and Children for Commercial Sexual Exploitation.
- A special campaign for creating public awareness and release of a Guidebook for the Media on Sexual Violence.
- Issuing of guidelines for speedy disposal of child rape cases.
- Guidelines on missing children.

- Successfully pursuing the ratification of the Optional Protocols to the Convention on the Rights of Child on (a) the involvement of children in armed conflicts; and (b) the sale of children, prostitution and child pornography.

Rights of Women

Protection and promotion of women's rights has been a constant endeavour of the Commission from the very beginning when it brought the issues of discrimination against women and gender-related violence on the list of its key concerns. It's persistent efforts in urging the Government to honour its obligations under CEDAW have, after several frustrating experiences, borne fruit in the form of the enactment of the 'Protection of Women from Domestic Violence Act, 2005' and the 'Protection of Women from Sexual Harassment Act, 2013'. The Commission feels great satisfaction in playing a significant role at the drafting stage of the domestic violence law. It also takes pride in effectively monitoring the Vishaka Guidelines of the Supreme Court on sexual harassment of women at the work place, particularly the operationalization of its complaint mechanism.

The Commission is credited with having effectively brought the rights perspective to the public narratives on some of the major issues concerning women such as maternal anemia, maternal mortality, HIV/AIDS, prenatal sex selection and trafficking. The Commission strongly feels that these are human rights issues and not mere women's issues.

A research project titled 'Action Research on Trafficking in Women and Children in India' is one of the most action-oriented research studies of the Commission, which is being seriously followed up in most States. An important outcome of the Action Research has been the formulation of an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women, which on adoption by the Government of India will replace its 1998 National Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children.

Some other commendable programmes and issues relating to women's rights undertaken by the Commission are: a collaborative study with UNFPA titled 'Research and Review to Strengthen Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act's Implementation across Key States; a National Conference on Violence against Women organized in January 2013 in the wake of the Delhi rape case of 16 December 2012 (useful inputs gathered from the deliberations were forwarded to the Justice Verma Committee); and follow up of the Government submission relating to its combined 4th and 5th country report to the CEDAW Committee.

Skewed sex ratio resulting in trafficking of women to States like Haryana and Punjab for forced marriages, increasing incidence of hysterectomy performed on pre-menopausal and even younger women for monetary gains in private hospitals, forcible sterilization of mentally challenged women and widespread neglect of the health and nutrition needs of adolescent girls are some of the issues which demand focused attention from the Commission.

Rights of Persons Displaced by Development Projects

The Commission's concern at the plight of those who pay the price for 'development' whether through the undertaking of mega projects or as a result of unfair economic policies dates back to 1996-1997 when it had dealt with a petition relating to human rights violations of the Bargi Dam oustees of Madhya Pradesh. Based on a report of visit to affected areas and interaction with the sufferers made by Shri Virendra Dayal, Member and Shri R. V. Pillai, Secretary General, the Commission issued a series of recommendations to ameliorate the condition of the affected population most of which were acted upon by the State Government. The Commission, since then, has been consistently urging the Centre and State Governments to examine and appropriately amend its land acquisition laws, regulations and practices and bring them in conformity with the constitutional principles following broadly the imperative of land for land, livelihood for livelihood and living ethos for living ethos in any plan of

rehabilitation and relocation. The Commission has been advocating replacement of the archaic Land Acquisition Act, 1894 by a new law which recognizes rehabilitation of displaced persons as a justiciable right and includes mandatory rehabilitation as a part of its provisions making project clearance conditional on operationalization of a Rehabilitation and Resettlement (R&R) plan. The Commission organized a National Conference of all stakeholders in March 2008 and forwarded its recommendations to the Government. It has been relentlessly pursuing this matter at various levels in the Government and has held a number of meetings with the ministries concerned.

The Commission can therefore take legitimate pride in the passage of the Right to Fair Compensation and Transparency in the Land Acquisition and Rehabilitation Bill, 2013 by both Houses of Parliament in August/September 2013. The Bill, closing the door on forcible acquisition, aims at addressing the widespread historical injustices and incorporates almost all the recommendations made by the Commission.

Core and Expert Groups

It has been a constant endeavour of the Commission to enlist the participation of the civil society in its functioning through constitution of Core and Expert Groups. These groups consist of eminent persons or representatives of bodies working on various human rights issues who are willing to serve in an honorary capacity. With specialized knowledge and expertise of their members, these groups have contributed immensely in the formulation of a number of initiatives of the Commission, particularly in the domain of societal issues. Some of the important Core and Expert Groups constituted by the Commission are – Core Advisory Groups on Health and Disability and Core Groups on Right to Food, Mental Health, NGOs, Lawyers and Protection and Welfare of the Elderly Persons.

While these groups have been carefully constituted with well defined objectives, the frequency of their meetings – just once a year – does not inspire the hope that the enormous potential of their Members to enrich

the policies and programmes of the Commission is being optimally realized. Information collected from the Commission shows that the Core Group on Right to Food has not met after August 2010; Core Group on Disability has had one meeting after June 2011; Core Group on Right to Health met only once on June 2013 after its reconstitution in July 2010; and there has been no meeting of the Core Group on Protection and Welfare of the Elderly Persons and the Core Group of Lawyers after June/August 2011.

Human Rights Education

The Commission has been discharging with great interest its mandated responsibility to 'spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights'. A number of steps taken by the Commission in the last 20 years with the ultimate aim of creating the culture of human rights in the country have produced encouraging results. Some of the notable efforts of the Commission in this area are:

- Making human rights study a part of the general education at all levels – school, college and university.
- Encouraging courses/modules on human rights in the training institutes for public servants, the police, para-military forces and armed forces.
- Constituting Task Forces of eminent academicians and legal experts to develop modules on human rights education at school and university levels.
- Organizing a one-day National Conference on Human Rights Education in December 2012 with the aim of bringing about uniformity in imparting human rights education throughout the country in schools, colleges and universities.

The Commission has helped the NHRIs of Jordan, Nepal, Uganda and Maldives in installing the software for Complaint Management

Information System in their local languages. It has also signed a MoU, along with UNDP, for capacity building of the Afghanistan Independent Human Rights Commission.

Human Rights Education (HRE) as a means to the creation of a culture of human rights, rather than an end in itself, requires that all sections of society particularly the youth at all levels of education are taught that the rights of citizenship entails the rights and privileges on the one hand and the duties and obligations to the State as well as fellow-citizens on the other. The ultimate purpose of the HRE can be achieved only by re-orienting HRE towards the balancing of Rights and Duties which alone can ensure the nurturing of democracy and progress of nation building in a diverse and complex polity like India. The Commission, therefore, needs to review and revise its human rights education programmes through a broad national consultation.

Research Projects

The Commission has been discharging its mandated obligations to 'undertake and promote research in human rights' commendably well since its inception. It's Policy Research, Projects and Programmes Division has handled around 25 research projects costing a sum of approximately ₹ 75 lakh through various institutions and NGOs. Important ones are : 'Quality Assurance in Mental Health'; 'Role of Civil Administrations in the Protection of Human Rights in Strife-torn areas of Jammu & Kashmir'; 'The Musahars: A Socio-Economic Study'; 'Economic, Social and Cultural Rights – A Study to Assess the Promotion of Economic, Social and Cultural Rights in India'; 'Estimating Project Costs and Providing Level Playing Field to Persons with Disabilities'. A recently completed research study on 'Developing a Code of Ethics for Indian Industry' marks the Commission's innovative venture into a new area. The well designed and suitably funded research projects on carefully selected human rights topics, suffer from the follow up deficit barring a few cases such as 'Quality Assurance in Mental Health'.

Besides the above, the Commission has undertaken three research projects in collaboration with international organizations. These are – 'Action Research on Trafficking in Women and Children in India' (UNIFEM), 'Research and Review to Strengthen Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act's Implementation Across Key States' (UNFPA), and NHRC-CHRC-IGNOU linkage project on 'Human Rights for Persons with Disabilities'. The Commission is effectively ensuring follow up action on these projects.

State Human Rights Commissions

The Commission has been advocating the setting-up of the State Human Rights Commissions (SHRCs) from its inception and also emphasizing the need for a clear definition of their functional relationship with the NHRC. The Act provides for operation of these bodies independent of NHRC with no mechanism laid down for coordination. This has, besides causing procedural problems, resulted at times in unjustified blocking of the Commission's jurisdiction. Proposed amendments in Section 36 of the Act for providing a certain power of judicial superintendence to give it the overarching ability to oversee the issues of human rights violations and their remedies has not been accepted by the Government. The need for NHRC's oversight over the SHRCs is felt all the more after the amendment in the Act to allow transfer of the complaints from NHRC to SHRCs since 2007-2008. The Commission has been, on average, transferring 9.77 per cent of the complaints to the SHRCs every year.

Establishment of the SHRCs has been a slow process with only nine SHRCs in existence at the time of the first decennial review made in 2002. Although the number of SHRCs in place is 23 now, the posts of Chairperson is lying vacant in as many as nine SHRCs – Himachal Pradesh, Jammu & Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, Tamil Nadu and Manipur. Three of these - Himachal Pradesh, Maharashtra and Manipur have no Member either. Odisha SHRC is working with an acting Chairperson with no other Member. As per the PHRA, an SHRC comprises a Chairperson and two other Members.

Conclusion

NHRC can look back with a sense of pride on its record of 20 years despite failures. Its handling of complaints of human rights violations has brought enormous relief to the victims in the form of financial compensation. It has generated public discourse on the issues of systemic reforms in the Police, Prisons and administration of criminal justice and strengthened the case for good governance. Following an expansive view of the concept of human rights, it has ventured into the arena of economic, social and cultural rights and taken a number of significant initiatives on human rights related to food, health, education and labour. The Commission has shown special concern for the rights of the vulnerable and weaker sections of society, such as the SCs, STs, displaced communities, bonded labourers, persons with disabilities, women and children, etc. It has done remarkably well in spreading human rights literacy and creating human rights awareness and helped in the process of people's empowerment. It's a matter of great satisfaction for the Commission that it was accredited under the Paris Principles as an 'A' status NHRI in 2006 and reaccredited with the same status from 2011 to 2016 by International Coordinating Committee and UN OHCHR.

The debit side of the Commission's balance sheet can certainly be improved by ensuring appropriate punishment to the public servants found responsible for the violations of the complainant's rights. The Commission needs to be assertive enough with the Government in the matter of compliance of its recommendations regarding action against the erring officials, submission of replies to its notices within the stipulated time frame and timely tabling of its reports in the Parliament.

Although the Commission has taken courageous, independent and at times anti-government stand on a number of issues, it has disappointed its human rights constituency by its silence on some sensitive matters, such as hate mails, religious fundamentalism, alleged institutionalized bias against minorities and the rights of LGBT communities.

Recognizing the fact that human rights is an evolving issue in a diverse and complex country like India, the Commission is expected to go beyond the stated objective of 'bettering' the protection of human rights to acting as a vanguard in the movement for realization of the full spectrum of human rights with the imperative of ALL RIGHTS FOR ALL.

The Commission needs to equip itself in infrastructure and technology to meet the emerging challenges to human rights arising from complex factors such as economic growth together with income disparities, development deficit and extremist violence, infringement of the right to privacy and cyber security and electronic communication surveillance.

By focusing the human rights discourse on the problems of dignity, health, education and employment, the Commission needs to strengthen its efforts for full integration of human rights with human development, which is the true measure of the progress of a democratic polity like India.

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CORRUPTION AND GOOD GOVERNANCE

Combating Corruption and Promoting Good Governance: Human Rights Perspective[#]

*Dr. Ashok Sahu**

Introduction

Corruption and the absence of good governance are two sides of the same coin. Being all-pervasive and eating into the vitals of the society, it inhibits enjoyment of human rights, undermines the rule of law, distorts the development process, contributes to inequalities in income, status and opportunities and poses a grave threat to human security.

Corruption is like a cancer; at the beginning it gives faint signals, which are often ignored. If controlled head on at the initial stage, even by taking drastic steps, a reprieve may be possible. Often ignored, it flares up and spreads to the body-politic, corroding the entire system. The belated measures usually fail to make any significant dent on the monstrous growth, leading ultimately to decay and decadence.

The concept of an absolutely corruption-free society appears utopian, conceivable but not feasible. Acceptance of corruption, therefore, becomes a matter of degree – each society developing its own standards in this regard. Even for the same society, the level of tolerance of corruption can vary spatially and temporally. Besides, corruption can be both visible and invisible. It is the former which hurts most, when in day-to-day life

[#] Part of the paper was presented at the APF Senior Executive Officers Meeting, 2013, at Sydney (Australia).

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the rule of law is compromised in pursuit of amassing personal gratification. In all cases, however, corruption has a spiralling effect. Like evil, it has to be nipped in the bud; otherwise slowly and steadily it spreads tentacles, gathers momentum and gradually goes beyond redemption.

Combating Corruption and Promoting Good Governance

It may be necessary to identify institutions which can help in combating corruption and promoting good governance.

(i) *Family:* The institution of 'family' plays a stellar role in imparting appropriate value system to an individual. While providing the initial exposure to the world, the foundations of his character and personality as well as capacity to face stress, strain, assault, recrimination, vendetta, temptation and appreciation are laid down in the family. Traditionally families espouse and instill values cherished universally like sincerity, obedience, hard work, truthfulness, love, affection, fellow feeling, mutual help, adjustment, tolerance, etc. – attributes required for becoming a good human being. This provides the backdrop for ushering in a corruption-free environment. However, in reality, a growing child also observes violation of the propagated norms among different members of the family, especially elders. The breach between the precept and practice causes a harmful psychological divide, which makes a child unsure of ideas to be either emulated or rejected. In some cases, families directly encourage adoption of corrupt practices through conspicuous consumption, blatant display of riches acquired by dubious means, being boastful of black money, etc. In the process, the family vitiates the character of younger members and becomes the breeding ground for corruption. In view of this, society playing a vital role in convincing the families to infuse in their children the spirit to fight corruption and adopt ethical norms would be an effective deterrent.

(ii) *Educational System :* Apart from family, the other most important agent associated with evolution of a corruption-free society is the educational system – consisting of educational institutions, the

curriculum, students and teachers. The educational system should be secular, functional and pragmatic with a strong ethical content. It should inculcate a sense of honesty and deride corruption, while upholding impartiality, fair play and meritocracy. When positive discrimination is practiced in the matter of admission, award of scholarship, etc. the ground rules should be transparent and unambiguous. In reality, however, the entire educational spectrum – from admission to course work, teaching or conduct of examination – does not inspire confidence due to lack of objectivity. There seems to be a need for overhauling the entire educational system.

(iii) *Preventing Formation of a Rent-seeking Society:* In an economy there are various factors of production at work which receive reward according to their relative contribution. In a free atmosphere under perfect competition, the system becomes most efficient in terms of yielding maximum output at minimum cost. If a competitive environment is not provided, the system generates rent-seekers aiming at receiving a reward without reciprocal contribution. They are rent-seekers who thrive under licence-permit raj and corruption, favouritism, nepotism, etc. get in-built into the system. Existence of such parasites de-motivate genuine factors of production to perform to the best of their ability disturbing the socio-economic fabric of the society. Dismantling the licence-permit system and discouraging middlemen appear to be the answer to such a problem.

(iv) *Overcoming Poverty and Unemployment:* Though there is no conclusive evidence that a rich nation is corruption-free and a poor one corruption-prone, some correlation exists between poverty, unemployment and corruption. When there is a struggle for survival, concepts like 'respect for rule of law', 'righteousness', etc. become stale, especially if there is glaring disparity in distribution of wealth and income. Sometimes, for those who have just escaped the clutches of poverty, the very thought of relapse is unnerving. They tend to give all scruples a go-by and try to accumulate enough to ensure themselves and their posterity a secured future. In reality, lack of

adequate employment opportunities for the educated, semi-educated and uneducated vitiates the entire atmosphere. Hence, assurance of earning a reasonable livelihood is a guarantee against majority of people feeling tempted to be corrupt. Poverty and unemployment need to be reduced by taking proactive measures. Some form of unemployment insurance, old-age pension and social security measures to take care of sickness and injury may also have a salutary effect.

(v) *Red-tapism:* Government institutions constitute the most important service provider in a developing country. This is accomplished through layers of bureaucracy and a plethora of rules, regulations and procedures. In the process, vested interest develops in making the delivery mechanism slow, cumbersome and sometimes incomprehensive, widely known as red-tapism. The common man becomes both susceptible and vulnerable to the cobweb of red-tapism, while from the point of view of service-provider it pays to delay things. In order to overcome the harassment, people are prepared to offer a price for the service rendered, rather helplessly. Gratification, though both its payment and acceptance are illegal, becomes an accepted norm. Over time the system snowballs into a major menace by corroding the institutional arrangements, creating a parallel black economy and destroying the socio-economic environment, while the civil society remains a mute spectator. The effective answer to such a malady is to allow the market forces operate fiercely, making procedures simple and transparent, even down-sizing the government and making it withdraw from non-core areas. Harnessing of information technology and right to information etc. can also become effective remedial instruments.

(vi) *Inspector Raj:* To oversee implementation of laws, inspectors are appointed, who by insisting on procedural formalities, plethora of registers to be maintained, etc. often suffocate the enterprises, cause harassment and encourage corruption. The problems become more acute for small industrial establishments who do not have enough resources at their command to face the onslaught of 'inspector raj'.

Such a system has to be dismantled. It is necessary to make the laws simple and easily implementable, to keep the registers/records etc. to be maintained to the barest minimum, use of information technology in maintenance, submission and checking of records, avoid overlapping of jurisdiction of various law implementation agencies, allow inspections not as a matter of routine exercise but when there is prima facie evidence of violation, provide orientation courses for inspectors and create enough awareness and incentives among citizens to comply voluntarily with the provisions of law so that the need for having inspectors declines automatically.

(vii) *Ethics in Governance:* Corruption and poor governance go hand-in-hand. The goal of good and effective governance is to be transparent and fair in all transactions and giving effective service to the people. The strong commitment to ethics has to emanate from the top and sustained at every level. While there is no prescribed solution for coping with the ethical dilemma in all types of situation, some organizational rules by integrating ethical guidelines into decision making, aligning reward system with vision of integrity and feeling responsive to criticism and complaints would help.

Viewing Corruption from Human Rights Perspective

Corruption is recognized as one of the biggest obstacles to development. This gets reflected in the adoption of the United Nations Convention Against Corruption (UNCAC) which came into force in December 2005. Since corruption distorts allocation of public resources, their administration becomes discriminatory and arbitrary. Besides, corruption is often associated with discrimination based on race, colour, sex, religion, political opinion and national or social origin. Corruption has a disproportionate impact on people who are victims of discrimination. Under a human rights framework, the principle of non-discrimination requires States to take affirmative action to ensure all disempowered groups and those suffering from structural discrimination such as indigenous people, migrant workers, persons with disabilities, persons with HIV/AIDS, refugees, prisoners, the poor, women and children have fair access

to services and resources. Hence the anti-corruption principles crucial from human rights' perspective are: (i) participation, (ii) transparency and access to information and (iii) accountability. [2]

Role of National Human Rights Commission

Human Rights Institutions (HRIs) have to take the cause of combating corruption and promoting good governance seriously. In the past, on 9-5-2006, NHRC held interactions with various stakeholders at a National Conference on "Effects of Corruption in Good Governance and Human Rights" where it was felt that developmental gains are being offset by corruption, leading to below-par infrastructure, poor regulation, day-to-day hassles for the common man, loss of revenue for the Government, ineffective services, inefficient subsidies, lack of accountability and gross wastage of taxpayers' money. Hence corruption has a direct bearing on the realization of economic, social and cultural rights. Accordingly, the Commission made the following major recommendations:[3]

(i) There is an urgent need to generate greater awareness among the people about economic, social and cultural rights and highlight the manner in which corruption impairs and affects them.

(ii) There is a need to ensure that the laws that deal with the problems of corruption are interpreted, implemented, and executed effectively and expeditiously in the country by the legislature, judiciary and the executive. Simultaneously, there is need to enforce prompt and effective punishment for acts of corruption, which would eventually accelerate grievance redressal mechanism and good governance.

(iii) There is need to set up exclusive fast track courts to deal with cases of corruption.

(iv) There is need to evolve a system of providing immunity and witness protection to all those who expose cases of corruption as the defenders of human rights.

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2 Integrating Human Rights in the Anti-Corruption Agenda : Challenges, Possibilities and Opportunities, International Council on Human Rights Policy, Transparency International.

3 For details please see *Journal of the National Human Rights Commission*, Vol. 6, 2007, pp 68-69.

(v) There is need for bringing about technological advancement in all public institutions and government departments by introducing toll-free lines, websites, e-governance, transparent and time-bound action plans and SMS-based applications to reduce corruption.

(vi) A Vision Plan for prevention, control and reduction of corruption in the country, Ministry/Department-wise may be prepared.

(vii) The Constitution of India can be amended adding one more clause to Article 51A that deals with Fundamental Duties stating therein that nobody should indulge in any corrupt practices.

Policy Parameters and Institutional Arrangements

Important policy parameters and institutional arrangements put in place in India to prevent corruption and promote good governance are indicated below:

(i) The New Industrial Policy (NIP) announced in 1991 ushered in an era of Liberalization, Privatization and Globalization (LPG) in India which led to dismantling of license-permit raj, reduction of Inspector Raj and adoption of global business practices.

(ii) The Information & Communication Technology (ICT) revolution has given fillip to e-governance. It has helped in faster dissemination of information, prevention of frauds and elimination of middlemen. It is being harnessed to introduce innovative schemes like Direct Transfer of Subsidies through biometric cards, popularly known as 'Aadhar Cards' prepared by the Unique Identification Authority of India (UIDAI), primarily intending at plugging leakage.

(iii) The civil society (including NGOs) and the media (both print and electronic) have become vocal and prominent and have been conducting social auditing regularly. Fighting corruption has become a mandate for political parties also.

(iv) The Right to Information (RTI) Act, 2005 has empowered people significantly. Its jurisdiction is also being expanded continuously.

(v) Certain constitutional and administrative bodies are functioning like effective watchdogs as per their mandate. For instance, the Comptroller and Auditor General (CAG) scrutinizes government expenditure and exposes lapses, the Union Public Service Commission (UPSC) guarantees impartial recruitment, the Central Vigilance Commission (CVC) checks misconduct of public servants, etc.

(vi) Ministry of Statistics and Programme Implementation (MOSPI) is monitoring implementation of major projects to prevent time and cost overruns, which indirectly checks corruption. Ministry of Finance and Administrative Ministries also conduct similar scrutiny.

(vii) Legal provisions exist in certain laws like the Indian Penal Code (IPC) which act like a deterrent against corruption.

(viii) Many regulatory authorities have been constituted to ensure right pricing of various services and preventing exploitation of consumers. Grievance Redressal Mechanisms are being established as mandated in different statutes.

(ix) A system of checks and balances exists between the executive, legislature and judiciary which simultaneously helps in preventing corruption and promoting good governance. Hon'ble Supreme Court's ruling to debar politicians convicted and imprisoned for a certain time period from contesting elections and holding legislative posts is a pointer in this regard.

(x) Ushering in Second Generation Reforms in India is being contemplated encompassing 'Administrative Reforms', 'Judicial Reforms', 'Police Reforms', 'Labour Reforms', etc. which have good governance and prevention of corruption as desired objectives.

Emphasis on Governance in Plan Document

The chapter relating to 'Governance' in the Twelfth Five-Year Plan Document[4] observes that good governance is critical to translating Plan outlays into significant outcomes on the ground and states as follows:

4 Twelfth Five Year Plan 2012-2017, Faster, More Inclusive and Sustainable Growth, Vol.I, Chapter 10, Planning Commission, Government of India.

> *"The problem of governance that has to be tackled surfaces in three different ways. The first relates to systemic improvements, which increase the effectiveness of government plan expenditure on new programmes. The second relates to improvements in customer satisfaction on the delivery of services by government agencies. The third relates to the perception of corruption and what we can do to tackle it."*

The pace of public expenditure, especially in flagship programmes has increased substantially but the question remains whether benefits are actually being delivered as expected. Their effective implementation demands a new architecture with emphasis on strengthening of local institutions, social mobilization, crucial role to be played by civil society and voluntary sector etc. Accordingly, the Twelfth Plan proposes setting up of dedicated institution like the Bharat Rural Livelihoods Foundation (BRLF), promoting Corporate Social Responsibility (CSR) initiatives and fostering state, civil society, voluntary and corporate sector partnerships essentially for capacity building of the people and improving governance. Other measures include restructuring of Centrally Sponsored Schemes through convergence, effective design and better implementation, establishment of Independent Evaluation Office, improving public service delivery through use of unique ID numbers, dissemination of information by using electronic and social media, combating corruption by developing transparent procedures in awarding government contracts, effecting procurement and granting licences, promoting accountability through civil services reforms and adoption of outcome-based Results Framework Document (RFD) and establishment of Regulatory authorities.

Steps Taken by Indian HRIs and NHRC

Indian HRIs are taking the following concrete steps in the direction of combating corruption and promoting good governance :

(i) NHRC and its State counterparts are primarily playing a catalytic role by spreading awareness through conferences, training programmes, etc. regarding promotion of human rights, which includes fight against corruption, promoting good governance and establishment of a just society.

(ii) During the course of visits by Special Rapporteurs or conduct of investigations, if instances of corruption leading to human rights violation are noticed, due cognizance is taken by NHRC for taking remedial measures.

(iii) If representations/complaints are also received in this regard, they are being examined and legal action taken as per procedure by NHRC and its State counterparts.

(iv) NHRC is in the process of developing a basic 'Code of Ethics', inter alia, providing for accountable business which requires implementation of laws, covenants, etc., adoption of transparent business standards and non-indulgence in corrupt practices.

(v) In conceptualizing second generation reforms, NHRC provides valuable inputs from human rights perspective to Administrative Ministries.

Conclusion

While steps are being taken in the right direction, considering the seriousness of the problem, it may be necessary to reiterate the recommendations earlier made and involve all stakeholders once again for taking remedial action.

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RIGHT TO EDUCATION

RTE and the Issue Relating to Quality of Education

*Prof. Nalini Juneja**

With the RTE Act 2009 into its third year of 'being in force', focus is now shifting to the 'quality' of education. The recent ASER reports about the low ability of rural school-going children to read and to do simple calculations have added to the concerns about the quality of education being imparted in our schools.

In discussions on this issue it is not uncommon to hear the plaint that the RTE Act was indirectly to blame for this state of affairs. It is alleged on the one hand, that the RTE is so overly concerned with 'inputs', that it fails to address the issue of quality; and on the other that its mandate for 'no detention', takes away what little 'power' teachers had over the child, with the result that now they do not study, knowing well that they will go to the next class, because the teacher '*has* to pass them'.

Unfortunately, even among educationists, many are not aware of the various and interlinked clauses related to Quality in the RTE Act 2009. Therefore this paper starts out by throwing light on some of these clauses and their genesis and then pointing out their consistency with each other and with the NCF 2005. Secondly, it will attempt to understand what is meant by quality of education by looking at some attempts to problematiz'e

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the issue of quality, and its shifting connotations in educational policy in India as exemplified in 'quality standards' such as 'Minimum Levels of Learning', and in approaches such as the NCF 2005. Finally, this paper asks whether quality is at all different from equality, as it draws parallels and lessons from the experience of the successful reform of education in Finland and asks what this implies for the pursuit of education of good quality in India.

Section-I

Clauses addressing 'Quality' in the RTE

The word 'quality' itself occurs only in sections 8(g) and 9 (h) in relation to 'standards and norms specified in the schedule to the Act. These clauses require the appropriate authority/ local authority to 'provide good quality elementary education according to standards and norms specified in the schedule'. Interestingly, despite the presence of the term 'quality' in these clauses, the schedule itself is generally perceived, not as specifying 'quality of education' but only the physical facilities that need to be provided in each school and the amount of time the teacher must spend. Evidently such inputs do not constitute what in general perception is considered to be 'quality of education'.

Section 29(2) is usually the first and often the only 'quality of education' related clause to be identified by most people[1]. Some also point out to the clauses related to the prohibition of physical punishment and mental harassment (Section 17); prohibition of failing / holding back a child in the same class, or expulsion (Section 16). However, that fact that it is these clauses, all relating to the actual teaching learning process, and the relationship between the teacher and the taught, that are identified, is itself an indicator of the meaning that the term 'quality of education' holds for most people.

However, the lack of any specified 'level of learning to be achieved' is also commented upon with perplexity, indicating perhaps the general confusion

1 in training sessions on the RTE Act, conducted by the author

related to quality- is it a process, or is it an outcome? Deferring this issue to the next section, it may be interesting to dwell on Section 29 (2).

During the drafting of the Act, there was uncertainty about whether or not to include, (and thereby accord justiciability) to something as amorphous and difficult to define as 'quality of education'. At the same time, the importance of the transactions in the classroom, between the teacher and the child, needed to be accorded their due. Those familiar with the clauses in the U.N. Convention on the Rights of the Child would recognize at once how this dilemma was resolved. As may be seen from the chart below, Section 29 (2) was unmistakably inspired by clauses from the Convention, (especially Article 29 of the CRC, which begins with the statement "States Parties agree that the education of the child shall be directed to:"

Table 1: RTE: Section 29 (2) and similar clauses in the CRC

Subsections of RTE Section 29 (2) child	**Clause in Convention on Rights of the**
a. Conformity with values enshrined in the Constitution	*CRC: Article 29(b)* The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations
b. All-round development of the child	*CRC: Article 29 (a)* The development of the child's personality, talents and mental and physical abilities to their fullest potential
c. Building up the child's knowledge potentiality and talent	
d. Development of physical and mental abilities to the fullest	
e. Learning through activities, discovery and exploration in a child-friendly and child-centric manner	*CRC: Article 311*. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the

Table contd...

Subsections of RTE Section 29 (2) child	Clause in Convention on Rights of the
	age of the child and to participate freely in cultural life and the arts.
f. Medium of instruction shall as far as practicable be in the child's mother tongue	*CRC: Article 29(c)* The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
g. Making the child free of fear, trauma and anxiety and helping the child to express views freely	*'Freedom from Fear' in the Universal Declaration of Human Rights 1948CRC: Article 121*. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weightage in accordance with the age and maturity of the child.
f Comprehensive and continuous evaluation of the child's understanding of knowledge and his or her ability to apply the same.	This clause is not inspired by the CRC. Elsewhere in the RTE Act detention is prohibited, (and by implication the end of year exams on which the detention decision was based) this clause supports the existing, NCF 2005 conforming, alternative.

Thus it may be seen that in making the statements in the RTE related to 'quality of education', no *new* commitments were actually being made, for the provisions in RTE section 29 (2) merely reiterate what India is already committed to by virtue of having signed the Universal Declaration of Human Rights and Convention on Rights of the Child. The only exception being the statutory commitment to a particular pedagogical practice - continuous and comprehensive evaluation – which however is in consonance with the NCF 2005 as well as to the general agreement among educationists of the purpose of evaluation (formative) in the

teaching learning process. Therefore while legislatively, these clauses did not make any giant steps forward, they do serve the very important function of ensuring that the RTE is not presented as being 'silent' on the issue of the what happens within schools and classrooms, curriculum and evaluation issues – issues commonly (and narrowly) perceived as related to 'quality'.

The only provision within Article 29 (2) which is not from existing UN instruments, is the clause mandating Continuous and Comprehensive Evaluation, which as a particular pedagogical practice should not perhaps have been 'legislated' into practice. CCE was already being advocated as an alternative to the end-of-term exams which served no formative educational purpose. They were also consistent with the perspective held by many who were involved in preparation of the NCF 2005. A factor that might perhaps have contributed to the harmony between the NCF 2005 and the RTE Act 2009 is the fact that the development of the NCF 2005 and the drafting of the RTE Act 2009 were parallel activities in neighbouring institutions, and some members were common to both processes.

However, what may surprise many is that although the RTE Act does not actually mention the NCF 2005, it statutorily binds the nation to abide by it in matters of curriculum and evaluation procedure. How does it do that? If one takes a look at Section 7 (6) of the RTE Act, it says that "The Central Government shall (a) develop a framework of national curriculum with the help of the academic authority specified under Section 29."

Section 29(1) in turn reads "the curriculum and the valuation procedure for elementary education shall be laid down by the academic authority to be specified by the appropriate government by notification"

Cutting through the legalese, and in trying to understand what this might mean for the Central Government for example, it may be realized that the Central Government would notify an 'academic authority' (as

must be notified by respective state governments also). In the case of the Central Government, the academic authority so notified by the Union Ministry for Human Resource Development (on 31st March, 2010) was the NCERT. The states in turn notified their respective SCERTs as their academic authorities. According to the Act (Section 7 (6)), these academic authorities, would together develop a framework of 'National Curriculum'. Till such time as the nation chooses to develop a new national curriculum framework, the MHRD notified (on August 31, 2010) NCF 2005 as the 'Framework of National Curriculum'', thereby giving statutory standing to the NCF 2005 in matters regarding curriculum development, transaction and evaluation – in short- all that happens in the classroom between the teacher and the child. As stated earlier, the discussion of the NCF 2005, and its approach to education and what it considers to be 'quality education' is deferred to the next section. Suffice to say, that far from avoidance of discussion of quality, the RTE Act has in fact, enveloped within its swirl, the entire NCF 2005, and in doing so adopted as law, its position on quality of education.

Not usually recognised as clauses mandating quality, are also the clauses that:

- Ensure hereinafter that a teacher will always be a qualified professional as mandated by centrally appointed body (Section 23), and that education of children in schools will not be relegated to unqualified, untrained individuals.
- Ensure that hereinafter the teacher pupil ratio will be computed at the level of the school, rather than at the district level (in an effort to ensure that teachers serve children in schools, rather than in the district office)
- Mandate the preparation of a Development Plan at the level of each school by a committee comprising mainly mothers of the children studying in the school; or even clauses that
- Mandate the retention of the child till completion of elementary education. (Section 8a (ii), which read with the clauses that prohibit

physical punishment and mental harassment, (Section 17), and clauses such as in Section 29 (2), seek to give legislative support to a happy school life as the right of the child.

Similarly, the clauses mandating inclusion also in effect, call for a change in attitudes and practices of teaching and learning in schools, as was the experience of this principal of a school in New Delhi:

> *"One visually challenged child was enough to prove in St Mary's that most classroom methodologies in the school catered to a homogeneous group. As attitudes changed and became more welcoming of difference and as a diverse student population entered the school, modifications in pedagogy and curriculum became a daily feature." (Koshi, 2013, p. 94)*

In fact, this school found that the fact of inclusion and the changes it fostered challenged prevailing notions of curriculum transaction and evaluation, enabling these to better serve the needs of every child:

> *"The modification of classroom transactions, curriculum and evaluation practices is an extremely important part of ensuring an equitable quality education for all children, since a homogeneous curriculum and evaluation cannot be considered equitable unless it is matched with differentiated instruction that suits the needs of every child" (Koshi, 2013, p. 95)(p. 95)*

Section-II

Interrogating 'Quality' of Education

What is 'Quality'?

Unfortunately there appears to be no consensus on what educational quality for, as Dhankar (2010) observes, "Around the world, the notion of what constitutes quality, how it can be achieved, and why it is important is answered in very disparate terms" (p. 3). This could be perhaps because despite the encrusted meanings loading on to this simple word, it is a relative term. As Kumar and Sarangapani (2004) point out, the notion of quality of education relates to conceptions of education and its aims, and

would differ according to how it is imagined that education should be. It would thus differ for different people, from place to place, and even with time.

In Japan, for example the ideal vision of education in the context of a previous generation, and it's all too successful implementation came to be perceived ironically in changed times, not, as good quality education, but as an 'educational problem'. For example in the 1980s, among the problems pointed out by the Japanese in their education system were "excessive uniformity and strengthened administration leading to an excessive degree of control over children's behavior. In addition the intensification of competition for entry to the best high schools or top class universities inflicted psychological stress on both children and parents" (Saito, 2004, p. 31)

The debates and growing consensus about this 'problem' lead ultimately to the educational reform of 2006 in Japan. What Japan now seeks to achieve as the aim of education can only be understood and evaluated against its new vision of future society "Since the 1960s when Japan enjoyed a high economic growth, the goal of education has been to train manpower for economic growth. Nevertheless the implementation of that goal caused many educational problems. A plan should aim for a more human condition." (Murata & Yamaguchi, 2010, p. 211)

Thus, conceptions of life in a society are reflected in its conceptions about education. It seems almost axiomatic to state therefore that any debate on the quality of education is therefore essentially a debate on the quality of life that the system should design. In reference to the people of a nation, notions about quality of life in turn are reflected in the Constitutions of countries, which as living documents change with changed conceptions.

Interestingly, the Right to Education, in the Constitutions of both Japan and India are drawn from the Right to Life, for both drew inspiration from a common source. The Constitution of Japan included the Right to Life as Article 25, and the Right to Education as Article 26, - using the

Weimar Constitution as their model (Sato & Dawson, 2008, p. 80). The Indian Constitution also took much from the Weimar Constitution, and herein too, the Right to Education (Article 21A) is placed just after the Right to Life, (Article 21) for the reason that education is considered to be an expanded qualification of the Right to Life. The unfortunate difference however, is that while Japan linked together the Right to life and to Education while drafting their Constitution right after World War II; India expanded the original definition of the Right to Life only in 2002 by Amendment to its 1950 Constitution to include the Right to Education (notified in 2010).

Etymology of 'Quality'

Commenting on the confusion that envelopes the definition of educational 'quality', Alexander (2008, p. 11) points out that such confusion arises when the term 'quality' is used, not as the noun that it is, but as an adjective. According to him, "as a noun applied to a process like education, 'quality' can mean either an attribute, property or characteristic, in which case it is value neutral, or it can mean a degree of excellence, as in 'high' or indeed 'low' quality". However, in its increasingly common use as an adjective, as in phrases like 'quality education' (Dakar) or 'the quality imperative' (the 2005 UNESCO EFA Monitoring Report) 'quality' invariably designates or implies a standard or level of quality to be desired."

Offering an explanation of how quality came to be in more recent times to become associated with ranks and numbers, Alexander goes to say that because the international debate about the quality of education has been dominated by those who operate in the domains of policy, accountability and funding rather than in the arena of practice, quality has tended to be conceived not as what it actually is but as how it can be measured." (p. 3)

In the case of India, the current concern with quality represents a departure from a more 'education-reform oriented approach' that was evident until DPEP (Sarangapani, 2010, p. 45) and Sarangapani (2010) based on her research on the history of the quality debate in India points

out that (i) that in educational policy documents, the term 'quality' as an 'objective to be achieved' began to appear only from the mid-1990s onwards; (ii) whereas prior to the 90s, it was seen more as a system input, and references in policy documents to quality were linked to the nature of the provisions and related to expansion of the system; and that (iii) the 1986 Policy on Education "marked the use of the term 'Quality' independently from the idea of inputs and provisioning" to accommodate the idea of education through non-formal education and that all these institutions could be of 'comparable quality' even if no longer comparable in terms of provisioning" (p. 43).

The notion of 'comparable quality' apparently served to assuage any disquiet arising from concerns that disparity in provisioning might sit uncomfortably with the constitutional mandates for 'equality of opportunity'. The harmonizing of these dissonant notions of disparity in provisioning but 'comparability' in terms of quality were assisted by the employment in that period of the concept of MLLS or 'Minimum Levels of Learning' - a notion evocative of the appealing and egalitarian idea of everyone receiving at least a basic level of mastery of subjects through a scientifically sound process of educational transaction. This vision of mastery at minimum cost, contributed to the rise in number of schemes for non-formal education in habitations without schools and even part-time education of working children and other 'hard to reach' groups. Such programmes served to show action on the ground while providing for 'achievement' (measurement) of these 'Minimum Levels of Learning' as graduated responses (output/ outcome) to measured stimuli (curricular input), virtually irrespective of individual or contextual differences.

Therefore for this reason, it is easy to comprehend the obvious economic, politically inclusive and scientifically sanctioned and continuing[2]

2 The Aide memoire of the Eighteenth Joint Review Mission of the Sarva Shiksha Abhiyan , June 2013, decries the fact that "Just as the idea of laying down the MLLS had receded into the background, so did to a lesser extent the measurement to assess whether the MLLs were achieved" (Para 2.5, p.6); and makes an impassioned plea for their return and the adoption of "national norms on minimum learning outcomes" (para 2.7, p.8) because "we need to know how the learning achievement is improving over the years in a given State. It is equally important to know, say how Uttar Pradesh is faring in comparison to Kerala."

appeal of the MLLs. But in order to understand why the NCF 2005, (which now enjoys statutory status through the RTE 2009) rejects the notion of the MLLs, perhaps it might be well even at the risk of digression to examine the conceptual and theoretical underpinnings of these two polarized concepts, which despite their developments in psychology, were rooted in conflicting schools of thought.

Minimum Levels of Learning (MLLs): 'Knowledge is Received'

The idea of MLL was born from the Behaviorist school, so named because of its fundamental belief in observable and measurable responses to external stimuli. The behaviourist perspective in education, focusing only on the observable and the measurable, "drove home the notion that learning could be predicted, measured accurately, that it had a particular sequence, and that there was a direct correlation between inputs and achievement. Consequently, the whole process could be planned and controlled." (Sheshagiri, 2013, p. 5) Within the same school of behaviourist thought, Benjamin Bloom in the 1950s, developed a 'taxonomy of learning objectives' – with a "strictly hierarchical sequence; - one cannot attain higher levels, unless lower levels are first achieved." (p. 6)

It was from Bloom's Taxonomy, that the MLLs emanated and became "synonymous with the notions of learner achievement and of quality" despite limitations such as: construct inadequacies which failed to acknowledge that all learning did not result in behavioural changes; and among behavioral changes, the construct being restricted to immediate change; being confined almost exclusively to the cognitive domain while neglecting the affective or psychomotor domains "beyond the indication of general directions"; being neither able to predict nor measure, and therefore unable to capture "the child's imagination, expression, creativity, incentive and problem solving capacities" (Sheshagiri, 2013, p. 6).

Quoting Kumar, (1992), Sheshagiri (2013) points out that perhaps the saddest limitation of the MLLs was that 'information' or 'received knowledge' came to be equated with education.

The NCF 2005: 'Knowledge is Constructed'

Another school of thought that emerged later in the 1970s in psychology, built on the findings of Jean Piaget that children 'construct knowledge' in the course of their developmental experiences. This school differs with the earlier behaviourist school of thought in that it gave primary importance to the child's initiative, and the notion of learning from the perspective of this school, was one that required the agency and mental inter-connections made by each child. Thus each child's knowledge was unique and could be different from the knowledge constructed by another child in the same situation. Other psychologists such as Vygotsky and others joined with Piaget in countering the Behaviourist view of knowledge, and in giving importance to the context, cultural aspects, and the agency of the child in relation to education.

The National Curriculum Framework, 2005 is inclined towards the more recent notion of education as 'constructed knowledge' and thereby rejects the Behaviourist view, and the even more constricted and reductionist view of education as represented by the MLLs. The NCF 2005, while supporting learning acquisition of knowledge as constructed by the child stands in conceptual opposition to the 'reducing' of learning or of the schooling experience mainly to certain cognitive aspects that are measurable, and which alone are then measured.

As with the concept of education itself, the concept of 'Quality of education' is also therefore seen differently in the opposing perspectives reflected in the MLLs and in the NCF 2005. Moreover, in an educational system purporting to ensure education as a right can hardly ignore the child and her interaction within the system.

The purpose with which evaluation is carried out, is also of crucial importance, for the risk, which is too great to be ignored, of evaluating learning, not for the purpose of 'formative evaluation' (i.e. to provide feedback to the teacher and to the child and to thus improve the teaching learning process) but only to 'show' learning to the administrator, (summative evaluation). Such an external purpose also carries with it the

consequent risk of the design of the schooling system becoming warped in order to 'show' ever higher measures on 'learning outcomes'.

The risk of the evaluation process taking over and becoming the 'be all and end all' of schooling, or becoming a case of 'the tail wagging the dog' may be seen all too clearly in the narration of the following anecdote in which the author was personally involved.

In 2006, a block level functionary, seeking to impress 'a national level professor' boasted that as a result of his 'reform' efforts, teachers in his area now had to teach 'throughout the academic year'. *(Oh, did all teachers not teach throughout the year?)*. But what was it that this functionary had done? He had ordered that exam papers were not to be available in the shops until well into February – i.e. the end of the school year. Looking suitably impressed, I allowed him to go on, and he said that now that the teachers had come to know the question paper only in February, they had to teach much more than the five questions they would have prepared the class with – as was the case before he instituted his reform measure!

Later discreet inquiries from multiple other sources served to provide an explanation of what went on in his state before his localized 'reform effort'. In the absence of printed question papers for the primary stage, some private printers had taken it upon themselves to print 'question papers' for each class. These papers were available for purchase from stationery shops. It was apparently the practice for teachers to buy question papers in the numbers needed for their classes (after collecting 'exam fees' from the students). These question papers were available for purchase throughout the year, and it was also apparently the practice for teachers to teach only the five questions that appeared in the paper for that year. The big ticket reform instituted by the functionary was to ensure that shops did not carry the question papers till almost the end of the academic year – thereby making it impossible for the teachers to 'teach' only those five questions!

In such instances of 'the tail wagging the dog', it becomes all too obvious that there are many ways of producing 'outcome measures' of

learning to suit administrative and not learning purposes and which result in making a mockery of the end of term 'pass-fail' ritual, and 'grade specificity' of learning levels. Such a system focused on outcomes as the indicator of the quality of the system, is based also on mistrust of the teacher and the dehumanization of the child. Thus, in such a system the 'game changes' from being a noble mission to one of 'outsmarting the policeman', and the child ceases even to be visible in the picture.

Then, there is the question of the failures. The Behaviourist tradition that analyzed every action, job or task down to its simplest segments (or components of minimum learning skills) also produced 'assembly line methodologies of production', concepts and measures of production efficiency, product testing, and the separation and return of rejects to the melting pot.

When applied to the human product, it is a question worth asking - happens to the failures? Are they expected to drop out of the assembly line and allow the school system to focus more efficiently on those that 'pass'? An aspiration for a minimum level for learning for each grade is laudable, and it ensures that only those products that 'make the grade' continue on. However, such systems also ensure that there are rejects, and when these rejects are children, it is a question worth asking –what happens to rejected children?

Offering a mathematical logic based argument, against systematic elimination at successive stages, Kumar (2010) points out that

> *"talent selected from the widest possible pool of human diversity, in all its forms will have a greater predictable quality than talent selected from a narrower pool…if talent is drawn from a narrow pool the drawing process will become reproductive, making the competitive quality of the talent weaker with every successive round of selection. Hence it would be correct to conclude that equality is an aspect of quality, not contradictory to it. (p. 13)*

This does not by any chance mean that examinations and elimination tests have no place. In the case of elimination tests, for say, the Wimbledon

Championships, the purpose is clear, and the concern is only to seek out and reward the best. But such elimination 'pass-fail' annual events are hardly advantageous when the purpose is education and especially so for the compulsory education stage, the purpose of which is to ensure the learning of ALL.

Unfortunately, despite the international discourse on Education For All, or even in the context of our national debates on right of every child to free and compulsory education in India we are still stuck in the colonial mindset of education as a process of screening the 'talented' and the 'deserving', for continued education or education in better (read private) schools.

When we think of education in India or of quality of education, we rarely include in the debate the disparity of education that is accessible to all children. Even an act as bold as the RTE Act, was unable for various reasons to mandate equality of educational facilities for all children, and even we that the schools that children in different circumstances have access to represent a vast and disparate range, (Juneja, 2010). Thus at the stage of the conceptualization of quality, let alone the achievement, we are limited in terms of the discourse itself and "the significant difference between policy discourses in India as compared to developed countries is that "in Indian education today, the discourse is about the education that is being provided to children of the poor" (Sarangapani, 2010, p. 47)

Section-III

The Quality-Equality Issue and Lessons from Finland

Quality, Equity and Beliefs

Today, despite the recent thrust on elementary education which has increased the number of schools in India to 1.35 million[3] (i.e. more schools than the entire population of Mauritius); and school enrolment to 248 million[4] [i.e. there are more students in schools than the entire population

3 Table A1: Statistics of School Education, 2010-2011. Govt. of India

4 Table B1: Statistics of School Education, 2010-2011. Govt. of India

of countries such as Brazil (201 million), Indonesia (237 million)] and the combined populations of Pakistan and Bangladesh, the sad fact remains that by the end of grade 8, more than 40 per cent have dropped out, and by the end of grade 10, we have lost 50 per cent[5] of those who enrolled.

By any standard in the world, it is a reflection on the 'quality' of the system when half the children drop out before completing schooling. It is even more shameful for us a nation that selectively in this 'half that drops out', there are more girls, children from lower castes, tribes, poor, those residing in rural and remote areas, migrants to other rural areas, migrants to cities and street children.

When such descriptors such as being female, from lower caste, of rural residence, etc. become predictors or indicators of the probability of dropping out, or not learning, it reflects more than anything else that the conditions of access and success are not the same for such children and serious action needs to be taken to remedy the situation. Now, more than ever, since education is now a fundamental right of every child, India is committed to ensuring that all children enroll, participate and learn in school.

There are some that believe that only after all children are enrolled, the focus should shift to quality. This view was for long widely shared, and was consistent with their belief that poor parents resisted sending children to school because they wanted/ needed child labour. Sinha, (1996) on the other hand, was one of the very few voices which thankfully prevailed and succeeded in showing how this erroneous belief deflected the attention of the policy makers away from the more relevant causes of low enrolment and drop out such as poor condition of schools, the lack of teachers, their unfriendly attitudes, and from addressing administrative practices that were inimical to the conditions of the lives of the poor. Such beliefs also deflected attention away from government failure to provide adequately for education and even to justify low allocations. Most importantly, such beliefs were employed to not only justify not abolishing

5 Table G1: Statistics of School Education, 2010-2011. Govt. of India.

child labour and not making education compulsory, but to justify the provision of non-formal education and para- teachers and even more inequitable provision of schooling by the government. She argued that as long as such assumptions are held valid, policies will continue to remain the same.

Before Sinha, (1996), Weiner (1991) had asserted that India's low capita income and economic situation is less relevant as an explanation than the belief systems of the state bureaucracy. Since then, accumulating research evidence and civil society advocacy has succeeded in overturning this belief, and a Central Act has been passed to make education free and compulsory. Even so, data such the dropout figures quoted above, serve as affirmation to Rao, Cheng and Narain (2003) when they state that "other contextual factors including cultural belief systems and school related factors have moderated the effectiveness of educational policy" and that "solutions to problems such as non-enrolment and retention in primary schooling must not only adequately address their causes, but must also be sensitive to cultural beliefs and other contextual factors." (p. 172)

But which cultural beliefs and contextual factors need to be changed? The findings of a recent qualitative study commissioned by the Sarva Siksha Abhiyan in six states – Andhra Pradesh, Assam, Bihar, Odisha, Madhya Pradesh and Rajasthan during 2011-12 to look at inclusion and exclusion, have identified a number of exclusionary practices prevalent even today in schools of these states. (Ramachandran & Naorem, 2013) .

Apart from a number of exclusionary practices related to interaction, mid-day meals and drinking water, this study found a common belief among teachers that children from some backgrounds are not capable of learning- "*children from deprived backgrounds did not perform well in school.* When the researches presented with them with some evidences to the contrary, "*they said the bright children were exceptions' to the rule*" (Ramachandran & Naorem, 2013, p. 46)

Such beliefs about who are the 'good' students expressed themselves in terms of the seating arrangements within the classrooms (*In all the six states, the teachers mostly focused on 'bright' children who sat in the front rows, resulting in exclusion"* p. 46); and were conveyed to the children through the kinds of tasks that the teacher asked them to do. (There was a '*clear hierarchy of tasks from menial to educational, and teachers invariably called those students who according to them were the best and the brightest to perform the better tasks while poor and marginalized children were asked to do the menial tasks.*' p. 48)

The conditions of the lives of the poor children were reflected in their frequent absence from the classrooms. ('*the combination of being poor, first generation school goers, SCs or STs and being absent frequently were perhaps the most compelling reasons for their exclusion from school activities'*. p. 47) however, instead of helping the children to cope with the poverty of their lives, as well as with their unpreparedness to the school situation, when the children fell behind, '*the teachers ignored them*. (p. 47) Thus frequent absence meant that students were unable to keep pace with learning.

Although Ramachandran and Naorem (2013) themselves acknowledge that the study does not tell anyone anything they did not already know, they express satisfaction on account of the simple fact that this was a government sponsored study and as such it now "*makes it possible for policy makers to officially acknowledge the prevalence of exclusionary practices in schools and the urgent need to address them*" (p. 43)

Thus in order to reverse the tide of alienated dropouts from schools, and to ensure the learning of each child as her right, quality cannot be thought of as something separate from equality. For this the acceptance of an alternate philosophy, aim and methodology of education was needed and it is this humane and developmental standpoint of education that is reflected in the National Curriculum Framework 200, which in turn is in consonance with the philosophy that the RTE Act embodies.

In its quest for reform in education – which country can India learn from? Not just India, but most countries in the world are keenly studying the case of Finland, for in the past 30 years, Finland has 'progressed from

mediocrity to being a model and a 'strong performer', and "it has been able to create an educational system where students learn well, and where equitable distribution has translated into little variation in student performance between schools in different parts of the country". (Sahlberg, 2012, p. 20) Finland is consistently among the top scorers in the Programme for International Student Assessment (PISA) survey carried out by the Organisation for Economic Cooperation and Development (OECD). In the PISA surveys, Finland regularly emerges as the country with the smallest performance between schools in reading mathematics and science among all OECD countries.

Despite this, Sahlberg contends that "unlike many other contemporary systems of education, the Finnish system has not been infected by market based competition and high stakes testing policies. The main reason is that the education community in Finland has remained unconvinced that competition and choice with more standardized testing than students evidently require would be good for schools. The ultimate success of high stakes testing policy is determined by whether it positively affects student learning, not whether it increases student scores on a particular test" (Sahlberg, 2012, p. 23)

Although the Finnish case was not so well known at the time of the drafting of the RTE Act 2009, in 2004-5[6], it is interesting to note that many of the elements making up the story of educational success of Finland are similar to provisions in the Right of Children to Free and compulsory Education Act 2009.

For example, the RTE Act prohibits detention (section 16) and advocates Continuous and Comprehensive Evaluation (section 29(2) h), and that the teacher should assess the learning ability of each child, and accordingly supplement additional instructions. In the Finnish system too, according to Sahlberg, "it has been an important principle in developing elementary education in Finland that structural elements that

6 The essential provisions of this Act were drafted by a subcommittee of the CABE appointed in 2004, and which submitted its report in July 2005. The author was convener of the smaller group appointed by the subcommittee to prepare the actual draft provisions.

cause student failure in schools should be removed. That is why grade retention and over reliance on academic performance have gradually disappeared from Finnish schools. (p. 26).

In place of grade retention (which in the old school system in Finland as in the current system in India and was a method of differentiation for teachers) 'modular curriculum units' were introduced. Thus grade repetition in its conventional form has vanished from Finnish upper secondary schools and rather than repeating a grade, students only repeat those courses that were not passed satisfactorily. (p. 27)

As advocated for schools and classrooms across India today, in Finland, the idea of intervening 'early and often' became the norm: "the basic idea is that with early recognition of learning difficulties, and social and behavioural problems, appropriate professional support can be provided to individuals as early as possible' (p. 24); as did special education. It came to be recognised at all children at some stage or another need special support, and they receive it such that up to half of those students who complete their compulsory education at the age of 16 have been in special education at some point in their schooling. In other words, it is nothing that special anymore for students. This fact significantly reduces the negative stigma that is often brought on by special education.' (p. 24)

The RTE Act has an underlying message of inclusion, social justice and faith in the agency of the child to successfully construct learning given the appropriate learning environment and pedagogical support. The Act embodies its abiding concern in the making of it- that as a nation, we are shaped by education of every child, and the right of all citizens to equal opportunities. Its implementation too can start only with the belief that every child is indeed equal to every other child- and this is where the nations which top the education league tables today started - in the beliefs, and then acting on those beliefs. In supporting the NCF 2005, which has a similar consistent philosophy, the RTE also lays the foundation for a coherent approach – which, Sahlberg (2012) points out, was also important in the Finnish case: "Finland has shown that educational change should

be systematic and coherent in contrast with the current haphazard intervention efforts of many other countries.

However, nothing perhaps exemplifies the parallels between the thoughts underlying education in Finland and the RTE than the common belief that 'developing the capacities of schools is much more important than testing the hell out of students.' (Sahlberg, 2012, p. 40)

Conclusion

As seen in this paper, there is a common misconception that the Right of Children to Free and Compulsory Education Act, 2009 (more commonly referred to simply as 'the RTE') does not address 'quality of education'. Usually, for those holding such misconceptions, the notion of 'quality of education' appears to be limited only to 'outcome' of education, and is further narrowed to those among the outcomes that can be quantified and measured. However, as seen in this paper, the concept of quality of education refers to a much larger vision – a vision of society, a way of life, and of the role of education as a preparation of our young people to populate that envisaged world. As such the assessment of the quality of education for a future society can only be in terms of the extent to which it prepares children for that social order.

The issue of quality of education becomes problematic when the term quality is used as a verb, when it is and should be used a noun. In the context of that use of the term, 'quality education' tends to relate to something that is tangible, measurable, and quantifiable. However the process of getting education to fit into a 'measure' for its quantification, involves reducing, or cutting it down to the size of it that can be captured into that cage called its measure. However it also involves leaving out of the measure, much of what is the amorphous soul of education- the manner in which it engages the child, the way it is used by the child to create new concepts and ideas; the bond between the teacher and the child which propels the child to higher planes of development of mind, body, and spirit and confidence.

Those parts of what is education that are more easily entrapped into measures for quantification are usually 'behaviours' and actions such as the elicitation of the right responses to standard stimuli. Therefore, perhaps aptly in the behaviourist tradition, these limited measures which were adopted by us came to be known as the 'minimum levels of learning' for each grade. The parts that these minimalist measures failed to capture, were those related to the agency and participation of the child which should form essential elements of any education given to the child as a right.

However, these very elements of child agency and engagement are better represented in the view of construction of knowledge that informs the National Curriculum Framework (NCF) 2005- that is referred to in Sections 7(6) and sections 29 (1) and (2) of the RTE, and which together attempt, to the extent possible, to create the conditions for the child to have access to education of good quality.

Under the right conditions, education of good quality, can like a plant, take root and flower. As such the quality of education can hardly be separated from the conditions in which it emerges. And just like a delicate plant, it needs the right soil and climate, and the continuous and careful infusions of the right conditions such as a level field, non-discrimination, a happy and emotionally warm classroom environment, gentle care and positive regard – all conditions that the RTE sought to incorporate into the legislation through its many provisions that all seek to ensure the quality of education, without so much as using the words 'quality' and 'outcomes'. But like a plant, it will need time to grow, become deep rooted, will need constant infusions of finance, shielding from the harsh administration centred testing, and gentle care for the respect, and dignity of the child and the teachers.

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RIGHTS OF CHILDREN

Tackling Juvenile Delinquency under the International Child Rights Law

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Background

In the wake of a series of incidents[1] involving crimes especially, rapes committed by juveniles recently, the issue of juvenile delinquency has been under public focus. It started with the gruesome rape incident late last year in Delhi that had led to a massive public outrage. This outcry was accompanied by a demand for change in juvenile laws since one of accused was below the age of 18 years and hence falling in the category of a juvenile, to be tried in accordance with the procedure prescribed under the Juvenile Justice (Care and Protection of Children) Act, 2000[2] (Juvenile Justice Act). The public, at large was in favour of severe deterrent punishment being meted out to the culprit, considering the brutality involved in the crime committed leading to serious injuries and to which the victim finally succumbed.

People were especially, perturbed that the existing provision in the Act allows delinquent juveniles to get away with a punishment of maximum three years imprisonment in an observation/special home even after committing serious crimes. The existing law, it was argued, encourages delinquency among juveniles. It was also feared by many that because of

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1 Delhi rape case was followed by recent rape case in the Shakti Mill Complex, Mumbai. Similar cases have also been reported in other parts of the country.

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

these provisions in law, children, especially in the age group of 16-18 years are being used by hardened criminals for committing crimes. Hence, there was an argument for reducing the maximum age for defining a juvenile from 18 years to 16 years.

In the events that followed, on expected lines, the juvenile accused in the rape case of Delhi was adjudicated by the Juvenile Justice Board and handed out a punishment of only three years stay in observation/special home as per the Act. This led to further dissatisfaction with the legal position on the issue as it prevailed in the country and in fact, a Special Leave Petition[3] was filed and admitted in the Supreme Court challenging the existing definition of juvenility. The petitioner wanted that the accused should have been tried, in this case, by the sessions court as required while dealing with an adult.

Divergent Legal Views

Legal experts have taken varying positions regarding the issue of change in juvenile laws. One view[4] which seeks to adhere to the UN Convention on the Rights of the Child[5] adopted by the General Assembly in 1989 and ratified by India in 1992 and other instruments takes a position that justice cannot follow a tough act and that equating juveniles with adult criminals is neither scientifically correct nor normatively defensible. It has been argued that while competence related abilities mature by 16 years of age, the capacity relevant to decisions about criminal culpability continues to mature till young adulthood and therefore, adolescents should be punished less harshly than adults. The Rules[6] framed and notified by the Ministry of Women and Child Development, Government of India in 2007 under the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 also follow this principle when they state that

3 SLP(criminal) 1953 of 2013 see judis.nic.in/supremecourt/imgs1.aspx?filename=40679

4 See Pande B.B. (2013) "Justice cannot follow a tough act" The Hindu, NOIDA/Delhi 24 September, 2013.

5 UN Convention on the Rights of Child, for full text see www.gov.mu/.../convention%20on%20the%20rights %20of%20the%20c...ý

6 Juvenile Justice (Care and Protection of Children) Rules, 2007, for full text see wcd.nic.in/icpsmon/pdf/jjrules 2007.pdfý

mental and intellectual maturity of a juvenile or child or a child in conflict with law is considered insufficient throughout the world and hence age of criminal responsibility cannot be fixed too low an age level.

There is also a view[7] that even the UN Child Rights Convention allows sufficient leverage to try a culprit even below 18 years of age by adult courts as is the practice in some of the western countries. It has been argued that protection sought to be provided to the juveniles should be balanced with the objective to protect the vulnerable members of society from violent crimes by persons below 18 years of age and hence, decision to amend the existing law should be taken in accordance with this need.

Protection of society, especially its vulnerable members is indeed a very important objective and laws should indeed be shaped or modified, if necessary, to achieve this end. In fact, the State should use all possible resources at its command towards protection of life and property of its citizens. Long-term sustainability of a nation as an entity against disintegration due to civil unrest and anarchy depends largely on how secure, both physically and economically, the citizens feel under the State authority. But in order to be certain if the protection of society against juvenile crime is possible within the ambit of existing International Child Rights Law, it would be useful to examine the important instruments that constitute this law as well as the status of its implementation within our country.

International Child Rights Law

While the UN Convention on the Rights of Child was adopted in 1989 by the General Assembly, some other important instruments were also drafted and accepted by International Community both, before and after this historic event, pertaining to child rights. These instruments deal at length with not only treatment of children involved in deviant behaviour or activities but also the measures to be undertaken by the State in order to prevent delinquent behaviour among juveniles. This paper will deal

7. See Vishwanathan Aparna, 2013 "Balancing the Juvenile Act" the Hindu, 9 September, 2013 available at www.thehindu.com/.../balancing-the-juvenile-act/article5108496.ece

with each of these aspects separately and in the context of conditions prevailing in the country.

The Beijing Rules, 1985 and UN Rules for Protection of Juveniles Deprived of their Liberty, 1990

The UN Standard Minimum Rules[8] for Administration of Juvenile Justice (The Beijing Rules) adopted by the General Assembly in 1985 seek to deal effectively, fairly and humanely with juvenile in conflict with law. They also seek to ensure that juvenile justice services are systematically developed so as to improve the competence of personnel involved in these services. They further seek to ensure efforts to establish in each national jurisdiction, a set of laws especially applicable to juvenile offenders in order to meet their varying needs. These Rules require that juvenile justice system shall emphasise on the well being of the juvenile and shall always be in proportion to the circumstances of both the offender and the offence.

UN Rules for Protection of Juveniles Deprived of their Liberty, 1990[9] seek to provide appropriate facilities of accommodation, physical and mental health, education, vocational training and work, recreation and medical care for the juveniles under detention. It is also provided that all juveniles should benefit from arrangements to assist them in returning to society, family life, education or employment after release. These Rules lay emphasis on the personnel handling these juveniles to be well trained and appointed as professional officers with adequate remuneration to attract suitable men and women.

It is generally seen that the primary objective of the UN Convention on the Child Rights, the Beijing Rules as well as the UN Rules for Protection of Juveniles Deprived of their Liberty is to provide an opportunity to the children going astray to reform themselves and get purposefully rehabilitated in productive vocations so as to become good citizens of the country and useful members of society. This approach serves as the

8. *See www.un.org/documents/ga/res/40/a40r033.htmý* for more details on the Beijing Rules, 1985.

9. See for more details : www.un.org/documents/ga/res/45/a45r113 htm.

basis of the Juvenile Justice (Care and Protection of Children) Act, 2000 in India. In fact, the preamble of the Act also recognizes the need for re-enacting the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the child as well as the Beijing Rules, 1985 and the UN Rules for Protection of Juveniles Deprived of their Liberty (1990) and other relevant instruments. However, a large number of provisions in this Act and Rules framed there under still remain to be properly implemented. Some of these provisions relating to reforming the juveniles are examined below :

(i) Rule 50 of the Rules under the Juvenile Justice Act, gives a detailed procedure that shall be followed in respect of the newly admitted juveniles in the homes under the Act. The Rule seeks to ensure, inter-alia, the following :

- The immediate and urgent needs of the juveniles are attended to like appearing in examinations, letter to parents and other personal problems.
- Every newly admitted juvenile or child shall be allotted a case worker from amongst the probation officers or child welfare officers or social workers or counsellors attached to the institutions.
- Juveniles observe institutional discipline and standards of behaviour, respect for elders and teachers, besides daily routine, peer interaction and optimum use of developmental opportunities.
- A case history of the juvenile or the child admitted to an institution shall be maintained as per prescribed form, which shall contain information regarding his socio-cultural and economic background and these information may invariably be collected through all possible and available sources, including home, parents or guardians, employer, school, friends and community.

- A well-conceived programme of pre-release planning and follow-up of cases discharged from special homes should be organised in all institutions in close collaboration with existing governmental and voluntary welfare organisations.
- An individual care plan for every juvenile or child in institutional care shall be developed with the ultimate aim of the child being rehabilitated and re-integrated based on their case history, circumstances and individual needs and the individual care plan. All care plans shall include a plan for the juvenile's or child's restoration, rehabilitation, reintegration and follow-up.
- Further, Rule 2(h) of the Rules defines the term "individual care plan" to cover both the juveniles and children in need of care and protection. The aim of this care plan is to restore the dignity and self-esteem of the juvenile/child and nurture him into a responsible citizen. Accordingly the plan is required to address the following needs of a juvenile or a child:
    - Health needs
    - Emotional and psychological needs
    - Educational and training needs
    - Leisure, creativity and play
    - Attachments and relationships
    - Protection from all kinds of abuse, neglect and maltreatment
    - Social mainstreaming
    - Follow-up post-release and restoration.

In actual practice, however, there is very little implementation of the above requirements in most of the homes. The individual care plans are not being given the importance they deserve, especially with regard to the correctional services required to be provided in the juvenile homes. In fact, the rules also need to lay more emphasis on correctional/ reformatory

aspects of the juvenile in conflict with law and equal effort should be there to put it actual practice.

(ii) Section 44 of the Juvenile Justice Act provides for setting up of after care organizations and requirement of State Governments to make rules under this Act, *inter alia,* for the preparation and submission of a report by the probation officer or any other officer appointed by that Government in respect of each juvenile or the child prior to his discharge from a special home, children's home, regarding the necessity and nature of after-care, supervision thereof and for the submission of report by the probation officer or any other officer appointed for the purpose, on the progress of each juvenile or the child.

As per the Juvenile Justice Rules, after care organisations are to be set up for the purpose of having in place an aftercare programme to which juveniles may be referred for a smooth transfer from institutional life to mainstream society for social reintegration. These organisations can look after them till they reach the age of 21 years. Very few such organisations actually exist on ground. The recent Integrated Child Protection Scheme (ICPS) provides for this component but it has not made much difference so far at least on this aspect.

(iii) Rule 55 of the Juvenile Justice Rules provide that every institution shall have a Management Committee for the management of the institution and monitoring the progress of every juvenile and child. The Management Committee shall meet every month to consider and review, inter-alia, the custodial care or care in the institution, housing, area of activity and type of supervision or interventions required; individual problems of juveniles and children, provision of legal aid services and institutional adjustment, leading to the quarterly review of individual care plans; vocational training and opportunities for employment; social adjustment, recreation, group work activities, guidance and counselling; review of progress, adjustment and modification of residential programmes to the needs

of the juveniles and children; and planning post-release or post-restoration rehabilitation programme and follow- up for a period of two years in collaboration with aftercare services. This provision also remains more on paper than practice. Many States have not provided for the minimum required staff leave alone setting up of Management Committees for all these Institutions.

(iv) Rule 87 of the Juvenile Justice Rules indicates an important role assigned to the Probation Officer or Child Welfare Officer or Case Worker. Every probation officer or child welfare officer or case-worker is required to carry out all directions given by the Board or Committee or concerned authority and perform, inter-alia, duties, functions and responsibilities like making social investigation of the juvenile through personal interview and from the family, social agencies and other sources; clarifying problems of the juvenile or the child and dealing with their difficulties in institutional life; participating in the orientation, monitoring, education, vocational and rehabilitation programmes; developing a care plan for every child in consultation with the juvenile or child and following up its implementation; participating in the pre-release programme and helping the juvenile or the child to establish contacts which can provide emotional and social support to the juvenile or the child after their release; establishing linkages with voluntary workers and organizations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up.

On ground, many of the institutions do not have these personnel. Where the posts are filled, the individuals manning them are not properly trained and hence, unsuitable for the job at hand. Thus, whereas the objective of the Act was to provide for a proper reformatory and correctional system, the system is far from being satisfactorily operational in practice. The result of these important gaps is that neither the juveniles are subject to scientific correctional environment in the observation/special homes during their confinement nor are they provided for a smooth transition into the mainstream society. The juveniles, therefore, on their

release enter the society with similar frame of mind and attitudes as was responsible for their deviant behaviour early on. This leads to scope of repeat crimes by the juvenile offenders on their release. In such a situation, protection to society members cannot be guaranteed.

In fact, in a large number of states, the implementation of the Act alone leave much to be desired. This has been also documented in some of the reports based on the visits of Special Rapporteur(s) of NHRC to these institutions. These reports highlight the importance of a programme of rehabilitation for children lodged in institutions. The reports also lament about the lack of importance given to the duties of a probation officer under the Act by the State Governments. They also indicate poor standards of counselling services being provided here[10]. In some states, where physical infrastructure is in place in the form of newly constructed observation homes, even here, there is lack of well-trained staff who are having sufficient knowledge of correctional techniques. Juvenile inmates running amok or involved in undesirable activities are a common feature of these homes. Most of the staff lacks motivation due to the fact that promotional avenues are scarce. In many cases, sanctioned posts are vacant or filled with adhoc staff who are neither conversant nor equipped to deal with the duties to be performed. This was not the scenario which was envisaged under the Beijing Rules or the UN Rules of 1990.

There is therefore, need for governments to show greater commitment towards implementation of the Act. Especially, strong emphasis is required on the capacity building of the probation officers and case workers on these aspects so that the juveniles emerging out from a stay in these homes are actually reformed and their personalities corrected to make them benign and productive members of society. The Management Committees responsible to oversee the management of such institutions should be in place and they need to see to it that all these aspects are implemented in accordance with the provisions of Act and Rules framed thereunder.

10 The latest of such reports was on the basis of a visit to Juvenile Homes in Allahabad, Uttar Pradesh by the Special Rapporteur, NHRC in November, 2012

Government of India is making regular financial contributions to the United Nations Interregional Crime and Justice Research Institute (UNICRI). We need to make use of their research and training output for prevention and control of juvenile delinquency. Domestically also, the institutions like Institute of Criminology and Forensic Sciences as well as National Institute of Public Cooperation and Child Development (NIPCCD), National Institute of Social Defence (NISD) should lay more emphasis on trainings for probation officers and child welfare workers.

The Riyadh Guidelines, 1990

It would also be useful here to recall that the United Nations General Assembly had by a Resolution dated 14th December, 1990, adopted and proclaimed a set of Guidelines for the Prevention of Juvenile Delinquency, popularly known as Riyadh Guidelines[11]. Some of the fundamental principles on which these guidelines are based on are :

- A child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.
- Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.
- Labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

These guidelines, among other things, lay major emphasis on family environment and the need for governmental and societal efforts to preserve the integrity of the family. The guidelines also lay emphasis on efforts on the part of government to make public education accessible to all young persons. Furthermore, education system, apart from academic and

11 *See www.un.org/documents/ga/res/45/a45r112.htmý* for more details on the Riyadh guidelines, 1990

vocational training activities should devote particular attention to teaching of basic values and developing respect for social values of the country, in which the child is living. They also place a responsibility on the media for promoting egalitarian values in the society. Community based services which respond to special needs of children have been emphasised. The need for basic values to be imparted as part of education to children was also emphasised upon earlier in Article 29 of the UN Convention on Child Rights, adopted by the General Assembly in 1989.

It would be interesting also to see some aspects of the juvenile crime related statistics in the context of the Riyadh guidelines. It is observed that the share of crimes under the Indian Penal Code (IPC) committed by juveniles is only 1.1 per cent of total crimes under IPC in the country during 2011, as per latest data available from the National Crime Records Bureau (NCRB)[12]. In fact, this low share of juvenile crime in total crime reported in the country is in itself a serious and vital argument against need for change in existing juvenile laws.

The NCRB data further indicates that 63.9 per cent of the juveniles apprehended for IPC and SLL crimes during 2011 were belonging to the age group of 16 to 18 years. An argument could therefore, be put forward that juvenile delinquency may be reduced to a large extent if the age of determining a juvenile is reduced from 18 years to 16 years. However, the counter view that severity of punishment is not on the minds of a person (read juvenile) while he is committing crime and hence, this may not have the desired result.

However, more noteworthy is the fact as per the NCRB, 81.4 per cent of the juveniles arrested across the country during 2011 were those who were living with their parents and only 5.7 per cent were those who could be categorized as homeless children. At the same time, the available data also indicates that 56.7 per cent of the juveniles arrested during 2011 belonged to families with an annual income up to ₹ 25,000/- and another 26.7 per cent of the juveniles arrested belonged to families with annual

12 See NCRB, 2012, 'Crime in India – 2011 statistics', Ministry of Home Affairs, New Delhi.

income between ₹ 25,000 to ₹ 50,000. Yet another set of data indicates that 86.9 per cent of the juveniles arrested during 2011 were having education level below matriculation/higher secondary.

One can conclude from above statistics that there is a high probability of a juvenile who is delinquent in India having two attributes namely, belonging to and living in a family with a low level of income (not more than ₹ 50,000 p.a.) and secondly, having dropped out of education before reaching the primary or senior secondary level.

It is, therefore, necessary that if we are to bring down or prevent juvenile delinquency, the focus of government policies needs to be on public education and improvement in our drop-out rates on priority basis. Even more important is the need to incorporate value based education in our education curriculums. The other important need is to strengthen families. The UN Convention on Child Rights lays major emphasis on the need for a child to be brought up in a family environment. However, it is not a sufficient condition that the child is living within a family as the NCRB data indicates. There is need to strengthen families at the lower end of the ladder economically and reduce disparities in incomes. Present globalization of the economy and consumerism has led to availability of a wide variety of goods in the market to which the children from economically weaker sections are not oblivious. This awareness and sense of deprivation is exacerbated by the reach of television and cinema. Pent up desires left unsatisfied leads to frustration especially at the nascent stage of adolescence resulting in delinquency. Needless to say, there should be simultaneous emphasis upon virtues of simple living and avoidance of ostentatious show of wealth as part of the education. Media also has an important role to play here.

In conclusion, there is need for fulsome implementation of the provisions of the Juvenile Justice Act as well as the Rules notified thereunder especially those relating to mainstreaming of the juveniles detained in the institutions into the society. Most of these provisions have been derived from the Rules and guidelines discussed in the paper

but which have not been implemented in true spirit. Several measures also need to be put in place by the Government in order to prevent juvenile delinquency along the lines suggested by the Riyadh Guidelines. The Government not only needs to put in place more egalitarian policies and take vigorous initiatives to lift families from low income levels but also encourage the availability of increased community services for the citizens, especially those in the adolescent age group.

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RIGHT AGAINST TORTURE

The Convention Against Torture – India's Ratification

*Narinder Singh**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations, without a vote, by resolution 39/46 of 10 December 1984.

Article 2 of the Convention requires States Parties to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. The article further provides that there can be no justification of torture, and no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked to justify or permit acts of torture. Superior orders also cannot be invoked to justify acts of torture.

All States Parties are required to ensure that all acts of torture are made offences under its criminal law and punishable by appropriate penalties which take into account their grave nature. Attempts to commit torture and acts of complicity or participation in torture are also to be made punishable as offences (Article 4).

The Convention also requires Each State Party to ensure in its legal system that the victim of an act of torture obtains redress and has an

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enforceable right to fair and adequate compensation, including the means for a full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation ***(Article 14).***

At present, there are 154 States parties to the Convention. Although India signed the Convention on 14th October 1997, it is yet to ratify the Convention.

The question of India's non-ratification has been raised at various forums. India has on several occasions declared that it intends to ratify the Convention but cited lack of specific implementing legislation as the factor holding up the process. At the same time India has also asserted that existing legislations and constitutional remedies provide a sufficient basis to carry out its obligation under Article 7 of the International Covenant on Civil and Political Rights to prevent and punish acts of torture.

This article examines the various reasons given for non ratification, the provisions of existing laws, the Prevention of Torture Bill, 2010 presently before Parliament to give effect to the provisions of the Convention, as well as official positions of the Government of India before the human rights treaty bodies in order to assess whether there are any legal impediments in terms of Indian law for India to ratify the Convention immediately.

Consideration by the Human Rights Committee

India acceded to the International Covenant on Civil and Political Rights on 10 July 1979. Article 7 of the International Covenant on Civil and Political Rights stipulates that:

> *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."*

Under Article 40 of the Covenant, States /Parties to the Covenant have undertaken to submit reports on the "measures they have adopted

which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights". The first such report is to submitted within one year of the entry into force of the Covenant for the States Parties concerned, and thereafter whenever the Committee so requests.

In it's Third periodic report under Article 40 of the Covenant (UN Doc. CCPR/C/76/Add.6) India strongly asserted that:

> *"The requirements of article 7 of the Covenant are met sufficiently in the Indian legal system. In addition to the constitutional prescriptions, various sections of the Indian Penal Code prohibit infliction of hurt, grievous hurt or bodily harm or injury especially to extract any confessions from any person." (para 63)*

The Report also made the following detailed statement in support of the above assertion that there are adequate laws in place to implement Article 7 of the Covenant:

> *"64. The Indian Constitution and the laws made thereunder have elaborate and stringent provisions to safeguard the fundamental rights of all individuals and every contravention is subject to judicial remedies. Any person subjected to torture or to cruel, inhuman or degrading treatment or punishment can move the higher courts for various judicial remedies under the law, under articles 32 and 226 of the Constitution. Apart from this, the laws make full and adequate provisions against torture whether by an individual or law enforcement agencies.*
>
> *"65. To further safeguard against the use of torture in custody there are a range of legal provisions which are given below: (a) Section 54 of the Criminal Procedure Code confers upon an arrested person the right to have himself medically examined. Such a request can be addressed to the magistrate;*
>
> *(b) A further safeguard is that a confession made to a police officer is not admissible in evidence (sects. 25 and 26 of the Indian Evidence Act);*
>
> *(c) Section 162 of the Criminal Procedure Code also provides that no statement of a witness recorded by a police officer can be used for any*

purpose other than that of contradicting his statement before the court. This section also forbids the police officer to obtain the signature of a person on the statement made by him;

(d) The Indian Evidence Act (sect. 24) also provides that when admissible, confession must be made voluntarily. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings;

(e) An additional safeguard is that under section 164 of the Criminal Procedure Code, it is for the magistrate to ensure that confession or a statement being made by an accused person is voluntary.

"66. There are also a range of penalties prescribed for offences which may amount to torture or cruel, inhuman or degrading treatment. Section 330 of the Penal Code prohibits causing hurt to extort confession or information to compel restoration of property. Under Section 331, whoever voluntarily causes grievous hurt for the purpose of extorting any confession or any information which may lead to the detection of an offence, or for the purpose of compelling or causing the restoration of any property, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to a fine.

"67. When the liberty and dignity of an individual are encroached upon by inhuman or degrading treatment, remedies are also available under articles 32 and 226 of the Constitution.

"68. It was also mentioned in India's second report that the question of cruelty to prisoners is dealt with by the Prisons Act, 1899. If any excesses are committed on a prisoner, the prison administration is held responsible for them. Under section 176 of the Criminal Procedure Code, 1973, an inquiry by a magistrate is compulsory where the death of a person occurs in police custody. Since the last report, it may be noted that the Indian courts have awarded compensation for custodial violence or death in certain cases (see Nilabeti Behara v. State of Orissa, W.P. Cri. No. 488 of 1988) and suggested detailed measures to the State Government to prevent, check and monitor custodial violence (see Calcutta High Court in M.P. Chakraborty, P.K. Dube v. State of West Bengal c.o. No. 374 (W) of 1989). The National Human Rights Commission has further instructed that all instances of custodial death, rape, etc., be brought to its notice

within 24 hours of occurrence. These cases are investigated and remedial measures prescribed."

The Committee considered the third periodic report of India (UN Doc. CCPR/C/76/Add.6) at its 1603rd to 1606th meetings on 24 and 25 July 1997.

Introducing the Report, Mr. Ashok Desai, the Attorney General, stated that the Government of India "had decided to become a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (UN Doc. CCPR/C/SR.1603, at para 5).

He also informed the Committee that the Supreme Court had held that any form of torture would contravene article 21 of the Constitution, and had set out detailed requirements relating to all cases of arrest and detention, failure to comply with which would render the responsible official liable to departmental action and guilty of contempt of court. (para 11), and also that although, as reflected in India's declaration relating to article 9, there was no statutory right to compensation for unlawful detention, the courts did award compensation for violation of a constitutional right and that the right to compensation had been strengthened by recent case law.(para 12).

During consideration of India's Report, several members expressed concern on the lack of proper implementation of Article 7 of the Covenant in India. One member stated that the Committee had received alarming information that " According to Amnesty International, torture was routinely practised in all 25 States of India; that organization had mentioned the names of over 400 individuals who had died while in custody at police stations, in their cells or in hospitals to which they had been taken after being illtreated." (UN Doc. CCPR/C/SR.1604, para 14).

Other members stated that while "...the existing legislation, some but not all of which was excellent, was not being fully implemented..." (para 17), that "torture was routinely practised in police stations" (para 9), that it was clear from the available information that there were far fewer investigations of torture cases than there were complaints and

reported incidents.and that respect for the right to life made it essential for any death in custody to be fully investigated by an independent body. (para 19)

One member stated that "The instances of torture and excessive use of force by the security forces were worrying" and urged the Government to ensure that independent judicial inquiries were conducted in all cases of death subsequent to operations by the police or security forces and to allow the National Human Rights Commission to carry out its own investigations into all acts of violence attributed to the security forces. He further said that all obstacles to the investigation of cases of torture must be removed, and the Special Rapporteur on torture must be permitted to visit India. (UN Doc. CCPR/C/SR.1606, para 43)

Another member said that it was hard to see why there were still so many cases of torture and death in detention, that the Indian Government could not expect the Committee to be satisfied with such a situation and urged review of all the laws that left room for abuse of authority. (para 47).

At its 1612th meeting (sixtieth session), held on 30 July 1997, the Human Rights Committee adopted its concluding observations (UN Doc. CCPR/C/79/Add.81) on India's Report. On Article 7, it stated:

> *"23. The Committee expresses concern at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for habeas corpus are not always complied with, particularly in disturbed areas. It also expresses concern about the incidence of custodial deaths, rape and torture, and at the failure of the Government of India to receive the United Nations Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment."*

While welcoming the requirement by the National Human Rights Commission that all such alleged incidents be reported and investigated, and that all postmortem examinations be taped, the Committee recommended:

"(a) The early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill treatment or rape in police custody;

"(b) The adoption of special measures to prevent the occurrence of rape of women in custody;

"(c) The mandatory notification of relatives of detainees without delay;

"(d) That the right of detainees to legal advice and assistance and to have a medical examination be guaranteed;

"(e) That priority be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, and judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officials be taken into account in this regard."

Universal Periodic Review

The Universal Periodic Review (UPR) was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251 which involves a periodic review of the human rights records of all UN Member States. This mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States".

The reviews take place through an interactive discussion between the State under review and other UN Member States. Any UN Member State can pose questions, comments and/or make recommendations to the States under review.

India's Reports under this process have been reviewed in 2008 and 2012.

In it's First Report under the Universal Periodic Review (UN Doc. A/HRC/WG.6/1/IND/1), India stated that it had "signed the

Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Enforced Disappearances signaling its intention to respect the provisions of these treaties and is taking steps towards their ratification".

The Working Group on the Universal Periodic Review (UPR) held its first session from 7 to 18 April 2008. The review of India was held at the 8th meeting on 10 April 2008. (UN Doc. A/HRC/8/26).

The United Kingdom, France, Mexico, Nigeria, Italy, Switzerland, Sweden recommended that India's ratification of the Convention against Torture be expedited. Canada referred to reports of torture and abuse by and impunity of police and security forces acting under the AFSPA (para 27)

Switzerland also referred to the reported cases of torture noted by the Human Rights Committee and the Special Rapporteur on the question of torture and encouraged India to respond favourably to the renewed request made by the Special Rapporteur on the question of torture to be permitted to carry out a mission to the Indian territory as soon as possible.(para 56).

Replying to the discussion on the Convention against Torture, the Indian delegation "noted that India is a signatory and is committed to its objectives. The Indian Penal Code also has clear provisions regarding torture and the Supreme Court of India in a well known judgment, D. K. Basu vs. Union of India, has issued important guidelines on provisions of detention that are applicable throughout India. The ratification of the Convention against Torture is being actively processed by the Government." (para 46)

Second Review under UPR

In it's Second Report under the Universal Periodic Review (UN Doc. A/HRC/WG.6/13/IND/1), India made the following statement in relation to the Convention:

> *"29. India has signed the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A Bill introduced in the Parliament was passed in the Lok Sabha in 2010. In Rajya Sabha, it was referred to a Parliamentary Select Committee which has made certain recommendations. These are under examination by the Government. Although India has not yet ratified the Convention, Article 21 and other Articles of the Constitution of India and the relevant provisions under the Indian Penal Code, 1860, provide for adequate safeguards. The Supreme Court of India, through its judgements, has also laid down exacting standards on this issue." (para 29)*

The Working Group on the Universal Periodic Review (UPR), held its thirteenth session from 21 May to 4 June 2012. The review of India was held at the 8th meeting on 24 May 2012. The delegation of India was headed by Goolam E. Vahanvati, Attorney General of India. At its 13th meeting, held on 30 May 2012, the Working Group adopted the report on India.

Out of a total of 169 recommendations made on India's Report, 23 related to the Convention against Torture, urging India to expedite the ratification of the Convention and its Optional Protocol, and adopt robust domestic legislation to this effect, to provide effective to justice and to ensure that the domestic legislation is consistent with the Convention and to end impunity for security forces accused of committing human rights violations. (UN Doc. A/HRC/21/10, para 138).

Several UN Members referred to the Convention against Torture. Timor-Leste noted that while the Prevention of Torture Bill had been passed in the Lower House of Parliament, the Select Committee of the Upper House identified several shortcomings with the Bill. (UN Doc. A/HRC/21/10, para 42). The United Kingdom noted that India's National Human Rights Commission and civil society had reported a significant numbers of cases of torture involving police and security authorities (para 47). Australia expressed regret that India had not ratified CAT and was particularly concerned about the pending Draft Prevention of Torture Bill. (para 56). Italy noted India's human rights challenges which it identified

as including alleged cases of torture. (para 101). Kyrgyzstan requested further information on measures adopted by the Supreme Court to strengthen standards in combating torture.(para 104)

Replying to the discussions, India stated that:

> *"... the Convention against Torture may only be ratified once the definition of torture was fully reflected in domestic legislation. The Lok Sabha passed the Prevention against Torture Bill in 2010 but the Rajya Sabha referred the Bill to a Select Committee whose report was being examined. Nevertheless, there were sufficient provisions in Indian law prohibiting torture, including the Indian Penal Code. Also, the right to life under Article 21 of the Constitution encompassed the right to live with dignity. The provisions in the Constitution and Criminal Procedure Code against self-incrimination, the obligation to produce an arrestee before a magistrate within 24 hours of such arrest and to ensure that the arrestee is informed of the grounds of arrest, provide further safeguards." (para 74)*

From the above, it may be seen that before the UN human rights bodies, India has consistently claimed that it has adequate domestic laws to prevent and punish acts of torture, while at the same time insisting that enactment of further domestic legislation is essential before India can ratify the Convention and also declaring that it intends to ratify the Convention.

Consideration by Parliament

Lok Sabha

The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on 26th April 2010 (Bill No. 58 of 2010). According to the S*tatement of Objects and Reasons*:

> *"… Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture". Although some provisions relating to the matter exist in the Indian Penal Code yet they neither define "torture" as clearly as in Article 1 of the said Convention nor make it a criminal offence as called for by Article 4 of the said Convention. In the circumstances, it is necessary for the ratification of the*

Convention that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code or bringing in a new legislation."

Section 3 of the Bill as passed by the Lok Sabha (Bill No. 58-C of 2010) defines torture in the following terms:

" Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,—

(i) grievous hurt to any person; or

(ii) danger to life, limb or health (whether mental or physical) of any person,

is said to inflict torture: ….."

The Bill was debated and passed by the Lok Sabha on 6th May 2010. During the debate, members highlighted its importance as a "very far-reaching Bill …. which we should have discussed at length in this House because it concerns human rights, it concerns human values and it concerns the dignity of human being." It was emphasized that torture is simply wrong, morally unacceptable and legally unjustifiable and cannot be condoned.

The view was also expressed that this was an important Bill, which should be sent to the Standing Committee on Home Affairs for a detailed discussion and for taking evidence of experts and only after the discussion and only after the Report of the Standing Committee on Home Affairs, should it be re-introduced and discussed before it is passed.

Members also expressed concern at the long delay in India's ratification of the Convention, at the widespread use of torture by the police, the lack of any provision on the person who orders the commission of the act of torture, the six months time limit for filing complaints as torture victims who are in custody may not be in a position to make complaints while they are in custody, the need to include provisions on prevention,

setting up of independent Committees both at the Centre and at State levels to deal with complaints of torture, the inadequacy of the punishment prescribed, the requirement for governmental approvals for filing complaints of torture and the difficulty in obtaining such sanctions, and the lack of any provisions on compensation to victims and their families. References were also made to the reports of the NHRC on the incidence of torture and custodial deaths in India.

(See Lok Sabha website: http://164.100.47.132/LssNew/psearch/Result15.aspx?dbsl=2437)

The Home Minister, replying to the debate, gave the following clarifications: (1) that the Bill defines 'torture' in a very special context, namely, when it is inflicted by a public servant or abetted by a public servant for the purposes to obtain from him or a third person information or confession, which is the definition in the Convention, and is the definition in the Bill, and that the definition of public servant in the Bill is without prejudice to section 21 of the Indian Penal Code which defines public servant; (2) that under the Criminal Procedure Code, a complaint need not be filed by the person who has been abducted or kidnapped, and that complaints regarding torture, therefore, can be given by anyone who is the next friend or next of kin of the victim; (3) that Section 357 of the Criminal Procedure Code contains detailed provisions regarding compensation and there is no need to carry all those provisions into this Act because the Criminal Procedure Code will any way apply; that section 176 of the Criminal Procedure Code deals in detail with custodial death and custodial disappearance, and it is not necessary to carry all that into this Act.

Rajya Sabha

The Draft Bill, as passed by the Lok Sabha, was submitted to the Rajya Sabha where it was considered by a Select Committee. The Committee deliberated at length on the various provisions of the Bill and also heard the views of a cross-section of experts and organisations including eminent jurists, academicians, civil servants, NGOs and members of the civil

society, and presented its Report to the Rajya Sabha on 6th December 2010.

See "Report of the Select Committee of the Rajya Sabha on the Prevention of Torture Bill, 2010, presented to the Rajya Sabha on 6th December 2010", available at:

http://www.prsindia.org/uploads/media/Torture/Select%20Committee%20Report%20Prevention%20of%20Torture%20Bill%202010.pdf

The Committee observed that the proposed Bill and the definition of Torture should be consistent with the provisions of the UN Convention, our Constitutional jurisprudence and the nation's irrevocable commitment to human rights and the basic dignity of the individual as guaranteed by our Constitution.

The main views and recommendations of the Select Committee in its Report to the Rajya Sabha on 6th December 2010 are as follows:

- The definition of "torture" should not only be consistent with the definition in the UN Convention, but should also be enlarged to include specific and serious offences against the human body as enumerated in the Indian Penal Code.
- The definition of "torture" was too narrow to advance the objective of the Bill as it was restricted with reference to the purpose thereof.
- The definition of torture should be suitably enlarged so as not to exclude acts generally known to be committed on persons in custody which cause severe physical and mental injury, pain, trauma, agony, etc.
- The Bill should also address the issue of torture of women in the context of sexual abuse in custody and of children.
- Some of the obvious acts of torture should be specifically mentioned by way of illustrations in the Bill itself, which would help to better interpret its provisions.

- Attempt to torture should also be provided for as an offence.
- For the purpose of culpability for torture, the definition of Public Servant should not be restricted to that provided under section 21 of the Indian Penal Code but should be enlarged to include Government companies or any institution or organisation including educational institutions under the control of the Union and State Governments.
- Punishment for torture should be commensurate with the gravity of the offence and that a minimum punishment of three years be provided to make the law more deterrent.
- In the case of fine, a minimum amount of one lakh rupees should be payable by the torturer.
- The Bill should deal with the issue of custodial deaths, and include suitable provisions for the rehabilitation of the victims of torture. The Bill should also include guidelines for arriving at a fair and adequate compensation to the victim and in case of death, to the dependants.
- The Committee recommends that a limitation period of two years from the date on which the alleged offence was committed for filing of the complaint, would give sufficient time to enable the victim of torture to initiate proceedings against the persons responsible for torture. In order to meet exceptional situations, the Court must have the discretion to entertain complaints even beyond the period of two years so as to advance the ends of justice.
- The Bill should specifically provide for registration of the complaints according to law and if the victim is disabled for reasons of health, financial incapacity or otherwise, a complaint may be filed through a duly authorised representative or friend.
- The investigation of complaints of torture should be impartial, time-bound and accountable and the accused must not be allowed to interfere with the course of investigation.

- While there is need to retain the provision for prior sanction of the competent authority before proceeding against the public servant concerned so as to insulate public servants from false, frivolous, vexatious and malicious prosecution, such a provision should not be used to shield those officials who have, in fact, intentionally tortured or abetted the torture of individuals. Thus, the Committee felt that relevant provisions needed to be suitably amended so as to provide adequate safeguards for honest and upright officials, while at the same time ensuring that the sanction provision was not used to deny the victims of torture their right to justice through speedy trial. Accordingly, the Committee recommended: that if the requested sanction is not granted within a period of three months from the date of application, it would be deemed to have been granted which would help ensure that the right of the victim is not lost due to procedural delays; and where sanction to prosecute is declined, the said decision should be supported by reasons.

- The fact that torture is committed on the command and instruction of a superior officer or is committed during a state of war, threat of war, or during a proclamation of emergency being in operation should not be a defence against prosecution for torture.

- Adequate provisions for the protection of the victims, complainants and witnesses may be incorporated in the Bill. Further, the Committee also stressed the need for compulsory medical examination of the victim at the time of being lodged in jail and a report of such examination should be transmitted to the concerned trial court.

- For the removal of all doubts the Bill should specifically state that it shall be in addition to and not in derogation of any other law for the time being in force and that in the event of inconsistency with any other law, its provisions shall prevail.

The recommendations made by the Select Committee are being examined by the Government of India.

Constitution of India

India's Second Report under the Universal Periodic Review in 2012, highlighted the protection to persons under detention provided by Article 21 and other articles of the Constitution as well as the Criminal Procedure Code. In particular, the Report stated:

> *"30...Apart from Article 21 itself, under Article 20(3) of the Constitution, no person accused of any offence can be compelled to be a witness against himself. Articles 22 (1) and (2) provide that a person who is arrested must be informed of the grounds of his arrest. The person also has the right to consult a lawyer of his choice. An arrested person must be produced before the nearest magistrate within 24 hours of his arrest. To protect persons in police custody from abuse, the Supreme Court has laid down specific rules that police must follow while making arrests, such as informing relatives of an arrest or detention, recording the arrest in a diary, medical examination norms, signing of "Inspection Memo" both by the arrestee and the police officer effecting the arrest etc. (e.g. D.K. Basu v. State of West Bengal (AIR 1997 SC 610)."*

(See UN Doc. A/HRC/WG.6/13/IND/1, at para 30)

Article 21 which is entitled **"**Protection of life and personal liberty" stipulates that "No person shall be deprived of his life or personal liberty except according to procedure established by law." This provision was examined by the Supreme Court in D.K. Basu v. State of West Bengal (AIR 1997 SC 610):

> *"22. … The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. … Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied*

to convicts, undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law."

Indian Penal Code

The offence of "torture" is not specifically defined in the Indian Penal Code. However, its provisions are clearly intended to punish acts of torture, as is clear from the Illustrations to Section 330.

Section 330 provides that any person who

"…voluntarily causes hurt, for the purpose of extorting from the sufferer or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Where grevious hurt is caused for the above mentioned purposes, Section 331 provides for a maximum punishment of ten years imprisonment.

Section 330 is accompanied by the following four illustrations referring to different situations to which this sections 330 and 331 apply, and in which the term "torture" is used:

"(a) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c) A, a revenue officer, tortures z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section. "

From the above, it is clear that under the Indian Penal Code, where either hurt or grievous hurt is caused for any of the purposes enumerated in these provisions, an act of torture is said to have been committed and is punishable thereunder.

It may be noted that under Article 1(1) of the Convention Against Torture, acts of torture are not limited to the purposes mentioned which it is clearly provided are only illustrative and not exhaustive. Accordingly, under the IPC, there is a higher burden of proof in that the purpose for which the particular act of torture was committed will also have to be proved to establish that the offence has been committed. However, even in cases where the specific purpose required under Section 330 is not established, the acts of torture may be punishable under the sections relating to "hurt" or "grievous hurt".

The Supreme Court in D.K. Basu Vs. State of West Bengal (AIR1997SC610), has also stated that "… Section 330, therefore, directly makes torture during interrogation and investigation punishable under the Indian Penal Code…." (para 41)

Court Decisions

The Supreme Court in D.K. Basu vs. State of West Bengal (AIR 1997 SC 610), referred to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) which provides that 'anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation' and recalled that the Government of India at the time of its ratification of the Covenant in 1979 had made a specific reservation to the effect that the Indian Legal system does not recognise a right to compensation for victims of unlawful arrest or detention. The Court declared that the reservation,

"however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement

> *of the fundamental right to life of a citizen. See with advantage Rudal Shah v. State of Bihar : 1983 Cri LJ 1644 ; Sebastian M. Hongrey v. Union of India : [1984]3SCR22 ; Bhim Singh v. State of J and K : 1986 Cri LJ 192 and Saheli v. Commissioner of Police, Delhi : AIR 1990 SC 513 . There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life." (para 42)*

Among the early cases where the beginnings of the law relating to payment of compensation to victims of state excesses was laid down is the Bhagalpur Blinding case [Khatri (II) vs. State of Bihar 1981CriLJ 597], in which the Court posed the following question while considering the relief that could be given by a court for violation of constitutional rights guaranteed in Article 21 of the Constitution: "...but if life or personal liberty is violated otherwise than in accordance with such procedure, is the Court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty?"

The question was raised in greater detail in a subsequent order in Bhagalpur Blinding case [Khatri (IV) vs. State of Bihar (1981) 3 SCR 145], in the following terms:

> *"If an officer of the State acting in his official capacity threatens to deprive a person of his life or personal liberty without the authority of law, can such person not approach the court for injuncting the State from acting through such officer in violation of his fundamental right under Article 21 ? Can the State urge in defence in such a case that it is not infringing the fundamental right of the petitioner under Article 21, because the officer who is threatening to do so is acting outside the law and therefore beyond the scope of his authority and hence the State is not responsible for his action? Would this not make a mockery of Article 21 and reduce it to nullity,…. So also if there is any threatened invasion by the State of the fundamental right guaranteed under Article 21, the petitioner who*

is aggrieved can move the court under Article 32 for a writ injuncting such threatened invasion and if there is any continuing action of the State which is violative of the fundamental right under Article 21, the petitioner can approach the court under Article 32 …, but where the action taken by the State has already resulted in breach of the fundamental right under Article 21 by deprivation of some limb of the petitioner, would the petitioner have no remedy under Article 32 for breach of the fundamental right guaranteed to him ? Would the court permit itself to become helpless spectator of the violation of the fundamental right of the petitioner by the State …?"

Answering the above questions, it was held that when a court trying the writ petition proceeds to inquire into the violation of any right to life or personal liberty, while in police custody, it does so, not for the purpose of adjudicating upon the guilt of any particular officer with a view to punishing him but for the purpose of deciding whether the fundamental right of the petitioners under Article 21 has been violated and the State is liable to pay compensation to them for such violation.

In Rudul Sah vs. State of Bihar (AIR 1983 SC 1086) the Supreme Court ordered compensation to be paid by the state to a person who had to undergo wrongful incarceration for several years. It held:

"10. … the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. …."

Nilabati Behera vs. State of Orissa AIR 1993 SC 1960 was a case where the son of the petitioner was taken in police custody from his home and was later found dead with bodily injurious on a railway track the next day. The Supreme Court, while directing the State of Orissa to pay compensation to the Petitioner observed:

> *"12. … award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort."*

In State of Madhya Pradesh vs. Shyamsunder Trivedi (1995) 4 SCC 262 I the Court observed:

> *"16. …. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve otherwise the common man may lose faith in the judiciary itself, which will be a sad day."*

Following this was the celebrated decision in D.K. Basu vs. State of West Bengal (AIR 1997 SC 610) where the Court recalled the entire law relating to payment of compensation by the state to a victim of state excesses. The Court also stated that

> *"35…we are of the view that it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. It is desirable that the officer arresting a person should prepare a memo of his arrest at the time of arrest in the presence of at least one witness*

> *who may be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. The date and time of arrest shall be recorded in the memo which must also be countersigned by the arrestee.",*

The Court then laid down a set of detailed procedural "…requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures". (para 36)

Conclusions

From the above, it may be seen that the Government of India, in its Reports on the International Covenant on Civil and Political Rights and under the Universal Periodic Review, has taken the unequivocal position that India has in place adequate laws to prevent and punish acts of torture, as well as for payment of compensation to victims of acts of torture, as required under the Convention Against Torture.

The Government has also been citing a number of judgments of Indian Courts, including of the Supreme Court, to support this claim.

Further, the Government has consistently stated that it intends to ratify the Convention, but that ratification is contingent on enactment of the necessary legislation which would define "torture" in terms of the Convention.

Considering the above, and also the concerns expressed in the Human Rights Council, by the NHRC, and the Indian Parliament at the delay in India's ratification, and taking into consideration that Indian courts have tried and punished offences relating to acts of torture under the existing laws, and have also been awarding compensation for violation of fundamental rights in such cases, even in the absence of a statutory provision, and considering that it is already seventeen years since India signed the Convention, there is no justification for any further delay in India's ratification. India should now ratify the Convention without any further delay, and not wait for adoption of the pending legislation.

VOLUME-12, 2013

IMPORTANT RECOMMENDATIONS/SUGGESTIONS OF THE COMMISSION

NHRC Recommendations on Human Rights Education*

Human Rights Education at School Level

(i) Human rights education should be an integral part of the right to education and there is a need to widen the scope of promoting human rights education at the school level. It should be so designed that it provides the child with life skills and also strengthens the capacity of the child whereby s/he is able to enjoy the full range of human rights and in the process promote a culture which is infused by appropriate human rights values.

(ii) In view of the above, it is not sufficient to introduce a stand-alone chapter on human rights or give information about human rights in small sections in any one of the text books, like social studies or civics. In particular, there is a need to review and examine the contents depicting existing prejudices related to caste, class, gender, religion, region, etc. that are embedded in various subjects in the existing school curriculum.

(iii) There is need to teach human rights education at all levels of the school system. Only then, human rights education would lead to promotion of rights based education in the schools. This would ensure respecting the human rights of all. There is also a need to look into the pedagogy adopted in schools for teaching of human rights.

* These recommendations were made on the basis of the National Conference on Human Rights Education, held on 14 December, 2012

(iv) Holding of mock courts on violation of human rights, mock Parliament sessions and enacting out other real-life situations in schools should be arranged regularly to allow children to participate in them actively. Other interesting methods could be working on projects in the neighbourhood and community.

(v) Teachers, too, need to be trained and sensitized to human rights education through pre- and in-service training, with the necessary knowledge, understanding, skills and competencies to facilitate the learning and practice of human rights in schools.

(vi) It would be ideal to train all teachers on human rights issues irrespective of the subjects being taught by them along with school administrators, school management committees and other staff.

(vii) The experiment initiated by the Government of Kerala of inviting children from different schools across the State to showcase their best practices with regard to human rights education on State-run television channel, can be considered for replication in other States as well.

(viii) All efforts towards human rights education in the school system should aim at providing a platform for systemic improvement in all schools across the country and promote citizenship and values education along with social and emotional development of the child.

(ix) There is need to provide guidelines/list of do's and don'ts on key components of human rights issues like 'no to corporal punishment, eve-teasing, ragging', etc. These must be prominently displayed in schools on notice boards. Likewise, a scheme of incentives should be developed to motivate students so that they can become responsible citizens.

(x) One complete month from 11 November [National Education Day] to 10 December [Human Rights Day] should be observed for 'Human Rights Education and Training'.

Human Rights Education at University & College Level

(xi) Human Rights Education at the university and college level should not be limited only to a formal degree in 'Human Rights' at the Bachelor's, Master's, MPhil or PhD level having a specific syllabus, course work, examination, evaluation, etc. This kind of an approach will only produce scholars in the field of human rights. The idea is to disseminate information on human rights issues and entrench a human rights culture whereby everybody is encouraged to respect self and others.

(xii) It would be appropriate to offer introductory courses on human rights for students of all disciplines at the college level. At the university level, advanced courses addressing human rights issues could be developed in different disciplines of study.

(xiii) It would be worthwhile to develop strategies for infusing human rights as a cross-cutting issue into all the disciplines taught at the university and college level. In no way, it should be restricted to law or social sciences but also disciplines in the technical and scientific fields, for instance management and engineering as they relate to development, environment, housing; medicine as it relates to child care, public health, women's reproductive rights, HIV/AIDS, disability; biotechnology and architecture as they relate to food, housing and environment, etc.

(xiv) The conventional approach for teaching human rights education whereby students are familiarized wirh important human rights concepts, related to declarations and treaties, plans of action, etc. should be done away with. Instead there is a need to adopt a holistic approach towards teaching and learning of human rights education at the university and college level by integrating it in programme objectives, content, resources, methodologies, assessment and evaluation. The idea is to look beyond the classroom and interact with the outside world.

(xv) It should be ensured that human rights education material for higher education should be based on human rights principles as embedded in the relevant cultural contexts, as well as historical and social developments. It would be practical to use material provided by the United Nations, ILO, and their subsidiary offices located in the country/region.

(xvi) Similarly, the pedagogy used for imparting HRE should comprise audio-visuals, documentaries, film clippings, short films, etc. Apart from reliance on textual literature, posters, cartoons, news items, etc. should also be interwoven in teaching of HRE to make it more interesting and effective. Besides, it would be useful to make use of experiential learning methodologies that enable students to understand and apply human rights concepts to their lives and experiences, including there area of work. They should also be involved in activities like legal aid, lok adalats, community service, filing of PILs, examination of Bills/Laws, etc.

(xvii) The full potential of media needs to be harnessed. Radio, television, video conferencing and e-learning should be used extensively for teaching of HRE. Likewise, there is need to develop website resources, facilitate online learning programmes, e-forums, and distance learning programmes.

(xviii) Along with students, there is a need to train and sensitize professors, academicians and administrators about the importance of HRE.

(xix) There is a need to encourage awards/scholarships/fellowships to the best faculty, best student, best student paper/project reports as a means to promote human rights education and training in the college and university system.

(xx) Research on HRE needs to be encouraged and promoted. The integration of research and teaching should also be stressed upon in HRE. For a truly vibrant HRE, an interface between teaching/academics and research is very much desirable. Scholars on HRE

need to be identified and encouraged. Adequate budget should also be kept for this initiative.

(xxi) The Ministry of Communication and Information Technology could be tapped to supplement efforts in spreading HRE. The Ministry has around 100 CEC centers in different States/UTs where services like e-learning, radio-talk are implemented. HRE could then be disseminated in rural and tribal population.

(xxii) It is imperative that HRE should include opinions and perspectives of eminent persons and speakers. Seminars and conferences should be regularly organized in which members of the NHRC, SHRCs, judiciary and academicians should be invited so that students are benefited from their experience. Students must also be taught to assist victims of human rights. Ragging, eve-teasing, gender discrimination, etc. are common in educational institutions and students should be part of the redressal forum to combat these issues.

(xxiii) The HRE should also draw attention to the implementation of international human rights standards in the domestic framework. The non-ratification of treaties, reservations of the Government of India to various human rights covenants like the Convention for Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) needs to be taken up with the Government. The role of the Indian courts, constitutional provisions as well as contribution of institutions like NHRC should find a prominent place in the syllabus of HRE taught in colleges and universities.

(xxiv) Similarly, internal disturbances, wars and armed conflicts and the ensuing repercussions on human rights norms should form part of the curriculum along with conflict resolution, peace education and human rights, and cultural relativism.

(xxv) It is imperative that the curriculum of HRE should include a comparative, analytical and critical perspective. It should further

incorporate best practices from all over the world like the Asian and African discourses on HRE. It is also imperative to sensitize the faculty on newer human rights concerns.

(xxvi) Issues raised in the Plan of Action for the Second Phase of the World Programme for Human Rights Education (2010-2014) concerning higher education needs to be taken into account by all stakeholders.

(xxvii) The NHRC should support teaching of HRE at the college and university level by publishing adequate materials in the form of dossiers, know your rights series, posters, and other publications, including short films on relevant themes.

VOLUME-12, 2013

NHRC Recommendations on Right to Food*

Recommendations on Food Availability including PDS & National food Security Bill

(i) Food will not be available unless adequate quantities are produced, properly stored and efficiently distributed.

(ii) Food availability cannot be restricted only to cereals; it must include pulses, oils, vegetables fruits and animal-based proteins. Food security entails making available adequate nutritional food that is locally acceptable. For this, the availability of safe drinking water is essential. All of this must be accessible and affordable. First right on food should be of the poor who have not been able to afford.

(iii) The experience so far with the targeted public distribution system shows that very large numbers of those who are hungry, poor or malnourished, and who need its support, are excluded. The government must keep this essential need under review, to eventually bring under its coverage all those in need.

(iv) The list of the most vulnerable presently in India includes workers in the unorganized sector, dalits, tribals and forest-dwellers, migrants, single women and disabled people. The special needs of children and of pregnant and lactating women have to be

* These recommendations were made on the basis of the National Conference on Right to Food, held on 4 January, 2013

addressed. Equally, there is increasing evidence that marginal farmers & landless labourer's engaged in agri-activities are in stress and are food-insecure. This covers the vast majority of Indians.

(v) In computing food availability, the government needs to bear in mind that the current calorie consumption-definition of hunger as being below a calorie intake of 2400/2100 is extremely conservative in the Indian context. The government should raise this level in order to arrive at a realistic computation of need.

(vi) The government should therefore draw up in consultation with all stakeholders and urgently adopt a comprehensive national nutrition policy to give priority to nutrition security.

(vii) There should be an independent monitoring and evaluation mechanism which brings in accountability for proper implementation of the government's scheme to promote food security. A periodic social audit of all food schemes should be made mandatory at the Gram Panchayat level where officials participate and ensure immediate correction of the problems.

(viii) Reform of the PDS system is essential. It would be useful for the government to distill the best practices of States like Andhra Pradesh, Chattissgarh, Gujarat, Tripura and Tamil Nadu where these reforms have been instituted.

Recommendations on Nutritional Issues including Programmes like ICDS, MDMS, etc.

(i) Food served should be in sufficient quantity, it should be affordable and available all times. It should be, by and large culturally acceptable. Taste and preference factor must not to be ignored.

(ii) Transparency has to be ensured at all levels, be it production, distribution or management.

(iii) There has to be easy access to potable water and proper sanitation facilities.

(iv) Community Based Supervision for Nutrition Programmes to be given priority.

(v) Food should have balanced combination of various components including vitamins, fruits, vegetables and animal-based proteins like milk, curd, paneer, etc.

(vi) Coordination and convergence of ICDS and ASHA functionaries at the field level.

(vii) Balance diet should be provided in ICDS Centres and mid day meal schemes throughout the week.

(viii) Full nutritional security commitment in the National Food Security Bill has to be incorporated immediately.

(ix) More awareness generation relating to nutritional requirements, Right to Food, micro-nutrients, etc. There is also need for effective social communication through social counsellors.

(x) Those involved in nutrition programmes have to be made accountable and action to be taken against erring officials and Panchayat functionaries.

(xi) All forms of malnutrition, such as, Vitamin A deficiency, protein energy, iodine deficiency must be addressed adequately and effectively.

VOLUME-12, 2013

NHRC Recommendations / Suggestions on Violence against Women*

LEGISLATIVE REFORMS

Comments on Criminal Law Amendment Bill, 2012

(i) The definition of penetrative sexual assault u/s 375 IPC should be broad and beyond the peno-vaginal rape. Further, the offence of sexual assault should be kept gender specific with only men being accused of sexual assault rather than making it gender neutral.

(ii) The present definition of consent u/s 375 IPC works against the interest of justice for women. Accordingly, appropriate changes will have to be made in the process of investigation. Further, the age of consent for sexual intercourse should be retained at 16 years and not increased to 18 years.

(iii) Recognizing the structural and graded nature of sexual violence based on concepts of hurt, harm and injury, stalking, stripping and parading naked in public, etc., there is need to codify these sexual crimes as new offences of sexual violence against women and girls. All these need to be suitably defined and procedural laws need to be made accordingly.

(iv) Punishment under Section 354 of IPC may be enhanced up to five years depending upon the seriousness of the offence.

* These recommendations/suggestions were made on the basis of the National Conference on Violence against Women, held on 8 January, 2013

(v) In the 2012 Bill, the amendments proposed in Sections 154 and 161 Cr.P.C. are a step in the right direction. However, as far as possible, the statement of women victims should be recorded in the presence of woman police officer.

(vi) There is need to look into the deteriorating standards of public prosecutors which leads to low conviction rate for which there is no accountability on them. In order to address this problem, there is need to explore how the victim may engage her own private lawyer.

(vii) In an appeal preferred by the convict in the High Court, other than the State, victim or nearest next of kin of deceased victim also be made party. Notice of any proceeding initiated by the accused in the High Court should also be issued to the next of kin of deceased victim or victim as the case may be, and opportunity of hearing should be afforded.

Comments on Code of Criminal Procedure, 1973

(viii) Death penalty in every rape case, as a punishment is not desirable.

(ix) Need to examine the severity of punishment to be imposed with regard to rape and other kinds of sexual assault/offence/crime.

Judicial Reforms

(x) There is need to have more courts and other infrastructure to cope with the burden of cases faced by the judiciary. At the same time, more Judges/Judicial Officers are needed. This will go a long way to ensure speedy justice.

(xi) Fast-Track Courts must be set up immediately to speed up trial where victims are women. There is also need for quick disposal as per section 309 of Cr.PC.

(xii) A national protocol needs to be developed for medical examination of victims of sexual assault and giving dignified treatment to them.

(xiii) Orientation and sensitization of judicial officers, public prosecutors and lawyers on issues and jurisprudence relating to sexual violence against women and girls.

(xiv) A database of cases of violence against women should be maintained to track the implementation and performance of the law, and to identify its weaknesses for future reforms.

Police Reforms

(xv) Non-registration of FIR by the police is a serious problem. There is need to follow Supreme Court guidelines/directions on police reforms so that police has functional autonomy. This will assist in better registration of FIRs by the police.

(xvi) Protocols need to be evolved to guide the police with regard to receipt of any kind of complaints of sexual violence against women and girls and its investigation in a gender sensitive manner.

(xvii) Need to establish 'Violence Against Women Assistance Cells', which should be made responsible for providing immediate access to free medical attention, psychological counselling, legal aid and other support services as may be required by the victim. These cells should be uniformly available in tribal, rural and urban areas and in areas of conflict.

(xviii) Proforma used for recording medical examination needs to be as per Sections 53 & 53A of Cr.P.C. for the accused and as per Section 164 A Cr.P.C. for the victim and this should be followed strictly.

(xix) Forensic tests to include DNA test. In order to reduce time lag, there is need for expanding infrastructural facilities of forensic labs to carry out such tests efficiently so that concrete evidence is available in a timely manner for immediate disposal of cases.

(xx) There is a need to increase the percentage of women in the police force.

Other Comments

(xxi) Medical professionals apart from police officers and judicial officers also need to be sensitized about important aspects of sexual violence against women and girls.

(xxii) Need to bring about a change in the public transport system, including plying and regulation of private buses, autos and taxi/ car services.

(xxiii) Indecent portrayal of women in the media should be avoided. Sensationalism of crime in films and television needs to be avoided.

(xxiv) There is a need to issue guidelines for the media. The NHRC Guidebook for the Media on Sexual Violence Against Children should be used and modified/developed for this purpose.

(xxv) Moral and ethical education needs to be prescribed in schools.

(xxvi) By way of prevention, there is need for societal change which necessitates massive awareness generation through educational and civil society interventions, NGOs and the media.

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NHRC Recommendations / Suggestions on Missing Children*

(i) Child related problems have to be made visible.

(ii) Various planning measures should not stop at district level. There is need to go further into sub-district, and even household level.

(iii) Community has to play a major role through Welfare Committees, involving school teachers, Anganwadis workers, etc.

(iv) There seems to be a divergence between official and non-official statistics relating to missing children. Tracking System being developed would help (under integrated Child Protection Scheme)

(v) Child Line Services are important and should be streamlined and encouraged.

(vi) FIR should allowed to be lodged in all cases of missing children irrespective of whether crime is committed.

(vii) SOP needs to be developed (already in place in Delhi & MP)

(viii) Reports have to be sent to NCPCR.

(ix) Feedback needs to be given to parents.

(x) Needs for regulation of placement agencies.

* These recommendations / suggestions were made on the basis of the National Conference on Missing Children, held on 15 January, 2013

(xi) Acts like RTE act and other development schemes shall be properly implemented. There is a need for their convergence.

(xii) A Missing Persons Bureau should be established in all States.

(xiii) Sponsorship programmes for vulnerable children would help.

(xiv) Inclusivity in school education curriculum is necessary.

(xv) States having child tracking system should migrate to the National Tracking System for Missing and Vulnerable Children being developed by the Ministry of Woman and Child Development. Hardware has to be made available.

(xvi) Need for Child Relief Fund, proper counseling and residential facilities for homeless.

(xvii) Sufficient financial provisions and adequate infrastructural facilities need to be made.

(xviii) Compensation for trafficked children as in case of rescued child labour.

(xix) Children up to 18 years should be covered and distinction between hazardous and non-hazardous industries should go.

(xx) Establishment of a Central Agency to trace missing children.

(xxi) Emergency Response System (First 24 hours important).

(xxii) Focus on prevention.

(xxiii) Accountability needs to be fixed.

(xxiv) In order to have permanent solution to the problem of missing children you have to ameliorate poverty by providing land to landless.

(xxv) Tracking system should be converged with CCTNS

VOLUME-12, 2013

BOOK REVIEW

The Seven Social Sins- The Contemporary Relevance#

*Prof. S. Sitaraman**

This book written by the eminent educationist Dr J.S. Rajput will appeal to everyone, especially patriots and those who are worried about the future of this country. We are sliding down fast, as we as a nation have lost our moorings and bearings. In fact we have lost our road map also. The root cause for this deplorable state of affairs can be traced to our failure to inculcate VALUES, ETHICS and MORALITY amongst our children and parents.

Keeping the above situation in view it must be said that this book is a timely addition to the literary reservoir of India. The readers of the National Human Rights Commission's forthcoming English Journal 2013 will have a clear and precise idea of the contents of this thought-provoking book containing seven chapters, each chapter dedicated to one social sin.

The Seven Social Sins were originally published in Mahatma Gandhi's journal The Young India, in the year 1925. These include: `

1. Politics Without Principles

Author: Dr. J.S. Rajput

* Senior Vice President, Amity, University & Amity - Top US Universities Synergy Forum Professor, Faculty of Management, Adviser Students' Welfare Adviser, Amity Centre for Guidance & Counseling (ACGC) Director, Amity Foundation for Ayurvedic Sciences.

2. Wealth Without Work
3. Pleasure Without Conscience
4. Knowledge Without Character
5. Commerce Without Morality
6. Science Without Humanity
7. Worship Without Sacrifice

Each of the above social sins has been dealt with, in a pragmatic way by different scholars and educationists to bring out the essential truth that all the seven sins are sadly flourishing in this land of mahatmas and sages, as the backbone of our country, namely the moral values, has been broken by the politicians- bureaucrats axis, aided and abetted by anti-socials, criminals, jail birds, havala carriers and to some extent the terrorists across the borders.

The seven authors have made searching questions as to why we as a nation have sunk into a deep morass of corruption combined with other equally unholy practices such as horse trading in politics, stashing ill gotten wealth in Swiss banks, etc. They have asked legitimate questions as to why the present generation having a hoary past and a noble heritage has allowed itself to sink into moral degradation, by deliberately allowing VALUES to be given a go-by, by allowing ETHICS to be totally sidelined and by ensuring that MORALITY is discounted. The authors have expressed their anguish and dismay that our generation has silently accepted all such anti-social and anti-national violations, as something inevitable.

Some significant statements of Gandhiji, quoted by the authors in their respective essays are worth reproducing below.

1. What is the role of religion? What is the relevance of practising religion if it does not prepare the individual to serve his/her fellow human beings?

2 Gandhiji gave three essential pillars of education in India- PURE CONDUCT, FEAR OF GOD and LOVE

3 Gandhiji's remarkable view on NEED and GREED is given here. Nature is sufficient to meet everyone's needs, but not anybody's greed.

4. Gandhiji's prophetic words uttered many years before independence are strikingly true at present-

"We should remember that immediately on the attainment of freedom our people are not going to secure happiness. As we become independent all the defects of the system of elections, injustice, the tyranny of the richer classes, as also, the burden of running administration are bound to come upon us. People would begin to feel that during those days (pre independence) there was more justice, there was better administration, there was peace, and there was honesty to a great extent among the administrators compared to the days after independence. How true are his sane forecast of ugly things to follow after we became independent!!

Looking at this aspect, Prof. R.P. Dholakia, a former Dean of B H U states as follows:

The crisis of our time lies in the sharp decline,erosion and even in reckless rejection of external values of human life.What is in evidence today is, that politics in practice is built on expediency as a process of acquisition and retention of power, for amassing wealth by whatever means at one's disposal. The state of contemporary moral degradation and growing cancerous grip of corruption may be seen as the single internal threat to India, more than any other factor.

Discussing about another social sin, namely WEALTH WITHOUT WORK, Prof. (Dr) K.S. Bharathi observes that in spite of massive production of material items, something has gone wrong somewhere which is abundantly substantiated by general mass poverty, unemployment, widening gap between rich and poor, alienation, exploitation, etc. He rightly asks why is poverty is so widespread in spite of the fact that in the last 50 years the world has produced goods and services which it could not

produce in the last 2000 years! He rues the fact that wasteful consumption and luxury living have become the mainstay. His words are absolutely right especially in the context of the filthy rich brazenly exploiting the poor and the needy.

Prof. J.S. Rajput has done yeomen service to the cause of education and his stamp of professional purity is evident in his chapter on Knowledge without Character. He has made a powerful plea to recognise the role of education is vital role in character building.

The other contributors, besides Prof. Rajput are Prof. M. Sivaramkrishna, Dr. Sudharshan Iyengar, Dr. A.K. Merchant and Shri P. Krishna.Each one has contributed very noble thoughts and it is a delight to go through their scholarly analysis of present day reality vis-a-vis the need for eschewing the seven social sins,endorsed by the Father of the Nation.

The book with 167 pages is priced at Rs 450 and has been published by Allied Publishers. The book is an invaluable addition to the value based Knowledge Bank, among the educated section of the population. All libraries will do well to keep multiple copies in their shelves so that young people as well as the older generation can read the valuable observations that will strengthen our country's moral fibre.

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