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DISCLAIAMER

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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CHAIRPERSON
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PREFACE

It gives me immense pleasure to write the introduction of the English Journal of National Human Rights Commission which has completed its thirteenth year since its launch in 2002.

Keeping in view the functions mandated for the Commission under Section 12 of its Statute, the Journal has carved a niche for itself over the years in stimulating thinking on protection of human rights and promotion of human dignity across the country. The Journal indeed is one of the most prestigious publications of NHRC and is circulated widely in the country. I am confident that the Journal will not only serve as a repository on human rights issues, both national and international, but also provide a fresh insight and put to full use by policy makers, parliamentarians, legal fraternity, research scholars, human rights activists, students and others. It is hoped that the Journal will be helpful in updating them on a range of latest developments in the field of human rights.

In the Journal for this year, the Editorial Board invited articles on diverse themes such as development, planning and human rights, women and children's rights, human rights education, right to health, unorganized sector and rights of workers, and right against torture. Eminent experts and academicians have authored these articles and would interest readers

from a wide spectrum of society. Besides, the Journal carries a number of important recommendations emanating out of the national conferences organized by the Commission from November 2013 to November 2014. It also includes NHRC submission to the Committee on the Elimination of Discrimination against Women on the implementation of CEDAW in India with special reference to Combined Fourth and Fifth Reports of Government of India and the oral statement made by it before the CEDAW Committee in its meeting with NHRIs. As in the past, the Journal has a separate section on book reviews.

The Commission firmly believes that the 2014 English Journal will increase knowledge and awareness about protection and promotion of human dignity which is the quintessence of human rights.

New Delhi
10 December 2014

(K.G. Balakrishnan)

Volume-13, 2014

SECRETARY GENERAL
NHRC

From the Editor's Desk

The English Journal of the National Human Rights Commission, since the time it was first published in 2002, has been an important tool in spreading human rights literacy, besides facilitating promotion of human rights culture and good governance in the country. It is one of the key human rights journals in India providing an insight into the contemporary issues relating to civil, political, economic, social and cultural rights of the people of this country. The Journal also provides an important platform for erudite work on human rights and in bringing together a fraternity of human rights scholars to deliberate on noteworthy present-day issues which it covers.

The 2014 Journal focuses on development planning and human rights, women and children's rights, human rights education, right to health, unorganized sector and rights of workers, and right against torture. Keeping with its past tradition, this Journal also brings forth a number of significant recommendations of the national conferences organized by it during the last one year. In addition, it carries submissions of NHRC

made before the CEDAW Committee this year and a section on book reviews. I would like to compliment and express my gratitude to all the authors who have contributed to this Journal.

It is with great humility that NHRC presents the 2014 English Journal in the public domain with the fervent hope that it will be useful towards promoting increased commitment of its readers towards the human rights culture in the country.

New Delhi
10 December 2014

(Rajesh Kishore)

Volume-13, 2014

DEVELOPMENT PLANNING AND HUMAN RIGHTS

Integrating Human Rights with Development Planning in India

*Arun Maira**

Human rights is an evolving idea. As is development planning. There are many contending ideas about how to plan a nation's development, including the idea that planning is altogether a bad idea and it would be best to leave development to market processes. The integration of two evolving and also contested ideas is not easy. Neither can be pinned down exactly and so a precise connection between them is not possible. They must be brought together in an unconventional manner. I will connect them through two stories. These are accounts of encounters between proponents of ideas of human rights and planning.

The first is an account of a meeting of Members of India's Planning Commission and human rights activists in 2011. The human rights activists accused the planners of either 'not getting it' or not doing enough about it—the "it" being human rights. The second is an account of an introspection amongst intellectuals at the Global Economic Symposium in 2013, about paradigms of progress driving policy-makers around the world and an encounter therein of intellect with heart. I will use insights emerging from these two meetings as entries into a discussion of a process of aligning human rights with development planning. I will also refer to recent, international research that supports these insights and which

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suggests what the shape of a national planning process integrated with human rights should be.

Without doubt, India would be the best nation in the world to develop and apply an integrated process. India is the most diverse nation in the world, along dimensions of religion, ethnicity, languages, and economic disparity too. The idea of a modern India was given birth, with the country's independence from British rule in 1947, on the principle that all people have the political right to form their own government. India's Constitution, framed soon after, charges the nation's policy-makers to work very hard to ensure that all citizens have equal social and economic rights too, in addition to their political rights. The pernicious division of people into castes over centuries had disabled a very large number of Indians from having the same human rights as others. Others who have been excluded from enjoying equal human rights are women and India's tribal people. Such deep-seated exclusions must be corrected. Moreover, within the Indian nation's diversity of religions, ethnicities and languages, there are many 'minorities' whose rights must be respected and who should not be smothered by the majority in any attempts to homogenise and unite the nation.

The paradigm of 'planning' that India adopted soon after its Constitution to help the country realise its developmental goals has been seriously questioned in the last twenty five years. The opening of the economy in 1991 with the adoption of the idea that a free market was the best way to make progress and develop nations (the so-called Washington Consensus) was the first intellectual challenge to India's planning institutions. However the inertia of the established planning routines withstood this threat.The old paradigm of planning continued with marginal adjustments.

Subsequent developments on the political front, with more regional and caste-based political parties that have formed to defend the rights of their constituents gathering strength, have led to a greater assertion of

rights by the states. Governments formed by political parties who are not part of the central government have made stronger challenges to the centre. The states chaffed at the over-bearing central planning process. This has led to the abolition of the Planning Commission in August 2014 by the new central government, now led by a former, powerful state chief minister. A new model of planning is sought to be introduced. This is a good moment to examine the integration of human rights and development planning in India.

An Encounter between Development Planners and Human Rights' Advocates

In 2011, two Members of India's last Planning Commission, Dr.Syeda Hameed and Arun Maira (the author of this article), set about organising the largest, systematic participation of citizens in the preparation of the nation's plans attempted by the Planning Commission until then. The meeting reported here took place in the later months of 2011 in the Nehru Memorial Library, in what was the residence of India's first Prime Minister, Jawaharlal Nehru. In this meeting, there were leaders of many organizations, representing women, children, dalits, minorities, the differently abled, etc.- all advocates of the rights of their respective constituents. Many were dissatisfied with the insufficient recognition of the rights of their constituents. And many were frustrated that, even when some rights were converted into legal entitlements, there was too little progress in translating these rights into realities.

The setting of the meeting was a reflection of India's journey since its Independence. Jawaharlal Nehru had delivered the address at the 'midnight hour' of India's freedom. He had declared that India was setting out on its 'tryst with destiny', to free India's citizens from injustices of many kinds that they were enduring. Indeed, the Constitution of the Republic of India which was formulated soon after, with the equal rights it granted to all citizens, some ahead of even many developed countries,

such as the right to vote to all citizens, women or men, rich or poor, educated or illiterate, has been universally recognised as a landmark in democratic development.

Soon after this Constitution was adopted and India became a Republic, Jawaharlal Nehru created the Planning Commission in March 1950, to plan the achievement of the country's developmental goals. Jawaharlal Nehru's aspirations for independent India, as well as the great frustrations of Indians that their country is far from its tryst with destiny, came together in this meeting six decades later between the Planning Commission Members and the representatives of hundreds of millions of insufficiently included citizens. The civil society leaders complained that successive elected governments have not been able to ensure that human rights are respected, and governments have failed to ensure that all citizens are equitably included in the progress of the country.

An unexpected intervention in the meeting momentarily silenced even the loud critics of government. An attractive woman in the back of the room stood up to speak. The participants turned to see her. When she spoke, there was shock. Because she spoke in the heavy voice of a man. She said to the entire meeting, "You do not even know who you are excluding. There are many millions of human beings like me in India. You talk of the rights of women as equal to men. We are trans-genders, and we have rights too. How will you ensure we will get them when you do not even consider us as human?"

The Evolution of Human Rights

With this setting, let us consider how human rights are secured. The evolution of human rights is a process of societal learning and change. Rights are acquired when people change the way they think about others and behave towards others. In this light, I now make some assertions which I will explain further.

1. Human rights are not universal and eternal principles. The concept of human rights is evolving. It is changing with time. And it is not the same in all societies.

2. An essential step in the acquisition of rights is the concession of rights to those who have less rights by those who have more rights. For this a prior step is the realisation of what others are deprived of. This realisation comes principally in 'moments of truth.' Statistics of deprivation are not sufficient to cause change in behaviour.

3. Human rights cannot be granted by law alone. Human rights become realities only when they are experienced, in their lives, by those to whom they are sought to be extended. Whereas it is much easier to write strong laws than it is to change practices on the ground, a society actually gives rights to others only when the practices change.

4. Since the fundamental concept of human rights is that all men, women, (and even trans-genders I may add), have equal rights, they must respect each other's rights. Such respect generally manifests itself in voluntarily extended 'affirmative action', which precedes, or goes beyond legal mandates.

5. How much a society values its social cohesion affects how much respect will be given to the rights of all its members.

6. A requirement for social cohesion is a constructive process of dialogue amongst stakeholders; an ability to listen to others; to reason with others; and make mutual adjustments to reshape conditions in society so that the needs of all are met. Since human rights is an evolving concept (point 1 above) and since human rights are established by changes in relationships within societies (points 2, 3, and 4), the quality of the process of 'public reasoning' is a strong determinant of both cohesion as well as the prevalence of human rights in a society.

The central thread stringing these six points together is that human rights are recognised and then actualised through a process of social awareness and change.

Lynn Hunt explains this very well in her book, "Inventing Human Rights: A History" (W.W. Norton and Co, 2008). Thomas Jefferson wrote into the US Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights." Hunt points out that, "For human rights to become self-evident, ordinary people had to have new understandings that came from new kinds of feelings." She explains how these new kinds of feelings come about through encountering new ideas (often through new literature she points out), through new dialogues, and by viewing the world through new lenses. She uses the case of the rights of women (that even the USA's Founding Fathers had not discovered as self-evident: they talked about 'all men'). She explains how societal sensibilities changed later towards women, by what was written, read and talked about, which led to the realisation that women were deprived by society of the rights they too were endowed by their Creator.

Her thesis is that new realizations come from perceiving reality through new lenses. New laws and new norms follow the new realisations not the other way around.

An Encounter between Intellectuals and the Heart of the Matter

The Global Economic Symposium is organized annually by the Kiel Institute for the World Economy. The theme in 2013 was "Redefining Success". 300 economists, social scientists, and policy-makers from many countries convened to examine the prevalent paradigms of economic growth.

Prof. Dennis J. Snower, President of the Kiel Institute, opened the symposium with a stirring account of three narratives of economic

development that are converging. The first is the main-stream 'materialistic progress narrative'. In this narrative, economic growth, measured principally as growth of GDP, benefits everybody in the long run. Propelled by this paradigm of progress, the GDP of many developing countries has increased rapidly in the last two decades. Along with this growth, principally in the two billion-plus population countries viz. China and India, the numbers of people below the poverty line globally has reduced by one billion. In this paradigm, without growth of GDP, there can be no progress. So economists and policy-makers are trying to find ever new ways to stimulate growth. Individual initiatives, free markets, and private sector activities are considered the essential and perhaps even the only drivers of growth. Governments seem to come in the way and have to be kept at bay.

The second narrative is the 'global risk narrative'. This has gained strength in the last fifteen years or so, principally on account of the looming fear of inexorable climate change caused by the excessive carbon spewed into the atmosphere by relentless material and energy consumption. Risks to the sustainability of economic growth on account of these 'externalities' are now realized. It is becoming clear that the present paradigm of growth is not sustainable. Because, if everyone in the world were to have the life-styles present in the West, with the same material consumption levels, we would need four or five additional Earths by 2050 to support everyone. Other externalities of the materialistic growth narrative are increasing inequalities within countries—inequalities of income and, more worrying, inequalities of access to opportunities. Not only are these of great concern from a moral perspective, they are limitations on economic growth too according to some economists, and therefore risks to growth that must be managed.

The third narrative is the 'happiness narrative'. It was always known to most people outside the hard-core economics fraternity that human beings are not satisfied merely with material progress. They seek something

more, something ephemeral. Some call this 'happiness'. Others, 'well-being'. It is not clear how to define these qualities exactly, or how to measure them. Therefore the challenge for economists and policy-makers is to expand their measurement models and policy frameworks to include these intangibles in a tangible way. Indeed some countries have begun to do this.

Prof. Snower concluded with a memorable statement: 'We plunder our planet to produce more material goods in pursuit of pleasures that fail to materialize'. The two-day symposium, with dozens of parallel sessions, buzzed with ideas for the integration of the three narratives. At the closing plenary, seven persons on a panel were asked what thoughts they had on how to do this.

The economists amongst them said that unless one can measure something one cannot manage it. We are having a difficult time, as it is, trying to estimate and manage economies, they said. Therefore we must be cautious when we begin to add on other, less tangible objectives. Later, the moderator went around asking each of the panelists what they deeply wanted the world to become. One of the economists said he wanted a world in which the dignity of all human beings was enhanced and respected. Which begged the question, of course, how do you measure dignity?

Economists seem caught in the trap of measurement. Even in their own hearts, they hear a music that defies enumeration. The pursuit of numbers, in the belief that numbers alone indicate accuracy, has become the bane of economics. Many forces that shape societies and economies cannot be easily measured, such as the trust of citizens in institutions. Such substantial forces must not be excluded from a model which seeks to explain the behavior of the economy.

The Evolution of Development Planning as a Process of 'Public Reasoning'

The concept of development planning is evolving, as is the concept of human rights. Development planning can be defined as a process of changing realities to create the conditions we want. Concepts of 'development' and of 'planning' are changing. The objectives of development are being broadened well beyond the growth of the economy (with GDP as its principal measure). Methods of planning are changing to include wider stakeholder participation. They are also changing to include several, less quantifiable, systemic and societal issues in development plans, in addition to quantifiable resource, finance, and infrastructure issues which have been the principal focus of economic development plans so far.

Robert Lucas, who received the Nobel Prize in economics for expounding the 'rational-expectations' view of human behavior, referred to a theory as something that can be put on a computer and run. Many economists insist on equations and numbers because that is all that computers can compute, whereas economists should study human behavior as it is, not as they find easy to model. British economist Adrian Turner, delivering the 2010 Lionel Robbins Memorial Lectures, said the time has come to reconstruct economics. Too much reality was being left out of economists' models for them to explain the world. These flawed models are incapable of predicting the future condition of an economy. With a twist of Keynes' famous statement, that 'practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist', Turner warns, 'the great danger lies with reasonably intellectual men and women who are employed in the policy-making departments of central banks, regulatory bodies, and governments, who are aware of intellectual influences, but who tend to gravitate to simplified versions of the dominant beliefs of economists who are still very much alive'.

Isaih Berlin says in his treatise, 'On Political Judgement', "All socially engineered systems of formal order are in fact subsystems of a larger system on which they are ultimately dependent, not to say parasitic. The subsystem relies on a variety of processes—frequently informal or antecedent—which alone it cannot create or maintain. The more schematic, thin, and simplified the formal order, the less resilient and more vulnerable it is to distortions outside its narrow parameters".

The reconstruction of economics will require the inclusion of many disciplines of social and ecological sciences in a collaborative inquiry. Human societies and economies are complex systems. To see the whole elephant, those who have blinded themselves to others' points of view by their conceptual and ideological differences, must come together. The first step to build a better model, before writing equations and running the computations, is to prepare a diagram—a map of the whole system.

Leaders in democratic governments must negotiate mission and goals with the public. An agreement with the people by whom government leaders are elected, about what exactly they value is not easy to obtain. Government leaders must consult widely to obtain consensus on goals, and define measures even for intangible goals.

Nicolas Sarkozy, when President of France constituted a commission in 2009 to examine the measurement of economic performance and social progress of nations. He asked three widely respected economists, Nobel Laureates Joseph E. Stieglitz and Amartya Sen and the French economist Jean-Paul Fitoussi, to examine what a new score-card of the progress of nations should be. The three economists produced a report they called *"Mis-Measuring our Lives: Why GDP does not add up"* (The New Press, 2010).

I will not reproduce here all the recommendations of this seminal report by these eminent economists. I highlight only some of their insights.

They state in the Preface to their report:

"We see the world through lenses not only shaped by our ideologies and ideas but also by the statistics we use to measure what is going on, the latter being frequently linked to the former. GDP per capita is the commonly used metric; governments are pleased when they can report that GDP per capita has arisen, say by 5%. But other numbers can tell a very different picture."

'Well-being' and 'happiness', which many summarize as the outcome that citizens desire from progress, are multi-dimensional concepts. Examining the academic research and a number of concrete initiatives around the world (which include Bhutan's Gross National Happiness project) the Commission has listed eight dimensions of 'well-being'. These are:

i. Material living standards (income, consumption, and wealth);

ii. Health;

iii. Education;

iv. Personal activities including work;

v. Political voice and governance;

vi. Social connections and relationships;

vii. Environment (present and future conditions);

viii. Insecurity, of an economic as well as physical nature;

Several of these dimensions—political voice and governance, social connections and relationships, and insecurities (on account of exclusion from access to resources and opportunities), relate directly to the concept of human rights. And the other dimensions also relate, albeit less directly, to issues of human rights.

Many of these dimensions are qualitative and instruments to measure them have not been developed yet. The list of dimensions may also change with further research. Better score-cards need to be developed. Because

economists and policy-makers attempting to guide the economy and society "are like pilots trying to steer a course without a reliable compass", according to the authors of *Mis-Measuring Our Lives.*

They also say, "Metrics that seem out of synch with individuals' perceptions are particularly problematic. If GDP is increasing, but most people feel worse off, they may worry that governments are manipulating the statistics, in the hope that by telling them that they are better off, they will feel better off. In these cases, confidence in government is eroded, and with this confidence, the ability of government to address issues of vital public importance is eroded."

A Dip-Stick Assessment of India's Development Planning

Let us apply these ideas about measurement to examine how India may be doing. India's citizens were rapidly losing faith in institutions of government in the years preceding the change in government in 2014, when the Congress Party, which had been leading the government for most of the country's history since its independence, suffered its worst defeat ever. India's GDP had been growing, and the Planning Commission publicly declared that poverty had reduced a lot. Citizens suspected something was amiss in these statistics because GDP growth and the poverty numbers reported by the Planning Commission did not reveal the reality they experienced in their lives.

India's goals of development, broadly accepted by all and expressed in the objectives of its 12th Five Year Plan, are: Faster, More Inclusive, and Sustainable Growth. These are also the goals of many other countries. Therefore one may compare how well India is doing with other countries.

Many comparisons have been made by international agencies. Amongst the clearest is the *Sustainable Economic Development* (SEDA) framework recently developed by *The Boston Consulting Group* (BCG). SEDA is an instrument for assessing the effectiveness of countries in converting

GDP growth to 'well-being' of their citizens. SEDA considers performance along ten dimensions as the indicators of overall well-being. These are: GDP per capita, economic stability, infrastructure, employment, education, health, income inequality, governance, civil society, and impact on the environment. SEDA co-relates growth in GDP per capita with the other variables to determine a co-efficient of transformation of GDP wealth into overall well-being in the country.

SEDA compares the relationship between levels of wealth and well-being of all countries in the most recent year for which the BCG had the data, which was 2011 for most countries. It also includes a comparison of the performance over the previous five years: how was growth in wealth in these years converting into well-being? The combination of these two measures provides an evaluation of the 'policy-matrix' of the country's growth strategy i.e. how is improvement on all dimensions being managed along with growth. Since India's goals are faster, more inclusive, and more sustainable growth, the SEDA analysis is very relevant.

How India is doing in converting increase in GDP (which was high in the years BCG has studied) to well-being can be assessed by comparing India's performance with its peers. BCG has chosen twelve countries as India's peers. These are the three other BRICs countries, five countries in S.E. Asia including Indonesia and the Philippines, and our four neighbours—Pakistan, Bangladesh, Sri Lanka, and Nepal. What this reveals is that India seems to be doing worse than its peers, and worse even compared to its neighbours.

The two dimensions along which India fares worst are generation of employment and protection of the environment while growing its GDP. The country ranks relatively high, in terms of its present position, with respect to governance and economic stability. But its performance on both these dimension is assessed to have deteriorated in recent years—an evaluation that Indian citizens clearly agreed with and which led to the

dramatic downfall of the Congress-led United Progressive Alliance government in 2014.

Social Cohesion as a Development Goal

Social cohesion is a new concept that is entering into goals of development planning. In recent decades it has been getting more attention in many countries (e.g. Germany, Canada, the US, Australia, and New Zealand). As with any new concepts in the realm of human aspirations, such as human rights, their definitions are fuzzy initially, and hence their measurement is problematic. Nevertheless, as the Bertelsmann Stiftung, which is doing pioneering research into the measurement of social cohesion, says, "Social cohesion is seen as a desirable quality that makes a society liveable and sustainable. Moreover, social cohesion is often viewed as a resource, a prerequisite for economic success and for a functioning democracy". For these reasons, social cohesion is an important concept to apply in India's development planning.

The Bertelsmann Stiftung is evolving a Social Cohesion Radar, an instrument to assess social cohesion. Introducing this instrument, it says: "Everyone is talking about social cohesion, but no two people agree on what cohesion means – and hardly anyone is in a position to say how well it is doing. Thus, despite the importance of this topic, evidence-based insights are sorely lacking. Although social scientists are expanding their focus to include not only "hard" economic data like gross domestic product, but also "softer" indicators like education and health, aspects of social cohesion are receiving little attention. There is as yet no established field of research that specializes in international comparisons of social cohesion."

"It is important to note that our definition includes a perception of fairness, rather than objectively measurable (in)equality or (un)fairness. We believe that an observably inequitable distribution of resources is a possible cause for a low level of social cohesion, while a widespread

perception of unfairness may be direct evidence of weak cohesion. Similarly, our definition does not take into account a society's cultural, ethnic or religious diversity, but it does include acceptance of diversity. In modern societies, social cohesion is only possible if people are able to deal appropriately with diversity. This ability may be affected by the degree of cultural, ethnic or religious diversity in a society, but diversity itself is not an indicator of cohesion (or a lack thereof). Rather, social cohesion is reflected in a constructive approach to diversity."

The notion of fairness amidst diversity on which the Social Cohesion Radar is founded, makes it very relevant for India. India is the most diverse country in the world perhaps, along multiple dimensions: religion, language, ethnicity, and economic disparities too. Within this diversity, the human rights of all its citizens can be a reality only when there is a sense of fairness for all, as mentioned before.

Social cohesion, a new concept, seems very important to apply to India's development planning. It is not yet sufficiently developed to be factored into measurable assessments of India's progress, such as the SEDA comparisons mentioned before. However another study by Bertelsmann Stiftung is immediately applicable for integrating concepts of human rights and well-being into India's development planning.

Bertelsmann Stiftung has done a study of 'Winning Strategies for a Sustainable Future'. It studied 35 countries around the world that appear to be leaders in developing strategies for sustainable growth. Bertelsmann examined the quality of their strategies, the frameworks for implementation, and results so far. Then the list was narrowed to five countries for deeper study. From the study of these 35 countries, and further insights from the five, Bertelsmann selected five key success factors. Two of these must be highlighted because they are the starting points of the process of faster improvement.

The first is that sustainability policy derives from an overriding concept and guiding principles that are made to permeate significant areas of politics and society, and 'best practice' to make this happen is to get specific in national debates about a new score-card of progress. Effective score-cards are not merely lists of measures cobbled together. They have an over-arching concept to integrate measures of growth, social impact, and environmental sustainability.

The second requirement for success is that sustainability policy must be developed and implemented in a participatory manner. Therefore the task for countries is to develop new participatory formats. Not only must large numbers of people be engaged, but different constituents must listen to each other too. The country must have an integrative vision of its future to unite it and a balanced score-card to guide it. The task, to be taken up by whosoever political leaders and policy-makers will lead their country, is to lead and facilitate this dialogue amongst the citizens of their country.

Processes for Democratic Deliberation

The evolving concept of human rights becomes integrated with evolving concepts and goals of development through a process of democratic deliberation. It is the quality of this process, of democratic deliberation and public reasoning, which will determine whether human rights will be actualized and whether development planning will fulfill the needs of the people.

Democracies of elites or opinion leaders, who debate and decide amongst themselves what is best for the people, are at best a democracy *for* the people. Democracy *by* the people requires their participation in the deliberations. It is practically very difficult to include everyone, or even many people in deliberations. Technology seems to provide possibilities for including masses of people in democratic deliberation. Experience shows that the vast reach of technology can also make democratic deliberation more difficult.

The internet, social media and cell-phones bombard us with thousands of bits of information, messages and tweets. It is difficult for anyone to keep in touch with everyone and everything. If we are connected, we suffer from an 'attention deficit disorder'. Coping strategies are: remain on all the time; pay shallow attention to many things; and choose the many we wish to follow from the millions we can. All these strategies make a deeper understanding of others impossible.

Remaining on all the time with shallow attention reduces the depth at which we are with others. People meet to have coffee together. Everyone is looking into their smart phones, and not at each other. People together at a business meeting keep one eye on their smart phone or I-pad on the table, and the other to dip in an out of what is happening in the room. Internet and social media have vast 'reach', but staying connected reduces the 'richness' of conversations amongst people.

The third coping strategy, of choosing the web-sites, tweeters and Face-Book friends one will follow, as perforce one must, makes us stay with people we like because they are like us. We easily understand what they say. If we have to make an extra effort to understand something or someone, we just shut them out. There is no time to reflect. Thus we get locked within 'conceptually gated communities'. Across the walls are others in their own resonance chambers like we are, hearing what they like, and listening to who they like.

The divides of ideology and beliefs that separate people can be bridged only when people listen to each other deeply, to 'why' the other believes what she believes; to 'who' she is; and not merely to 'what' she says. People must look each other in the eyes to see the persons behind the words.

The methods we have to communicate with each other can be described along a continuum of diminishing 'richness' with increasing 'reach'. On one end is a dialogue between two persons. Very rich, but

with reach only to one other. At the other end, we have the on-line reach of internet and social media. Vast reach, but very shallow communication. In between are 'vision workshops' of dozens of people, and 'large group interactive processes' of perhaps hundreds, and many other such formats. These are designed for deeper deliberations than in conventional business and citizen meetings, and to enable agreements about visions and principles that can only be scratched at in the formality of conventional meetings.

A selection of formats of meetings for bringing people together, from across the continuum of richness and reach, can be combined into larger processes for democratic deliberation. These processes must adhere to some basic principles of inclusive, deliberative democracy. James Fishkin, professor of communication and political science at Stanford University, describes three principles in his book, *'When the People Speak: Deliberative Democracy and Public Consultation'* (Oxford University Press, 2009). He says a good process must fulfill three norms: political equality, deliberation, and mass participation.

The first norm, political equality, requires that all who participate are considered equal in the deliberations. Those who have more—power, wealth, or education—must not overpower the voices of others. This is not easy because we are habituated to defer to them.

The second norm, deliberation, requires that people have the information required, that they listen to other points of view, and that they are able to advocate their own views too without being intimidated by the power of others. The conversations must be 'rich' in content, and in understanding of issues through an understanding of others' points of view.

The third norm, mass participation, requires reach for many be to be engaged—perhaps too many to enable richness in the deliberations.

Humanity's aspirations are reaching much higher than they were at the time of Athenian democracy. The processes of democratic discussion

that Athenians used, which for a long time have inspired Western democracies, are now considered faulty. They emphasized deliberation. But did not meet the requirement of political equality and mass participation. For instance, women and slaves were excluded from participation.

The founders of the US Constitution were acutely aware of the need for suitable processes for democratic deliberation. Such processes would be necessary to implement their vision of 'government *of* the people, *for* the people, and *by* the people' too. James Madison, (fourth President of the US, hailed as the "Father of the Constitution" and the key champion and author of the United States Bill of Rights), described what was required, and what the difficulties were in devising a good process, in the '*Federalist*' papers. Madison wrote in *Federalist* No.55, "had every Athenian citizen been a Socrates, every Athenian assembly would still have been a mob." Thereby he pointed to the need for a good process. In *Federalist* No.10 he wrote about the need for taking 'raw' opinions from the people and 'refining' them in bodies of elected representatives.

Madison and other the framers of the US Constitution would be distressed to read Jeffrey Sachs' comment on the state of affairs in the USA at the start of the 21st century. In his book, *'The Price of Civilization: Economics and Ethics after the Fall"* (The Bodley Head, 2011) Sachs, Director of the Earth Institute at Columbia University, says:

"In America today, there is little systematic public deliberation and the public's views are rarely taken seriously in the political process. One key policy decision after another is adopted behind the backs of the public, often in direct contradiction to public opinion."

How should raw public opinions be gathered, and what should be the design of processes for their refinement? These are critical issues in designing processes for democratic deliberation in the 21st century. The mass of shallow information that comes from social media is too raw

and not sufficiently ripe for refinement by Elite Deliberation (as Madison called it) in national assemblies of elected representatives in large countries.

It is difficult to design an ideal process that fulfills the three norms proposed by Fishkin, he admits. He recommends that institutions should be created to research, experiment, and develop new processes. At the Center for Deliberative Democracy in Stanford, Fishkin has been experimenting with a process he describes as Deliberative Polling, which he has tried in many countries, including the USA, UK, Japan, and China. Another such institution is the Danish Board of Technology, an office set up by the Danish Parliament to offer continuing capacity to sponsor deliberative consultations. In its case, it is pursuing the concept of 'consensus conferences' which has been applied in many settings.

Shaping India's Future

Finally, let us return again to the aspirational and dis-satisfied citizens of large, diverse, and democratic India, some representatives of whom we encountered earlier in the account of the meeting convened by some Members of the last Planning Commissionin the Nehru Memorial Library in 2013. India, a vast, diverse, democracy, has great need for good processes for democratic deliberation to create a vision that will guide its progress and shape its plans. India must make much faster progress towards its goals of ensuring human rights and of inclusion of all citizens in the benefits of economic development. Therefore, for passionately democratic, greatly diverse, and noisily argumentative India, good processes for democratic deliberation are essential for the country to progress faster towards its goals. Some processes have been introduced and others are being tried. I will give a smattering of examples.

The Center for Internet and Society in Bangalore is researching ways in which the internet and social media can facilitate democratic deliberations.

The Planning Commission constructed a process which combined techniques at both ends of the 'richness-reach' continuum to get inputs for the preparation of India's 12th Five Year Plan. 950 civil society organizations, representing a diversity of constituents—women, youth, scheduled castes and tribes, the minority religions, urban poor, children, and transgenders—fanned out to get opinions of their members. The internet and social media was used to obtain inputs of those who have access to these mediums.

Another large initiative was taken up by the *Rajasthan Patrika*, a Hindi language newspaper with 23 million readers in 8 Indian states. The Patrika designed a process for three Indian states that were going into elections in late 2013: Rajasthan, Madhya Pradesh, and Chhattisgarh. In each of these states, citizens in every constituency participated to create a vision for their constituency and their state. 10 stakeholder groups were identified. Separate meetings were held with each of these 10 groups in each of the 520 constituencies in these three states, a total of 5200 meetings. In each meeting, in a structured process, citizens discussed their concerns, their requirements, and their vision. The output of these meetings were compiled and given to all political parties contesting the elections. Thus, politicians could have heard the expectations of the people they would represent if they won the elections.

An unusual process has been introduced by the Delivering Change Foundation (DCF) of Pune along with Pemandu (the Malaysian Prime Minister's program delivery unit). This combines the 'Tanishka' program of the Sakal Foundation of Pune, which has millions of women in its network whose participation generates a strong 'emotional' connection, with Pemandu's structured management methodology for developing and implementing strategies with coordinated actions by all stakeholders. This integrated process is being applied in Maharashtra to transform the management of water, a critical resource for the state that is impacted by vagaries of weather. The objective is to make Maharashtra 'drought free'

in the next ten years. For this, water must be managed much more efficiently and more equitably too. Guaranteeing the rights to water of poor farmers and poor urban and rural consumers is a critical feature of the program.

These are only a few examples. There are many others. However, overall, they are far too few for a country as large and diverse as India, with its backlog of development needs.

India, to progress much faster must have good processes for people to listen to each other, to come to agreements with each other, and progress together. Development planning to effect a mixture of social and economic change cannot be an ivory tower exercise done by experts, in the jargon of economics and other social sciences, with goals expressed in disembodied numbers that people cannot relate to in their daily lives. The language of the plan must be the language of the people.

Nations and societies shape their futures through narratives. Their narratives are created and then shared by multiple conversations between citizens in many places and over time. Their shared narrative provides a glue for the alignment of diverse interests within the nation. The narrative tells the story that will take the nation to its goals, a story that the people want to be part of.

The central story will have many versions fitting local realities because all communities of people must make it their own story. By their actions, they will ensure that the rights of all are realized, that their community has cohesion, and that they convert contentions into collaboration to advance towards common goals.

Evolving concepts like human rights and development plans will get integrated through this narrative. The narrative must be a story of the people because it must describe the future they want to live in. It must be a story bought into by the people because their behaviors and attitudes will bring the story into reality. Therefore their participation in deciding the story lines is crucial. The realization of human rights must be manifest in the story. The plan must be the story they will bring to life.

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Sustainable Development and Human Rights: An Evolving Framework

*Ravi Chopra**

Most religions preach respect for nature. The Atharva Veda says that "Earth is our mother and we are all her children."[1] The ancient Greeks worshipped Gaea or the Earth Goddess. Islamic law believes that people have inherited 'all the resources of life and nature' and are duty bound to God in using them. According to the Bible, God gave Earth to her followers and their offspring as an everlasting possession, to be cared for and passed on to future generations.

This paper reviews the evolution of international sustainable development law, its relationship to human rights and its application in India.[2] Much of today's discourse on sustainable development has emerged from studies, discussions and debates at international forums in more recent decades. Therefore this paper begins with a brief review of the recent history of international concerns about sustainable development. This is followed by a review of the concept of sustainable development as discussed in the pioneering report "Our Common Future" (World Commission on Environment and Development (WCED) 1987).

The evolution of an international corpus of human rights and the basic human rights guaranteed in the Indian Constitution are outlined in

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1 The Atharva Veda quote and other religious citations are from (Sabharwal 2005).

2 Sustainable development law refers to the body of internationally accepted legal principles, agreements and treaties that deal with the integration of economic, environmental and social laws (Cordonier et al 2004).

the next section. Thereafter the paper discusses the inter-relation and inter-dependence of sustainable development and human rights along with the emergence of a rights-based approach to sustainable development. In the final section the evolution of Indian environmental law in the context of human rights is detailed and analyzed.

Early History

The first analytical articulation of the finite nature of Earth's resources may have been expressed by Rev. T.R. Malthus, a British cleric and scholar, in his 1798 paper, "An Essay on the Principle of Population". "The power of population is indefinitely greater than the power in the earth to produce subsistence for man," he wrote (Malthus 1798).

Later thinkers like Henry Thoreau, Leo Tolstoy and Mahatma Gandhi wrote about different aspects of consumption of Earth's resources and its impacts. Mahatma Gandhi when asked once if after independence India would attain Britain's standard of living, replied, "It took Britain half the resources of the planet to achieve this prosperity. How many planets will a country like India require?" (Khoshoo 1996). Clearly he was cautioning the questioner that there was a limit to the world's resources and hence consumption driven prosperity had to remain within bounds. Without using the term sustainable development, Mahatma Gandhi was highlighting the concept much before it became fashionable.

The present concerns for environmental degradation and its impact on life on Earth are generally traced to Rachel Carson's prescient book "Silent Spring" (Carson 1962). Not only was she the first to articulate the deleterious impact of the use of synthetic chemicals on the world's environment, but she was also the first to demand in writing that there should be a human right to a healthy environment (Boyd 2012).

In 1972, the year of the United Nations Conference on the Human Environment in Stockholm, the Club of Rome published its pioneering

report "The Limits to Growth" (Meadows *et al.* 1972) analyzing the sustainability of global resources based on a systems dynamics computer simulation. It drew attention to the depletion of the world's non-renewable resources based on projections of population, food production, industrial production and pollution levels.

The term 'sustainable development' probably first appeared in the subtitle of the World Conservation Strategy report released by UNEP, IUCN and WWF in 1980. "Human beings in their quest for economic development and enjoyment of the riches of nature, must come to terms with the reality of resource limitation and the carrying capacities of ecosystems, and must take account of the needs of future generations. This is the message of conservation. For if the object of development is to provide for social and economic welfare, the object of conservation is to ensure Earth's capacity to sustain development and to support all life," it said in its foreword (United Nations Environment Program *et al.* 1980).

In 1987 the United Nation's World Commission on Environment and Development Report "Our Common Future", also known as the Brundtland Commission Report, elaborated on the concept of sustainable development and the strategic objectives for achieving it. Thereafter world summits and international conference have been held fairly regularly on the themes of sustainable development and human rights. They have highlighted the interdependent nature of the two, identified goals to be achieved, the steps required for achieving them and reviewed progress towards the same. The outcomes of these activities have been periodically reviewed and the possible further steps ahead have been outlined.

Sustainable Development

The Brundtland Commission (BC) defined sustainable development simply as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (World Commission on Environment and Development 1987: Chapter

2). In a brief elaboration of the concept the Commission highlighted two important aspects:

(i) Overriding priority has to be given to the essential needs of the world's poor.

(ii) The environment's ability to meet the present and future needs is limited by technology and social organization.

It also said that the concern for intergenerational social equity implied equity within each generation. It called for an international consensus on the concept of sustainable development and on a broad strategic framework for achieving it.

According to the Commission satisfaction of human needs and aspirations is a major objective of sustainable development. Among other important aspects of sustainable development it noted were:

(i) Sustainable development encourages consumption standards within the limits of an ecosystem's regeneration potential and "to which all can reasonably aspire."

(ii) Human needs must be met "by increasing productive potential and by ensuring equitable opportunities for all."

(iii) Population growth has to be in harmony with "the changing productive potential of the ecosystem."

(iv) Unlike the present development pattern "sustainable development requires that Earth's natural life support systems, the atmosphere, waters, soils and living beings are not endangered" and that the ecosystem's overall integrity is maintained.

(v) Knowledge and technology must be aimed to reduce depletion of resources.

(vi) Exploitation of non-renewable resources today should not foreclose future choices.

(vii) Sustainable development requires that plant and animal species be conserved since species that are once extinct cannot be renewed.

(viii) Technology and rapid growth have vastly extended the boundaries of ecological impacts of production processes. Safeguarding the common interest requires cooperation across jurisdictions, including international cooperation.

(ix) Resource depletion or ecosystem deterioration enhances inequalities at different levels. Economic justice and social justice are prerequisites for promoting the common interest. Effective participation of local communities in decision-making can help them to enforce their common interest.

In conclusion the Commission observed that, "sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change, all enhance both current and future potential to meet human needs and aspirations" and that "its aim is to promote harmony among people and between people and nature."

In one sense, however, the term sustainable development is somewhat inappropriate. The prime object of sustainability is Earth's resource base. Hence a major emphasis is on the sustainability of the environment. By using the term sustainable development the BC chose to emphasize the development process by adding economic growth and equity, or social justice, to environmental protection. These are also the three pillars of sustainable development.

Periodic meetings on sustainable development at the national, regional and international levels in the last quarter century, since the publication of the BC Report, have identified a number of desirable goals for

sustainable development. They pertain to poverty eradication, food and nutritional security for the poor, good health, access to safe and adequate water, sanitation and safe and clean energy, population control, sustainable human settlements and transport, full and productive employment, disaster risk reduction, reducing the threats of global warming and climate change, sustenance of natural life support systems like forests, biodiversity, rivers, lakes and other water bodies, mountains, oceans and seas and minerals, combating desertification, minimizing the use of harmful chemicals and chemical wastes, education and gender justice.

A number of international meetings have been held to develop the principles of sustainable development law. In an annex, the BC Report proposed the adoption of 22 legal principles for future law-making. The Earth Summit at Rio De Janeiro in June 1992, adopted Agenda 21, identifying actions to be taken at the global, national and local levels to promote sustainable development. It gave priority to the 'development of international law on sustainable development, giving special attention to the delicate balance between environmental and development concerns' (TERI 2011). In 1995 the UN Commission on Sustainable Development identified 19 principles and concepts of international law for sustainable development.

The Delhi Declaration (2002) at the 70th Conference of the International Law Association specified seven basic principles of the international law on sustainable development (TERI 2011). These include:

- Duty of the State to ensure sustainable use of natural resources;
- Equity and the eradication of poverty;
- Common but differentiated obligations among nations;
- Precautionary approach to human health, natural resources and ecosystems;
- Public participation and access to information and justice;

- Good governance;
- Integration and interrelationship between human rights, social, economic and environmental objectives.

Though such principles of international sustainable development law are not legally binding, they are more than just broad policy recommendations (TERI 2011). They are increasingly becoming part of binding international agreements and national strategies for sustainable development. For example, the Right to Information is now guaranteed by law in India. In some judgments Indian courts have accepted environmental principles adopted in international agreements to which India is a signatory. These are detailed later.

In the 1970s, Portugal (1976) and Spain (1978) became the first countries in the world to include the right to a healthy environment in their constitutions. Since then 92 countries have granted constitutional status to this right (Boyd 2012). By 2010, national constitutions of 125 countries had provisions for protecting the natural environment (Jeffords 2012).

Human Rights

Concern for human rights was integral to the establishment of the United Nations (UN). The Preamble to its Charter "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all member states to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (UN Charter 1945: Preamble, Article 1)[3]

In December 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). It is the first international agreement on rights to which all human beings are inherently entitled.

[3] http://www.un.org/en/documents/charter/chapter1.shtml

India was one of the 48 countries that voted for it. It consists of 30 Articles that outline basic civil, political, social, cultural and economic human rights.

Several rights in the UDHR can be invoked to further sustainable development. Among others, these include:

1. Right to freedom and equality in dignity and rights; equality before the law. (Art. 1 and 7)
2. Right to life, liberty and security of person. (Art. 3).
3. Freedom of movement within the national borders. (Art. 13)
4. Freedom of opinion and expression and to seek, receive and impart information and ideas through any media and regardless of frontiers. (Art. 19)
5. Freedom of peaceful assembly and association. (Art. 20)
6. Economic, social and cultural rights indispensable for one's dignity free development of personality, in accordance with the organization and resources of each State. (Art. 22)
7. Right to work, to favourable conditions of work and to protection against unemployment; the right to form and join trade unions. (Art.23)
8. Right to a standard of living adequate for the health and well-being of oneself and one's family. (Art. 25)
9. Right to education. (Art. 26)

Some civil and political rights like the rights to participation and access to justice have been used to guarantee processes and procedures essential for sustainable development, while other substantive rights like the right to life have been used by courts around the world to promote sustainable development.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR), adopted by the UN General Assembly in 1966, are binding upon the UN member nations that have signed and ratified them. They reiterate many of the rights in the UDHR and specify additional ones. For example, the ICCPR includes substantive rights like the rights to due process, *habeas corpus*, political participation, to vote and minority rights (http://en.wikipedia.org/wiki/International_ Covenant_on_Civil_and_ Political_Rights).

The UDHR taken together with the ICCPR and ICESCR Covenants constitute the International Bill of Human Rights. After the Covenants were ratified by the requisite number of UN member nations in 1976, the Bill acquired the status of international law. Despite reservations about some clauses India ratified both the Covenants on April 10, 1979. The United States of America has ratified the ICCPR with some reservations, but not the ICESCR. It regards the rights defined in the latter as a set of desirable goals rather than legal rights.[#]

By defining rights to an adequate standard of living, education, health and well-being the UDHR and the ICESCR were identifying a right to development, without specifying so. In fact there was no explicit mention of environmental or developmental rights in human rights documents predating the 1972 Stockholm Conference. This is because the issues of environmental protection and sustainable development came to the fore on the international stage only at the Stockholm Conference.

Human Rights and Sustainable Development

The indivisible and interdependent nature of all human rights underpins the links between sustainable development and human rights (NGLS Roundup May 2002). It defines the theoretical link between the two. Many national laws and judicial decisions have recognized the relationship

[#] (http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights).

between environmental protection, economic development and human rights (TERI, 2011).

The Stockholm Conference recognized the link between the two. The first principle of the Conference Declaration called for a right to development and a good environment by declaring that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." In December 1990 a UN General Assembly resolution (45/94) reiterated that all individuals are entitled to live in an environment adequate for their health and well-being (United Nations 1997). It called for greater efforts towards ensuring a better and healthier environment.

Sustainable development and human rights are inter-related. For example, poverty and human rights abuses can both be worsened by environmental degradation (Sabharwal 2005). In most developing countries rural populations are heavily dependent on their immediate environment for obtaining resources like food, water, fuel wood or fodder for their daily sustenance. Destruction of forests or pollution of ground water resources thus endangers their rights to life and livelihood. Polluted drinking water or poor sanitation may lead to ill-health and even death, thereby denying the basic rights to life and good health.

Sustainable development and human rights are also interdependent. The Stockholm Conference Declaration asserted that the "the natural and the man-made [environment], are essential to his [or her] well-being and to the enjoyment of basic human rights, the right to life itself," (Clarke and Timberlake 1982).[4] In other words, sustainable development is essential for ensuring basic human rights. It is required for providing adequate safe drinking water, sanitation and minimizing the use of harmful

[4] Text in square brackets added by the author.

chemicals thus guaranteeing the rights to life, good health, well-being or an adequate standard of living.

At the global level it is becoming increasingly critical to sustain life-supporting environmental resources in order to ensure basic human rights. Global warming is expected to lead to rising sea and ocean levels and inundation of low lying coastal settlement, or forced migration and loss of life. Many island nations like the Maldives or coastal Bangladesh face such a threat due to the green house gases emitted by developed societies across the world. Implementing the strategies for sustainable development recommended by the BC can help secure the rights of the threatened populations.

Conversely, the assurance of many of the basic human rights is critical for the three pillars of sustainable development, i.e., economic growth, environmental protection and social progress. It has been argued that human rights are pre-requisites for sustainable development. Mary Robinson, the former President of the Republic of Ireland and a UN High Commissioner for Human Rights (1997-2002) said it emphatically, "Poverty eradication without empowerment is unsustainable. Social integration without minority rights is unimaginable. Gender equality without women's rights is illusory. Full employment without workers' rights may be no more than a promise of sweatshops, exploitation and slavery. The logic of human rights in development is inescapable" (UN Association of Canada 2002).

Civil and political human rights like the right to information, freedom of speech, the right to peaceful assembly, etc. empower the affected people and civil society organizations to seek remedies to cases of unsustainable development. The UN Non-Governmental Liaison Service (NGLS) has cited several judicial rulings from across the world in cases of environmental damage, deforestation and air and water pollution that are based on violations of existing, universally recognized substantive rights like the right to life, health or information (NGLS 2002).

Rights-Based Approach to Sustainable Development

The rights-based approach to sustainable development is a conceptual framework in which internationally accepted human rights standards guide sustainable development policy-making and processes. It uses human rights based arguments in courts and policy-making forums to demand that various goals of sustainable development be fulfilled or that certain actions that negate sustainable development should not be permitted.

The rights-based approach has resulted from an international recognition of the slow progress toward sustainable development. The Brundtland Commission had proposed that an international conference be held to decide on specific goals and initiatives for sustainable development policies and programs across the world. This led to the Earth Summit at Rio De Janeiro in June 1992, twenty years after Stockholm. A comprehensive action plan, *Agenda 21,* emerged from this meeting. It identified actions to be taken at the global, national and local levels to promote sustainable development.

Five years after the Earth Summit (Rio+5), the UN General Assembly expressed deep concern "that the overall trends with respect to sustainable development are worse today than they were in 1992" (United Nations 1997). Its Resolution S-19/2 said that globalization had increased the number of poor people in the world, despite slower population growth rates. Marginal progress had been made in curtailing unsustainable production and consumption patterns and the state of the global environment had continued to deteriorate. It maintained that, "Growth can foster development only if its benefits are fully shared," and that, "Democracy, respect for all human rights and fundamental freedoms, including the right to development, transparent and accountable governance in all sectors of society, were also essential for people-centered sustainable development."

Around this time, environmentalists, human rights activists, civil society organizations, and senior officials within UN organizations began to realize that achievement of sustainable development goals required going beyond pious declarations of intentions. Evidence was beginning to emerge from many countries that enforcement of the substantive civil and political human rights like the rights to life, liberty, freedom of speech, etc. was more effective in pushing governments to act on the goals of sustainable development.

Within the UN, the rights-based approach to sustainable development received strong support after 1997 from the UN Secretary General, Kofi Annan, who said that, "The rights-based approach……empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed," (UN NGLS 2002).

The strong support from the UN for a rights-based approach to promote sustainable development led to additional responses from several international human rights organizations. For example, protection of the environment is a key feature of sustainable development. Now it is also a feature of several recent legally binding international human rights agreements like the Convention on the Rights of the Child, the International Labour Organization (ILO) Convention on Indigenuous and Tribal People and the Convention on Biological Diversity (UN NGLS 2002). Environmental protection has also been upheld as a human right by international judicial bodies. In 1997 the International Court of Justice stated in a judgment that, "The protection of the environment is……a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself" (UN NGLS 2002).

Sustainable Development and Human Rights in India

Fundamental rights defined in the Indian Constitution guarantee basic human rights to all Indian citizens. The substantial ones include rights to: equality before the law (Article 14); freedom of speech and expression, peaceful assembly, association, movement, residence, and the right to practice any profession or occupation (Art.19); life and liberty (Art. 21); education (Art. 21A); protection against exploitation (Art. 23 and 24); freedom of religion (Art 25 to 28) and minority (cultural) rights (Art 29 and 30). Various courts in India have accepted arguments based on some of these fundamental rights to advance sustainable development.

The Constitution of India adopted in 1950 did not contain any clause pertaining to environmental protection. The 1972 Stockholm Conference enjoined the UN member states to undertake measures to improve and protect their natural environment. In 1976 India's Parliament passed the 42nd Amendment to the Indian Constitution. Article 48A of the Amendment made protection and improvement of the environment and the safeguarding of forests and wildlife, a Directive Principle of State Policy. Article 51A (g) made it a Fundamental Duty of all Indian citizens to 'protect and improve the natural environment, including forests, lakes, rivers and the wildlife, and to have compassion for living creatures'. Thus the State and its citizens are now constitutionally bound to protect and improve the environment. Though the Directive Principles are not legally binding, India's Supreme Court has upheld the principles in Article 48A in several judgments.

Post Stockholm, the Indian Parliament enacted a number of laws to protect the environment. These include the Water (Prevention and Control of Pollution) Act of 1974, the Forest Conservation Act (1980) and Air (Prevention and Control of Pollution) Act of 1981. After the Bhopal Gas tragedy of 1984, the Environment (Protection) Act was legislated in 1986. Besides environmental sustenance its aim is to minimize hazards to

human beings, other species and property. In the following years, a number of rules under the EPA were framed to prevent the occurrence of Bhopal-type industrial disasters and to sustain critical ecosystems such as coastal areas, habitats with rare or endangered species and rich biodiversity areas. The most important among them is the Environment Impact Assessment (EIA) Notification in 1994. The EIA rules, however, were substantially diluted by amendments passed in 2006.

In the past decade the Government of India began to move towards a rights-based approach to integrate economic development, environmental protection and social justice. A landmark legislation for empowering citizens is the Right to Information Act passed in 2005. The Forest Rights Act of 2006 is an attempt to integrate forest conservation with social justice for the marginalized by protecting the rights of traditional forest dwellers. The National Rural Employment Guarantee Act, 2005 in practice combined the right to work with improvement of the natural environment by linking a vast majority of works under the MGNREG Scheme with water, soil and land conservation (UNDP 2012).

The legislative efforts of the Government of India have been supplemented with the development of supportive jurisprudence through judicial pronouncements by Indian courts. India's Supreme Court (SC) has played a leading role in developing environmental case law. It has pioneered new principles to protect the environment, reinterpreted fundamental rights and innovated procedures to admit petitions and gather evidence. Some important examples are:

- *Rural Litigation and Entitlement Kendra* v. *State of U.P. & Ors*[5]: It was the first Public Interest Litigation (PIL) on an environmental issue entertained by the SC.
- *M.C. Mehta and Anr* v. *Union of India & Ors*[6]: In this oleum gas leak case the Supreme Court reiterated its stand on entertaining

[5] 1985 AIR 652

[6] 1987 AIR 1086

petitions from public spirited persons or social action groups whenever the fundamental rights of a person or a group were violated and who could not approach the Court directly. A key feature of its judgment was the principle of 'absolute liability' in which no exceptions (acts of God) can be accepted. The Court also effectively endorsed the 'Polluter Pays' principle.

- *M.C. Mehta* v. *Union of India & Ors*[7]: In the Ganga water pollution case the Court declared that life, health and ecology had a greater importance for people than employment or revenue generation.
- *Charan Lal Sahu Etc.* v. *Union of India & Ors*[8]: A constitution bench of the SC in the Bhopal gas disaster case linked the fundamental right to life with environmental quality. 'In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under Articles 21, 48A and 51(g),' it said. It added that the State was duty bound to take effective steps to protect the constitutional rights guaranteed. It ordered the US-based Union Carbide Corporation to pay US 470 million in full settlement of all claims, rights and liabilities.
- *Subhash Kumar* v. *State of Bihar & Ors*[9]: The Court observed that 'Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.' It thus recognized the right to good environment quality as a part of the fundamental right to life.
- *Indian Council for Enviro-Legal Action* (ICELA) vs Union of India & Ors[10]: In this case relating to environmental pollution, particularly ground water, by an agro-chemical industry in Bichhri village of Udaipur district, the Supreme Court reiterated that the

7 1988 AIR 1115

8 1990 AIR 1480

9 1991 AIR 420

10 1996 (3) SCC 212

'polluter pays' principle was the law of the land, as indicated earlier in the oleum gas leak case.

- *Vellore Citizens Welfare Forum* v. *Union Of India & Ors*[11]: The Court endorsed the view that the precautionary principle and the polluter pays principle are essential features of the concept of sustainable development. It said that the State and its statutory agencies were obliged to 'anticipate, prevent and attack' the causes of environmental degradation. It upheld the 'precautionary principle' by stating that, "Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."
- *M.C. Mehta* v. *Union of India & Ors* (indiankanoon.org 2005)[12]: The SC entertained a PIL petition to save the Taj Mahal from being damaged by emissions from industries in and around Agra. Citing earlier decisions and Articles 21, 47, 48A and 51g of the Indian Constitution the judgment said, "In view of the above mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country." It interpreted the 'polluter pays' principle as to mean that the absolute liability for harm to the environment extended to compensating the victims of pollution and also the cost of restoring the environmental degradation.
- *M.C. Mehta* v. *Kamal Nath*[13]: In this landmark case the Supreme Court held that along with the 'polluter pays' principle, the public trust doctrine was also a part of environmental law in India. This doctrine holds that environmental resources like air, sea, water, forests, etc. are gifts of nature that the Government holds in trust and protects them for the good of the general public. They are significant for all people and therefore should not be privately owned.

[11] 1996 (5) SCC 647

[12] http://www.indiankanoon.org/doc/1964392/

[13] 1997 (1) SCC 388

- *Jagpal Singh & Ors* v. *State of Punjab & Ors* (Kaur 2011): In this case, concerning the illegal encroachment of a village pond in Rohar Jagir village of Patiala district, the Court called for environmental protection. Arguing that village commons including forests, pastures, ponds, irrigation channels and rivers among other resources in many parts of India had been encroached upon or usurped by powerful interests for personal benefit it reaffirmed the rights of the common people. It ordered that the encroached land be handed back to the Gram Panchayat. It directed all state governments to prepare schemes for evicting everyone occupying village commons and restoring them to the community. The Court also asked the states to submit compliance reports so that it could monitor implementation of its directions.
- In April 2013 the Supreme Court authorized 12 tribal gram sabhas in Odisha to decide whether the tribals had religious rights over the Niyamgiri hills (Shrivastava 2013). Their "rights have to be preserved and protected," it said. In effect the SC gave the gram sabhas a statutory, legal authority. Earlier the Union Ministry of Environment and Forests (MoEF) had denied a state joint venture with an international aluminium manufacturer (owned by an India-born entrepreneur) to mine the hills for bauxite. MoEF claimed that the project violated provisions of the Forest Conservation Act, Environment Protection Act and the Forest Rights Act (FRA) as well as the religious rights of the Dongria Kondh and Kutia Kandha tribals who worshipped the Niyamgiri hilltop as the abode of their deity Niyam Raja. In 2011, the joint venture Odisha Mining Corporation Limited challenged the MoEF decision in the Supreme Court. To ensure that gram sabha proceedings were not influenced by the project proponents, the state government or the Centre, the court directed that the proceedings be recorded in the presence of a judicial officer of the rank of a district judge.

- In April 2014 the Supreme Court delivered a judgment limiting the annual extraction of iron ore from mining leases in Goa to 20 million ton, estimated at less than half the amount of ore that was being extracted earlier. The judgment took into account the principles of sustainable development and inter-generational equity (Banerjee 2014).

It can be seen from the cases cited above that the Supreme Court has innovated procedural and substantive environmental jurisprudence. Its procedural innovations include entertaining petitions on behalf of pollution victims and inanimate objects, taking *suo moto* notice of environmental problems, expanding the scope of litigation, appointing expert committees and appointing amicus curiae to represent environment and pollution victims (Sahu 2008).

Perhaps the most important procedural innovation for environmental jurisprudence is the introduction of the concept of PIL. It has enhanced the basic right of access to justice. It eliminates the biggest hurdle in the path of litigation for environmental justice, i.e., the traditional concept of *locus standi*. Earlier only the victims of environmental pollution or degradation could petition the Courts. Now any individual or civil society organization with sufficient public interest in environmental problems can approach them on behalf of affected people or even for protection of the natural environment (Curmally 2002).

In 1983 the Supreme Court heard the Dehradun lime stone quarries case filed by the Rural Litigation and Entitlement Kendra as the first PIL in India on an environmental issue. This was followed in relatively quick succession by issues of Ganga water pollution, vehicular pollution in Delhi, the oleum gas leak case and litigations regarding the Tehri and Narmada dams among others. Other issues dealt with by the Supreme Court through public interest petitions over the years include forest conservation, environmental impact of development projects particularly large dams and protection of ecosystems like wetlands and coastal regions. Many

decisions in these cases lend support to the concept of a human right to a healthy environment (Razzaque 2004).

To enhance access to justice Indian judges have taken *suo moto* notice of environmental issues. The Supreme Court took cognizance of a letter, complaining about air pollution, and transmitted it as a petition to the Madras High Court within whose jurisdiction the offence was located. In 1992 the Court treated a newspaper report about water pollution from an industrial unit in Bihar as a petition and delivered a judgment on it (Razzaque 2002).

Through substantive innovations the Court expanded legal interpretations, created policy and defined the necessary governance structure for implementing environmental protection (Sahu 2008). A major substantive innovation has been to clarify the fundamental right to life and liberty under Article 21 of the Indian Constitution. Through various cases the Court has recognized several unarticulated liberties including the right to survive as a species, right to a healthy environment, quality of life, the right to live with dignity and the right to livelihood, among other things (Sabharwal 2005). In the *Ganga water pollution case* it has held that life, health and ecology have greater importance than employment or revenue generation.

India's apex judiciary has enhanced environmental justice in India by reaffirming sustainable development and environmental principles formulated in various international covenants, agreements and conferences. These include the 'polluter pays' principle, precautionary principle, public trust doctrine and the intergenerational equity principle. In the Bichhri ground water pollution case, the Supreme Court ruled that the 'polluter pays' principle was the law of the land. In the *M.C. Mehta* v. *Kamal Nath* litigation it held that along with the 'polluter pays' principle, the public trust doctrine was also a part of Indian environmental law. The reiteration of the public trust doctrine in the village commons case of 2011 has

been lauded abroad also (Bollier 2011). In other cases it reiterated that the public trust doctrine had 'grown from Article 21 of the Indian Constitution and had become a part of the Indian legal thought process for quite a long time' (Sabharwal, 2005). In the *Vellore Citizens Welfare Forum lawsuit* the Court considered the precautionary principle and the 'polluter pays' principle to be essential principles of sustainable development. It also maintained that the State was obliged to 'anticipate, prevent and attack' the causes of environmental degradation. It applied the precautionary principle in the *Taj Trapezium case* judgment and ordered the shifting or closure of polluting industrial units.

The activism shown by the Supreme Court has percolated to the lower courts also. Many High Courts in India have admitted PILs on environmental issues. Among the variety of PILs heard in High Courts in different states are the following:

- The Gujarat High Court directed the Jetpur Dyeing and Printing Association to submit a model scheme for treatment of water that was polluted by the sari printing and dyeing units (Down To Earth, 1995).
- Following the logic of the public trust doctrine, the Guwahati High Court asked the state government to preserve two important *beels* (wetlands) in the city, as they were necessary for protecting the local environment (DTE, 2000).
- Responding to a clutch of PILs, the Chief Justice of the Bombay High Court passed an order to ensure conservation and rejuvenation of mangroves in Maharashtra state with immediate effect (DTE, 2010), another application of the public trust doctrine.
- In a very recent decision based on the precautionary principle, the Odisha High Court ordered three District Collectors to stop all stone quarrying and mining activities in areas of high biodiversity. It also asked them to cancel the leases given earlier (DTE 2014).

Several state High Courts have given human rights-based decisions regarding environmental resources that are also life support systems. They have held that the right to safe potable water is a fundamental right guaranteed under the right to life (Upadhyay 2011). In 2006 a Kerala High Court judgment said, 'Failure of the State to provide safe drinking water to the citizens in adequate quantities would amount to violation of the fundamental right to life enshrined in Article 21 of the Constitution of India and would be a violation of human rights…. Nothing shall stand in its way whether it is lack of funds or other infrastructure. Ways and means have to be found out at all costs with utmost expediency instead of restricting action in that regard to mere lip service' (Upadhyay 2011).

It has been argued that a major reason for judicial activism is the failure of executive agencies to discharge their constitutional and statutory duties (Baxi 1985). The judiciary's activism has encouraged civil society groups and public spirited individuals to approach the courts on behalf of victims of environmental pollution or degradation for redress. But this activism is not without problems. Some PILs have been filed with little or no preparation, with inadequate evidence to support them, thus wasting the time, energy and resources of the Court (Sahu 2008). The Supreme Court has itself noted that compliance with orders issued at the local level in many cases, would have prevented recourse to the highest Court. In addition, what was considered as an inexpensive and expeditious mode of redressal has sometimes taken more than a decade to get settled, as in the 1995 *T.N. Godavarman* v. *the Union of India* case on forest conservation (Sahu 2008).

Another cause for concern among public spirited persons and organizations, who see the Court as the last resort to protect the environment is, with due respect, an inconsistent approach of the courts in entertaining and rejecting PILs. This is particularly true in cases involving

large infrastructural projects of state agencies, like the Tehri and Narmada dams. For instance, in the Tehri dam case, a majority of judges allowed the government to construct the dam without a comprehensive environmental impact assessment, contrary to the recommendation of the official Environmental Appraisal Committee that construction of the dam not be allowed (Bhushan 2004). The Niyamgiri case, where the permission to a public-private joint enterprise to mine bauxite was ultimately cancelled on the basis of the local panchayats' decisions to protect the religious rights of the tribal people, is a major exception to the trend of allowing large development projects to proceed.

Environmentalists, however, are deeply concerned at several steps taken by the new government of Prime Minister Modi to undo various laws and rules that aim to protect the environment. Some of the reported changes are (Narayanan, N. 2014):

1) Taking away the right of tribal village councils to oppose an industrial project
2) Reconfiguring the National Board of Wildlife to reduce the authority of independent experts
3) Exempting coal mining from public hearings, allowing irrigation projects without clearances
4) Lifting the moratorium on new industries in critically polluted areas
5) Diluting forest norms and allowing industry to creep closer to national parks
6) Diluting the scope of the National Green Tribunal
7) New environmental committee set up to review laws

Some concerned environmentalists have gone to court against some of the changes that have been made already.

The Road Ahead

The failure to meet internationally agreed upon goals of sustainable development has led to a growing demand at various world forums for a new sustainable development agenda based on justice and therefore embedded in essential human rights principles of 'universality, interdependence, equality, participation, transparency and accountability' (CESR 2013). This demand is often supported by similar calls for a human right to a healthy environment (Kotze 2014). This call for a universal human right to a healthy environment becomes critical with the growing threat of global warming and climate change.

Despite the development of a progressive environmental jurisprudence in India, substantial and continuing improvement in environmental quality and hence sustainable development is at best uneven and limited. A large part of this is due to unresponsive and dysfunctional administrative agencies and a legitimate reluctance of the courts to encroach on the executive domain. Non-implementation of court orders undermines its authority. This lacuna needs to be overcome. Delivery of environmental justice can improve significantly if the principles of sustainable development law are consistently followed or institutionalized (Sahu 2008).

A major step towards improving the delivery of environmental justice in India could be to make the right to a healthy and safe environment a fundamental right or at least a justiciable right. A former Chief Justice of India, Y.K. Sabharwal, has contended that, "there is a *prima facie* rhetorical and moral advantage in making the environment a human rights issue," (Sabharwal 2005). It has also been argued that, "Life, livelihoods, culture and society are fundamental aspects of human existence," and hence their well being ought to be recognized as a fundamental human right (Kothari 2006). Such a right must also include the survival of all other species on Earth because the erosion of biodiversity erodes sustainability and human rights.

The current attempts to dilute India's environmental laws and rules, even though they impinge upon accepted human rights, will require strong challenges in the courts if sustainable development initiatives taken over several decades are to survive.

Conclusions

The edifice of sustainable development is built on the three pillars of environmental protection, economic growth and social justice or equity. A number of international, regional and national consultations have helped evolve the principles, objectives and strategies of sustainable development.

The indivisible and inter-dependent nature of all human rights underpins the links between sustainable development and human rights. It has been emphatically argued at times that human rights are pre-requisites for sustainable development. The slow progress towards fulfilling the internationally agreed upon goals of sustainable development has led to the emergence of a rights-based approach to sustainable development. Most countries now have a right to a healthy environment or provisions for protecting the natural environment as part of their constitutions.

India is one of the leading nations in the world in the evolution and practice of sustainable development law. Since the Stockholm Conference the Government of India has enacted many laws to protect the environment and has moved to a rights-based approach to integrate economic development, environmental protection and social justice.

The legislative efforts of the Government of India have been admirably supplemented by the development of supportive jurisprudence through judicial pronouncements by Indian courts. The Supreme Court of India has evolved a number of procedural and substantive innovations. In doing so it has often used a rights-based approach to uphold the basic principles of sustainable development. One of its most important innovations is to promote public interest litigation, thereby extending

access to environmental justice for the environment and people who are usually unrepresented. Civil society organizations and public spirited individuals have seized the opportunity provided by the judiciary to highlight serious violations of human rights arising out of conflicts around the natural resource base. Despite problems and conflicts arising out of such judicial initiatives, it will be fair to say that overall the cause of sustainability and human rights has advanced steadily in India in the last few decades.

References

Banerjee, S. (2014): *'Supreme Court allows resumption of mining in Goa'*, Down to Earth, April 22, 2014, retrieved from http://www.downtoearth.org.in/content/supreme-court-allows-resumption-mining-goa

Baxi U. (1985): 'Environmental Law: Limitations and Potentials for Liberation' , in *India's Environment: Crises and Responses*, Bandyopadhyay J., et al. (Eds), Natraj Publishers Pvt. Ltd, Dehradun.

Bhushan, P. (2004): *'Supreme Court and PIL"*, Economic & Political Weekly, 39 (18).

Bollier, D. (2011): *'The Supreme Court of India defends the village commons'*, at http://bollier.org/ supreme-court-india-defends-village-commons

Boyd, D.R. (2012): *'The Constitutional Right to a Healthy Environment'*, Environment, Philadelphia, July-August 2012.

CESR (2013): *'A Matter of Justice'*, Center for Economic and Social Rights, Brooklyn, NY.

Clarke, R. and Timberlake, L. (1982): '*Stockholm Plus Ten - Promises, Promises? The Decade Since the 1972 UN Environment Conference*', London, Earthscan

Cordonier Segger M.C. and Khalfan A. (2004): *'Sustainable Development Law: Principles, Practices and Prospects'*, Oxford University Press, Oxford. (As cited in TERI 2011).

http://en.wikipedia.org/wiki/International_ Covenant_on_Civil_and_Political_Rights

http://en.wikipedia.org/wiki/International_Covenant_on _Economic,_ Social_and_ Cultural_Rights

Jeffords C. (2012): 'Constitutional Environmental Human Rights: A Descriptive Analysis of 142 National Constitutions, in *'The State of Economic and Social Human*

Rights: A Global Overview', Ed. Minkler L., Cambridge University Press, Cambridge, Ma, Chapter 13.

Kaur, R. (2011): '*Return of village land*', Down to Earth, Feb 28, 2011.

Khoshoo T.N. (1996): *'Mahatma Gandhi: An Apostle of Applied Human Ecology'*, Tata Energy Research Institute, New Delhi, p.33.

Kothari, A. (2006): *'Environment and Human Rights'*, National Human Rights Commission, New Delhi.

Kotze, L.J. (2014): *'Human rights and the Anthropocene'*, The Anthropocene Reviw, published online August 28, 2014, retrieved from http://anr.sagepub.com/content/early/2014/07/22/2053019614547741

Malthus T.R. (1798): '*An Essay on the Principle of Population*', Oxford, Oxford World's Classics reprint, Chapter 1, p. 13. (As cited in Wikipedia).

Meadows, D.H., D.L. Meadows, J. Randers, and W.W. Behrens III (1972): '*The Limits to Growth*', Universe Books, New York, NY.

Narayanan, N. (2014); *' Modi government has launched a silent war on the environment'*, September 12, 2014, retrieved from http://scroll.in/article/678380/Modi-government-has-launched-a-silent-war-on-the-environment

Razzaque, J. (2002): *'Human Rights and the Environment; the national experience in South Asia and Africa'*, Office of the UN High Commissioner for Human Rights, Geneva.

Razzaque, J. (2004): *'Public Interest Environmental Litigation in India, Pakistan, Bangladesh'*, Kluwer Law International, Hague.

Sabharwal, Y.K. (2005): *'Human Rights and the Environment'*, retrieved from http://www . supremecourtofindia.nic.in/speeches/speeches_2005/humanrights.doc

Sahu, G. (2008): 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence', 4/1 *Law, Environment and Development Journal* , p. 375, available at http://www.lead-journal.org/content/08375.pdf

Shrivastava, K.S. (2013): '*Gram sabha gets a boost'*, Down To Earth, May 15, 2013.

TERI (2011): *'Sustainable Development in India: Stocktaking in the run up to Rio+20'*, The Energy and Resources Institute, New Delhi, p.25.

UN Non-Governmental Liaison Service (2002): 'Human Rights Approaches to Sustainable Development', NGLS Roundup, New York/Geneva, p.1.

United Nations (1997): Resolution S-19/2 adopted by the UN General Assembly Nineteenth Special Session, New York, September 19th. Retrieved from http://www.un.org/documents/ga/ res/spec/aress19-2.htm.

Upadhyay V. (2011): "Water Rights and the 'New' Water Laws in India: Emerging Issues and Concerns in a Rights Based Perspective", India Infrastructure Report 2011, Infrastructure Development Finance Corporation (IDFC), Chennai, Chapter 5, pp 56-66.

WCED (1987): *'Our Common Future'*, Report of the World Commission on Environment and Development, United Nations, New York, 1987.

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Women and Children Rights

Trafficking in Women and Children

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Trafficking in women and children is one of the most outrageous violations of human rights. It violates fundamental right to life and dignity. It has been aptly described as a "*trade in misery.*" Over the decades due to operation of forces such as globalization, feminization of poverty as well as incidence of war and violence, trafficking has become a burgeoning form of organized crime. There are contradictions in the reports about the magnitude of trafficking. There are reports estimating that about 27 million persons[1] are victimized though human trafficking every year and it is more than 32 billion dollar industry – the second largest and fastest growing criminal industry. It is linked to international crime syndicates that peddle drugs, guns, false documents as well as people. It is also a global health hazard that helps spread of HIV/AIDS and other ailments. It further constitutes a global security threat because profits from trafficking finance violence and terrorism.

However, actual incidence of trafficking is of much wider extent than what is projected as many cases particularly trafficking of children, are not reported. At present, there is no clear cut definition of trafficking in Indian law. The term is used to describe activities that range from voluntary migration to movements of persons through force or violence for exploitative purposes. Trafficking has been defined in the UN Protocol

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1 Department of State, United States of America, *The 2012 Trafficking In Persons (TIP) Report,* June 2012, The Promise of freedom http://www.state.gov/documents/organization/192587.pdf.

to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (2000) to which India is a signatory and also ratified it in May 2011. The definition given therein is:

> "(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
>
> (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
>
> (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
>
> (d) "Child" shall mean any person under eighteen years of age.

The above definition articulates that trafficking is not limited to sexual exploitation only, it could occur also for forced labour and other slavery like practices. It has been correctly pointed out that at the core of any definition of trafficking must be the recognition of the fact that trafficking is never consensual. It is this non-consensual nature of trafficking that

distinguishes it from other forms of migration. Thus, all kinds of illegal migration are not trafficking and the basic distinction between the two is the question of consent[2]. Very often trafficking is equated with prostitution and that is one of the prime reasons why human rights violations inherent in trafficking are not properly understood. There is need to understand various issues and manifestations of trafficking from a human rights perspective.

Push and Pull Factors

Trafficking is a problem that virtually affects every country in the world. Normally, the flow of trafficking is from less developed countries to advanced countries. A number of push and pull factors operate. Some key push factors are: inadequate employment opportunities, lack of social safety net, globalization, feminization of poverty. Other contributory factors include - (i) poor status of women in many societies - many societies favour sons and look upon women as economic burden, (ii) large profit and low risk nature of operations. Many law enforcement agencies and governments seek to downplay the nature and magnitude of the problem, and (iii) due to priority to check illegal migration in many countries trafficking is looked upon as a problem of illegal immigration. The victims are treated as criminals and often detained and punished.

Pull factors are the factors operating at the place of destination. These factors capitalize on victim's vulnerability at the place of origin. Though push factors can be minimized by way of development and growth but this can happen only when if there is inclusive growth and development. However, growth and development alone cannot eliminate the push factors. Natural calamities and disasters like earthquakes, floods, famines destabilize and displace people and place them under traumatic conditions. They become easy victims of trafficking. Studies have shown increased trafficking of women and young girls from migrants of Odisha cyclones

[2] Report of the U.N. Special Rapporter Ms. Radhika Comaraswamy (28th October – 15 November 2000)

and earthquakes in Latur in Maharashtra[3]. UNICEF's State representative from Bihar reported that after Bihar floods hundreds of survivors were separated from their families and large numbers of incidents of child trafficking were reported[4].

Global Pattern

The globalization of world economy has increased the movement of people across borders, legally or illegally, from poorer to wealthier countries. International organized crime has taken advantage of free flow of people and services to further extend its own reach and operations. International trafficking trade is highly organized, involving sophisticated international networks of procurers, document forgers, escorts, corrupt officials etc. Chinese Asian, Central American and Russian gangs are among the major traffickers of people. International Organization of Migration (IOM) reports that Russian organized crime groups control European prostitution industries such as those in Poland and Germany. One major Russian criminal syndicate *Mogilevich* owns night clubs in Prague, Riga and Kiev and are engaged in trafficking in women and children for forced prostitution in these clubs. But largest numbers of victims are trafficked from South East Asia and South Asia. Cambodia, Philippines and India have become popular destinations for sex tourists including pedophiles from western countries and Australia. Japan is considered to be one of the largest markets for Asian women trafficked for sex. Japanese organized crime syndicate *Yakuja* is involved in a big way in trafficking in women.

Modus Operandi of Traffickers

Traffickers acquire the victims in a number of ways. Sometime women are kidnapped outright in one country and taken to another. Victims are often lured with job offers. Traffickers entice victims with promises of

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[3] Pandey Balaji *et al., 2002; Trafficking in women in Orissa: An exploratory study; Bhubaneswar*; Institute for Socio-Economic Development.

[4] Khanna Priyanka, Bihar, 24 September 2008: *Reuniting survivors of Bihar floods*. http://www.unicef.org/india/emergencies 4651.htm as visited on 14/10/2011

paying jobs in foreign countries as models, dancers, domestic workers etc. They also advertise phoney jobs and marriage opportunities in local papers. The prevalence of dowry system compels many families to avoid formal marriage of their daughters and parents are persuaded by the traffickers to handover their daughters for "*dowryless marriages*". In India, social acceptance of prostitution in some communities encourages this clandestine trade.

Traffickers seek to control the victims by using different methods. The victims very often remain under the impression that it is for her or his benefit and this is the only way they can help themselves and their family members. Traffickers also work upon the fear psyche of the victims. The victims are threatened with dire consequences and often threats of harm to the family members. There are also instances where the victims develop Stockholm syndrome over a period of time. This feeling of oneness with the trafficker helps the trafficker when there are interventions from the enforcing agencies trying to establish the crime.

An important feature of trafficking network is an efficient cooperation of what appears to be a fragmented process. Actors in the trafficking network collaborate and protect one another. Each actor concentrates on his or her responsibility in a chain of activities that involve recruitment, forging of documents, placement in workplace etc. Another principle in the sex trade is mobility. Women are rotated among different brothels at a fixed period of time. The objective is to disorient the women and ensure that they are not able to build lasting contacts with the clients to seek help.

Plight of the Victims

Research has established that women trafficked into the profession report high levels of physical, sexual and psychological violence. In NHRC's Action research[5] a large number of victims of commercial sexual

[5] *Action Research on Trafficking in Women and Children* – NHRC and Institute of Social Sciences, 2005

exploitation across 12 states of India were interviewed. The data gleaned from the victims indicated that the majority of them were from deprived and marginalized sections of the society and dysfunctional families and most of them are illiterates. They had to face harrowing times in the brothels and had no choice in deciding the number of clients they have to service. They were denied the basic medical facilities and many of them were suffering from HIV and other gynecological problems. Most of the victims did not maintain any contact with their families and did not know if their families ever tried to rescue them.

An important feature of trafficking network is an efficient coordination of what appears to be a fragmented process. The actors in trafficking network collaborate and protect one another. Persons who operate at the recruiting end always do not know the people or their activities at the receiving end. Each actor concentrates on his specific responsibility in a chain of activities that involve recruitment, passage, forging papers and placement in work places.

According to the UNODC Report the most common form of human trafficking (79%) is sexual exploitation. The victims of sexual exploitation are predominantly women and girls. One surprising point stressed in the report was that in 30% of the countries, which provided information on gender of traffickers, women make up the largest proportion of traffickers.[6]

Poor Law Enforcement

The Constitution of India under Article 23(1) prohibits trafficking in human beings and forced labour. This right is enforceable against the state and private citizens. There are also provisions in the Indian Penal Code, 1860 that makes procuring of a minor girl from one part of India to another punishable (Section 366(a)). Section 366(b) makes importation

[6] UNODC report on human trafficking exposes modern form of slavery; http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html

of a girl under the age of 21 years punishable. Section 374 IPC provides punishment for compelling a person to work against the will of the person. There is Suppression of Immoral Traffic Act, 1986 – a special legislation that deals with trafficking. The purpose of this enactment was to eliminate trafficking in women and children for the purpose of prostitution as an organized means of living. However, one of the main problems of the Act is that it makes prostitution the only form of trafficking and does not include other forms of trafficking, as enunciated in *Palermo Protocol*. The Immoral Traffic Prevention Amendment Bill, 2006, however, broadens the definition of trafficking, which includes all forms of enslavement – from servitude to prostitution. These amendments are in keeping with UN protocol to end trafficking in persons, specially women and children. The proposed definition of trafficking decriminalizes the women and shifts the blame from the victims to the perpetrators. It for the first time provides punishment for person "who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons". Unfortunately, this Bill has yet not been enacted to law.

Poor law enforcement is one of the principal factors responsible for the upsurge in trafficking. Unfortunately, law enforcement authorities accord a low priority to deal with this serious crime eating in to the vitals of our social fabric. National Crime Records Bureau (NCRB) figures show that very few cases are registered by the police under Immoral Trafficking Prevention Act[7], 2503 cases were reported in 2012 as compared to 2435 cases in 2011. But 20% of such cases were registered from Tamil Nadu while Andhra accounted for 18.4% of such cases. Some states like West Bengal, Bihar, Goa, Gujarat, Karnataka which are considered as destination, transit and source areas for trafficking in women and children, register very few cases. NCRB figures do not clearly reveal the extent and depth of trafficking. They mostly pertain to cases registered by the police after raiding brothels or places where commercial sexual activities are

[7] Crime in India – 2012, Compendium, National Crime Records Bureau. Ministry of Home Affairs.

going on. Hence, NCRB figures do not provide a clear picture of the total number of women and children trafficked for commercial sex work or other exploitative purposes or the severity of violence experienced by women and children during trafficking.

In the Action research on trafficking conducted by the Institute of Social Sciences under the aegis of the National Human Rights Commission, large number of police and judicial officers were interviewed. The interviews brought to light the fact that many of the police officers were not aware of the provisions of the law dealing with trafficking and again while registering cases of trafficking provisions of substantive law are not being combined with the provisions of special law (ITPA). This very often allows the culprits to escape the clutches of law with light or no punishment. There is also gender discrimination in booking the culprits under ITPA. Overwhelming majority of persons arrested are females and very few males are arrested under the Act. This shows lack of sensitivity on part of the law enforcement officers as well as ignorance of the various provisions of law. Out of the total 65,602 persons arrested under ITPA during the period 1997-2001 only 8452 were males and 57,150 were females.[8] Most of the police personnel hold the erroneous view that women and children caught from brothels are a part of an antisocial set up and therefore are to be arrested and placed behind the bars.

Trafficking and Law Enforcement

The importance of training of the law enforcement officers cannot be overemphasized. During the research study conducted by the Institute of Social Sciences majority of the total 852 police officers interviewed stated that they received no gender sensitivity training so far in their police careers. This lack of exposure to emancipatory training makes them insensitive while dealing with the victims. This insensitive approach has the further effect of alienating the victims and pushing them into a non-sharing mood

[8] Supra note 5

which hampers prosecution of the traffickers. It is necessary for the law enforcement officers to identify areas where they need support and assistance and information to deal more effectively with the crime and respond better to the victims.

There is also an imperative need for augmentation of the staff of the law enforcement agencies. In most of the states there is severe shortage of police personnel, particularly women police officers to effectively deal with the problem of trafficking. Studies conducted on implementation of Immoral Traffic Prevention Act show that provisions of the Act which deal with the traffickers and exploiters are seldom invoked, whereas section 8 of ITPA wherein the victims can be charged and prosecuted for soliciting are overused. In launching prosecution against the victims the legal concept of mens rea has to be borne in mind and a person who is made to solicit under force, duress or coercion should not be charged with the offence of soliciting.

It is encouraging to note that there is an emerging trend in the courts of punishing the brothel owners and exploiters. For this painstaking and through investigation is necessary to unearth the sources of trafficking and expose crime syndicates and gangs involved in trafficking operations. Efforts have to be made to unearth illegal assets of the traffickers and confiscate them.

Special Police Officers

There is shortage of special police officers in implementing the law. Section 13(2)(a) of the ITPA authorizes the District Magistrate to appoint special police officers to implement the Act. Unfortunately, this provision of the Act is not properly utilized. If utilized, it would provide an important weapon to the police authorities to identify competent personnel, specially women, and utilize them in anti-trafficking operations. ITPA also provides under Section 22(a) to set up special courts not only by the state

government but by the Central Government also. This provision is also seldom utilized. It is necessary to set up courts, by Central and State governments so that trial of offences against ITPA can be completed and justice meted out to the offenders expeditiously. U/s 18(2) of ITPA the court convicting any person of any offence U/s 3 of ITPA (keeping a brothel etc.) and 7 of ITPA (for misuse of public place) may pass order of closure of brothels and eviction of the offenders. However, seldom these provisions are resorted to.

Cross Border Trafficking

Despite constitutional mandate and existing laws Indian situation so far as trafficking in women and children is concerned is very disconcerting. India serves as a source country, transit centre and destination country for trafficking in women and children. There is cross border trafficking in women and children across the country's porous borders with Nepal and Bangladesh. There are no accurate data available on cross border flow of trafficking and only NGOs working in the field provide some rough estimates on the subject. Indo-Nepal border is a long and a porous one with specific entry points along the entire stretch. This facilitates extensive illegal cross border movements. Under the 1950 Treaty with India, there is no immigration control for Nepalese travelling or migrating to India and so no records are maintained. Research on the trafficking of Nepalese women and girls to India points to around 5000 to 7000 Nepalese girls being trafficked to India. Though Nepali women are trafficked to many Indian cities, Mumbai appears to get the highest percentage of Nepali prostitutes. The booklet "Rape for Profit" by Human Rights Watch, Asia, describes how the girls are tricked with promises of employment and prospects of false marriages etc. by pimps and traffickers. "*While there has been some acknowledgement by government officials in both countries about the magnitude of the problem and the need for action, neither India nor Nepal has taken serious measures to stop trafficking. Despite a plethora of national and international legal*

instruments that address trafficking and abuses common in the industry, the trade continues to prosper"[9].

Similarly, thousands of women and children from Bangladesh are trafficked to India and Pakistan each year. Bangladesh has almost 4156 Km border with India. The entire porous border is thinly guarded and BSF personnel dispersed over a long zig-zag riverine area have not been effective in controlling illegal trans-border migration sustained by a well-organized bribe system.

However, trafficking from neighbouring countries only accounts for only 10% of the total volume of trafficking. Action research on Trafficking in Women and Children in India conducted by the NHRC and ISS identified the geographical belts of exploitation. States like West Bengal, Andhra Pradesh, Bihar, Maharashtra, Madhya Pradesh and Rajasthan appear to be the main states from where trafficked persons are sourced. Metro cities are the most frequent destination points.

Missing Children

Another important, though often unused, strategy to control trafficking in women and children is to link the cases of missing persons to trafficking cases. Recent data on missing children presented by the Home Ministry to Parliament show that 3.25 lakhs children went missing between 2011 and 2014 (till June). On an average nearly 1 lakh kids are missing every year. More worryingly, 55% of those missing are girls and 45% of all missing children have remained untraced. This is just a tentative and unrealistic estimate because data collected from police records are inadequate and incorrect. Many cases are not reported, and if reported, not registered by the police. What is worse, under the existing law enforcement system there is no special focus on tracing missing children.

NHRC's Action research on trafficking has shown, through several case studies, the linkage between trafficking and persons reported missing.

[9] *Rape for Profit* – Human Rights Watch/Asia - Page 5

Many of these children are trafficked for commercial sexual exploitation or forced labour or other forms of abuse. Unfortunately, police seldom thoroughly and properly investigate cases of missing children. While trafficking is a serious crime, missing of persons is not viewed as a crime. The seriousness of the issue is diluted by registering the case under a "missing persons" category. Many of the missing children are trafficked for commercial sexual exploitation or forced labour or other forms of abuse. The seriousness of the issue is diluted by registering the case under "missing person" category.

The Committee setup by the NHRC[10] under one of its former member P.C. Sharma has given a bold suggestion that preliminary enquiry into cases of missing persons could be outsourced by the police to NGOs who are willing to undertake such tasks. Such NGOs can be notified by the state governments. Synergy between the law enforcement and the NGOs will be of great help in this regard. In the words of the NHRC Committee, missing children constitute a "veritable black-hole" in law enforcement and the police so far have unfortunately failed to tackle the problem and not paid adequate attention to this.

Sex Tourism

Sex tourism represents another new dimension of trafficking in women and children. This is a worldwide problem and in India abuse by tourists of both male and female children has assumed serious dimensions. Unlike Sri Lanka and Thailand, the problem has not been tackled seriously and remains shrouded in secrecy. Though it is difficult to measure the exact incidence of sex tourism, research studies and anecdotal evidence suggest that child sex tourism is growing and spreading to different parts of the world. Internet has played a big role in the promotion of child sex tourism. There are web sites providing child sex tourists with pornographic accounts written by other sex tourists. Indeed, child sex tourism and pornography

[10] Report of the NHRC Committee on Missing Children, 2007

are closely interlinked and mutually reinforcing. Many of the sex tourists are paedophiles, who seek children to satisfy their sexual urges. Though some of them are loners, paedophiles are usually members of organized gangs. There is evidence that increasing number of sex offenders are shifting their operation to less developed countries due to increase in vigilance against paedophiles in their own counties.[11]

Some of the factors responsible for upsurge in child sex tourism are (a) feeling among the foreign tourists that children of third world countries can be exploited and the chances of detection are slender, (b) belief that children are less likely to contract sexually transmitted diseases, (c) governments in many developing countries with a view to encouraging tourism turn a blind eye to this problem. There is need for global cooperation to fight the menace of child sex tourism. Tourist sending countries must pass extra territorial legislation to penalize those who visit other countries to engage in sex with children. The destination countries must also vigorously prosecute and punish the exploiters and their collaborators. Countries like France, Germany, Belgium and Italy have introduced a luggage tag condemning sex tourism. The Ministry of Foreign Affairs in the Netherlands has included a warning in the travel brochures. Goa Children's Act, 2003 addresses several issues related to child sexual exploitation in an integrated manner. Some of the salient features of the Act are:

1. Sexual assault has also been given a wider definition to incorporate in itself every type of sexual exploitation. Punishment also has been enhanced.
2. Responsibility for ensuring safety of children in hotel premises is placed on the hotel management. Unrelated adults cannot take children to hotel rooms.
3. Stringent measures have been provided to regulate children's access to pornographic materials in the electronic media and on the Internet.

[11] Desai, Nishtha, 2001. "See the Evil: Tourism Related Paedophilia in Goa", Mumbai, Vikas Adhyayan Kendra.

The Act also provides for the setting up of Victims Assistance Units, including social workers to help children in trauma and the setting up of children's courts, to try all offences against the children.

Non Sex Based Exploitation

Although majority of trafficking takes place for sex based exploitation, trafficking in humans for non sex based exploitation including industrial labour, domestic labour, begging, camel jockeying, organ trafficking are also on the increase. Victims of non sex based trafficking include men, women, children, both boys and girls. Illiterate women and children belonging to poor and marginalized sections of the society, farmers, artisans suffering from acute poverty become helpless targets of trafficking.

Begging

A large number of children are trafficked for the purpose of begging. Children with disabilities belonging to poor families are at a high risk of being trafficked for begging as it is easy for children with disabilities to arouse sympathy among the alms givers. This puts child beggars at a great risk of being deliberately maimed in order to increase their earning potential. Children get trafficked for begging both within and outside the country. The research study done by the Institute of Social Sciences uncovers the ploy of drugging children for the purpose of begging.

Camel Jockey

Children are exploited not only inside but outside the country also. Camel races are common in many Middle Eastern countries. The organizers of camel races recruit small boys who are light in weight and therefore do not overload the camel while racing. Boys as camel jockeys are underfed in order to control their body weight. Boys from India, Bangladesh and Pakistan are trafficked to Middle Eastern countries in order to become camel jockeys. During the race young boys are tied with ropes to the back of the camel so that they do not jump off the camel's back. There are

incidents where small boys fall on the ground and are trampled to death by other camels. Few years back a number of Bangladeshi boys were rescued in India while being trafficked for becoming camel jockeys. Determined action by India and Bangladesh authorities is called for to end this outrageous violation of human rights.

Performance in Circus

Children, particularly girls, are trafficked to perform in circus companies. Many of them are brutally exploited by the circus company owners. Interviews conducted by the research team of ISS with 13 Nepali girls rescued by a Nepal based NGO revealed that the victims were brutalized and had to face sexual abuse by men working in the circus. They were paid very low wages and not allowed to leave the circus premises. Their parents in Nepal remained blissfully unaware of the problems faced by the girls after they joined the circus troupes.

Domestic Servitude

Domestic servitude is one of the worst forms of trafficking in human beings. There are instances where victims are not paid at all or paid very infrequently. Working hours can be as long as 19 hours a day. A research study explains that there is a growing demand for domestic workers who face terrible abuse and grossest violation of human rights.[12]

Adoption

Adoption is another major factor for which small children are trafficked. In developed countries due to low fertility and low birth rates, there is great demand for adoption of small children. Some tribal communities in Andhra Pradesh (particularly Lambarda community) are known sources for adoptions within India. Similarly, Salem district in Tamil Nadu is also known as a major source area of trafficking children for adoption purposes.

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[12] B.Anderson, "*Just Another Job? The Commoditization of Domestic Labour*", in B. Ehrenreich and A. Russel Hochschild (under the dir. Of), Global Woman (Metropolitan Books: New York, 2003), pp. 104-114

Gender discrimination and poverty are some of the major factors encouraging parents to sell their children to agents of adoption rackets. In international adoption cases involvement of child trafficking has been identified. Although adoption is not included in the definition of trafficking in Palermo Protocol and this has created some confusion in treating adoption as human trafficking. A Child Welfare Committee (CWC) of Tamil Nadu was of the view that trafficking and selling children into adoption in foreign countries is still common in south India[13].

The Supreme Court of India in a case of *Laxmikant Pande* v. *Union of India* (WP Crl.No.171/1982) looked into the complaints against some of the social organizations engaged in coordinating the adoption of Indian children by foreign parents. The Court was of the view that it is desirable that a Central Adoption Resource Agency (CARA) be set up by the Government of India with regional branches in various states. The Court also opined that demanding large sums of money by giving a child into adoption is almost akin to trafficking in children. Various state governments have now also issued orders to regulate adoptions in their respective states. Andhra Pradesh government has issued an order prohibiting the biological parents from relinquishing the children to orphanages citing poverty as the reason. However, close monitoring of the adoption process and follow-up system for well being of the adopted child is by and large missing. In cases of international adoption it becomes difficult to keep tabs on the welfare of the adopted child. CARA guidelines say that a foreign couple adopting a Indian child should not pay more than $ 3500 to the Indian orphanage, but in reality foreign parents are often forced to pay ten times more to private adoption agencies who have made adoption a lucrative business in India[14]. The Hague Adoption Convention 1995, established international guidelines for adoption restricting non-compliant countries from adopting from other countries.

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[13] Rahman Shaikh Azizur, The National, Foreign Correspondent,: *Indian Children stolen for adoption*, June 28, 2010. UAE; http://www.thenational.ae/apps/pbcs.dll/article?AID=/20100629/FOREIGN/706289840/1103/NEWS.

Non compliant countries include Nepal, Kazakhstan, Mexico, Swaziland and Sierra Leone etc.

Organ Trade

Traffickers also lure people including children to donate organs by offering big sums of money. There is a huge demand in many countries of the world for organ replacement. Many countries require living donors to be family members or organs must be removed from cadavers, usually accident victims. There is a large gap between demand and supply of the organs in the world market with the result India and China have become international centers mainly for organ transplantation. Transplantation of Human Organ Act 1994, prohibited trade in human organs, but due to certain loopholes in the law the Act, has not been successful in stopping organ trafficking in India. A study carried out by Sanjay Kundu, an IPS officer, unveils the magnitude and depth of the problem and the nexus among qualified doctors, police officials, judicial officers and the traffickers. The donors are given a paltry amount between Rs. 15000 to 25000 as a reward for donating a kidney. The traffickers target poor people and people suffering from debt bondages etc.[15]

A new dimension of the problem is that the market of "transplant tourism" has expanded over the years. The modus operandi of the traffickers is that the donor and the receiver are made to travel to a new place, away from the homes where organ transplant is done. It has been described as a "slave triangle" by an anthropologist from the University of California Barkley.[16]

Organ trafficking is a very complex issue and requires a multi-pronged approach to combat the problem. There is need for a strong political and societal will and proper enforcement of existing legal provisions to curb

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[14] ibid

[15] Kundu Sanjay 2004, *Human Trafficking in India*, SVP National Police Academy, Hyderabad

[16] Maclay Kathleen, 30 April 2004, UC Berkeley anthropology professor working on organs trafficking, UC Berkeley News, accessed at http://berkeley.edu/news/media/releases/2004/04/30_organs.shtml on 5/11/2013

the problem. According to Organs Watch, a human rights group in California, that tracks illegal organ trade, around 15,000 to 20,000 kidneys are illegally sold globally each year. The World Health Organization (WHO) estimates that only 10% of the global requirements for organ transplantation are being met legally. In the submissions before Justice Verma Committee on sexual offences in India, the Director General, Health Services accepted as reality removal of organs from accidental victims illegally at hospital with the connivance of the police. The Director CBI also referred to cases investigated by the CBI regarding illegal extraction of organs from young boys and girls[17].

Combating Strategies

Trafficking in women and children, despite efforts and initiatives of different state governments and various national and international NGOs to contain it continues unabated and poses a serious and multi dimensional challenge. Lack of sensitivity and commitment among law enforcement officers, particularly in lower ranks, delay in delivering justice to the victims of trafficking, inadequate punishment of the perpetrators, absence of effective rescue and rehabilitation programmes, lack of meaningful cooperation between state governments and civil society groups are some of the factors responsible for the growing menace of trafficking in women and children. Another factor responsible for exponential rise in human trafficking is that internet has made it easier. Traffickers are reaching their victims by recruiting and advertising online. There are many websites that sell pornography and one third of the images are of the minors.

Indeed, a new dimension of the growing problem is that the age of the victims is coming down. The mythical belief of "*virgin cure*" is one of the factors for child trafficking. The virgin cure is a mistaken belief that sex with a virgin female can cure a man of sexually transmitted diseases. Children are trafficked not only for sex trade but also other forms

[17] Justice J.S. Verma Committee, 23 Jan 2013, "R*eport of the Committee on Amendments to Criminal Law*" pp 175-178

of non sex based exploitation. Poverty and physical disability are the ideal combination for the children to be trafficked.

For combating trafficking the need for vigorous law enforcement and realistic punishment of the criminals cannot be over emphasized. Law enforcement has to be vigorous and effective. There must be confiscation of the property and the assets of the traffickers and agents of sex trade along with stringent punishment. Trafficking has become today a vast international operation. Tentacles of the traffickers are spread over different countries and combined international action is called for to contain the growing menace. Hence, the need for trans-border cooperation. Traffickers and exploiters have no boundaries, but law enforcement officers are bound by limitations of jurisdiction. This constitutes a serious handicap in anti trafficking programmes. Though some of the NGOs through networking with NGOs abroad are able to carry out repatriation of women and children, trafficked from those countries, these adhoc initiatives have to be sustained, strengthened and institutionalized. Within the country investigation of trafficking cases encounters problems because of jurisdictional restrictions. Although as per section 13(4) of the ITPA the Ministry of Women and Children (MWCD) has notified that officers of the rank of Inspector or above of the CBI as trafficking police officers. However, for want of jurisdiction u/s 5(6) of the Delhi Special Police Establishment Act, 1946, the CBI cannot *suo motu* take up trafficking crimes for investigation even if they have international ramifications. At the same time state police do not have the wherewithal to carry out such interstate/international investigations. There is an urgent need to set up a national task force duly empowered to take up the investigation of such crimes.

National Database

Again for monitoring trafficking cases a national database has to be developed as well as a national system of intelligence dissemination on

traffickers and exploiters. All connected data have to be disseminated to the concerned agencies.

The Home Secretary of the United Kingdom Theresa May, while talking on new law to curb human trafficking expressed the view that in order to curb the traffickers, the best way is to "*maximize the number of modern day slave drivers we convict and imprison*[18]". However, for dealing with the problem effectively law enforcement approach has to be strengthened and supplemented by a victim-oriented approach. A complete offender-oriented approach compromises the victim's plight. It is a fact that the rescue homes and children homes run by welfare agencies are crowded and facilities provided by them are far from being adequate. The Supreme Court in the case *Vishal Jeet* v. *Union of India* (AIR 1990, SC 14120) observed that "*in spite of stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. The malady is not only a social but also a socio-economic problem and therefore the measures to be taken in that regard should be more preventive than punitive*". Research study of ISS has brought to light several instances where rescued women and children are being re-trafficked for want of proper rehabilitation. Close collaboration between government and NGOs in setting up rescue homes, counseling and rehabilitation centres will be an effective strategy in rehabilitating the trafficked victims. Some states like Tamil Nadu and Andhra Pradesh have successfully developed such cooperation between the government and non-government agencies. Community support is imperative to combat this scourge of trafficking. Indeed cross border trafficking cannot be prevented unless law enforcement agencies network with civil society on both sides of the border.

In sum, trafficking can be effectively combated through participation of all stake holders. It is not a problem concerning law enforcers only. A multi-agency and multi-disciplinary approach is called for. Enormous scale

[18] Theresa May, *Modern Day Slavery Crackdown*, 25 August 2013, BBC News

of human trafficking across the globe requires cooperative effort to solve the issue. Purposive action at bilateral and multilateral levels among various countries and between governments and NGOs is called for to empower the vulnerables and restore to trafficked women and children their dignity and worth as human beings. We cannot embrace our dignity as human being unless we champion the dignity of others.

Legalization of Prostitution

Some human rights activists and femininst groups campaign for legalization and decriminalization of prostitution. The proponents of legalization hold the view that legalization will ensure safety of women in prostitution, control forcible trafficking and improve hygiene among sex workers and clients and limit the spread of HIV and other diseases. However, facts prove otherwise. Prostitution has been legalized in countries like Australia, Germany, Netherlands etc. it has been noticed that wherever prostitution has been legalized, illegal sector has grown much larger than the legal sector. More demand for sex has led to more trafficking. Further, legalization has aggravated risks for women from violent pimps and customers. In Victoria in Australia, where prostitution is legalized it has been estimated by the police that the number of illegal brothels is four times more than legal brothels. Legalization gives much more muscle to the brothel owners. Many of the trafficked women are so debt-bonded that their earnings out of commercial sex go towards repayment of debts. This makes them more vulnerable and beholden to the traffickers.

One of the primary objects of legalization has been to protect women from sexually transmitted diseases like HIV/AIDS but studies have revealed that legal brothels expose women to greater health hazards. As against Germany/Netherlands model which legitimizes sex trade Sweden has decriminalized prostitution and sought to criminalize the purchaser. Today Swedish model has been adopted by many countries like Norway, Finland, Ireland etc. Indeed, it is a serious failure on the part of the

government not to provide decent livelihood options for women and children and pull them out of the inferno of prostitution. Instead of legalizing prostitution the state should seek to create alternative livelihood for sex workers and sternly punish those who exploit them with the objective of financial gain.

Road Ahead

Exponential increase in trafficking in women and children poses a very serious criminal as well as sociological problem. The "trade in human misery" also constitutes an outrageous affront to human rights. To effectively curb this monstrous evil a number of well-coordinated long as well as short-term measures are called for. First, the existing law has to be replaced by a new comprehensive law that covers all forms of trafficking. There is need to provide a clear and comprehensive definition of the term trafficking which is missing from the present Act. The definition should lay emphasis on exploitation which could be physical, sexual or emotional. Commercial Sexual Exploitation (CSE) will include brothel based or non-brothel based exploitation such as pornography, cyber pornography, sex tourism, pedophilia, and other forms of exploitation including begging, organ transplant by force, false adoption etc. Trafficking is a serious organized crime. Many state governments have already enacted special laws to deal with various organized crimes. Trafficking has also to be brought under the ambit of special laws. Second, all cases of trafficking have to be registered by the law enforcement agencies. Registration of cases of trafficking is the first step towards prosecuting criminals involved in trafficking. At present very few cases are registered and many cases are either under-reported or non-reported. Very low priority is given by law enforcement agencies to curb this burgeoning crime spreading like cancer and undermining our social fabric. Power to close brothels and evict offenders under Section 18 ITPA can be an effective tool in dealing with the exploiters. Third, networking between the government agencies, service providers and the community is the best means to combat this problem.

It is ironical that often the agencies with common goal work with contrasting agenda. They work as rivals and get involved in mudslinging and tarnishing each other's image rather than working together to address the menace. Fourth, there is an over-arching need for creating public awareness among vulnerable groups and in vulnerable areas. There is culture of silence within the community. Many are not parties but remain mute spectators. Fifth, there is a tendency among the developed countries to hold the view that developing countries are the countries of origin and they have to address the problem of prevention. But this myth has now been exploded. There is enough evidence to indicate that developed countries are not mere destination points but also face serious problems of domestic trafficking. The problem has to be addressed both at supply and demand side.

Finally, to deal effectively with the problem of trafficking a human rights perspective should replace the present paternalistic, law and order perspective. Human rights approach is holistic and all policies and programmes should aim at helping the trafficked victims/survivors. National Human Rights Commission and State Human Rights Commissions should play an important role in bringing about this paradigm shift.

References

1 Department of State, United States of America, THE 2012 TRAFFICKING IN PERSONS (TIP) REPORT, June 2012, The Promise of freedom http://www.state.gov/documents/organization/192587.pdf.

2 Report of the U.N. Special Rapporter Ms. Radhika Comaraswamy (28th October – 15 November 2000)

3 Pandey Balaji *et al., 2002; Trafficking in women in Orissa: An exploratory study; Bhubaneswar*; Institute for Socio-Economic Development.

4 Khanna Priyanka, Bihar, 24 September 2008: Reuniting survivors of Bihar floods. http://www.unicef.org/india/emergencies 4651.htm as visited on 14/10/2011

5 Action Research on Trafficking in Women and Children – NHRC and Institute of Social Sciences, 2005

6 UNODC report on human trafficking exposes modern form of slavery; http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html

7 Crime in India – 2012, Compendium National Crime Records Bureau. Ministry of Home Affairs.

8 Action Research on Trafficking in Women and Children; NHRC and Institute of Social Sciences, 2005

9 Rape for Profit – Human Rights Watch/Asia – Page 5

10 Report of the NHRC Committee on Missing Children, 2007

11 Desai, Nishtha, 2001. "See the Evil: Tourism Related Paedophilia in Goa", Mumbai, Vikas Adhyayan Kendra.

12 B.Anderson, "Just Another Job? The Commoditization of Domestic Labour", in B. Ehrenreich and A. Russel Hochschild (under the dir. Of), Global Woman (Metropolitan Books: New York, 2003), pp. 104-114

13 Rahman Shaikh Azizur, The National, Foreign Correspondent,: Indian Children stolen for adoption, Last Updated: June 28, 2010. UAE; http://www.thenational.ae/apps/pbcs.dll/article?AID=/20100629/FOREIGN/706289840/1103/NEWS

14 ibid

15 Kundu Sanjay 2004, Human Trafficking in India, SVP National Police Academy, Hyderabad

16 Maclay Kathleen, 30 April 2004, UC Berkeley anthropology professor working on organs trafficking, UC Berkeley News, accessed at http://berkeley.edu/news/media/releases/2004/04/30_organs.shtml on 5/11/2013

17 Justice J.S. Verma Committee, 23 Jan 2013, "Report of the Committee on Amendments to Criminal Law" pp. 175-178

18 Theresa May, Modern Day Slavery Crackdown, 25 August 2013, BBC News

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A Victim-Centric Approach towards Crimes of Commercial Sexual Exploitation

Michelle Mendonca[1,2]

Introduction

Indian society *still* regards victims of sexual offences as accomplices in crimes committed against them. Consequently the implementation of the anti-trafficking laws, like the Immoral Traffic Prevention Act, 1956 by State agencies remains flawed, and trafficked persons are treated as worthy of censure and punishment rather than victims of brutal slavery. Criminal trafficking networks[3] generally escape with impunity

Very few persons in commercial sexual exploitation make a conscious choice to become "prostitutes" or "sex workers" - trafficking by fraud, force and coercion is often the entry point into a life of commercial sexual exploitation.[4] Describing the ethnography of sex workers in Sonagachi,

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[2] *Justice and Care* is a non-governmental organization that rescues and supports victims of trafficking, slavery and other abuses. We work internationally with governments and law enforcement agencies, focusing on prevention, protection and prosecution. Director, Partnerships Justice and Care

[3] The common links in the criminal network are the spotter, handler, recruiter, seller, buyer, conspirator, transporter, abettor, customer, financier, pimps, brothel keepers, brothel managers, parents, guardians etc.

[4] Farley, M. (2006). *Symposium: Sex for Sale: Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order To Keep the Business of Sexual Exploitation Running Smoothly*, 18 Yale J.L. & Feminism 109

Kotiswaran[5](2010) explains the progression of a trafficked victim in Sonagachi from 1) a victim subjected to abuse and coercion (*chhukri*) to 2) a sex worker who must share her[6] income with the pimp and brothel keeper (*adhiya*) and finally 3) to an independent sex worker who then prostitutes out of "choice".[7] Kotiswaran (2010) writes: "Invariably she would have started out as a *chhukri*, who then became an *adhiya*, and has finally saved enough money to pay the requisite premium for the right to rent a brothel room."[8] Prostitution is the choice of those who have no other choice – either because someone has forcibly enslaved them or their circumstances make it their only option.

There are a large number of victims of sex trafficking in India. Data by the Ministry of Women and Child in India indicates there are approximately 28 lakh sex workers;[9]yet according to the 2014 UNODC India report only 1556 persons were convicted of ITPA offences in 2012. While there are several reasons for this disproportion between the number of trafficked persons and number of perpetrators convicted, mis-treatment of the former by State agencies certainly contributes to the inability of the State to successfully prosecute these crimes. Data collected by the International Organization for Migration shows that where trafficked persons are adequately supported, they are more likely to cooperate with law enforcement.[10] Trafficking takes place in secret and frequently, it is

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5 In her research, Kotiswaran does not contextualize her socio-ethnographic study as advancing either the 'structuralist' or 'abolitionist' (those who adopt a subordination approach, against the commodification of sex) or the 'individualist' (those adopting the autonomy approach and understand sex work in terms of choice and agency) arguments. Instead she chooses to advance a critical theory of sex work that views sex work as a form of work and simultaneously addresses power and domination questions against the backdrop of stakeholders' bargaining choice, consent and work issues within the sex market, while also examining the effect of partial de-criminalization on each category of highly differentiated sex workers found at Sonagachi.

6 The use of the female pronoun in this article refers to persons of all genders.

7 Kotiswaran, P. (2010). *Born Into Brothels – Towards a Legal Ethnography of Sex Work in an Indian Red-Light Area.* Law and Social Enquiry, Volume 33, Issue 3, 579-629, Summer 2008, SOAS School of Law Legal Studies Research Paper Series

8 See Kotiswaran, supra.

9 Data by Ministry of Women and Child Development (2007)

10 Andrevski, H., Larsen, J.J., & Lyneham, S. (2013). *Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study,* Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Vol. 451, May 2013

trafficked persons alone who can provide details of the crime and the criminal network.[11] Winning their support is key to a successful prosecution; at the same time, the trauma they have experienced impacts their ability or willingness to cooperate with law enforcement.[12] In the absence of support, treatment and protection to trafficked persons, the prosecution loses key testimony and is certain to fail.[13]Lack of social services accompanied by harsh treatment of victims not only leads to a compounding of injury and perpetuation of the abuse but also ensures that the organized criminal network that perpetrates this crime escapes with impunity.[14]

Protection of trafficked persons at all stages in the criminal justice process – rescue, investigation, pre-trial, trial, rehabilitation and reintegration – not only allows them to enjoy their basic human rights and restores to them a sense of dignity (which is the very least that the State owes them) but will also aid State agencies bring this brutal crime under a measure of control.

Indian substantive law and precedents against trafficking are among the best in the world. By implementing them in letter and spirit, State agencies can ensure that traffickers can no longer carry on their trade with impunity – deterrence will drastically reduce the number of persons enslaved in conditions of prolonged rape.

This article argues for a victim-centric approach for each person(man, woman, child) whose sexual services are sold for the profit of others. Even a person, who "chooses" to prostitute because they have no other choice, has most likely experienced brutal abuse and pain that has brought

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11 See Andrevski, supra.

12 Ibid

13 Ibid

14 See *Kamaljeet Singh* v. *State*, 2008/MANU/Del/225where the Delhi High Court held that the illegal trafficking of persons involves violence, threat of violence, intimidation or coercion and therefore, charges under the Maharashtra Control of Organized Crime Act can supplement charges under the Immoral Traffic Prevention Act.

them to a point where selling sexual services to strangers starts to seem normal. Whether a person identifies as a trafficked victim or a "consenting" sex worker, implementation of the law by State agencies must be victim-centric. No other approach will bring this crime under a measure of control. Failure to adopt a victim-centric approach perpetuates:

1. **Injustice**: Victims of crime deserve compassionate treatment; it is an insult to suggest that they have invited the brutal damage inflicted on them. Lack of a victim-centric approach benefits only the criminal network. Failing to treat trafficked persons as "victims" drives them away from the criminal justice process and back into the arms of their exploiters. Rescue, prosecution and prevention efforts are futile in the absence of an intentional effort to protect victims.

2. **Gender discrimination**:[15] No State that penalizes victims of a crime can ever hope to bring that crime under a measure of control. Imagine if the State subjected victims of theft to suggestions that they were accomplices in the crime. Thieves would have a field day and their victims would suffer loss rather than report it. The only other crime where the State indirectly implicates victims is rape. Unfair treatment of victims of sex offences stems from the gender discrimination prevalent in a patriarchal society.

3. **The flesh trade**: Victims will not cooperate with harsh State agencies and will prefer to keep quiet about their abuse rather than to report it and invite retaliation from their perpetrators whose willingness to brutalize them is more powerful than the willingness of the State to free and restore them. The wheels of the flesh trade will continue to run smoothly trampling over thousands of innocents.

4. **Violation of the law**: Criminalizing victims of trafficking is unlawful. Anti-trafficking laws do not criminalize women whose sexual services are offered to customers unless they are keeping,

[15] Standard Operating Procedure for Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC and Government of India, 2007

managing, acting or assisting in the keeping or management of a brothel.[16] Instead, the law requires police and courts to make a distinction between victims and the criminal network.[17] When trafficked persons are arrested, their debt bondage to their exploiters increases to the extent of their bail amount or fine. Apart from the increased debt bondage, a criminal record makes it even more difficult for the person to leave.[18] The only "choice" they have is to submit to re-trafficking.

Section II of this article offers a comprehensive view of the law and precedents that mandate implementing agencies to adopt a victim-centric approach. Section III of the article offers further recommendations to bring trafficking under a measure of control.

II: A Victim-Centric Approach from Rescue to Reintegration

A. A Victim-Centric ApproachTowards Rescue

State agents must not commit crimes against trafficked persons during rescue. Because trafficked persons are kept in captivity from which escape is almost impossible, the police use decoy customers to establish instances of trafficking. However, trafficked persons must not be subjected to State-sanctioned rape during rescue. The decoys should not abuse or even undress the victim let alone have sexual intercourse with them.[19]

State agents conducting rescues must identify victims accurately. Trafficked persons rarely identify as "victims" immediately upon rescue. This is because of the "slave mentality" they develop as a mechanism to cope with brutal abuse. Normalizing brutal abuse does not spare them the pain of living through it and they experience severe trauma – physical,

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16 *State* v. *Gaya*, 1960 CrLJ 893

17 *Guria, Swayam Sevi Sansthan* v. *State of U.P.*, 2010 CrLJ 1433

18 MacKinnon, C.A. (2011). *Trafficking, Prostitution and Inequality*. Harvard Civil Rights – Civil Rights Liberties Law Review, Volume 46

19 *Navin Rego* v. *State*, 2008 CrLJ 4733. See also *Kamlabai Jethamal v. State*, AIR 1962 SC 1189.

mental and emotional – over a period of months or years. Farley (2006)equates the brutality of the sex trade to state-sponsored torture.[20] The criminal networks obtain the victim's "consent" through "debilitation, dread and dependency".[21] This dependency fostered by fear and intimidation keeps trafficked persons in mental and emotional bondage even after they are physically freed. Farley (2006) explains that many trafficked persons suffer from Stockholm's syndrome where they identify with their captors, because trafficked persons lack the opportunity to interact with anyone other than their abusers, they often form bonds with their captors and customers.[22] Surviving prolonged rape daily requires victims to deny the true nature of the harm that is inflicted on them.[23] Utterly dependent on her abusers, she "vigilantly attends to the pimp's needs and may ultimately identify with his world view".[24] Her consent, fostered by these circumstances, increases her chances of survival[25] but also impedes her return to freedom.

Another reason trafficked persons will not immediately identify as victims is lack of trust in law enforcement. To intimidate trafficking victims, abusers will often tell them that they buy off law enforcement agencies by paying bribes. Whether or not this is true, trafficked persons, often from poor sections of society already distrustful of police, have little reason to believe that State agencies will exert any efforts on their behalf.

The method used by some law enforcement agencies to identify victims is also flawed. Often, police will interview victims in the presence of the abuser or without ensuring they are free from the psychological influence of the abuser. No one, especially a person whose will is broken

[20] See Farley, supra.

[21] Ibid

[22] Ibid

[23] Ibid

[24] Ibid

[25] Ibid

by constant abuse, will dare to implicate their abusers to law enforcement authorities they are yet to trust.

Therefore, law enforcement agencies must use other indicators to detect trafficking: the likelihood that a victim is trafficked increases if she 1) is young; 2) is from another country or Indian State; 3) has marks of abuse or suffers from sexually transmitted diseases; 4) seems distressed, afraid and watchful for the presence of the perpetrator; 5) is not allowed to retain her earnings;[26] 6) is unable to describe the locality beyond the brothel; 7) seems unwilling to speak to law enforcement agencies. The likelihood of trafficking also increases if the place of exploitation has 1) security precautions like locks, barred doors and windows;2) very poor ventilation and hygiene;[27] or 3) ifthe perpetrator hovers around the victim when she is being interviewed. Accurate identification of trafficked victims is critical – law enforcement agencies must not abandon those whose abuse prevents them from crying out for help.

Once law enforcement agencies identify a trafficked person, they must keep them separate from the criminal network.[28] Even transporting them together after the rescue will provide the criminal network with the opportunity to threaten victims into silence.

B. A Victim-Centric Approach during the Investigation Phase

A victim-centric approach requires that police interview trafficked persons only after they are given the time and opportunity to 1) recover from their trauma; and 2) gain trust in the law enforcement agencies.Police must interview trafficked persons in places of safety rather than in the presence of their captors.[29]

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[26] Standard Operating Procedure for Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC and Government of India, 2007

[27] Ibid

[28] Ibid

[29] *Prerana* v. *State,* Criminal Writ Petition 1694 of 2003

Even when trafficked persons provide statements to magistrates under oath,[30] they must be given sufficient time to recover (up to at least 2 months) if they are young or have suffered trauma, undue influence or abduction.[31]

The State must also ensure protection of future victims by going after each and every person in the criminal network. The common links in the criminal network are the spotter, handler, recruiter, seller, buyer, conspirator, transporter, abettor, customer, financier, pimp, brothel keeper, brothel manager, parents, guardians etc.[32] Without a victim-centric approach that earns that trust and cooperation of the victim and leads to an implication of every link in the criminal network, the investigation will start and end in the place of exploitation. The rest of the criminal network will remain free to replace rescued persons with others.

A victim-centric approach requires proportionate treatment of offenders in matters of bail. Trafficking of children below the age of 18 is a grave and heinous offence and offenders should not be granted bail[33] even if s/he professes ignorance about the age of the victim.[34] Trauma may prevent a trafficked personfrom naming all the offenders in the first instance and some offenders may be implicated in later statements. Even these offenders should be denied bail where trafficked persons are children below the age of 18.[35]

To ensure that the criminal network is not only arrested by also convicted and stopped from continuing its crimes, the investigating agency must submit a foolproof charge-sheet within the statutory time-limits. For detailed guidelines on investigation of trafficking cases, please see

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30 Section 164, Criminal Procedure Code

31 *Qutbun Nisha* v. *State,* 2008 CrLJ 3233

32 Standard Operating Procedure for Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC and Government of India, 2007

33 *Guria* v. *State,* 2009/MANU/ SC/1345

34 *Shaikh Jaffar* v. *State,* 2008 (1) BCR (Cri) 216

35 *State* v. *Mohd. Sajid Hussain*, AIR 2008 SC 155

the Standard Operating Procedure for Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC and Government of India, 2007.

C. A Victim-Centric Approach during the Pre-Trial and Trial Stages

i. Speedy Trials

The clichéd term "justice delayed is justice denied" is nonetheless true in cases of trafficking.Trafficked persons are almost always from source communities far from the destination areas where the prosecution of the crime occurs. If the charge-sheet is submitted within statutory limits[36] and the trial starts soon thereafter, the trafficked person is often still in protective or aftercare homes in the destination area and is available for testimony. Availability of cooperative victim testimony during trial increases the possibility of a successful prosecution. On the other hand, delay by the police in submitting the charge-sheet or by the court in framing charges may result in the trafficked person not having the opportunity to testify until years after rescue. This can lead to the following adverse outcomes: 1) Many trafficked persons restored to freedom don't want their life disrupted by constant court hearings that require explanations to their family about the abuse they have suffered. 2) The trafficked person may be subject to threats and harassment by the criminal network; 3) Law enforcement agencies may lose track of the person and the criminal network will escape punishment; and 4) Long delays will mean that the criminal network is free to replace rescued victims with other innocents even while they are on trial.

Getting arrested and coming to court for years on end is an occupational hazard for criminal networks that accept it as part of the job. A heavy sentence of imprisonment alone will stop them from

[36] Section 167, Criminal Procedure Code

continuing to enslave others. Courts must record victim testimony within 1 month of the charge-sheet filing, expedite trials of trafficking cases and complete them within 6 months of the charge-sheet being filed.[37] Only an expedited trial process can deliver justice to victims and protect society. A casual approach to trafficking cases benefits the criminal network who, though under the radar of the State, are still able to damage innocents till they are convicted – often, many years after their arrest.

ii. Complexities Undergirding Consent of Victims

Globally, victims of sex crimes fear courts and court procedures. Unfortunately, provisions relating to fair trial for the accused are implemented in a way that leads to an unfair and almost, cruel treatment of the victim. The Malimath Committee (2003) rightly observed that "the hopeless victim is indeed a cipher in modern Indian criminal law and its administration." This is much truer of trafficked persons that Indian society has already condemned as "immoral". And yet, Indian law does not condone cruel treatment of victims. Courts are urged to draw a balance between the rights of the accused and those of the victim. The cruel treatment of victims in court may be traced to a misconception in judicial minds that the rights of the accused are paramount and can trample over all others; however often, the callous treatment of trafficked persons in courts is also due to abelief that they have invited their abuse and are accomplices in it because they have "consented." Because misnomers about consent have led to an accused-centric rather than a victim-centric approach in courts, this article will take a much-needed detour to address the issue of consent in sex trafficking cases.

Without doubt, a child below the age of 18 years cannot consent to sex trafficking.[38] Customers of sexual services cannot escape liability by claiming ignorance of the age of a person who is below the age of statutory

[37] *Prerana* v. *State*, Criminal Writ Petition 1694 of 2003

[38] *State* v. *Mohd. Sajid Husain*, AIR 2008 SC 155

consent.[39] Indian law does not permit children below 18 to marry, to vote, to enter into contracts. People below the age of 25 cannot drink, there is now a suggestion that the government should not allow people below the age of 25 to smoke. But somehow, implementing agencies and society have acquiesced in the suggestion that poverty and vulnerable circumstances make it all right for a child below the age of 18 years to "consent" to sexual exploitation for the profit of someone else. But actions based on this belief violate the law.

Even if the trafficked person is not a child, consent is immaterial when it has been obtained by threat or illegal inducement.[40] Helpless and meek surrender due to the fear of the perpetrator is not consent.[41]

Statements of trafficked persons, even if they indicate consent, should be weighed against the circumstances in which they were found. In one case, the trafficked persons stated that they were allowed to leave the place of exploitation. However, taking into consideration the fact that they were from a different State and dependent on the accused for food and board, the accused were found guilty of detaining them.[42] Consent is questionable when the only alternative is destitution in an unfamiliar place, far from family and community. It is the poverty of trafficked persons that consents, not their will.[43] Even survivors of "consensual" prostitution refer to it as "volunteer slavery".[44]

Understanding the complexities undergirding the consent of trafficked personsmay help courts to treat them with compassion rather than condemnation. Justice, at its best, has a healing, restorative effect on

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[39] *Raghunnath Ramnath* v. *State,* 2013 All MR 1023 (where customers claimed that they had not knowledge that the victim was below the age of 16 years. The Bombay High Court held that there was strict liability in case of rape). Note that after a change in the Indian Penal Code, the statutory age of consent for rape is now 18 years).

[40] *Raghunath Ramnath* v. *State,* 2013 ALL MR 1023

[41] *Anand Tatyaba Kadam* v. *State,* 2011 CrLJ 1130

[42] *Nilofar* v. *State*, 2004/MANU/Guj/0656

[43] See MacKinnon, supra

[44] See Farley, supra

survivors. A feeling of vindication is powerful medicine. But the sad reality is that survivors are traumatized by court proceedings and the process of providing their testimony can set them back in the restoration process. This needs to change.

iii. Compassionate Treatment of Victims in Court

"Children have a very special place in life which law should reflect."[45] In court proceedings involving children, the best interest of the child, rather than the best interest of the accused, is paramount.[46] And it is not only children that the law protects.

Case law precedents mandate a victim-centric approach to ensure that *all* trafficked persons can regain a sense of dignity while testifying. The courtroom is the only place where the victim can face her accuser with the full force of the law on her side. The power balance is no longer tilted against her. She gets to tell her story without influence or fear. Trafficked persons should experience the enforcement of this right in letter and spirit.

They have already gone through many ordeals. It is often the most vulnerable who are trafficked. They have been subjected to prolonged rape, experience severe trauma and it is not easy for them to choose to testify. Trafficked persons may experience physical and psychological trauma in anticipation of the date of testimony. They feel isolated and believe that the system protects the accused. They experience re-traumatization by unbridled cross-examination designed solely to shame or exhaust them and attack their credibility. Repeated court adjournments not only erode their willingness to testify but also prolong courtroom trauma. Though they desire justice, they don't always believe they will receive it and many don't. Few would choose to reveal the shameful details of trafficking and identify themselves as "prostitutes." In fact, most

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45 *May* v. *Anderson*, 345 U.S. 528, 536 (1953)

46 *Shankar Khade* v. *State,* 2013 (5) SCC 546

trafficked persons, I have counseled, choose to go through the trauma of testimony not for themselves but because imprisonment of the criminal network alone will prevent them from trafficking and damaging others. Their testimony, though altruistic, is rarely acknowledged as such and can be used to shame them. It need not be this way. Case law precedents require implementing agencies to adopt a victim-centric approach during trial.

Courts can alleviate the trafficked person's feelings of isolation by providing them with counselors and legal aid lawyers.[47] Courtrooms are intimidating environments, having someone by their side provides trafficked persons with support and protection from the threats of the criminal network who may otherwise take the opportunity to intimidate them into silence.

Assuring survivors of *in-camera* or closed-door hearings can alleviate much of the stress and strain of courtroom trauma. *In camera* hearings protect victims from embarrassment and intimidation and safeguards their reputation.[48] Testifying in a crowded courtroom with everyone straining their ears to hear lurid details of shameful acts is unnerving for a frightened, young victim who will leave the courtroom in humiliation knowing she has been branded as a "prostitute." Trafficked persons regain confidence if they can testify *in camera* only in the presence of the judge, prosecutor, victim advocate and the defense counsel conducting cross-examination. Even unconnected advocates must leave the courtroom during *in camera* hearings.[49] The protection of the victim is sacrosanct, even junior lawyers must leave if their seniors are cross-examining the victim.[50] Courts can limit cross-examination to what is required to protect the rights of the accused without embarrassing, harassing or exhausting the survivor.[51]

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47 *Prerana* v. *State*, Criminal Writ Petition, 1694 of 2003

48 *Sumeshwar Choudhury* v. *State*, 1993/MANU/MP/0171

49 *Varadaraju* v. *State*, 2005 CrLJ 4180

50 *Sumeshwar Choudhury* v. *State*, 1993/MANU/MP/0171

51 Indian Evidence Act, Ss. 151 and 152

When the testimony is complete, the trafficked person can leave the courtroom with her head held high, well on her way towards restoration.

Trafficked persons from out of State or out of country can testify via video-conferencing facility available to victims of child abuse or rape.[52] This increases the likelihood that they will cooperate with law enforcement agencies during the trial process.

Adjournments are particularly hard on trafficked persons. It is difficult for them to work up the courage to come to court in the first place and to have to do this repeatedly causes unnecessary trauma. The criminal network and their lawyers absent themselves to exhaust the trafficked person and chip away at her willingness to testify. Yet again, the law is on the side of the trafficked person and if strictly implemented, does not permit this ploy to succeed. Adjournments are strictly prohibited when witnesses are in attendance.[53] The absence of the accused cannot hinder the testimony of the victim, the accused must either exempt identification or have his bail revoked.[54] Lawyers pleading inconvenience[55] or lack of preparation[56] when witnesses are present in court must be penalized. They expose themselves to disciplinary action for professional misconduct if they offer such excuses.[57] Even though the Indian court system is severely backed up, a victim-centric approach demands that when trafficked persons are present in court, their testimony must be heard.[58] Courts should not allow themselves to be used by the criminal network and their lawyers to torment the survivor and deny them justice.

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52 *Sakshi* v. *Union of India,* AIR 2004 SC 3566. See also *State* v. *Praful Desai,* AIR 2003 SC 2053 for guidelines related to video-conferencing witnesses located out-of-country.

53 Section 309 Criminal Procedure Code mandating that if witnesses are present, judges cannot grant adjournments except for special reasons to be provided in writing.

54 *State* v. *Shambhu Nath*, AIR 2001 SC 1403

55 *Akil* v. *State*, 2013 CrLJ 57

56 *Delhi Administration* v. *Vishwanath Lugnani*, 1982 SCC (Cri) 139

57 *Dastane* v. *Shivde*, AIR 2011 SC 2028

58 See *Association of Victims of Uphaar Tragedy* v. *State*, 2002/MANU/DEL/0477 where the Delhi High Court held that systemic obstacles cannot justify violating statutory mandates regarding treatment of witnesses present in court.

Apart from these statutory mandates, courts can display compassion by 1) being gentle with victims – keeping in mind the trauma they have already endured and the trauma court proceedings are causing; 2) providing validation to the survivor by protecting them from unnecessary harassment by the defense counsel; 3) providing breaks if relating traumatic events is causing severe physical and emotional distress; and 4) being alert for signs of fainting, dizziness etc.

iv. A Victim-Centric Approach to Appreciation of Evidence

The power imbalance in commercial sexual exploitation reduces its victims to "sexualized puppets." They are accustomed to being treated as less than human and objects for the gratification and profit of others.[59] The brutality inflicted on them and the resulting trauma impedes their ability to provide law enforcement agencies with a precise narrative of their sufferings. Acquitting the accused because they have reduced their victims to a state where they cannot provide precise testimony plays into the hands of the criminal network.

Case law precedents display awareness and understanding of unique challenges victims of sexual offences face. Courts are urged to discard a mechanical approach and instead deal with these cases through a realistic and compassionate prism.

One of the common infirmities of trafficking cases is delay in the filing of the FIR. Courts are required to adopt an empathetic approach towards delay and place themselves in the shoes of the witness at the time the statement was made.[60]

When a trafficked person has, with great difficulty and ingenuity, managed to escape from captivity, her first thought is for safety, to get back home, to her family. She leaves with a perception that law enforcement

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[59] See Farley, supra

[60] *Prithvi* v. *Mam Raj*, (2005) 1 SCC (Cri.) 198

is hand-in-glove with perpetrators. Seeking redress is very far from her mind – and she is unaware of legal procedures and the necessity for prompt registration of offences. She may need time to recover from trauma or Stockholm syndrome or may have normalized the abuse as a coping strategy. Often, it is only months after her escape, if her needs for safety and security are met, that she may consider filing charges against the criminal network. In such cases, there is an understandable delay in the filing of the FIR. This delay cannot be used to deny her justice because leeway is granted in cases of delay in reporting of sexual offences. Courts understand that victims agonize over the possibility of stigma, the honor of their family, the wishes of their family members etc. before approaching the police.[61]

Even if there are no delays in the filing of the FIR, law enforcement agencies may need to take supplementary statements, if the victim is too traumatized at the time of the FIR or initial statement, to provide all the details of criminal network involved in her exploitation. Trauma can lead to loss of memory, hostility, confusion regarding the chronology of events, or even an inability to recall events.[62] Under the fearful influence of the criminal network, the trafficked person may have provided a statement favorable to them. Criminals should not be allowed to gain from these conditions they have caused. Victim statements made after recovery from trauma, even if delayed, are more accurate. Trafficked persons can receive justice even if there are long delays between their initial statement (tutored by the criminal network) and the subsequent statement made after they have gathered the courage to speak the truth.[63] In fact, fear of the accused is a valid reason for delay.[64] Offenders named in the supplementary statement, even if omitted from the principal statement, can be convicted.[65]

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61 *Bhawna Garg* v. *State*, MANU/DE/0469/2014
62 See Andrevski, supra
63 *Narmada Govind Kamble* v. *State*, 2010 CrLJ 1220
64 *John Pandian* v. *State*, (2011) 3 SCC (Cri) 550
65 *Raghunath Ramnath* v. *State,* 2013 ALL MR 1023

Delay is not the only infirmity in trafficking cases. Often, the initial statement of trafficked persons contains discrepancies.[66] Without an awareness of the reasons that underlie these discrepancies, it is easy to dismiss their testimony as unreliable. However, traffickedpersons experience genuine difficulties in providing precise statements or testimony. Trafficking is a unique crime - most other crimes occur within a very short span of time, and it is fairly easy for victims to recall events that have occurred within this short interval. On the other hand, trafficked persons have experienced continuing brutality and abuse over long periods of time. Often, they may not remember to condense their testimony to the police statement, they have suffered much more abuse than is recorded in the police statement and may want to recount it to the court.The trauma of prolonged rape and detention also blurs their memories as to dates, times and places.

Case law precedents display an understanding of these challenges. Courts accept that discrepancies are caused by errors in observation, lapse of time, mental disposition, fear or shock.[67] There is greater understanding of discrepancies in the testimony of uneducated witnesses (most trafficked persons fall in this category).[68] Even improvements cannot impair testimony if they are corroborated.[69] Improvements and omissions may arise because of the difference in the manner of questioning by police and prosecutors and as long cross-examination does not elicit contradiction about the material particulars of the abuse, the testimony need not be discarded.[70]

Apart from accidental omissions and discrepancies due to the nature of the crime, trafficked persons often feel the need to hide family details

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66 See Andrevski, supra

67 *State* v. *Krishna Master*, 2010 CrLJ 3889

68 *Joginder* v. *State*, 2010 CrLJ 1770

69 *Chandrashekar Sureshchandra Bhatt* v. *State*, (2000) 10 SCC 582

70 *Childline India Foundation* v. *Allan John Waters*, 2011 All MR (Cri) 2381

from law enforcement authorities. Survivors often refuse to reveal names and addresses of their families even in court due to 1) a desire to hidethe circumstances of their trafficking and increase their chances of acceptance by their families; or 2) the fact that families are involved in the trafficking in the first place. Suppression of these details raises concerns about the credibility of their testimony. However, the law provides that untruths about peripheral matters is inconsequential[71] and if false statements can be explained as normal given the emotional state of the witness and pressure from the accused, witness testimony need not be discarded.[72] Details about names and addresses of family members of victims can hardly be regarded as material to the substratum of a trafficking case against the criminal network.

Sadly, lack of understanding of the complexities of trafficking leads many courts to view trafficking victims as accomplices in the crime that has robbed them of dignity, humanity and often their health and life, and courts often require corroboration of offences committed in secret to which the only witnesses are members of the criminal network, including pimps and customers. Yet, case law precedents hold that seeking corroboration for sexual offences is adding insult to injury because victims hesitate to disclose these acts due to social pressure and there is no reason why victims should not be believed.[73]

There are clear guidelines that courts must take a compassionate approach towards victims of sexual offences and offer a practical, rather than a mechanical, appreciation of their evidence. Few other crimes have the kind of effect on victims and society that trafficking has. Allowing offenders to escape scot-free on trivial grounds has serious consequences for society.

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71 *State* v. *Shankar*, AIR 1981 SC 897

72 *Rajendra* v. *State*, AIR 2009 SC 2558

73 *Childline India Foundation* v. *Allan John Waters*, 2011 ALL MR(Cri.) SC 2381

v. A Victim-Centric Approach to Sentencing

Because trafficked persons are perceived to be accomplices in the crimes committed against them, perpetrators often escape with light sentences. Even when traffickers are found guilty of forcing children to prostitute against their will, few courts will sentence the offenders to more than the mandatory minimum sentences that the law prescribes. Leniency to traffickers, who inflict unimaginable damage on individuals and society, is misguided especially in view of the Supreme Court's direction that the judicial system take "severe and speedy legal action" to stop trafficking.[74] Courts must 1) award sentences not only to prevent the repetition of the crime but also to deter others;[75] and 2) decide sentences not only in terms of the brutality of the crime but also in terms of its social impact.[76]

Nothing in Indian law prevents courts from seeking a victim-impact statement from the victim at the time of testimony. The Court has a right to question witnesses[77] and seeking details of the impact of the abuse can assist courts in sentencing.

vi. A Victim-Centric Approach to Compensation

According to UNODC estimates, human trafficking is the third-most lucrative crime in the world, after arms and drug smuggling, yet trafficked victims are often destitute and rarely receive reparation. Ignoring victim compensation provisions can contribute to this injustice. Though compensation cannot ever adequately redress victims, "criminal justice will look hollow" without it.[78] Awarding compensation assures victims that they are not forgotten in the criminal justice system. In fact, courts must record reasons not only for providing compensation but also for

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[74] *Vishal Jeet* v. *Union of India*, 1990 CrLJ 1469

[75] *Zulfiqar Ali* v. *State*, 1986/MANU/UP/0557

[76] *State* v. *Kashiram*, 2009 CrLJ 1530

[77] Section 165, Indian Evidence Act

[78] *State* v. *High Court of Gujarat*, AIR 1998 SC 364

denying it.[79] The victim must be compensated for pain, suffering, shock, childbirth, loss of earnings, medical expenses etc. while calculating compensation.[80] Even foreign victims are entitled to compensation based on Constitutional provisions and the Universal Declaration of Human Rights.[81]

A victim-centric approach requires that compensation be collected not only from the perpetrator who may be unable to pay (and will not pay until appeals have been exhausted), but also by the State under Section 357A of the Criminal Procedure Code. In a recent case, the Supreme Court ordered the Maharashtra State Government to pay compensation of Rs.3 lakhs to a Bangladeshi trafficked person represented by *Justice and Care*.[82] Compensation must be adequate to ensure that trafficked persons do not become vulnerable to re-trafficking. Parallel compensation awards imposed on the accused *and* the State ensures that the trafficked person does not have to wait long years until all the appeals are exhausted.

For detailed guidelines on the successful prosecution of sex-trafficking cases, please see the Standard Operating Procedure for Prosecutors to Combat Human Trafficking, UNODC and Government of India, 2007.

D. A Victim-Centric Approach to Rehabilitation

Immediately after rescue, police agencies must place trafficked persons in safe homes,[83] and transfer trafficked children to the Child Welfare Committees.[84]

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79 *Ankush Gaikwad* v. *State*, AIR 2013 SC 2454

80 *Delhi Domestic Working Women's Forum* v. *Union of India*, (1995) (1) SCC 14

81 *Railway Board* v. *Chandrima Das*, AIR 2000 SC 988

82 *Vibhu Shanker Mishra* v. *State*, Writ Petition (Criminal) 61/2014

83 Section 17, Immoral Traffic Prevention Act (1956)

84 *Prerana* v. *State,* 2002 ALL MR (Cri) 2400

i. Home Enquiries – a tool to ensure safe repatriation

Custody of trafficked persons must not be handed over to those who may exercise a harmful influence over them.[85] Even if parents claim custody of their children, Child Welfare Committees and appellate courts must ensure that the fact of natural guardianship alone does not sway them. They must ensure that parents will protect children from moral and material abandonment.[86] Home enquiries are mandatory for child victims to ensure that they will not return to unfit homes.[87]

Justice and Care recommends home enquiries for adult victims so that the victim can exercise agency based on good information. Home enquiries, when conducted sensitively and without bias, can help the victim ascertain whether her family will receive her back (where they are not involved in the trafficking) and seek other alternatives (where the family is involved in trafficking). In the absence of home enquiries, trafficked persons have often been rejected or re-trafficked by their families.

ii. Protection from the criminal network during rehabilitation

Protection of trafficked persons requires that they be kept safe from the harmful influence of traffickers and their agents, even when these agents claim to operate under the cloak of the law. Often, lawyers obtain the signature of trafficked persons on *vakalatnamas* and claim to represent them. Even a cursory interview with trafficked persons will reveal that they do not have the means to employ these lawyers and they may not even know their names. It is the criminal network that employs these lawyers and gives them instructions that will protect the network rather than its victims. To protect trafficked persons from these lawyers, courts should not permit the same advocate to represent the accused as well as

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85 Section 17, Immoral Traffic Prevention Act (1956)

86 *Amrit Kaur* v. *State*, Criminal Writ Petition 550 of 2007

87 Section 33, Juvenile Justice (Care and Protection) Act, 2000. See also *Prerana* v. *State*, 2002 ALL MR (Cri) 2400 and *Amrit Kaur* v. *State,* Criminal Writ Petition 550 of 2007

the trafficked persons.[88] Courts can interview trafficked persons to ascertain if they have indeed hired lawyers who will represent their interests, rather than that of the criminal network. During the 21-day enquiry phase, the victims are under the protective custody of the court and are not accused of any crime. The court itself can take care of their best interests rather than entrusting them to lawyers that they have not employed.

Even lawyers appointed by family members should be treated cautiously till the enquiry reveals that the family is not involved in trafficking. It is interesting that families neglect trafficked persons while they are trapped in commercial sexual exploitation and often do not even file Missing Persons' Reports. But as soon as trafficked persons are rescued and the flow of income is curtailed, families rush to courts to gain custody. The journey from rescue to reintegration is a long one and if due care and caution is not exercised, it can end abruptly because of unscrupulous lawyers and families aiding the criminal network.

Decisions relating to custody and rehabilitation can change the course of a trafficked person's future.The legal expertise of the court alone will not suffice. A multi-disciplinary approach will work better, where judges seek the advice of respectable social workers while arriving at decisions relating to custody, repatriation or release of the victim.[89]

E. A Victim-Centric Approach to Reintegration

While rehabilitation is critical and the survivor needs time to heal and recover, institutionalization should always be the last resort. State agencies can seek the help of NGOs to ensure that the trafficked person, if she has a safe home to return to, is escorted by the police and by NGO workers. Safe return to her community involves respecting the confidentiality of the situation she was found in and her HIV status, if any. The trafficked person must be allowed to exercise her agency about

[88] *Prerana* v. *State*, 2002 ALL MR (Cri) 2400

[89] See *Prerana* v. *State,* Criminal Writ Petition 1694 of 2003

how much, and if at all, she wishes to disclose the circumstances she was rescued from.

Each trafficked person should be connected to a trustworthy NGO (if she so wishes) who will provide her with support, guidance and vocational training. City-based NGOs and shelter homes in destination areas can engage with community-based organizations in source areas to provide this support to victims of trafficking.

The best place for a survivor to heal is in a supportive community. State agencies, through the *Ujwala* program, can create schemes to provide adequate support to survivors. Every person in India has a fundamental right against trafficking.[90] It is the failure of State agencies and society in general that has allowed criminal networks to inflict unimaginable abuse. To make up for this failure, State governments can provide assistance to trafficked survivors through the *Ujwala* schemes.

The State must respect the rights of foreign victims and expedite their repatriation to their country of origin. In a recent case, the Supreme Court ordered Indian government to speedily repatriate a Bangladeshi trafficked person represented by *Justice and Care.*[91]

iii. Further Recommendations to Bring Trafficking Under a Measure of Control

So far, State action against trafficking has focused on penalizing the victims of crime rather than the organized criminal network which continues to operate with impunity and replaces rescued or arrested victims with new ones. To bring trafficking under a measure of control, apart from the recommendations in the article, *Justice and Care* also recommends that:

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[90] Article 23, Constitution of India

[91] *Vibhu Shanker Mishra* v. *State,* Writ Petition (Criminal) 61/2014. The Supreme Court provided a timeline of 10 days for repatriation.

A. State agencies focus their attention on closing down brothels[92] in public places,[93] particularly those that exploit children below the age of 18 and adults against their will.

B. The State enforce its policy of decriminalizing trafficked persons and concentrate its energies on increasing arrests and convictions of the members of the organized criminal network. We urge the State to put an end to the *entire* criminal network not just the weakest, dispensable links found in the place of exploitation. When the police investigation ends at the place of exploitation, the most powerful perpetrators – the financiers, recruiters, buyers, sellers etc. continue to keep the wheels of their deadly operation running smoothly.

C. The State focus its attention on reducing the demand for trafficking. The criminal network runs its deadly operation not to provide vulnerable persons with livelihood options but to fulfill the demand of millions of buyers of sex. It is illogical to allow these prime instigators of trafficking – the customers, to escape with impunity. MacKinnon (2011) argues that the difference "between prostituted people and those who buy and sell them are that one is served, the other serves; one is bought, the other buys and sells them; one is stigmatized, the other retains respectability; one is a criminal, the others either are not, or the law against them is virtually never enforced. And the one is mostly women, the others overwhelmingly men."[94]

Two years after Sweden penalized demand, the number of women prostituting reduced by 50% and the number of men who bought sex reduced by 75%; trafficking of persons into Sweden for sex has also reduced.[95] Swedish law protects women from being objects

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[92] In *Chitan J. Vaswani* v. *State,* 1975 AIR (SC), the Supreme Court has referred to brothels as "houses of vice where rich men buy poor women."

[93] Sections 18 (1) and (2), the Immoral Traffic Prevention Act, 1956

[94] See MacKinnon, supra, citing the dissent of two judges on South Africa's Constitutional Court.

[95] See Farley, supra

for sale. Eliminating their criminality protects women; criminalizing buyers lowers their privilege – "this is a sex equality law in inspiration as well as effect".[96]

Justice and Care urges Parliament to pass the amendment penalizing buyers of sex and to ensure that State agencies implement the amendment. Kotiswaran (2010), while examining the effect of partial de-criminalization on highly differentiated ethnographically categorized sex workres of Sonagachi, writes that penalizing buyers will improve conditions for trafficked persons (*chhukris*) while worsening conditions for independent sex workers because the customers who break the law to buy sex are more likely to be violent.[97] But the State must find a way to protect independent sex workers without turning a blind eye to the prolonged rape of *chhukris*. Is any reason sufficient for a civilized society to tolerate the prolonged rape of innocents? Criminalizing buyers, who are part of the criminal network, will go a long way in bringing this crime under a measure of control.

In conclusion, many condone prostitution because it is the "oldest profession" in the world and there is a misconception that it will always go on. In a country, whose Constitution cherishes women, this casual acceptance of prolonged rape, as an age-old tradition, is shameful. India is better than this. Bringing this crime under a measure of control is difficult, but it is possible. Our forefathers who fought against *sati*, advocated widow re-marriage and education for women swam against the overwhelming tide of public opinion. As an educated, independent woman, I am grateful they did not listen to naysayers and give up their fight.

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[96] See MacKinnon, supra, citing the dissent of two judges on South Africa's Constitutional Court.

[97] See Kotiswaran, supra

We cannot bring this crime under a measure of control unless we work with and for the girls, boys, women and men who are scarred and damaged by it. Trafficking will never be eradicated unless there are sincere efforts as intensive and extensive as the crime itself[98] but I believe that, within our country, there exists the political will and energy for these victim-centric efforts. It is possible to end trafficking. Let us not be the generation that failed.

References

Andrevski, H., Larsen, J.J., & Lyneham, S. (2013). *Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study,* Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, Vol. 451, May 2013.

Farley, M. (2006). *Symposium: Sex for Sale: Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 Yale J.L. & Feminism 109.

Kotiswaran, P. (2010). *Born Into Brothels – Towards a Legal Ethnography of Sex Work in an Indian Red-Light Area.* Law and Social Enquiry, Volume 33, Issue 3, 579-629, Summer 2008, SOAS School of Law Legal Studies Research Paper Series.

MacKinnon, C.A. (2011). *Trafficking, Prostitution and Inequality*. Harvard Civil Rights – Civil Rights Liberties Law Review, Volume 46.

Standard Operating Procedure for Investigating Crimes of Trafficking for Commercial Sexual Exploitation, UNODC and Government of India, 2007.

[98] *Priya* v. *State,* 2001 (4) MPHT 223

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Rights of Rape Victims in India: A Legal Analysis

Vageshwari Deswal #

Introduction

Victims are unfortunately the forgotten people in the criminal justice delivery system. Our criminal justice system, like all such systems, stemming from the Anglo-Saxon pattern, tends to take the victim for granted and is more concerned with the offender, his activities, his rights and his correctional needs.[1] It is a weakness of our jurisprudence that victims of crime do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law.[2] Among the many proposals for reforming criminal justice, the one that attracts universal acclaim relates to the status and role of the victim in criminal proceedings. Today he or she is an informant and possibly a witness for the prosecution depending upon the good sense of the police and the discretion of the public prosecutor. Unlike the accused, the victim has no rights to protect his or her interests in the proceedings, which are supposedly conducted on his or her behalf by the State and its agencies, and when the state agencies fail to do their duty, as has often happened in many cases in the recent past, the victim is left to suffer injustice silently or to take the law into his or her hands and wreak vengeance on the offender.[3] Crime can leave

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1 Dr. Justice A.S. Anand, Judge, Supreme Court of India delivering the Shri P. Babulu Reddy Foundation Lecture on *Victims of Crime - The Unseen Side.*(1998) 1 SCC (Jour) 3

2 *Rattan Singh* v. *State of Punjab*, (1979) 4 SCC 719

3 N.R. MadhavaMenon*Victim's rights and criminal justice reforms*, The Hindu, March 27 2006

victims physically injured and emotionally traumatized, with potentially long lasting psychological trauma, all of which can be compounded by severe financial difficulties. The agencies with which victims come into contact, particularly during the period after the crime, do not always understand and respond effectively to their needs. Many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings.[4]

In India victims have been given few legal rights. They cannot claim, as a matter of right to be informed, present and heard within the criminal justice system. There are no legal provisions imposing a duty on the police or prosecution to inform the victim regarding the arrest, court proceedings or release of the defendant. They have no right to attend the trial or other proceedings, and they have no right to make a statement to the court, at sentencing or at other hearings. Moreover, victim assistance programs are virtually non-existent.

Who is a Victim?

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,[5] defines the term 'Victims' to mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.

Thus under this Declaration, a person may be considered a victim, irrespective of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and

4 "*Criminal Justice: The Way Ahead*," A report by the UK Home Department, 2001

5 Adopted by the General Assembly of the United Nations, vide its Resolution No. 40/34, dated 29.11.1985

persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[6]

Indian laws define 'victim' as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.[7]

International Developments

In 1985, the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The Declaration recognized the following four types of rights and entitlements of victims of crime[8]

(a) Access to justice and fair treatment which includes prompt redress, right to be informed of benefits and entitlements under law, right to necessary support services throughout the proceedings, and right to protection of privacy and safety.

(b) Right to restitution return of property lost or payment for any harm or loss suffered as a result of the crime.

(c) Compensation when compensation is not fully available from the offender or other sources, the State should provide it at least in violent crimes that result in serious bodily injury, for which a national fund should be established.

(d) Personal assistance and support services include material, medical, psychological, and social assistance through governmental, voluntary, and community-based mechanisms.

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6 2nd principle in Annexure to UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

7 Definition of the term '*Victim*' inserted in Section 2(wa) of the CrPC by the Criminal Laws (amendment) Act 2008

8 N.R. MadhavaMenon: *Victim's rights and criminal justice reforms*, The Hindu, March 27 2006

Accordingly many countries enacted laws for victim protection e.g. Canada-Monitoba enacted the *Justice for Victims of Crime Act, 1986*. New Zealand enacted the *Victim of Offences Act, 1987*. United Kingdom enacted the *Criminal Justice Act, 1988* and made provisions for payment of compensation by the *Criminal Injuries Compensation Board*. Australia also enacted the *Victims of Crime Act, 1994*.

Generally it is seen that Common law does not provide for victim participation in Criminal justice administration and victim's role is limited to that of a witness. Inquisitorial systems, allow some participation of the victim within the trial process.For example Germany permits victims of certain serious offenses or the relatives of a murder victim to act as subsidiary prosecutors. France and Belgium also allow the victim to participate as an independent civil party. Under France's *Framework Justice Act (2002)*, police are obligated to inform victims of their right to apply for compensation and seek a civil remedy. Also, police can register compensation claims on behalf of victims, thus eliminating the requirement for victims to go to court.[9]Victims may initiate prosecution, participate and be heard as a party in any prosecution, and pursue a claim for civil damages in the criminal action. Restorative justice is another concept that is increasingly being used in all types of criminal justice systems, as victims and offenders cooperate in devising the resolution of the harms caused by the offense while holding the offender accountable for the harms.[10]

Provisions for Victim Rights in India

TheMalimath Committee appointed by the Government of India (2003) made a series of recommendations to put the victim back at the centre of criminal proceedings through a series of steps designed to empower him and the court. These include:

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[9] Rights of Victims available at http://www.endvawnow.org/en/articles/632-rights-of-victims.html

[10] Doak, Jonathan (2005). *Victims' Rights in Criminal Trials: Prospects for Participation* Journal of Law and Society. 32(2):294-316.

- Right of the victim, and if he/she is dead, his legal representative to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years imprisonment or more. In select cases to be notified by Government, this right may even be extended to recognized voluntary organizations as well.
- Right to be represented by an advocate of his choice. In cases where the victim is not able to afford the services of a lawyer than an advocate shall be provided at the cost of the State.
- Participation in criminal trial shall, *inter alia*, include the right to provide evidence, to put questions to witnesses with the leave of the court, to be informed of the status of investigation, to move court to ensure proper investigation, to be heard on issues relating to bail and withdrawal of prosecution, to advance argument after the prosecutor has submitted his arguments, and to participate in settlements of compoundable offences.
- Right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation.
- Explore the possibility of including psychiatric and medical help, interim compensation, and protection against secondary victimization under the ambit of legal services.
- Creation of a victim compensation fund to be administered possibly by the Legal Services Authority.

The above recommendations served as a precursor to the large scale amendments carried out in the CrPC in 2009. Some existing provisions were amended while some new provisions were introduced to incorporate these recommendations. Introduction of Section 2(wa) in the CrPC vide the Amendment Act of 2008 was the first step in this direction. This clause defined the term *Victim* in a broad manner to cover his or her guardian or legal heirs too. In 2009, *Victim Compensation Scheme*[11] was

[11] Section 357A inserted by Section 28 of Criminal Laws Amendment Act 2008 with effect from 31st Dec, 2009.

introduced. In 2013 another two provisions were introduced to protect the rights of victims. Section 357C imposes a duty on all public as well as private hospitals to provide free treatment to victims of acid violence and sexual assault and immediately inform the police of such incident[12] and Section 357B clarifies that the compensation payable to victims shall be in addition to the fine imposed as a form of punishment under IPC. Right to appeal against the acquittal of the accused or his conviction for a lesser offence has been also granted to the victim under the proviso to Section 372 CrPC by the amendment act of 2008. Proviso to Section 24(8) provides that the court may permit the victim to engage an advocate of his choice to assist the prosecutor. Legal Aid to victims especially women and children is mandated by Section 12 of the Legal Services Authorities Act, 1987 and the same has been reiterated a number of times by our judiciary.[13] In 2011 a circular[14] was issued by the Commissioner of Police, Delhi as per the orders of the Delhi High Court imposing a duty on the survivor's lawyer to keep the survivor informed about all the proceedings, bail or remand applications filed by the accused.

Victims of Sexual Assault

An act of sexual violence can devastate and derail a victim's life. The impact is long-lasting—months, years, even a lifetime. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman, i.e. her dignity, honour, reputation and chastity.[15]

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12 Section 357C

13 *Delhi Domestic Working Women's Forum* v. *Delhi Police* 1995 SCC(1) 14

14 Circular no. 53/Record Branch/PHQ- 2011.

15 *State of Punjab* v. *Ramdev Singh* AIR 2004 SC 1290

Rape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behaviour and values and generating endless fear. In addition to the trauma of the rape itself, victims have had to suffer further agony during legal proceedings. In the caseof *Delhi Domestic Working Women's Forum* v. *Union of India and Others*[16] the SC pointed out the defects of the criminal justice system that, complaints are handled roughly and not given warranted attention. The victims are mostly humiliated by the police. Facing rape trials is a traumatic experience. The experience of giving evidence in court has been negative and destructive for them, as they often say that, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself.

After the December 2012 Munirka Gang Rape case, a Committee headed by Justice Verma was constituted to suggest necessary amendments in laws relating to Sexual Offences. In addition to suggesting a broad definition for Rape and higher punishments for the perpetrators of sexual offences, this committee also recognized the important role played by advocates assisting the survivors in their quest for justice. In paragraphs 26 and 27 of its report the Committee suggested that the victim must be given opportunity to engage a lawyer of her choice who would be permitted to assist the prosecutor, examine witness and make submissions to the Court. They also recommended that the victim's advocate should be given a right of audience in his own capacity and not merely as a support to the prosecutor.[17]

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[16] *Supra* note 13. In this case four girls belonging to ST category were raped and abused by army personnel on their way to Delhi on Muri Express. A petition was filed by *Delhi Domestic Working Women's Forum* under Art. 32 of the Constitution of India, asking for a fast trial and compensation for victims of rape. The accused were finally charged with the Sections 376B (Intercourse by public servant with woman is his custody) and 341 IPC (wrongful restraint).

[17] *Report of the Committee on Amendment to Criminal Law*, available at http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece

Rights of Victims of Sexual Assault

In view of International Covenant on Economic, Social, and Cultural Rights 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not traumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with their privacy.[18]

I Right to Access to Justice Registration of FIR Mandatory in Cases of Sexual Assaults

Whenever the victim of any cognizable offence gives information to the police, the police are required to reduce the information into writing and read it out to the informant. The informant is required to sign it and receive a copy of the FIR.[19] If the police refuse to record the information, the victim-informant is required to send it in writing and by post to the Superintendent of Police concerned.[20] If the police refuse to investigate the case for whatever reason, the police officer is required to notify the informant of that fact.[21] Alternatively, victims are enabled by section 190 of the Cr.PC to avoid going to the police for redress and directly approach the Magistrate with their complaint.

[18] *Lilu @ Rajesh and Anr* v. *State of Haryana* 2013 (6) SCALE 17

[19] Section 154 (1)&(2) CrPC

[20] Section 154(3) CrPC

[21] Section 157(2)

The Criminal Laws Amendment Act, 2013 inserted Section 166A in the IPC[22] which has made recording of FIR's mandatory in cases of rape and failure on part of public servant to record information given to him in cases or rapes will make such public servant liable for punishment.

In cases where the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information is to be recorded, by a woman police officer or any woman officer and in the event that the victim or person against whom such offence was attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be and the recording of such information shall be videographed. "In relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality"[23]

Ordinarily in crimes FIR is to be registered promptly as with delay presumption of correctness goes on decreasing. But in cases of rapes

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[22] IPC Section 166A Whoever, being a public servant,

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

[23] Proviso to Sub Section (1) of Section 157 CrPC

delay in lodging of FIR, where such delay is explainable and the reasons for such delay are reasonable do not reduce the credibility of information contained in such FIR. A bench of justices H.S. Bedi and GyanSudha Mishra said that 'delay in lodging FIR by rape victims is understandable'. In incidents of rape, particularly when the victim is assaulted by a gang, it is difficult for the woman to promptly lodge a complaint since she has to consider the social stigma attached to it. A victim of gang rape inevitably suffers acute trauma and it is some time before such a victim is in a position to make a lucid and sensible statement. Moreover, rape itself brings enormous shame to the victim and it is after much persuasion that a rape victim goes to the police station to lodge a report and if some delay is occasioned, that cannot in any way detract from the other credible evidence.[24] If there are no injuries and if there is a delay in filing FIR, it cannot be said that the rape has not been committed.[25] Judicial response to human rights cannot be blunted by legal bigotry.[26]

Prompt Recording of Statement

The newly inserted proviso to S.154(1) as amended by Criminal law (Amendment) Act 2013, states that the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible. According to clause (a) of sub-section (5A) of section 164 'in cases punishable under section 354, section 354A, section 3548, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against which such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police'.

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[24] http://archive.indianexpress.com/news/fir-delay-in-rape-case-can-be-ignoredsc/827751/

[25] *State of Himachal Pradesh* v. *Gian Chand* SC judgment dated 1/5/2001 in Appeal (crl.) 649 of 1996

[26] *Rafiq* v. *State of U.P.*, 1981 SCR (1) 402 at p. 406

Recently on 25th April, 2014, a two Judge Bench of the Supreme Court[27] comprising of Justice GyanSudhaMisra and Justice V. Gopala Gowda has issued Guidelines in exercise of powers under Article 142 of the Constitution of India in the form of Mandamus to all the police station in charges in the entire country regarding 'recording statement of Rape Victim'. The Directions are as follows:

i. Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 CrPC. A copy of the statement under Section 164 CrPC should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge sheet/report under Section 173 CrPC. is filed.

ii. The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

iii. The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

iv. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

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[27] *State of Karnataka by Vinonavakre Police* v. *Shivanna@TarkariShivanna*, in the Supreme Court of India criminal appellate jurisdiction Special leave petition (crl.) No. 5073/2011

v. Medical Examination of the victim: Section 164A CrPC inserted by Act 25 of 2005 in CrPC imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 CrPC.[28]

During investigations no woman shall be required to attend at any place other than the place in which such woman resides for the purposes of giving information.[29] Statements made by witnesses during the course of police investigations and recorded under Section 161 may also be recorded by audio-video electronic means[30] and the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.[31]

Under Section 173 of the CrPC, every police office is required to complete investigations without unnecessary delay and forward the report to the concerned magistrate and where investigation relates to an offence under sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code, the report must specifically mention, whether the report of medical examination of the victim has been attached along with the report of the police officer.[32]

The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded

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[28] Available at http://indiankanoon.org/doc/2622362/

[29] Section 160(1) CrPC

[30] Proviso after Sub section (3) to Section 161 CrPC inserted by the Criminal Laws Amendment Act, 2008

[31] Proviso to Section 161 inserted by the Criminal Laws Amendment Act, 2013

[32] Sub-section (*2*), clause (h), Section 173 CrPC

by the officer in charge of the police station.[33] Section 25(2) of the Protection of Children against Sexual Offences Act, 2012 gives the right to survivors of child sexual abuse or their parents to get a copy of the statements and documents filed with a final report.

In *Birju Ram* v. *State of Rajasthan,*[34] the Court cautioned Magistrates to be more vigilant and sensitive to ensure that the provisions of law are not abused, to perpetuate injustice to victim. Ruling that statements under Section 164 are to be recorded only at the instance of the the police and not the accused, the Rajasthan High Court observed, "The statement of a witness under Section 164, CrPC can be recorded when a person is sponsored by the investigating agency. When it is not sponsored by the investigating agency the concerned Magistrate should look to the Police Diary and give sufficient time for reflection and also ascertain the bona fides of the parties concerned. If door is opened to such persons to get in and if the magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the magistrate Courts for the purpose of creating record in advance for the purpose of helping the culprits". The police is required to adopt follow up steps in the matter of investigation and that in the scheme of the said provisions there is no set or stage at which a magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. If a magistrate is obliged to record the statements of all such persons who approach him the situation would become anomalous and every magistrate court will be further crowded with a number of such intending witness brought up at the behest of accused persons.[35]

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[33] Sub Section (1), Clause (IA), Section 173, CrPC

[34] 2006 CriLJ 1794

[35] *JogendraNahak&*Ors v. *State of Orissa &Ors* Judgment delivered by SC on 4 August, 1999

Right to Receive Notice of Filing of Police Report under Section 173 CrPC

The Supreme Court in *Bhagwant Singh* v. *Commr. of Police*[36] followed in *Union Public Service Commission* v. *S. Papaiah*[37] has read into the requirements of Section 173 CrPC, the necessity to issue such a notice. This Court said: "There can, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(*i*) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(*i*) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."[38]

II Rights During Trial

Right to Legal Aid and Fair Trial

Article 39A of the Indian Constitution directs the State to provide legal aid to ensure that legal system dispenses justice without discrimination. Under Section 12 of the Legal Services Authorities Act, 1987 all women and children are entitled to legal aid. Legal Aid would include legal services such as giving legal advice, guiding the record of statements, making the victim aware of their rights and protecting the rights and interests of the victim at all stages of legal proceedings.

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[36] (1985) 2 SCC 537 SCC

[37] (1997) 7 SCC 614

[38] *Bhagwant Singh* v. *Commr. of Police* (1985) 2 SCC 537 SCC pp. 542-43, para 4

When a complaint of a woman disclosing a cognizable offence is not investigated by the police under Section 156(1) CrPC and the case is closed after preliminary investigation without registering an FIR, the victim is entitled to legal aid in order to pursue the remedy of a Magisterial order under Section 156(3) of the CrPC.

In *Delhi Domestic Working Women's Forum* v *Union of India and Others*[39] the SC indicated some broad parameters for assisting the victims of rape as follows, "The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance[40]. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station should represent her till the end of the case; Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her; The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed; A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable and an advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay,

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[39] *Supra note* 13

[40] *Ibid* at para 15

advocates would be authorized to act at the police station before leave of the court was sought or obtained."[41]

The complaints of victims are many. They often complain that they are ill-treated or harassed. Another grouse is that the police do not truthfully record the information. Investigations being exclusively a police function, victims have a role in it, only if the police consider it necessary. There is no special provision for support to victims of rape to enable them to overcome the trauma and hurt. Another allegation is that the prosecution can seek withdrawal at any time during trial without consulting the victim.[42] This leaves the victim with a limited right to prosecute the case as a private complainant.

Section 301(2) CrPC enables the victim's private counsel to assist the prosecution and also submit written arguments with the leave of the Court. According to Section 301 of CrPC such assistance is to be given at the enquiry, trial or appeal in a criminal case. When a party cannot be impleaded in criminal proceedings as held by this Court, he cannot be permitted to come in under the guise of an intervener. But at the same time, bearing in mind the wholesome observation of the Supreme Court, the right of a party to represent matters before the court cannot be whittled down into a strait-jacket formula of locus standi. Thus a pleader privately engaged can instruct and act under the directions of the Public Prosecutor.[43] Even otherwise the Court may permit the victim to engage an advocate of his choice to assist the prosecution.[44]

Right to be Heard in Matters of Accused's Bail

In the granting and cancellation of bail, victims have substantial interests though not fully recognized by law. Section 439 (2) allows a victim to move the Court for cancellation of bail; but the action thereon depends

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41 *Ibid*

42 Section 321 CrPC

43 *All India Democratic Women's* v. *State And Others* 1998 CriLJ 2629

44 Proviso to sub section (8) of Section 24 CrPC

on the stand taken by the Prosecution. Earlier the Complainant or informant could not oppose the accused's plea for bail and their counsel could at best, act under the instructions of the Public Prosecutor,[45] but in *Puran* v. *Rambilas,*[46] the Supreme Court recognized the rights of even a private party to move the court for cancellation of bail. The court observed, "When ignoring the material and evidence on record, a perverse order of bail is passed in a heinous crime, such order would be against the principles of law and not only the State but any aggrieved private party may move the Court for cancellation of bail."

Throughout the proceedings the rape victim's lawyer is duty bound to inform her about the remand or bail application filed by the accused.[47]

Victims to be Screened from the Offender

Where ever the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.[48]

The evidence of a witness (recorded by magistrate in warrant cases) under sub-section (1) of Section 275 CrPC may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of the offence.[49]

Trials to be Fast Tracked

Trials in rape cases are required to be conducted on day to day basis and unnecessary adjournments should not be permitted. In every inquiry or trial the proceedings shall be continued from day-to-day until all the

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45 *InduBala* v. *Delhi Administration* 1991 CrLJ 1774 (Del)

46 AIR 2001 SC 2023

47 *Supra* note 14

48 Proviso to Section 273 CrPC inserted by Criminal Laws Amendment Act, 2013

49 Proviso to Sub Section (1) of Section 275 CrPC inserted by Criminal Laws Amendment Act, 2008.

witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.[50]

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.[51] Such a direction was necessary to prevent unnecessary delays and adjournments due to technicalities or procedural formalities. Completion of trial gives closure to the victim's ordeal and she is able to surge ahead in life by putting the past behind.

Recently in Jan, 2014, hearing the plea of the accused for transfer of the *Shakti Mills case,*[52] a bench comprising of Hon'ble G.S. Patel, J refused to stay the trial in the lower court. The three accused in this case pleaded for transfer of proceedings to another court alleging that the trial judge was not properly recording the defence plea in the evidence. The defence advocates requested for time to prepare the applications. The judge told the advocates that they should make a proper representation after seeking instructions from their clients but meanwhile, staying the trial was out of question. The trial will proceed on a day-to-day basis. It is up to the accused and their advocates to decide whether they want to continue with the cross-examination and if they choose not to cross-examine any, they do so at their own peril. The Court observed that the only purpose of these applications seemed to be to somehow completely derail the trial that has been specifically fast-tracked and requires to be decided in the shortest possible time.

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[50] Sub section (1) to Section 309 CrPC as amended by Criminal Laws Amendment Act, 2013

[51] Proviso to Subsection (1) to Section 309 CrPC

[52] *Mohd.Salim Abdul Kuddus Ansari* v. *State of Maharashtra*, Criminal Application No. 697 of 2013, decided on January 3, 2014

Right to bail is regarded as a right of the accused but there is no corresponding right available to the victim or his heirs to oppose bail. It is left to the State only to oppose or not to oppose the grant of bail. Neither at the stage of the framing of a charge or passing an order of discharge are the views of the victim ascertained, let alone considered.

Right to Appeal

Victims have the right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appealcan be filed in the Court to which an appeal ordinarily lies against the order of conviction of such Court.[53]

Right to Privacy

Ordinarily trials in criminal cases are held in open courts i.e. where the public generally has access. Sections 327 (2) & (3) of the CrPC are in the nature of exception to the general rule of an open trial. This is to ensure transparency of proceedings in criminal trials. Owing to sensitivity of rape cases Sub sections (2) and (3) of Section 327 Cr.PC[54] prescribe that trial of rape cases are to be conducted in camera and as far as practicable by a woman judge or magistrate. This would enable the rape victim to depose frankly and freely without facing any kind of embarrassment as

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[53] Proviso to Section 372 CrPC inserted by the Criminal Laws Amendment Act, 2008.

[54] CrPC Section 327 *Court to be open*.

(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them: Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub- section (1), he inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted in camera: Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court.

(3) Where any proceedings are held under sub- section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with' the previous permission of the court

she would be facing in an open court or in the presence of male judges. The name and identity of rape victims is to be kept confidential and no matter in relation to such proceedings can be published without the previous permission of the court and where such permission is granted the reporting has to be done subject to the maintenance of confidentiality of the name and address of the parties.

In *Sakshi*v. *Union of India*[55] the Supreme Court laid down the following guidelines to be followed in holding trial of child sex abuse or rape:

- A screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused;
- The questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident, should be given in writing to the presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

For victims of sexual assault under POCSO, special courts have been established having special powers and following specific procedures for ensuring safety and comfort of the minor victims.

Section 228-A of the Indian Penal Code, 1860 makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. Though the restriction does not relate to printing or publication of judgment by High Court or Supreme Court, But keeping in view the

[55] (2004) 5 SCC 518

social object of preventing social victimization or ostracisms of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of High Court or lower Court, the name of the victim should not be indicated[56].The Courts should, as far as possible, avoid disclosing the name of the prosecutrix in their orders to save further embarrassment to the victim of sex crime. Sometimes the Courts may lift the ban on printing or publication of trial proceedings in relation to an offence of rape subject to maintaining confidentiality of name and address of the parties.[57] The anonymity of the victim of the crime must be maintained as far as possible throughout.[58]

III Trials in Cases of Rapes and Sexual Assaults to be Conducted in a Sensitized Manner

Presumption as to Absence of Consent

Section 114A[59] Indian Evidence Act, 1872: Presumption as to Absence of Consent in Certain Prosecutions for Rape— In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (j), clause (g), clause (h), clause (i), clause (j), clause (k), clause (f), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent. Section

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[56] *Bhupinder Sharma* v. *State Of Himachal Pradesh* 2003 Supp(4) SCR 792

[57] Proviso to Sub section (3) of Section 327 CrPC

[58] *State Of Punjab* v. *Gurmit Singh &*Ors 1996 SCC (2) 384; also see *Delhi Domestic Working Women's Forum* v *Union of India and Others*, JT 1994 (7) 183

[59] Section 114A Indian Evidence Act, 1872: Presumption as to Absence of Consent in Certain Prosecutions for Rape— In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (j), clause (g), clause (h), clause (‘), clause (j), clause (k), clause (f), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent.

Explanation. In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375

114A was inserted in the Indian Evidence Act, 1872 in 1983 and recently amended by the Criminal Laws Amendment Act, 2013. The controversy sparked off by the Supreme Court judgment in *Tukaram* v. *State of Maharashtra*[60] was the reason behind this provision. In this case two constables were tried for raping a 16 year old tribal girl within the premises of the police station. The Sessions Court acquitted them and said that "Mathura (the name of the victim) was a lair who was habituated to sexual intercourse as proven by her medical examination. She had sex voluntarily with the police constables as there were no marks of any injury on her person from which it could be deduced that she had resisted or that the act was done without her consent." The High Court reversed the judgment and held that the sexual intercourse in question was forcible and amounted to rape. The High Court also remarked that the learned judges of the trial court had erred in making a distinction between consent and mere passive submission. When the accused went in appeal the Supreme Court overruled the judgment of the High Court and agreed with the trial court that it was a consensual and peaceful affair. This case was highly criticized by the media and all sections of society held wide-spread demonstrations against the injustice meted out to Mathura. Same year in September, eminent law teachers of the country wrote an open letter to the Chief Justice of India criticizing the judgment and asking the court to review its judgment. All this did lead eventually to amendments in rape law in the year 1983. Several categories of rape such as custodial rape, gang rape, rape of a pregnant woman etc. were introduced in the Indian Penal Code. These categories of rape were made heavily punishable and simultaneously a provision Section 114A, relating to presumption as to absence of consent in prosecutions for rape was also inserted in the Indian Evidence Act.

According to this clause if the prosecutrix deposes that she did not consent to the act, it will be taken as conclusive evidence. The court shall presume that she did not consent and the burden would be on the accused

[60] AIR 1979 SC 185

to rebut the same. Therefore, in cases where there is no evidence to show that the victim consented and she states before the Court that she was raped without her consent and against her will, the Court shall believe her testimony[61].

Cross Examinations of Victims to be Handled Sensitively

Some times defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The Court, therefore, should not sit as silent spectators while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence.[62]

Relevance of Testimony

A rape victim is a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured witness in cases of physical violence. The same degree of care and caution must attach in

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[61] *HanumanthuRama Rao* v. *State Of A.P.*2001 (2) ALD Cri 522, 2001 (2) ALT Cri 317

[62] *Ibid*

the evaluation of her evidence as in the case of an injured complainant or witness and no more.[63]

In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations[64].

IV Right to Medical Examination

Law provides for medical examination of both the rape accused[65] as well as the rape victim[66], as soon as possible after the registering of an FIR in rape cases in order to determine the truthfulness as well as veracity of some sexual contact having taken place between the parties to the case. However medical examination is not conclusive evidence of rape, as rape is a question of law and depends on the consent of parties involved except in case of minors where consent is of no relevance.

Under Section 164 A of the CrPC, Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a

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63 *State of Maharashtra* v. *ChandraprakashKewalchand Jain* 1990 (1) SCC 550

64 *State of Uttar Pradesh* v. *Munshi*, AIR 2009 SC 370

65 Section 53A CrPC

66 Section 164A CrPC

registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence. The examination should be conducted preferably by a woman medical officer and if by a Male Medico then in the presence of another female attendant.

Immediately after conducting examination, a report is to be prepared consisting of the victim's name, age, marks of injury, description of material taken from the woman's body for DNA profiling. The conclusions arrived at by the examining officer should be reasonably explained.Such report shall without delay be forwarded to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

Section 357C of The Criminal Procedure Code imposes a mandatory duty on all hospitals whether public or private and local bodies to immediately provide first-aid or medical treatment, free of cost, to the victims of rape and they shall also be bound to immediately report all such cases to the police. Noncompliance with the provisions laid down under Section 357C of the CrPC is punishable with imprisonment up to one year under Section 166B of the IPC. Reference to past sexual history was banned in rape trials in 2003, but the two finger test[67] leading to formation of medical opinion regarding consent allows past the sexual history of the rape survivor to prejudice her testimony. Section 155 of the Indian Evidence Act, does not allow a rape victim's credibility to be

[67] The *Two finger Test* refers to a vaginal examination of rape victims to figure out the laxity of vaginal muscles and whether the Hymen is distensible or not. This is used to determine whether the woman being examined has had regular previous sexual experience. The test itself is one of the most unscientific methods of examination used in the context of sexual assault and has no forensic value. Whether a survivor is habituated to sexual intercourse prior to the assault has absolutely no bearing on whether she consented when the rape occurred.

compromised on the ground that she is "of generally immoral character". In the case of *Lilu @ Rajesh and Anr* v. *State of Haryana*[68], The Supreme Court ruled that the two finger test is unconstitutional. It violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to presumption of consent

In March, 2014 The Union health ministry, has drawn new guidelines for treating rape victims, and has asked all hospitals to set up a designated room for forensic and medical examination of victims besides outlawing the two-finger test performed on them, dubbing it as unscientific. The Department of Health Research (DHR) along with Indian Council of Medical Research (ICMR) with the help of experts formulated this set of national guidelines[69] for dealing with criminal assault cases, which will hopefully put an end to the horrendous medical process, which the victims are subjected to after the sexual abuse. The DHR has also drafted a new manual to address the psycho-social impact of sexual violence including counseling that the victims should receive to alleviate her woes.[70]

V Right to Compensation

The Hon'ble Apex Court has time and again observed that sexual offences are offences against the basic human right and violative of Article 21 of the Constitution of India. Thus the subordinate Courts trying the offences of sexual assault have the jurisdiction to award compensation to the victims. Their jurisdiction to pay compensation (interim and final) has to be treated to be a part of the overall jurisdiction of the Courts trying the offences of rape which is an offence against basic human rights as also the Fundamental Rights of Personal Liberty and Life.[71] In the case of

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68 2013 (6) SCALE 17.

69 DHR guidelines available at http://www.icmr.nic.in/dhr/pdf/1%20DHR%20Forensic%20Medical%20Manual%20Sexual%20Assault.pdf

70 http://timesofindia.indiatimes.com/india/Govt-issues-fresh-guidelines-on-medical-care-to-rape-victims-ends-two-finger-test/articleshow/31393118.cms last visited on 20th August, 2014 at 11pm.

71 *Bodhisattwa Gautam* v. *Subhra Chakraborty*, AIR 1996 SC 922

*Gudalure M.J. Cherian and Ors.*v. *Union of India and Ors*[72] the State of U.P. was directed to pay a sum of Rs.2,50,000/- as compensation to two Sisters on whom rape had been committed by unidentified assailants. This was notwithstanding the fact that the persons who had been arraigned as accused were found by the CBI not to be involved in the offence. The report pointed out grave lapses on the part of the investigating officers. In the *Delhi Domestic Working Women Forum Case*[73], the court directed payment of Rs.10,000 as ex gratia to each of the victims. Similarly in *Chairman Railway Board* v. *Chandrima Das*[74] the Supreme Court awarded Rs. 10 lakhs as compensation to the victim who was raped in Yatriniwas by railway employees.

Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In *HariKishan& State of Haryana* v. *Sukhbir Singh &Ors.*[75] The Court observed that, "Sub-section (3) is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent a constructive approach to, crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. The payment by way of

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[72] (1992) 1 SCC 397

[73] *Supra* note 12

[74] (2000) 2 SCC 465.

[75] AIR 1988 SC 2127

compensation must be reasonable. What is reasonable may depend upon the facts and circumstances of each case, e.g. the nature of crime, the justness of claim by the victim and the ability of the accused to pay etc.[76]

Section 376D of the IPC makes provision for imposition of a fine on the rape convict and also lays down that such fine is to be paid to the victim. The amount of fine fixed must be sufficient to compensate her for the expenditures incurred in her medical treatment and rehabilitation. The compensation payable to a rape victim by the State Government under section 357A of the CrPC shall be in addition to the payment of fine to the victim under section 376D of the IPC.[77] Section 357A was inserted in the Code of Criminal Procedure, 1973 by the Criminal Laws amendment act of 2009 and provides that the State Government in consultation with the Central Government should prepare schemes for victims and their dependents that have suffered loss or injury as a result of the crime and require rehabilitation. In Malimath Committee Report many experts had pointed to the Criminal Injuries Compensation Scheme (2001) implemented in the UK as an example to learn from. The fifth law commission of India in report submitted in 1971 had recommended the inclusion of payment of compensation to victims, as one of the prescribed punishments under Section 53 of the IPC, 1860.

The award of compensation is not dependent on the identification of the accused. Even in cases where the offender is not traced or identified, but the victim is identified and where no trial takes place, the victim or his dependents may make an application to the State or District Legal Services Authority for award of compensation.[78] The trial court may recommend payment of more compensation if there is a need for rehabilitation of the victim and the amount awarded initially is not sufficient for the rehabilitation process.[79] Whenever the Courts recommend payment of

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[76] *Ibid*

[77] Section 357B CrPC inserted by the Criminal Laws Amendment Act, 2013.

[78] Section 357A(4) CrPC

[79] *Delhi Domestic Working Women's Forum* v *Union of India and Others*, JT 1994 (7) 183

compensation to the victim, the District or State Legal Services Authorities have to conduct due enquiry within two months, decide the quantum of compensation to be awarded to such victim and award the same to the victim. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment. The Legal Services Authorities may also provide free medical treatment or any other interim relief to the victim if required.

In 2013 budget, the then Government of India had announced 'Nirbhaya Fund' which is a fund with a corpus of Rs. 10 billion. This fund was named 'Nirbhaya' meaning the fearless as a tribute to the brave heart that fell prey to monsters in the 16th Dec 2012 gruesome rape incident that had shocked the collective conscience of our country. The fund was launched amidst much fanfare with the objective to support initiatives taken by the Government and NGO's regarding ensuring safety of women against crimes against their dignity and safety. The fund is to be used to enhance safety and security of women in both the public as well as the private domain. In November 2013 the Ministry of Urban Development had sent requisitions to all States for proposals to implement new projects to be financed by the Nirbhaya Fund. Ministry of Women and Child Development (WCD) were also contemplating the formulation of a scheme for vulnerability mapping, opening of response centers and creating awareness for enhancement of safety and security of women. The NCW had also asked for Rs 100 crore funds to run massive awareness drives to bring a change in the mindset of the people towards women and rehabilitation programs which could help to bring down instances of violence against women, but their demand was turned down. In February this year, the Government has allocated additional Rs. 1000 crore to this fund. However, what is depressing is that not a single penny has been allocated out of this fund till date as the Government is yet to take decisions on proposed projects where it may be utilized. These funds need to be

put to proper use and decisions regarding their allocation should be taken fast

Compensation to victim is also payable under the Probation of Offenders Act, 1958. While releasing an accused on probation or with admonition, the Court may order the offender to pay compensation and cost to the victim under Section 5 of the Act.

Victims of Marital Rape

In India the institution of marriage grants the husband, an unlimited sexual access to the wife, recognizing the implied matrimonial consent to cohabit unless the wife is below fifteen years of age[80] or where the wife is living separately under a decree of separation or otherwise[81]. However non-consensual sexual acts with the wife are recognized as sexual violence under the Protection of Women against Domestic Violence Act, 2005 and cruelty (physical and mental) under Section 498, IPC. Victims of sexual abuse within the institution of marriage are entitled to the following rights

a. Protection orders can be claimed under Section 18 of the Domestic Violence law, preventing the husband from committing, aiding or abetting any act of violence against the woman;

b. Every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.[82] Thus she cannot be evicted or excluded from the shared household except in accordance with the procedure established by law;

c. Right to claim divorce on the grounds of cruelty.[83]

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[80] Exception 2 to Section 375 IPC

[81] Section 376B IPC

[82] Section 17 Protection of Women against Domestic Violence Act, 2005.

[83] Cruelty is legally recognized as a ground for seeking divorce (See Section 13 of the Hindu Marriage Act, 1955; Section 2 of the Dissolution of Muslim Marriages Act, 1939; Section 10 of the Indian Divorce Act, 1869)

Concluding Remarks

Rape is not only an offence against the person of a woman. It is a crime against the entire society. It is a crime against basic human rights and also violates the most cherished fundamental right guaranteed under Article 21 of the Constitution. So, the courts should deal with such cases sternly and severely.[84]

"It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing education programs for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime."[85]

Victim reparation is the next important step and is not achieved by compensation alone. The basic principle of justice in the civilized society is that a person committing crime is punished and not the victim. Indeed, the victim is compensated and rehabilitated. Apart from the fundamental right of a woman of right to life, to live with dignity free from cruel degrading treatment, there is also a duty cast on every citizen by Article 51(e) of the Constitution to renounce practices derogatory to the dignity of women. It must be realized that the security of a woman is essentially a law and order problem, which is the State subject.[86]The object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done.[87] Victims need to be more actively involved in the criminal justice system for better administration of justice. Only a vindicated victim can put a closure to her ordeal and lead a normal life. The State should also focus on restitution to restore the victim to her pre-victim status by

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[84] *ShriBodhisattwaGautam* v. *Miss SubhraChakrabortyAIR* 1996 SC 922

[85] Jennifer Temkin*Modem Legal Studies Rape and the Legal Process*, 1987 Edition, page 7

[86] *Birju Ram and Anr.Etc.* v. *State of Rajasthan and Ors.* 2006 CriLJ 1794

[87] *Bheru Singh* v. *State of Rajasthan* (1994) 2 SCC 467 p. 481, para 28

ensuring her safety so that she may resume her education, employment or any other daily activities. Physical, medical, social as well as psychological rehabilitation of victims is a must and State should ensure future security of the victim by guaranteeing her of non-repetition or prevention of future abuses.

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Child Rights in India: Contemporary Challenges

Ambarish Rai, Sneha Palit and Dr. Susmita Mitra[*]

In a society mired by social injustices, any debate on the notion of *rights of children* needs to move beyond the boundaries of legal framework and challenge traditional perceptions (and practices) that perpetrate discriminatory practices and injustices against children.

Before reflecting on the overall status of children in India, it must be noted that the word itself remains contested in India (in terms of its upper age limit), defined to suit policy purposes based upon differing situations. As per international standards stated in the United Nations Convention on the Rights of Children (UNCRC), 1989, individuals below the age of 18 are considered to be children. Considering India was one of the first few countries to ratify the Convention, it would have been only natural to reach a consensus regarding the upper age limit of children and consequently initiating processes to amend all the laws pertaining to children and synchronising them with the definition of a child as per international norms. However, no such actions have been taken yet.

The two important laws that came into existence following the UNCRC, 1989- the Right to Free and Compulsory Education Act, 2009 (through the 86th Amendment in the Constitution) and the Juvenile Justice

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(Care and Protection of Children) Act, 2000, both set different age bars to be considered a child, further adding to the confusion. Disparities in the definition include- definitions in the census (undertaken every 10 years) which considers any person below fourteen years to be a child, similar to the Child Labour (Prohibition and Regulation) Act, 1986, while Section 28 of the Indian Penal Code (IPC) states that no child below age seven may be criminally held for his actions. The Juvenile Justice (Care and Protection of Children) Act, 2000 however defines a child to be any individual below the age of 18, much similar to the Indian Majority Act, 1875.

Having thus stated at the outset the confusion rampant among policy-makers as to who shall be considered a 'child', we proceed to state the objectives of this paper. While the topic 'rights of children in India' can be analysed through multiple lenses, this paper focuses on providing a broad overview of those children who are entirely dependent on state institutions for their well-being, reflecting upon their status and how the state is failing in its duties to protect and nurture them. We particularly focus on the two biggest programmes in India that currently cater to nutrition and educational needs of children- the *Integrated Child Development Scheme* (ICDS) and the *Sarva Shiksha Abhiyan* (SSA). However, nutrition and education is not alone sufficient to protect the child, especially in a context characterised by entrenched poverty, class and caste hierarchies, gender disparities and dysfunctional state mechanisms. Hence, the paper briefly touches upon issues of child labour, human trafficking, physical and sexual abuse and discriminations based upon gender, religion, caste and class as it progresses. The objective of the paper is also to update the reader on the growing incidences of violations of rights of children and the complete absence of protection measures, regulatory frameworks and state responsiveness to curb atrocities against children.

As per the current Census (2011) data, 39% of the population in India falls within the age bracket of 0-18. Considering the large population

of India, if almost 40% of the population are children, then providing adequate nutrition, education, healthcare and ensuring necessary safety nets is not a matter of choice but rather absolute necessity. The social development indicators for children (discussed in details later) provide a further gloomy picture, calling for urgent re-strategising with respect to children and child protection measures; and introspection of the manner in which we are currently protecting and providing for our children. It is obvious that presence of unhealthy and uneducated adults in the next decade will just add unnecessary burden upon the already fragile state machineries. Considering that very soon India will overtake China in terms of population to become the most populous country on the globe, the expected *demographic dividend* may very well turn into a *demographic nightmare* for the country.

It is important to understand that legislation alone does not guarantee realisation, meaning, laws do not guarantee adherence to the laws. Implementing agencies and monitoring mechanisms must be created to ensure that the laws are abided by and in case they are not, stringent sanctions must be put in place. The second important thing that goes unnoticed is the role of every citizen in the society to ensure the successful enactment of its laws. As citizens bound by common laws, it becomes the duty of every individual to consciously abide by the law and report instances of violations. However, when it comes to children, it is almost as if we have developed certain blind- spots to visuals of child-rights violations. Therefore, most of us are indifferent when we see children selling plastic toys and books on the traffic signals, heavily malnourished children with protruding bellies (often carrying their infant siblings) begging for food on the road, or read news reports of incidences of maltreatment in schools, physical and sexual abuses where children are victimised, adolescents being trafficked from small villages into big cities and so on. These children just become numbers, cases and incidences adding to the worsening pile of social development indicators.

What is even more disturbing is the romanticised notion we tend to attach to the term *childhood*, a term generally associated with adjectives like innocence, carefree, happy and so on. While normative principles associated with the period of childhood cannot be dismissed, it will be prudent to analyse the contextual challenges faced by children (at least a majority of them) on a quotidian basis. In a country like India that is rooted with hunger, poverty, exploitation and abuse, the term hardly holds any positive connotations, especially for a majority of Indian children. In fact, such are the complexities within our society that the very experience of the term childhood changes based upon hierarchies of birth, gender, caste, religion, location and so on. Some children are considered to be special while others become easily 'disposable' (Grewal & Singh 2011).

The growing recognition to protect and nurture children and their rights is widely accepted today. In the Indian context at least, such thinking is not new. The drafting members of the Indian Constitution incorporated child rights and protection measures within the Indian Constitution, accepting children as a special group of vulnerable individuals (primarily due to their dependency on adults for *access* to social justice and *means* for growth and well- being) who need constant care, nurturing and protection to reach their full potential and capabilities. Furthermore, it becomes essential for the well- being of the nation to have healthy and educated children who will grow up to be responsible citizens and provide human capital for the country in the form of a vibrant labour- pool, taking forth the economic aspirations of the country. Hence, ensuring the welfare of children should not be seen as a purely humanitarian gesture but also as a prudent investment for future returns for the country in general.

Child Rights: What Are Our Legal Obligations

We are just a decade away from celebrating 100 years of the Geneva Declaration of the Rights of the Child, 1924 that emphasised the role of the present generation towards the future generation, explicitly stating how 'mankind owes the Child the best it has to give' (League of Nations,

1924). The evolution of *rights*, however, has not been an easy process. The concept of *rights* has always been a process of expansion in history, its scope expanded over decades to incorporate sub-groups of the population (bit by bit), sometimes through massive campaigning and movements while at times through violent rebellions.

Historically, the first documented evidence of Constitutional rights have been found in the Code of Hammurabi (1772 B.C.E), which granted certain *rights* (like presumption of innocence for the accused and the right to present evidence before a judge) to the citizens of Babylon (Chong, 2014). It was perhaps the first time when people were seen as more than mere subjects with just duties towards the ruling elite. While this was the beginning of bestowing rights to people, over decades, the notion of rights underwent different phases- adapted by the Greeks, Romans, King John of England before entering entered the constitutional frameworks of many western countries (Chong, 2014). The modern conception of human rights that believe all human beings posses some inherent 'natural' rights (from the philosophies of essentialism) is however credited to the enlightenment philosophers of sixteenth century Europe. The creation of the United Nations post World War II saw the adoption of the Universal Declaration of Human Rights (1948) by a consortium of nations who together agreed that people deserve a set of rights based solely on their inherent dignity as human beings. While the United Nations has since then had multiple Conventions and joint Declarations, the one that is most relevant for the purposes of this paper is the United Nations Convention on the Rights of Children (UNCRC), 1989. The four primary rights enshrined in the UNCRC (1989) can be seen in Table 1. Comprehensive in itself, the UNCRC is based upon the principles of best- interest (of children) where a child's survival, development and protection have been ensured in a world that respects its voice and views.

The UNCRC was first adopted in 1989 and finally came into force on the 2nd September 1990. It is guided by the non-discrimination

principle, i.e. every country that ratifies UN-CRC has to make sure that all the rights in this Convention apply to every single child in that country. The convention consists of 54 articles covering various rights under four major categories of rights for children (below 18) in their 'best interests'.

Table 1: United Nations Convention on the Rights of the Child:A Brief Snapshot

Categories	Rights
The Right to Life	Right to life, the highest attainable standard of health, nutrition and adequate standard of living, the right to a name and nationality
The Right to Development	Right to education, support for early childhood care and development, right to leisure, recreation and cultural activities
The Right to Protection	Freedom from all forms of exploitation, abuse, inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflict
The Right to Participation	Respect for the views of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion

Source: Compiled by authors from different UN sources and Child Rights Booklet, "Every Right for Every Child", Centre for Health Education, Training and Nutrition Awareness (CHETNA)

At a national level, it is important to note that India was one of the first few countries to ratify the United Nations Convention on the Rights of the Child (UNCRC), 1989, in the year 1992. However, the idea of treating children as a special category of individuals is not uncommon and finds its origins in the Constitution of India.

For example, Article 24, 39 and 45 of the Constitution highlight various protection measures for children and imposes certain duties upon the State. Article 21 (A) assures provision of free and compulsory education to all children from the age of 6 to 14 by the state, Article 24 protects children from being employed in hazardous conditions till the age of fourteen and Article 39 (f) assures the right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom

and dignity while guaranteeing protection of childhood and youth against exploitation and against moral and material abandonment.

Similarly, children have the right to be treated like any other citizen in India and enjoy the right to equality (Article 14), right against discrimination (Article 15), right to personal liberty and due process of law (Article 21), right to being protected from being trafficked and forced into bonded labour (Article 23) and right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

Table 2 highlights some notable achievements by the state that reiterates its commitments towards its children. Multiple policy initiatives have been undertaken to establish the required structural mechanism necessary for ensuring the rights of children. However, over the years, most of these measures have become academic exercises, restricted in their scope and adding to the volumes of to policy documents and commission reports and academic pieces.

Table 2: Trajectory of Rights of Children in India

1950	Constitution of India covered provision for children's well-being. For example, in Articles 24, 39 and 45 it mentioned about protection of children from being employed in hazardous employment, protection against moral and material abandonment, and provision of free and compulsory education for all children up to 14 years of age.
1974	National Policy for Children was formulated by Government of India, which describes children 'a supremely important asset' of the nation. This is being reviewed, so that it is brought in tune with current priorities and emerging needs of children.
1975	Integrated Child Development Services (ICDS) was launched in accordance to the National Policy for Children. This centrally sponsored scheme aims at providing services to pre-school children in an integrated manner so as to ensure proper growth and development of children in rural, tribal and slum areas.
1992	India ratified UN-CRC, becoming one of the first few countries to do so.
1997	India submitted its first report on the implementation of the CRC. This was reviewed by the UNCRC in January 2000.

Table contd...

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2004	National Charter for Children, 2003 was adopted with the intension to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.
2005	National Plan of Action for Children (NPAC) was launched by the Government of India for a collective commitment and action by all sectors and levels of Governments, and a partnership of the Government with families, communities, voluntary sector, civil society and children themselves in consonance with UNCRC, the Millennium Development Goals and others.
2006	A major step was taken to consolidate all child-related issues under one umbrella by upgrading the Department of Women and Child Development (DWCD) into a full-fledged Ministry towards the realization of child rights through improved coordination with other ministries, State governments, institutions and civil society. The ministry implements and monitors all policies and programmes/ schemes pertaining to children.
2007	The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, to ensure that all laws, policies, programmes are in consonance with child rights perspectives enshrined in Constitution of India and UNCRC mandates. The commission has been addressing issues of working children, sexual abuse, female foeticide and others.
2010	Right of the Children to Free and Compulsory Education Act 2009 came into effect

Source: Compiled by the authors from various Government of India sources

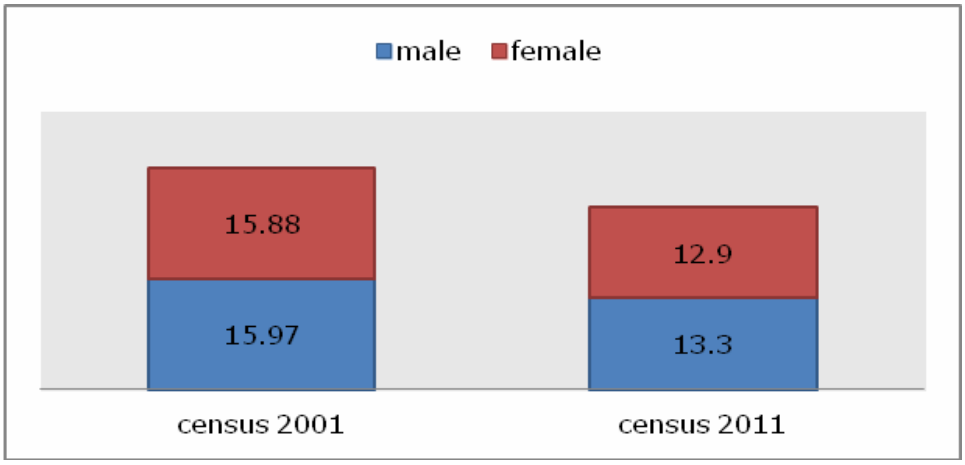
Currently, India is home to roughly 20% of the world's children, estimated to be around 36 million. As per Census (2011), the 13.12% of the population presently fall under the age bracket of 0-6, a decline of 2.8% points in 2011 when compared with census data in 2001. The percentage of people falling within the age bracket of 0-18 is around 39%.

Struggling for the Right to Survive

It is a matter of shame that India presently has the worst child sex-ratio of 914, a figure that is overshadowing the overall improvement in the sex-ratio (940), the highest since independence (Figure 3). States with alarmingly low child sex-ratio indicators like Haryana (830), Punjab (846),

Jammu & Kashmir (859) and Delhi (866) reflect the worst form of violence against women. The emergence of unregulated, private pre-natal sex determination clinics has worsened the situation, calling for an urgent regulatory framework to curb the growth of these clinics. The fact that middle and lower- middle class households opt for these services is a cause of serious worry, indicative of the prevailing biases that are embedded within the society. It is a common misconception to assume that it is *only* the poor households that prefer girls over boys or consider them to be a 'burden'. Continued preference for the male child is common across classes, at least for a majority of Indians.

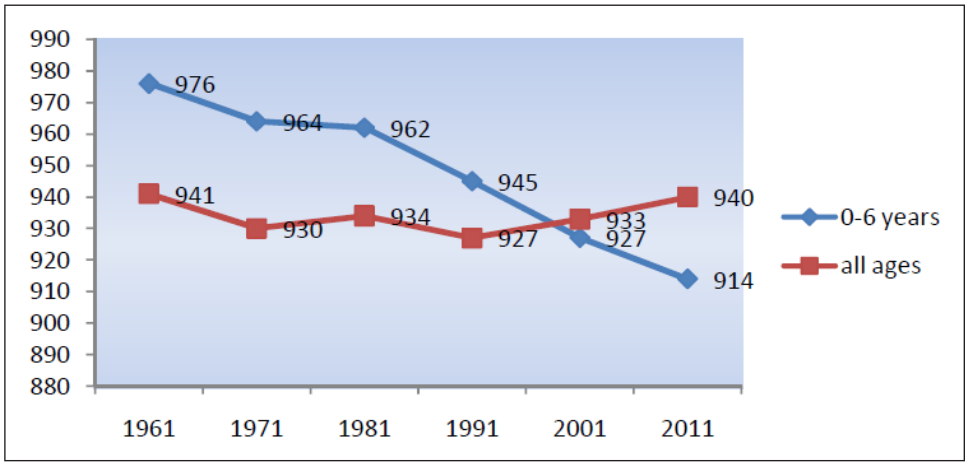
Figure 1: Share of children (0-6 yrs) to the corresponding total population (%)



Source: "Children in India 2012- A Statistical Appraisal", Social Statistics Division, Central Statistics Office, Government of India

The above Figure 1 shows that during 2001- 2011, the share of children to total population declined and the decline was sharper for female children (3.8% decadal decline) than male children (2.4% decadal decline) in the age group 0-6 years. Though, the overall sex ratio of the Country is showing a trend of improvement, the child sex ratio is showing a declining

Figure 2: Trends in Child and Overall Sex-Ratio in India



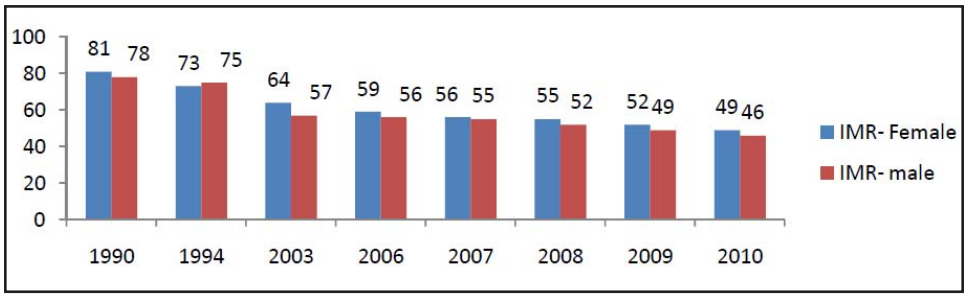
Source: Census, India, Office of registrar General of India

trend, which is a matter of concern. There are now 48 fewer girls per 1,000 boys than there were in 1981 (Figure 2).

The child survival data is equally poor in India. As per statistics from the UNICEF (2011), we contribute to approximately 20% of the child deaths in the world. It is estimated that more than 1.83 million children die in India before reaching five years of age, mostly due to preventable causes. Providing a child with a protective environment should be foremost in the list of priorities for the government. Protective environment in case of children includes clean drinking water, immunisation facilities, early detection of diseases and timely treatment, appropriate provision of nutritional needs, hygienic surroundings and similar things that is presently considered a luxury in India, available to a select few. All these factors together feed into the overall health and well-being of a child. However, access to these basics needs required for a healthy survival is largely absent.

Although overall infant mortality rate shows a declining trend, female infant mortality rate is higher than that of male (Figure 3). Gendered

Figure 3: Infant Mortality Rates (Male vs. Female)

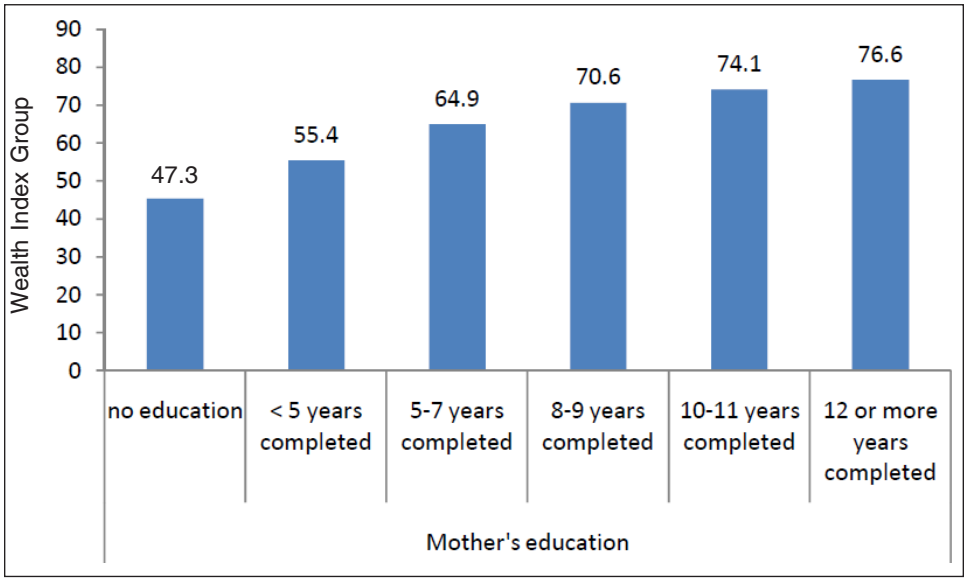


Source: Sample Registration System, Office of Registration General of India

biases continue to permeate the society, with the female child being given second preference.

In spite of some progress in health sector, the current situation is not adequate to ensure a bright future for the children. For example, only

Figure 4: Percentage of Children Age 12-23 Months Vaccinated with Full Immunisation



Source: "Children in India 2012- A Statistical Appraisal", Social Statistics Division, Central Statistics Office, Government of India

61% of the children aged 12-23 months received full immunization in 2009. While the coverage of immunization was higher in urban areas (67.4%) compared to that in the rural areas (58.5%), the economic condition of the family has a direct impact on status of received by the child.

About 75.5% of children of less than one year belonging to the highest wealth index group are fully immunized while only 47.3% from the lowest quintile are fully immunized. Mother's education also has a significant role in ensuring full immunization coverage to their children, as evident in Figure 4.

Early Childhood Development and Care: Performance of *Anganwadis*

According to HUNGaMA Report (2011), 42% of the children below four years of age were underweight in India and 59% had stunted growth in 2011. What is worst is the half hearted measures taken by the state to reduce malnutrition (Haddad 2009) despite having the largest under-six child-care and development programme- the Integrated Child Development Scheme (ICDS).

The Integrated Child Development Scheme (ICDS), implemented since 1975 and with a plan outlay of 444 billion (11th FYP) is India's primary response early childhood intervention for fulfilling the health and nutritional needs of the children. It has all the important components that are essential to children till six years of age, starting with the health and nutritional needs of pregnant mothers. The ICDS presently (till March 2010) reaches to 7.28 crore children and 1.6 crore pregnant and nursing women, through a network of 12.41 lakh (Ministry of Women and Child Development, 2012) village level *Anganwadi* Centres, run by *Anganwadi* Workers (Shashidhar *et al* 2012).

The role of the *Anganwadi* Centres, however, has been questioned in the recent years. While theoretically the concept of *Anganwadi* continues

to be held in the highest regard, a space where children develop their skills, are slowly introduced to the larger world with the necessary care and protection required at that tender age, under the loving and watchful eye of the *Anganwadi* worker, reality is quite different.

The disproportionate increase in the number of children has not been supplemented by a proportionate increase in the number of *Anganwadi* Centres. As a result what we presently have are multiple times more number of children than the centre can accommodate, struggling for space within the room. Consequently, the *Anganwadi* Worker, probably one of the most important frontline workers of the government, has been given the responsibility of managing all the children who come to the centres. Moreover, due to the number of services that have been integrated at the Anganwadi Centres over the years (related to women and child health), the overall purpose of these centres (as centres of early childhood care and education) has been lost. Currently, the performance of the *Anganwadis* is largely dependent on the level of enthusiasm, motivation and managerial skills of the *Anganwadi* Worker.

An evaluation of the ICDS done by the Planning Commission (2011) stated that despite significant increases in the overall outlay of the ICDS, the outcomes were more than disappointing. Results from the evaluation indicated towards massive leakage in the system. Moreover, the functioning of the ICDS in urban areas is even worse, marred by low allocation. The facilities provided are so bad that parents prefer private crèche facilities as against *Anganwadi* Centres. Those worse affected are children of migrant and construction site workers who often have no choice but to accompany their parents in construction sites.

With such a huge amount of money being spent in the programme, one would have expected better nutrition and nourishment indicators among the children. However, as per NFHS-3 (2005-06), approximately 43% of the children in India are underweight. In fact, figures indicate

that child malnutrition and anaemia among women have in fact increased over the years, with expected variations in performance across regions and states.

Since malnutrition is a multi-dimensional problem, the ICDS alone cannot be held responsible. However, considering the six pronged strategy that the programme adopts for delivering early childhood care and education, it is essential to look at the strategy adopted by implementing agencies of the ICDS programme to make it more effective and responsive. As per the 11th Five Year Plan, the government took vigorous initiatives to strengthen the programme and increase its outreach, increasing the number of *Anganwadi* Centres and *Anganwadi* Workers in order to universalise it. However, before expanding the programme, attempts should have been made to strengthen the existing system- especially with regards to implementation loopholes and leakages. The structure of funding is such that the central government funds 90% of the cost of the programme, released in return of utilisation certificates and monthly/ quarterly progress reports, leaving ample space for manipulation and malpractices. What is surprisingly missing is a consolidated plan of action. Better monitoring is the need of the day.

Since the *Anganwadi* Worker plays the most crucial role in promoting child development, substantial investment needs to be made in providing her training and improving her 'honorarium' (NIPCCD, 2009). While the *Anganwadi* Centres are indeed functional and parents do leave their children with the *Anganwadi* Worker, it is time to evaluate the nature of care and education that is received in these centres. While we do not discredit the efforts of the helpless *Anganwadi* Worker who deals with multiple challenges on a regular basis- we question the amount of responsibilities that have been placed upon the *Anganwadi* Worker in an environment characterised by lack of sufficient space, minimum 'honorarium' salary, gap in delivery of necessary provisions and absence of managerial skills. Is it fair to expect so much of an *Anganwadi* Worker?

Psychology ascertains that children learn most efficiently and development adept cognitive and motor skills by the age of six. Therefore, it is only natural that the *Anganwadi* Centres must provide the necessary pre-school education that is essential for a child to make a successfully transition into primary schooling and ahead. The Centre then becomes the platform that should give a head-start to children. However, at the moment, the component of education is the largely missing from the *Anganwadi* Centres. The problem thus manifests itself in the poor performance of children, in terms of learning outcomes, in elementary schools.

The Right to Education

"We the present generation of India can only hope to serve our country by our failures. The men and women who will be privileged to serve her by their successes will come later" - Gopal Krishna Gokhale (1911) after the rejection of his bill by the Legislative Council demanding free and compulsory education (Nurullah & Naik 1964).

The Right to Free and Compulsory Education Act, 2009, enacted in the country since April 2010 is one of the most significant achievement in the history of child rights in India. Enacted with the objective of universalising elementary education in India by making it the responsibility of the state to provide free and compulsory education to the children from the age of 6 to 14 years, the Act partly actualised Article 45 of the directive principles which stated that, "*The state shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years*". While the Constitution envisaged realising the goal by the end of the first decade post independence, it took more than half a century for the state to realise the importance of elementary education for every Indian child, catalysed by the Supreme Court judgment in 1993 (*Unnikrishnan* v. *the State of Andhra Pradesh*) that correlated the right to education with the right to life.

Even after this landmark achievement, the growing enrolment in private schools best reflects the present situation of state funded public education system in India. Debilitating infrastructure, inadequate number of trained qualified teachers, delay in provision of teaching- learning materials are common characteristics of a majority of public schools- mainly due to the disinterest of the state to revive the public education system. Therefore, it comes as no surprise when people automatically associate the low- quality schooling with public schools and prefer to change the present scenario and asking for better education through govt schools.

It is five years since the implementation of the Act (through the *Sarva Shiksha Abhiyan*) and its performance is far from good. Currently, less than 10% of the schools in India are compliant with the provisions mandated by the RTE Act, indicating the poor performance of the state with respect to implementation. While the Act barely focuses on education outcomes, the fact that the government has failed to even assure the basics in terms of infrastructural norms and trained teachers speaks volumes regarding its intentions with respect to public schools. Around 10% of all the state run schools are single teacher schools, currently facing a massive shortage of about 5 lakh teachers and also 6.6 lakh teachers still contractual and untrained. Pupil- Teacher Ratio norms are miserably failing in schools and the response of the state has been to hire untrained contractual teachers (without any formal training) to fill in the gap. It is hardly surprising that the level of learning of students is poor.

The primary aim of having education as a fundamental right is to empower children through the transformation of their capacity of critical analysis. However, despite having the right to education, we are far from achieving the goals of education. If on the one hand we have high percentage of student enrolment, indicating increased accessibility, the rate of retention is extremely low and number of students who drop out is very high. Moreover, from the definition of the Gross Enrolment Ratio,

one aspect is very clear that, very high (even more than 100%) enrolment ratio is due to the fact that older children than the official eligible age group are enrolled. Also those who drop-out generally belong to marginalised communities (Table 3). Thus we notice that although we have made improvements (as compare to previous years) universal education still requires vigorous efforts. At the same time, from Figure 5 it is clear that enrolment of girls is lagging much behind that of boys and the gap increases in higher level of education, although the time trend shows drastic improvement in this regard.

Table 3: Level Wise Gross Enrolment Ratio and Drop-out Rate in School Education (% of age)

Gross Enrolment Ratio

	All		**SC**		**ST**	
Level	Boys	Girls	Boys	Girls	Boys	Girls
Class I-V	115.4	116.7	131.3	132.7	137.2	136.7
Class I-VIII	104.9	103.7	117.3	116.9	120.5	118.7
Class I-X	97.6	94.8	108.7	107.2	108.2	105.3

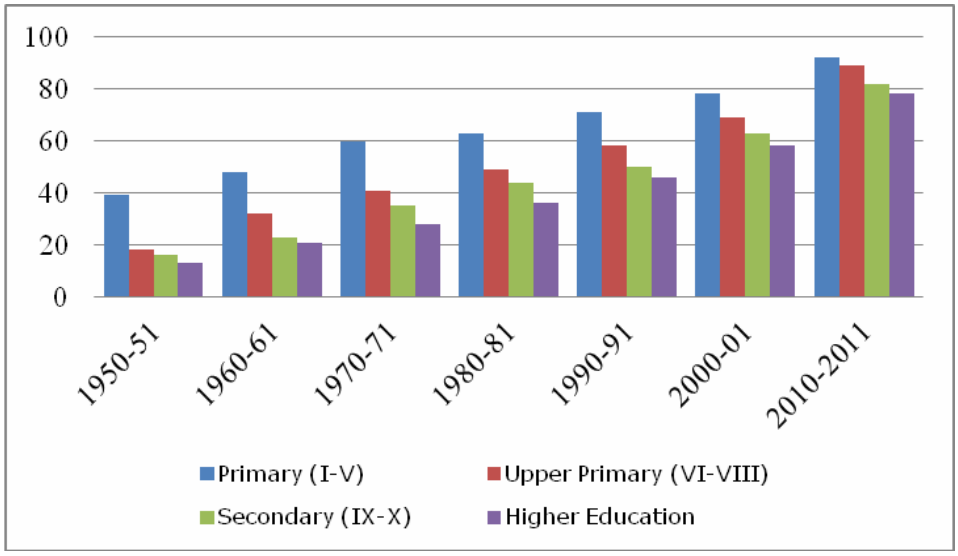
Drop-out Rates

	All		**SC**		**ST**	
Level	Boys	Girls	Boys	Girls	Boys	Girls
Class I-V	28.7	25.1	29.8	23.1	37.2	33.9
Class I-VIII	40.3	41	46.7	39	54.7	55.4
Class I-X	50.4	47.9	57.4	54.1	70.6	71.3

Note: Gross Enrolment Ratio is the total student enrolment in a given level of education, regardless of age expressed as a percentage of the corresponding eligible official age group population in a given school year and Drop-out Rate is the percentage of students who drop out from a given grade or cycle or level of education in a given school year

Source: Educational Statistics at a Glance 2013, Government of India

Figure 5: Number of Girls Enrolment per Hundred Boys Enrolled by Stages of Education



Source: Educational Statistics at a Glance 2013, Government of India

The approach of the state, on the other hand, with regards to state provided education has been alarming. For example, it is estimated that currently, India has approximately 17.8 milion out-of-school children. Plus, as stated above, almost 40% of the population is eighteen and below. Therefore, there are definitely a huge number of out of school children in the country who need access to schools. However, instead of improving the quality of education and status of schools, recruiting teachers or ensuring infrastructure, the state governments have adopted a strange policy of school rationalisation. For example, the state government of Rajasthan recently issued orders to merge around 17129 schools into 13565 schools, in the process closing down approximately 4000 schools. Reports from the field indicate that in most of the cases, the merged schools are violating infrastructural, distance, PTR norms of the RTE Act itself leading to cases of drop-outs. The insensitivity of the action and the manner in which the state government is taking decisions, years of advocacy work of generating awareness and emphasizing the importance

of education is being reversed. School rationalisation is not restricted to Rajasthan. Similar measures are being undertaken in the states of Odisha, Maharashtra, Telengana, Uttarakhand and Gujarat as well.

Child Labour and Exploitation

As a society, we have learnt to live with child labour. In fact, it is probably the only issue where opinions are divided. We lack a comprehensive policy banning all forms of child labour. What we have instead is a policy that only bans the employment of children in hazardous places. The excuse that is commonly cited is how in a severely impoverished nation (like ours), banning child labour is not a pragmatic decision, considering the extent of poverty and dependency on the income of children. Therefore children continue to be employed and remain out of school.

It is estimated that there are presently 12.6 million children engaged in hazardous activities (as identified by the Government of India) in India (Census, 2001). While the statistics have definitely changed over the decade, it is not clear whether the country has made any significant progress in curbing child labour. It is disheartening that we have failed to reach a consensus on banning all forms of child labour. Employment in hazardous industry is just one dimension of child labour.

There are millions of children who continue to be engaged in mostly unorganised, informal and invisible forms of labour that are extremely difficult to reach. For example, employing children as domestic helps is common in most parts of the country. Consequently, we often hear of children being exploited and abused, in their role as domestic helps. Such things are so common in our society that we have developed a blind-spot towards child labour. Another dimension in relation to children and labour is the automatic role of the elder female sibling as the care- giver in a household, often made to stay at home (out- of- school) to provide the element of care to her younger siblings.

'Investigation and site visits to illegal coal mines in the Jaintia Hills area of Meghalaya states, documented in two films, show large numbers of child workers toiling in shocking conditions where they crawl into small excavated spaces through holes adults cannot enter, and extract coal which they drag out in wooden carts small enough to fit through holes. These places are known as "rat mines". The rat miners are reportedly from Nepal, Bangladesh and some Indian states. The report and films indicate some 70,000 children caught in this labour.'[1]

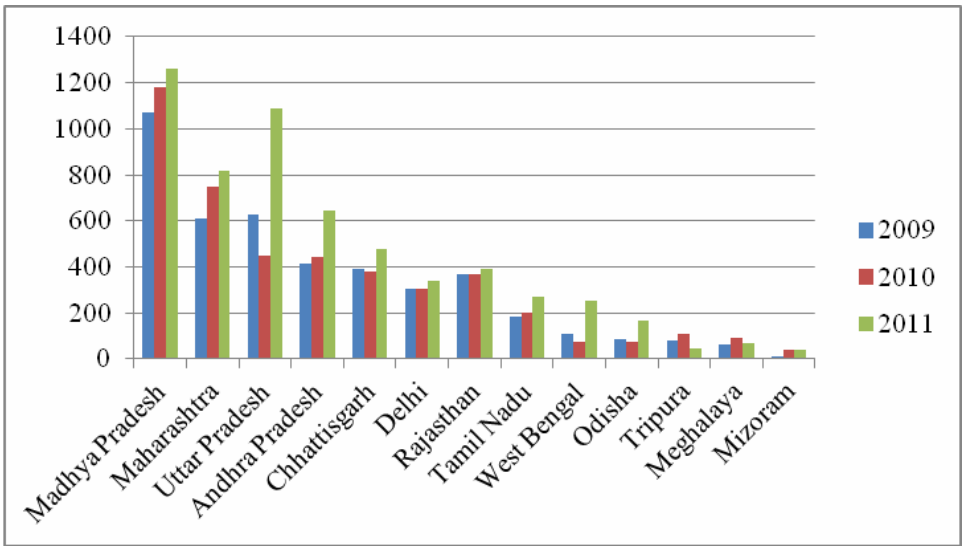
As seen in Table 4, there is immense exploitation of inhuman nature with children who are working as child- labourers. Similarly, children eking out a living by working in small eateries and restaurants are a common sight in India metropolis. Most of these children are migrants from impoverished regions, moving to big cities in the hope of earning money. However, their rate of exploitation is much higher due to the absence of any comprehensive law or regulatory mechanisms. The issue of bonded labour is also common in such instances. For example, cases have been reported where parents have exchanged labour against money (The Hindu, 2014).

Physical and Sexual Exploitation

A child goes missing every 8 minutes in India, almost 40% of who are never found (NCRB 2012). In 2011, almost 60,000 children were reported missing from a total of 28 states and union territories according to the NCRB. West Bengal had the highest number of missing children with more than 12,000 reported missing in 2011. Madhya Pradesh was next with 7,797 cases while Delhi had 5,111 cases (The Wall Street Journal 2012). On the other hand, a total of 3,554 crimes related to human trafficking were reported in 2012 (NCRB 2012).

1 Alternative Country Report & Update On India- 3rd and 4th Combined Periodic Report on the Convention on the Rights of Children, 2002-03

Figure 6: State Wise Information on Child Rape Cases Reported to NCRB (2009 - 2011)



Source: Asian Centre for Human Rights

The above Figure 6 shows that that there are state level disparities for reported child rape cases. However, the increasing trend in most of the states in the recent years is a cause of worry. Trafficking of children has emerged as a key problem that is being faced by the country presently. Interesting, sale of children and child prostitution are largely used as interchangeable terms, neglecting the dimension of sale of children for bonded labour, among other factors. The other bias that is dominating the entire discourse currently is the gendered understanding of sale of children, almost always associated to the female child, neglecting the boys.

Instances of children being rescued by state officials and civil society organisations are frequent in the print media. Common causes include promises of employment in big cities, poverty (often induced by violent conflicts) and natural disasters among others. However, sometimes it is the family of the child who sells them for some easy cash. It was reported that around 4000 children are trafficked out of Bihar every month (Times

of India 2014). Backward regions- especially tribal belts and north- eastern region of the country has emerged as the major source for women and child trafficking. It is important to note that it is not only poor girls who fall 'victim' to promises of employment, but also educated girls from well to do families who are lured by employment agencies and sold to brothels, spas and beauty parlours in big cities (The FreePress Journal 2014).

There has been a significant increase in the number of cases reported on cross- border trafficking. Annually, the sex trafficking industry in India generates roughly $9 billion (Live Mint 2014). India has emerged as one of the biggest foreign destination for victims, becoming the source, destination and transit country for human trafficking (Deane 2010) to an extent that trafficking girls from Nepal to India for the sole purpose of prostitution is perhaps the busiest 'slave traffic' of its kind anywhere in the world (McGirk 1997). Child abuse in the form of 'sex- tourism' is also becoming a cause of concern. There are increasing number of reported cases of child exploitation (mainly for sexual purposes) in tourist destinations of Khajuraho and Ujjain, Kerala, Hyderabad and Goa where children become victims of various forms of exploitation including child labour, physical violence, sexual exploitation and use of children in pornographic portrayal in photographs and videos (Times of India 2014; The Telegraph 2013).

Fighting Traditions and Challenging Norms

While it is relatively simple to point out the flaws in state mechanisms and suggest recommendations, implementing becomes the key. However, it is here that the duties of the citizens manifest itself and calls for a joint responsibility in protecting the rights of the children. Children are indeed young and by virtue of their age unable to directly access justice; thus their dependency on parents and guardians.

The term 'caring-community' perfectly fits in here as the end goal of any society. Coined by Dr. Eric Ram, a leading public health specialist,

the concept of a caring-community is fairly simple to understand. It is a community where care is the right of every child, not only from parents, guardians and family but from the society at large. Unfortunately, it is this dimension of care that is missing from the lives of millions of Indian children.

Realistically speaking, children in India do not have equal rights. Most of the children dependent on state institutions are children belonging to under-privileged backgrounds. Additionally, massive caste and religion based discriminations still percolate the system. For example, a report by Shariff (2012), the lead author of the 2006 Sachar Committee report, examined education-related data from 2004-05 and 2009-10 and concluded that improvements in grades I to X were lowest among Muslims. A recent report by Human Rights Watch (2014) titled '*They Say We're Dirty'* presents simple, heart-breaking narratives of little children who undergo discrimination as a part of their daily lives- for example not being made class monitor because they belong to a particular religion, not allowed to participate in certain sports because they come from a particular caste and made to sit separately behind the class due to their parent's professions. It is a little wonder that these children drop- out from mainstream education system, leaving with significant psychological scars.

Girls continue to be victimised, even before they are born. Gender biases are perhaps the most deep-rooted discrimination we have been carrying for centuries now. Female foeticide, female infanticide, under-5 mortality rates, nutrition and health related data, percentage of illiteracy, rate of drop-outs, incidences of human trafficking, sale of children and physical and sexual abuse are just some of the indicators that highlight the constant struggle faced by girls in contemporary Indian society. The day-to-day discrimination, patriarchal attitude and lack of choice in decisions related to their lives are a regular feature in their life. From an early age, they are pushed into a 'motherly-role', expected to take over as the primary care giver.

The other group of children who have been traditionally sidelined and remained largely invisible are children with disabilities. It is stated that less than 1% children with disabilities are enrolled in schools presently (RTE Forum Report 2014). Looking at the disable- unfriendly infrastructure that we have, not only in schools but overall, it is not surprising that they have been left out of most of the rights based discourse. It is not only infrastructure but our overall attitudinal ineptitude to deal with children with special needs that have worsened the situation. The society at large continues to be governed by parochial thoughts and associated views when it comes to dealing with children with disabilities.

Concluding Observations

We must accept that by and large, we are failing a majority of our children. While this paper provides attempts to provide an overall perceptive on the situation of children in India, the newly emerging categories of children in conflict zones, migrant and street children, children in tribal and mining areas and children suffering from natural disasters have been left out of the discussion here. Given the number of children who are affected by violence on a daily basis, immediate laws must be designed to protect their interests. However, as stated at the outset, laws alone will not suffice. Our structural mechanisms must be strengthened to ensure that children are aware of their rights and have easy access to them, without much dependence on other people. Rigorous punishments must be meted out to those who wrong them and the judicial system has to be vibrant, efficient and functional.

The demographics of the country is quickly transforming, new vulnerabilities are emerging that would require more rigorous policy-decisions and actions. The UNCRC asks for three things with respect to children- provision, protection and participation. At the moment, we are unable to provide basic provisions essential for survival. We have programmes and welfare measures but we are not completely successful

in implementing them. As far as protection is concerned, due to the sheer number of children, we are drastically failing. Maybe in the case of protection, is it important to understand the notion of a protective environment or a caring community- that is required for its realisation. It needs responsible citizens, the 60% who have to jointly take responsibility in protecting the 40%. We need more awareness, social consciousness and efficiency to curb social plagues like sale of children and child labour.

Lastly, the dimension in which our performance is poorest is with respect to nurturing the voice and enabling participation of a child, especially in areas and with respect to decisions which are directly relevant to them. In this entire process, we have somewhere killed the voice of the child who has some aspiration, opinion and suggestion as to how they would like to live their lives. Ironically, child participation is what is primarily missing from most of the debates and discourses on child rights. A child may be vulnerable and dependent on adults for provisions etc., but a child must surely have some opinion about his/ her life. However, in the process of ensuring and debating child rights, we tend to adopt a condescending approach towards children, so often dismissing them saying they don't know anything or emphasizing how we know better. It is this very attitude we have to change. Yes, care and protection is necessary but we must also give children the respect (by asking them to participate, hearing their opinions, and taking their suggestions) they deserve if we want to truly give them some rights.

References

1. Child Rights Booklet, "Every Right for Every Child", Centre for Health Education, Training and Nutrition Awareness (CHETNA)
2. Chong, Daniel P. L., (2014) *Debating Human Rights* Boulder, Colorado : Lynne Rienner Publishers, Inc., 277 pages
3. Deane, T. (2010). Cross-Border Trafficking in Nepal and India—Violating Women's Rights. *Human rights review*, *11*(4), 491-513.

4. Escape from Childhood, E. (1975). The Needs and Rights of Children. *Holt, I.*

5. General, R. (2011). Census Commissioner, India. *Census of India*, *2011*.

6. Government of India. Census of India (2011) Provisional Population Totals: Part 1 of 2011 India Series 1

7. Haddad, L. (2009) 'Lifting the Curse: Overcoming Persistent Undernutrition in India', IDS Bulletin 40.4: 1–8

8. Human Rights Watch (2014) They Say We're Dirty: Denying an Education to India's Marginalised

9. HUNGaMA (2011) The HUNGaMA (Hunger and Malnutrition) Survey Report 2011,

10. Imandeep Kaur Grewal & Nandita Shukla Singh (2011) Understanding Child Rights in India, Early Education and Development, 22:5, 863-882

11. League of Nations (1924). Geneva Declarations of the Rights of the Child

12. McGirk, T. (1997). Nepal's lost daughters, India's soiled goods. *Nepal/India News*, *27*.

13. Moira Rayner (2005), "History of Universal Human Rights- Up to WW2

14. Nurullah, S., & Naik, J. P. (1964). *A Students' History of Education in India: 1800-1965*. Macmillan

15. RTE Forum Report (2014) Status of Implementation of the Right to Free and Compulsory Education: Fourth Year Report. RTE Forum, New Delhi

16. Saxena, N.C. (2012) "Hunger and Malnutrition in India." *IDS Bulletin* 43.s1: 8-14.

17. Shariff, Abusaleh (2012). "Inclusive Development Paradigm in India: A Post-Sachar Perspective." US-India Policy Institute (USIPI). www.usindiapolicy.org

18. Shashidhar, R., Maiya, P.S., & Ramakrishna, V. (2012). India's Integrated Child Development Scheme and its Implementation: Performance of Anganwadis and Analysis. *OIDA International Journal of Sustainable Development*, *5*(6), 29-38.

19. UNICEF (2011) *The Situation of Children in India: A Profile* New Delhi

Newspaper References

1. LiveMint (2014) The human cost of sex trafficking

Available at: http://www.livemint.com/Politics NF6no9ZEl1TQWy V2CLF8LI/The-human-cost-of-sex-trafficking.html

2. The FreePress Journal (2014) Over 400 human trafficking victims rescued in Assam, Assam, India

   Available at: http://freepressjournal.in/over-400-human-trafficking-victims-rescued-in-assam/

3. The Hindu (2014) Beyond city lights, tragic tales of child labour abound. Chennai

   Available at: http://www.thehindu.com/news/cities/chennai/chen-society/beyond-city-lights-tragic-tales-of-child-labour-abound/article6342913.ece

4. The Telegraph (2013) Teenager exposes India's 'one month wives' sex tourism, United Kingdom

   Available at: http://www.telegraph.co.uk/news/worldnews/asia/india/9993453/Teenager-exposes-Indias-one-month-wives-sex-tourism.html

5. The Wall Street Journal (2012) India's Missing Children, By the Numbers

   Available at: http://blogs.wsj.com/indiarealtime/2012/10/16/indias-missing-children-by-the-numbers/

6. Times of India (2014) 4,000 children trafficked from Bihar every month: DIG. Patna, India

   Available at: http://timesofindia.indiatimes.com/city/patna/4000-children-trafficked-from-Bihar-every-month-DIG/articleshow/42051040.cms

7. Times of India (2014) Increased tourism leads to child exploitation in Madhya Pradesh

   Available at: http://timesofindia.indiatimes.com/india/Increased-tourism-leads-to-child-exploitation-in-Madhya-Pradesh/articleshow/43649758.cms

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Delivery of the Integrated Child Development Services (ICDS) Programme in a Rights Perspective – An Appraisal

Dr. K.R. Venugopal[#]

I. Introduction

This article is based on a book authored by me[1] which in turn is based upon a Social Audit sponsored by the Council for Social Development (CSD), New Delhi of the working of the ICDS programme in the district of Anantapur in the erstwhile composite state of Andhra Pradesh. This social audit, which was conducted in 2008-09 by three leading NGOs, namely, the Centre for Environment Concern, Hyderabad headed by its director Mr. K.S. Gopal; the Accion Fraterna, Anantapur headed by its director Dr. Y.V. Malla Reddy; and the Rural and Environmental Development Society (REDS), Kadiri headed by its chief functionary Ms. C. Bhanuja, was led and coordinated by me. This was an extensive social audit of 154 anganwadi centres (AWC) in129 villages and involved, in addition to the field work that collected large primary data, several rounds of interaction with the field, district and state level officers of the Government Departments concerned and groups of mothers, adolescent girls and anganwadi workers (AWW) at the village level. The findings of the social audit were discussed in two workshops in the year 2009, one at

Former Special Rapporteur, NHRC

1 (K.R. Venugopal – 2012 - *The Integrated Child Development Services A Flagship Adrift* – New Delhi – Konark Publishers)

the district level at Anantapur and another at Delhi to elicit inputs from various stakeholders and experts to find a way forward to a better ICDS programme. The participants in these workshops included the President, CSD, New Delhi Prof. Muchkund Dubey; Member, Planning Commission Dr. Syeda Hameed; the eminent nutrition scientist Dr. C. Gopalan; Ministers of the Government of Andhra Pradesh; senior officers of the Central and State governments; representatives of CARE (India) and UNICEF and several civil society organisations. The relevance of the findings of the social audit to this article is the significant opinion that emerged from the leading participants in these workshops including from the Member, Planning Commission that the findings of this social audit reflected the situation that obtained in the ICDS programme elsewhere in the country as well and therefore these findings and recommendations were valid not only for Andhra Pradesh but for the country as a whole. To maintain this authenticity, it is hereby acknowledged that the findings and the suggestions made in this article are often the reproduction of the contents of the book "The Integrated Child Development Services A Flagship Adrift." Obviously constraints of space in this article would restrict an elaborate examination or presentation of all the findings and therefore it is recommended that for validation and more detailed information on its contents readers may refer to the book itself.

II. The Source of Rights in the ICDs Programme

1. The objectives of the ICDS programme are:

(i) To improve the nutritional and health status of children in the age group 0-6 years;

(ii) To lay the foundation for proper psychological, physical and social development of the child;

(iii) To reduce the incidence of mortality, morbidity, malnutrition and school drop-outs;

(iv) To achieve effectively coordination of policy and implementation amongst the various departments to promote child development; and

(v) To enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

2. The ICDS programme as conceived by the Government of India in 1975 seeks to provide the delivery of a package of the following services in an integrated manner to children in the 0-6 age group and expectant and nursing mothers and women in the age group 15-44 years:

(i) Supplementary nutrition

(ii) Immunisation

(iii) Health checkup

(iv) Referral services

(v) Nutrition and Health Education(NHE)

(vi) Pre-school Education (PSE)

3. The concept of providing an integrated package was based on the premise that the total or overall impact of a programme will be much larger if the different services develop in an integrated manner as the efficiency of a particular service depends upon the support it receives from related services. This is about the resultant synergy. For instance, provision of supplementary nutrition alone is unlikely to improve the health of the child if it continues to be exposed to diarrhoeal infections or unprotected drinking water supply.

4. In the late 1980s it was recognized that the objectives of the ICDS programme would be enhanced and better achieved if the importance of the place and role of the adolescent girl in the life cycle of a woman was properly recognized. Advocacy was undertaken of her cause by the Union

Department of Women and Child Development itself with great support from many activists including in particular of the eminent nutrition scientist Dr. C. Gopalan, resulting in her becoming in the early 1990s a part of the ICDS programme.

5. The essence of the ICDS programme thus directly represents all vital constituents of the Right to Life as guaranteed in Article 21 of the Constitution of India and as explained by the Supreme Court of India in many of its path-breaking judgments such as those relating to the right to food, work, health, education, shelter and information.

6. The Constitution of India in Article 39 mandates that children be given opportunities and facilities to develop in a healthy manner and lays down in Article 45 that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. Article 46 lays down that the weaker sections of the people and in particular the Scheduled castes and Scheduled tribes shall be protected by the state from social injustice. Article 47 mandates that the state shall regard the raising of the level of the nutrition of its people and the improvement of public health as among its primary duties.

7. The Universal Declaration of Human Rights 1948 proclaims in Article 25 (ii) that motherhood and childhood are entitled to special care and assistance. Reaffirming this, the Convention on the Rights of the Child (CRC) adopted by the UN General Assembly in November 1989 and acceded to by India in December 1992 recalls that the Declaration of the Rights of the Child, 1959 had affirmed that the child needs special safeguards and care before as well as after birth. The CRC obligates India to ensure that every child is entitled to a life without discrimination of any kind irrespective of its social origin; that the State should ensure that the institutions, services and facilities responsible for the care of the children shall be developed so as to conform with the standards established by competent authorities particularly in the area of health, in the number

and suitability of staff as well as competent supervision; ensure that the children of the working parents have the right to benefit of child care units and facilities; that the State should recognize the right of the disabled children to special care; that the State should recognize the right of the child to the enjoyment of the highest attainable standard of health and ensure that no child is deprived of his or her right to access such health care services; that the State shall take appropriate measures to bring down infant and child mortality; to ensure medical assistance and health care; to combat disease and malnutrition through the provision of adequate nutritious food and clean drinking water; to ensure appropriate prenatal and postnatal health care for mothers; to ensure access to parents and children basic knowledge of child health and nutrition and the advantages of breast feeding; and recognise the right of the child to education directed at the development of the child's mental and physical abilities to their fullest potential.

8. The International Covenant on Economic, Social and Cultural Rights, 1966 stipulates in Article 12 that the signatory States should take steps for the reduction of still birth-rate and of infant mortality and for the healthy development of the child as part of the overall right of every one to the enjoyment of the highest attainable standard of physical and mental health. The International Covenant on Civil and Political Rights, 1966 in Article 6 proclaims that every human being has the inherent right to life. The Convention on the Elimination of all forms of Discrimination Against Women, 1979 in Article 11 (c) mandates that the State should encourage the provision of social services to enable parents to combine family obligations with work responsibilities through promoting a network of child care facilities; and in Article 12 (2) it mandates that the States should ensure to women appropriate services in connection with pregnancy, confinement and the postnatal period, granting free services where necessary as well as adequate nutrition during pregnancy and lactation.

9. These then are the rights of children and women as recognised in the Constitution of India and various international instruments. However, after six decades of working of the Constitution, where do the Indian children and women stand in regard to the specific rights highlighted above?

III. Mother and Child Health Status

10.The National Family Health Survey (NFHS-3), 2005-06 shows that for all India the percentage of children under age-3 who are under weight for their age is 46, only 1 percentage point less than the figure for NFHS-2 of the year 1998-99. This alarming trend is similar in Andhra Pradesh, although at a lower level (37%). The proportion of children under-3 who are wasted has increased compared to NFHS-2 by 3 percentage points for all India to reach 19 % and by 4 percentage points for Andhra Pradesh at 13 %. The figure for children under 3 who are stunted is 38 % for all India and 34 % for Andhra Pradesh. However, the trend in decrease in Andhra Pradesh, 5 percentage points, is much slower than that of all India. In rural India, the percentage of children under-3 who are stunted is 40.7; those wasted is 19.8; those who are under weight is a whopping 49. The percentage is a high 36.4 in urban India for under-3 children who are under weight.

11. As for vaccination coverage according to NFHS-3, the percentage of children 12-23 months, who have received all recommended vaccines, is 44 for all India while it is 39 for the rural areas. In Andhra Pradesh the combined figure for urban and rural is 46 and the figure for rural areas is 43. The further bad news is that the trends in vaccination coverage shows drastic decline compared to the results of the NFHS-2 survey 1998-99. The NFHS-2 figures for urban Andhra Pradesh were 73 % against 51 % according to NFHS-3. Similarly the vaccination coverage was 54 % according to NFHS-2, 1998-99 in rural Andhra Pradesh which declined drastically to 43 % according to NFHS-3 of 2005-06. The overall decline

for all of Andhra Pradesh – urban and rural – is from 59 % from 1998-99 to 46 % in 2005-06. These figures speak for themselves about the dangerous decline in the health security of the children of Andhra Pradesh.

12. Safe drinking water and access to toilet facility are two necessary adjuncts to food and nutrition security. While, according to NFHS-3, the percentage of households that use piped drinking water is 27.9 for all of rural India, for Andhra Pradesh it is 60.3. As for access to toilet facility, the percentage for rural India is 25.9, while it is 26.9 for rural Andhra Pradesh. The dangers that such large numbers defecating in the open pose in terms of the general infection load, and to subsoil and neighbourhood water bodies cannot be overstated.

13. According to NFHS-3, the percentage of mothers in India who had at least 3 antenatal care visits for their last birth was 42.8 in the rural areas and 73.8 in the urban areas. The corresponding figures for Andhra Pradesh are shown as 84 for rural and 90.2 for urban areas. The figures for percentage of mothers who consumed iron and folic acid (IFA) for 90 days or more when they were pregnant with their last child was 18.1 for rural India and 34.5 for urban India. These figures for Andhra Pradesh are 35.8 for rural areas and 46.2 for urban areas. Looking at these low figures of IFA consumption, one is left wondering what then were those large percentages of antenatal care visits doing to pregnant women in Andhra Pradesh in regard to their IFA distribution and consumption. For all India, percentage of births assisted by a doctor or a nurse / lady health visitor (LHV)/ auxiliary nurse-midwife (ANM) / other health personnel was 39.1 in rural India and 75.2 for urban India, while the percentage of institutional births was 31.1 for rural areas and 69.4 in urban area. Percentage of mothers who received post natal care from a doctor / nurse / LHV/ ANM / other health personnel within 2 days of delivery for their last birth was 28.1 in rural areas and 60.7 for urban areas. The corresponding figures from NFHS-3 for Andhra Pradesh are: the percentage of births assisted by a doctor or a nurse / LHV / ANM /

other health personnel is 66.9 for rural areas and 89.1 for urban areas; the percentage of institutional births in Andhra Pradesh for rural areas is 60.5 and 85 for urban areas; the percentage of mothers who received post natal care from a doctor / nurse / LHV / ANM / another health personnel within two days of delivery for their last birth was 63.7 for rural Andhra Pradesh and 82.1 for urban areas in Andhra Pradesh.

14. Percentage of children age 6-35 months who are anaemic is 81.2 in rural areas and for urban areas this figure is 72.7. Percentage of ever married women age 15-49 that are anaemic is 58.2 in rural areas and 51.5 in urban areas. Pregnant women age 15-49 who are anaemic are 59.5 % in rural areas and 54.6 % in urban India. However, the percentage forever married men age 15-49 who are anaemic is lower at 27.7 in rural areas and 17.2 in urban areas. These figures conclusively show the gender and urban-rural divides in India.

15. According to the UNICEF's "State of the World's Children 2009", during the period 2000-07 the percentage of infants born in India with low birth weight was 28; according to WHO / NCHS the percentage of under-5 children, who were underweight (moderate and severe) was 46; for the same category of children the percentage for wasting (moderate and severe) was 19; for stunting (moderate and severe) it was 38. Full coverage of Vitamin-A supplementation rate (6-59 months) in 2007 was 33 % and for at least one dose it was 53 %. The percentage of households consuming iodized salt for the reference period 2000-07 was 51. The percentage of population using improved sanitation facilities in India in rural areas in 2006 was a low 18 %, and for urban India 52 %, giving an overall figure of 28%. The immunisation figures for the year 2007 for children one year old for DPT 3 doses was 62%; for Polio 3 doses 62% and for Measles 67%. The percentage of under-5 children with diarrhoea receiving oral rehydration and continued feeding was 33. The percentage of women receiving antenatal coverage at least four times in the period 2000-2007 was 37 while for the same reference period the percentage of

delivery care coverage by a skilled attendant at birth was 47 and institutional delivery 39. The MMR for the year 2005 was 450.

16. This picture over all is dismal. The ICDS programme has a decisive role in combating this situation precisely because it was conceived for that purpose. It cannot be gainsaid that the figures given here are reflective also of the areas covered by the ICDS programme even if this programme has not universally covered the entire country. If we examine the rights guaranteed in our Constitution and in the international instruments including in the UN Convention on Child Rights and the indices that have emerged from the NFHS and the UNICEF studies for the country as a whole and a state like the erstwhile composite Andhra Pradesh, an appraisal of how the ICDS programme is being implemented and these rights delivered would not only be revealing but also be helpful for application of policy and implementation correctives. For this, in this article, we turn to the findings of the social audit of the ICDS programme in Anantapur district in Andhra Pradesh, a course justified by the belief of the experts referred to earlier that the findings reflect the situation obtaining generally in the ICDS programme in the country. I should, however, hasten to clarify that even within the erstwhile constituents of the composite state of Andhra Pradesh and in every other state in India as well and in particular in states like Kerala and Tamil Nadu the ICDS programme has been implemented in a manner worthy of critical acclamation. In fact a comparative study of the manner of implementation of the ICDS programme in the various states of India keeping such model states as touch stones would serve the cause of the Indian child well.

IV. Findings of the ICDs Social Audit in Andhra Pradesh - Issues of Governance - What can be Done?

17.The findings of this social audit would give an idea of how the ICDS programme is getting implemented against its stated objectives and the responsibilities expected of the stakeholders. If they appear critical it is not intentional but merely reflective of the reality. Essentially these are

issues of governance and failure of governance. Certain remedies have been suggested alongside the findings.

18. At the outset it needs to be said that for the poor people their basic needs are their rights[2]. For those who can take the kind of services sought to be delivered in the ICDS programme as available routinely because of their own socio-economic status in society this truth might not be self-evident but for the poor these are their first rights in a fundamental sense as their very survival depends up on these being accessible to them. Since this is what the ICDS programme promises it is a promise of rights solemnly held out by the Government that has framed it and held it up as one of its flagship programmes. It is true of any programme of the Government whether it is expressly proclaimed as a rights-based programme or not so long as what a programme promises is about rights promised in the Constitution or declared so by the Supreme Court while interpreting the provisions of the Constitution. The ICDS programme thus qualifies to be defined a rights-based programme *par excellence*, never mind even if the National Food Security Act, 2013 that makes a lackadaisical reference to the ICDS had not been enacted.

19. Since the readers are aware of what every service in the ICDS contributes to the present and future well being of the mother and the child it is not intended in this article to spell out these in any great detail. However, it would be in order to say that the right of a safe pregnancy for every woman lies not only in her right to her very survival and future life but also in the safe birth of herchild and its future life, with a viable, optimal weight, free of mental and physical disorders at birth and may develop thereafter, - defects not seen at birth but often seen later in life.The right to safety of a child's life in the mother's womb and in the 0-6 year period, especially the 0-3 period, is one of exceptional importance. That is why the motto of the WHO that "0-3 is Forever", which now adorns the ICDS growth monitoring chart, should be written in letters of gold.

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[2] *Upendra Baxi – 2002 - "The Future of Human Rights" – New Delhi - Oxford University Press2002*

Even discounting the fears about the brain being hard-wired with little scope for changing for the better that has been the received wisdom in the centuries preceding the second half of the 20th Century, dispelled recently thanks to the subsequent advances in neuroscience relating to the brain's plasticity[3], the fact still remains that even today for even the citizens of the most advanced countries of the world the benefits of this science are still pretty distant, what to say of the poor of the countries like India? For this most important reason of neurodevelopment we need to cherish the ICDS programme, which recognises the importance of nutrition and all other services that it postulates including early childhood care and education (ECCE), stimulation for cognitive development and preschool education alongside immunisation and health care, to a child's overall future development. India's poor, therefore, cannot afford its failure.

20. In order for the rights in the form of services to be delivered in the ICDS programme to the target groups the essential prerequisite is the comprehensive survey of their households and inclusive enrolment, and the enabling of their regular attendance at the focal point of delivery of these services, namely, the AWC, where the key functionary is the AWW. All the services delivered need to be of the highest quality, timely, free of corruption, consistent with the dignity of those receiving the services, mindfully delivered and productive of the outcomes sought to be achieved in the programme. Considering the scheme of the Constitution of India and the relevant international instruments, these have to be rule-based, the responsibility for that resting squarely with the State that is both the Union and the State Governments, as the ICDS programme is a Centrally Sponsored programme jointly implemented by them. So, good governance in terms of the delivery of the stated services (read rights) in all its essentials is a *sine qua non* for this programme as indeed for every other government programme.

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[3] *Barbara Arrowsmith-Young – 2012 - "The Woman Who Changed Her Brain" - New York, Free Press*

21. In terms of the above what did we learn from the social audit of the ICDS programme in Anantapur district, which has been referred to as being reflective of the Indian reality?

A. Inadequate Enrolment of the Target Groups

(a) Pregnant women: In 58 (38%) AWCs not all the pregnant women in the area covered by these centres have been enrolled. In the case of 30 (51%), this is attributable to the negligence of the AWWs, including in regard to the conduct of the periodic house to house surveys.In 23 (15%) AWCs pregnant women visiting their parental homes for delivery were not enrolled for supplementary nutritionbecause of lack of coordinated monitoring by the AWWs. This lacuna needs to be plugged to ensure institutional deliveries for women who go out of sight of the anganwadi centre where their pregnancy had been first registered. Given the perils of malnutrition and absence of health monitoring that would result from non-enrolment impacting on safe pregnancy with potential for irreversible birth defects, the enormity of non-enrolment can hardly be exaggerated. There are also other serious issues like the need not to cross the "targets" given; inflation of the numbers; and non- Dalit women not wanting to enroll because the AWC is located in the Scheduled Caste area.

(b) 0-3 cohort: In 61 (40%) AWCs not all the children in this group have been enrolled. In 93 (60%) AWCs no variation has been recorded between the children in this age group in the village and those shown as enrolled. There was hardly any worth-while attendance of this group at the AWCs. This is a very serious failure given the importance of early childhood care and stimulation for brain, cognitive, social, and psychological and language development for this cohort and NHE for the nursing mothers and the cohort's immunisation needs. The consequences of the failure of the entire ICDS set up in regard to the needs of this most important group of children are irremediable, including in regard to generating awareness among the mothers of the needs of this cohort, and in the community. This neglect represents a lack of

knowledge and relevant training in regard to awareness at all levels of the ICDS system of the crucial rights of this age group. This calls for a new orientation in the system.

(c) Nursing mothers: In 44 (29%) AWCs not all the nursing mothers in the area covered by these centres have been enrolled. This is again attributable to negligence especially on the part of the AWWs including in the conduct of household surveys. In 12 AWCs visiting nursing mothers were not enrolled. Here again there were other serious issues like non-Dalit women not wanting to enroll in AWCs located in the Scheduled Caste areas.There were also cases where it was believed that the supplementary nutrition provided was actually harmful to the health of the recipients. The failure thus to serve this category constitutes lost opportunities to promote crucial practices like breast feeding and the all-important task of getting the 0-3 cohort to the AWC for complementary nutrition, stimulation, immunisation and health checkup.

(d) 3-6 year old children: In 74 (48%) AWCs not all the children in this group have been enrolled. This again is a very serious short coming given the importance of early childhood education for this cohort as the foundation, through stimulating intellectual curiosity and social attitudes, for the universalisation of primary education. Obviously, there is failure of the entire ICDS machinery in regard to generating awareness among the mothers and in the community about ECE, even if there were other causes like accessibility and poor quality of SNP caused by the *Ready to Eat foods* used in the Supplementary Nutrition programme. One very worrisome cause that has been cited for poor attendance in as many as 30 AWCs is that the children in this age group are going at this tender age mostly to privately-run primary schools.

This non-enrollment and non-attendance are further compounded by inflated figures in some AWCs, including in some where the figures exceeded the actual children in the village.

Non-enrolment or inadequate enrolment of those entitled to these crucial services means non–delivery of their rights to the target groups.

B. Supplementary Nutrition

(a) Nutrition Interruption and quality of supplementary nutrition

Supplementary nutrition has to be provided at the AWCs for 300 days in a year. In 96 (62%) centres this was not being supplied regularly. Such nutrition interruption ranged from 46 days to 150 days. There were centres where such nutrition interruption took place for 46 days, 80 days, 100 days, 128 days, 138 days and in one case up to 200 days during a period of one year. In one centre there were no records on food distribution at all. In another supplementary nutrition was not supplied for 76 days including for one whole month continuously. At two centres supplementary nutrition was not supplied as they could not find a place to cook the food. The inherent reason for nutrition interruption is the state government's persistence with the policy to supply ready to eat (RTE) food material manufactured in a distant plant to the AWCs situated hundreds of kilometres away and *ipso facto* failing to do so regularly or in time. This happened in 85 AWCs. In 30 (19%) centres nutrition interruption was attributed to the AWW not being regular. While in 100 (65%) centres not all the enrolled children of 0-3 years received supplementary nutrition regularly, a similar situation obtained for the 3-6 year children in 109 (71%) centres. This situation obtained for pregnant women in 91 (59%) centres and for nursing mothers in 89 (58%) centres. In the attendance-cum-food distribution register pertaining to the pre-school children supplementary nutrition was shown as having been distributed to *all* enrolled children. In other words, full attendance is always shown for supplementary nutrition. Actual attendance of the 3-6 years age group was generally found to be only between 50 and 60% of the listed names. In 23 (15%) AWCs the AWWs were not regular in attending to their duties. Absence of Anganwadi Helpers often contributed to problems. The long

distances between AWCs and beneficiaries, houses in some cases also caused supplementary nutrition not being accessed. A very serious problem noticed was that the take-home supplementary nutrition (Take Home Rations or THR) was consumed by the entire family instead of by the pregnant women or the nursing mothers. Conditions of greater privacy need to be created in the AWCs to ensure women do consume the supplementary nutrition at the centre itself. The RTE food mixes in the ICDS programme, the Upma, Kichidi and Halwa, were found unpalatable and inedible by an overwhelming majority of the beneficiaries. The texture of some of these items when cooked became rubbery and sticky, which the children found extremely difficult to eat. The food became inedible within minutes of cooking on becoming cold. The consequence for a woman who takes the food home is obvious. *There is some evidence thatthis menu has kept children away from the AWCs in the 3-6 age group at least in some places*. In 18 (12%) centres children were reported to have fallen ill after consuming the new supplementary nutrition menu and that included diarrhoea in 16 centres. The Andhra Pradesh Government provides in a large number of AWCs these RTE foods as supplementary nutrition instead of a hot, nutritious meal cooked from locally available food commodities, as ordered by the Supreme Court of India. The RTE foods are transported over hundreds of kilometers leading to leakage, delays leading to denial of nutrition, diversion as animal feed and corruption. This scam is common to the ICDS programme all over India and yet thanks to contractors' lobbies and political corruption even the Supreme Court's orders are being dishonoured. The Central and State governments have both connived at this. This parlous situation calls for an immediate review that should lead to a universal ban on RTE foods, and children and women being provided with locally cooked, hot food made of locally available food material like nutritious grains, groundnut, green leafy vegetables (GLVs), banana and eggs. This single measure would eliminate all the evils enumerated here in addition to promoting NHE.

(b) Under-nourished Children and Women

Under-nourished children were identified in 48 (31%) AWCs out of the 154 audited. In some of these they had been ignored by the AWWs. In 23 (15%) centres, though identified, no additional supplementary nutrition was provided to them as stipulated. All in all, only in 11 (7%) centres additional nutrition was effectively given while in 9 (6%) such children were referred to the PHC. As for anaemic pregnant women, they were identified in 49 (32%) centres but in 31 (20%) no additional nutrition was provided to them. In one SC colony 6 pregnant women had a haemoglobin level of 8 Gms or less but had received no attention. As for anaemic nursing mothers, they were identified in 33 AWCs but in 16 no assistance was provided to them. In one centre a nursing mother weighed only 29 kgs and her haemoglobin count was 6 Gms.

(c) Growth Monitoring

Growth monitoring is the fulcrum of the ICDS programme. Regular recording of weights is fundamental to this. Nineteen (12%)AWCs do not havechild weighing machines at all. In 40 (26%) centres they are not in working order. Only in 92 (60%) AWCs the 0-3 year children were weighed. In the case of children in the age group 3-6 years, weighing was done only in 89 (58%) centres. In 57 (38%) centres weights were not taken regularly. In 76 (49%) centres weights were not recorded properly. The main reasons for these failures are the malfunctioning of weighing machines and AWWs not being regular in regard to this work and failing to bring the children to the AWCs in time. In 34 (22%) AWCs irregular measurement and recording of weights were attributed to absence of weighing machines or weighing machines not being in working condition. Children in grade III and IV malnutrition were found in 35 (23%) centres but in 19 no additional nutrition was given. The general failure of the growth monitoring work represents a failure of one of the most cardinal aims of the ICDS programme. A new, revised growth monitoring chart has been introduced recently using WHO standards. This chart adopts

differential standards for boys and girls. A heart-warming message on this chart "The First Three Years are Forever" emphasises the critical importance of the 0-3 cohort, the cohort currently forgotten in the ICDS programme. New chart or old, the crux of the problem is the lack of interest on the part of the ICDS establishment in keeping the weighing scales in proper repair at the AWCs and getting the AWWs to map the growth charts properly through earnest application of mind. This highlights the failed rights in the ICDS programme because of failed governance even in a simple task like maintaining weighing scales. The social audit had shown that the target groups did indeed depend in a big way on the supplementary nutrition supplied at the AWC, and the ICDS programme needed to monitor the changes the SNP triggered, but the programme failed on both counts.

(d) Nutrition and Health Education (NHE)

The Mothers' meetings relating to this are expected be held regularly. However, in 23 (15%) AWCs these meetings were never held. In 45 (29%) centres they were not regularly held. In 27 (17%) AWCs these were held once a month.Even where these were held, they were mostly ritualistic, and devoid of purpose, just to coincide with the distribution of supplementary nutrition. While all women in the 18-45 age group are expected to participate in these meetings, only the pregnant and nursing mothers attend these meetings but then not all of them either. Home visits are mandated for NHE on fixed days to generate household level awareness of these issues but only in 66 (43%) AWCs these fixed day visits were undertaken regularly. In 40 (26%) centres these never took place. In 48 (31%) AWCs these visits were made but not on a regular basis.

Without NHE for the pregnant or nursing woman or indeed for any woman the elaborate structure of rights in the ICDS programme is irrelevant as the programme would be but a leaking bucket that is being continually filled.

C. Health and Convergence of Health-Related Services

The Table below gives the government directions regarding the most important ICDS strategy, namely, CONVERGENCE of efforts among ANM, AWW and the newly-conceived Accredited Social Health Activist (ASHA) in delivering health services at the village level.[4]

22. The points that are crucial in this Table are the fundamental relevance of the importance of the two sectors – Health and Women and Child Development - converging their efforts as they address the same target groups to deliver mutually reinforcing services; the centrality of the AWC as an institution in the village for effectively converging these efforts physically; the specific assignment of a role to the ASHA of assistance to the AWW in registering children and women for immunisation, ANC, PNC and health checkups; ASHA's role in mobilizing beneficiaries for the village health day under the guidance of the AWW; assisting the AWW in her activities pertaining to the adolescent girl; and the many tasks like nutrition and health education to promote breastfeeding and infant and young child feeding practices that are common to all the three functionaries implying that they could be addressed at a common forum like theAWC, which is where primarily the target groups gather. Further, the task relating to the referral of sick children, and pregnant and nursing mothers to the sub-centre, PHC or the CHC is clearly mentioned as a responsibility of theAWW.

23. Regrettably, the observance of these convergence imperatives is more in the breach than in its practice. This absence of convergence raises serious doubts whether the AWC is looked upon any more by any of these functionaries as a focal point for immunisation or any of the health services. The original paradigm in the ICDS programme was that the AWW mobilises women in general and the target groups and adolescent girls in particular in the context of all their gender needs and rights

[4] *National Institute of Public Cooperation and Child Development ; 2006; Hand Book for Anganwadi Workers; 5, Siri Institutional Area, Hauz Khas, New Delhi – 110 016.*

Table: Convergence of Health Related Services

SI. No.	ANM	AWW	ASHA
1	To be invited to the meeting of the village Health and Sanitation Committee.	To be invited to the meetings of the Village Health and Sanitation Committee	To be invited to the meetings of the Village Health and Sanitation Committee
2	To assist in preparation of the village Health Plan	To assist in preparation of the village Health Plan ANC, PNC, Health checkups etc.	To assist in preparation of the village Health Plan for immunisation, ANC, PNC, Health checkups etc.
3	Organize village Health Day at the Anganwadi Centre (Immunisation, Antenatal checkups ANC), Postnatal checkups (PNC), Health checkups etc.)	Assist in organizing village Health Day. Register children and women for immunisation,	Assist in organizing village Health Day. Help Anganwadi Worker in registering children and women
4	–	Mobilize beneficiaries (with the AWH /ASHA) for the Village Health Day through SHGs, Mothers Committees and other beneficiaries of the ICDS Scheme.	Mobilize beneficiaries for the Village Health Day under the guidance of the Anganwadi Worker.
5	Attend to referred cases on priority	Refer sick children, pregnant / lactating mothers to sub-centre, PHC / CHCs	Refer cases to sub-centre, PHC/ CHC.
6	Impart health and hygiene education to the beneficiaries of Kishori Shakti Yojna (KSY) and the Nutrition Programme of Adolescent Girls (NPAG)	Assist CDPO/ICDS Supervisor in implementation of Kishori Shakti Yojna (KSY) and the Nutrition Programme of Adolescent Girls (NPAG)	Assist Anganwadi Worker in her activities pertaining to KSY and NPAG.
7	-	Depot holder of Medicine Kit / Contraceptives of ASHA and under ICDS	Receive ASHA Kits / Contraceptives from Anganwadi Worker.
8	Administer such drugs as specified by the M/O, HFW	Administer OTC drugs Distribution of ORS / IFA Tabs, DDK, OP and Condoms.	Administer OTC drugs Distribution of ORS/IFA Tabs, DDK, OP & and Condoms.
9	Implement IMNCI Home visits once in two months during pregnancy. (Once in the first week of delivery)	Home visits – once a month during pregnancy, once in the first week of delivery; second visit in second or third week as per need.	Implement IMNCI Home visits at least once in a month during pregnancy. (Once in the first week of delivery).
10	Maintain and update eligible couples register		Help ANM to maintain and update eligible couples register.
11		Counsel women on birth preparedness.	Counsel women on birth preparedness.

Table Contd...

Table Contd...

12	Guide/Counsel women on safe institutional delivery	Guide/Counsel women on safe institutional delivery	Assist ANM/AWW in this work
13	-	-	Assist / Escort women for institutional delivery.
14	Guide TBA (Trained Birth Attendant)	-	Guide TBA (Trained Birth Attendant)
15	-	-	Facilitate referral of difficult cases.
16	Nutrition and Health Education	Nutrition and Health Education	Nutrition and Health Education
17	Promote breastfeeding of infant and young child feeding practices	Promote breastfeeding of infant and young child feeding practices	Promote breastfeeding of infant and young child feeding practices
18	Share available information with the Village Registrar of Births and Deaths	Share available information with the Village Registrar of Birth and Deaths	Ensure registration of all birth and deaths of mothers with the Village Registrar of Birth and Deaths

Note: In addition to the above listed activities, ASHA will also play an active role in preventive and promotional activities in all health programmes in the villages, including those relating to communicable and chronic diseases. She will be guided and monitored both by the ANM and the AWW. The Anganwadi Centre will form the base of her activities.

including those such as nutrition; immunisation; health check-ups and referrals; and pre-school education at the AWC, as a focal point of those women and child rights. *In such an overall mobilisation* context were anchored all related women and child rights. The recent advent of the incentive-based of ASHA appears to have by passed this wholesome gender-based paradigm, in that the attempt now is to deliver services like immunisation to the women and children as if these services are mere technical answers to diseases; and as if the autonomous participation by these women and children in the ICDS context as human individuals, motivated by their own awareness of their health and nutrition needs, is not relevant. The result of this is that the AWW and the AWC have also been by passed to a very substantial degree. It is important for the senior officers of the union government in the Ministries of Women and Child Development and Health and Family Welfare to sit together and examine the question:

(a) Should immunisation (and other health services) be looked upon merely as a discrete, technical activity or should they be seen as a part also of the overall social, gender and other development issues and rights, affecting women in general and pregnant women and children in particular?

and

(b) Is a paradigm, which believes in bringing together the various services contemplated in the ICDS programme and delivering them at the AWC through a convergence of effort of two different ministries, not any more relevant for a greater synergy and understanding between them to ensure, over all, positive outcomes for women and children in the context of their fundamental rights guaranteed in the Constitution?

D. Immunisation

The most important shortcoming in the immunisation work is the complete lack of convergence in efforts of the ICDS and the health personnel. Specific days in a month are fixed for the visit to a village by the ANM for immunisation purposes. The ASHA has to visit the village a day prior to this to inform the target group about the visit. Such prior notice was not provided in the case of 23 (15%) AWCs. The ANM in one case had not visited the place for 3 months continuously. In a number of cases the vaccines are administered in villages other than those where the AWCs are located. There is no uniformity in regard to the venue. In one case immunisation was being done under a tree. As many as 69 (45%) AWCs reported delay or other problems in administering vaccines to children. Parents were not properly informed about the date and time of vaccination leading to the child missing the dose which means that she would not get that dose until the next visit of the ANM to that village, which takes sometimes even two months. A serious omission noticed was that in 5 AWCs BCG vaccine was not administered because the number of children needing immunisation was not sufficient to justify the opening of a new vaccine vial. In 28 AWCs the ANM was not regular

in her work. There were cases of the ANM asking pregnant women and children to come to neighbouring settlements on the ground that she could not visit two settlements on the same day. In 22 (15%) AWCs absence of proper coordination between AWW and ANM was identified as the cause, as evidenced by the records maintained by the two not tallying. Absence of coordination was very common in bigger villages because of multiple numbers of AWCs handled by one SHC. There were also cases of AWWs not being regular in attending to the immunisation activity. Often it appeared that the AWWs did not think that immunisation was a part of their work anymore as they considered this now to be the exclusive responsibility of the health department, after the introduction of the ASHA. The advent of the incentive-based ASHA seems to have demoralised the AWWs and adversely affected the convergence mechanism hitherto in place for immunisation, and health and referral work. This situation needs an urgent review. In regard to immunising pregnant women, 50 (32%) anganwadi centres reported delays and other "problems". In 26 anganwadi centres the "problems" related to lack of coordination between the ANM and AWW. In 19 AWCs absence or delay in administering vaccines to pregnant women was attributed to irregular visits of the ANM. A major cause of lack of coordination was the non-residence of health personnel in their headquarters. Often it was found that all three doses of DPT had not been administered. BCG was most often delayed as was measles vaccination. Children who are 3 months old had not received BCG though they had received one dose of DPT. Women had not received TT even when 9 months pregnant. There were cases where, for immunisation, even pregnant women had to go to the PHC located elsewhere; or ANMs visiting villages once in several weeks or months the consequence being that BCG was invariably delayed beyond several weeks or months. It is a matter for investigation whether all this is not the result of the immunisation work having been entrusted currently to the ASHA to the extent that even the ANMs are diluting their own responsibility towards this work. BCG immunisation is a definite casualty and so is

measles immunisation while, relatively, the DPT immunisation is perhaps better. The reason for BCG vaccination being a casualty is the irregularity of the ANMs and absence of institutional deliveries. As for measles vaccination, the fact that this is to be administered after a time gap in relation to DPT renders it vulnerable to the absence now of a focal point like the AWC for immunisation work. For achieving total immunisation, the right answer would be to rely on the AWC located in the village unlike the ANM's health sub centre located beyond the village. There is need, therefore, for the AWC to be the primary location. The sub centre should be the secondary location to immunise those missing it at the AWC. The third strategy should be the "outreach" strategy of the fixed day approach. All the three choices must be available and implemented giving all of them equal importance if total immunisation has to become a reality.

It is not by any means suggested that coordination is totally non-existent between the two departments but it is clear beyond doubt that such coordination or convergence of efforts is extremely perfunctory and that at the field level the trends for the future are clear that the health department wants to carry on with its work in isolation.The concept of convergence needs to be honestly believed in by the ministers and senior bureaucrats heading the health and family welfare sector and the ICDS sector right from the central government level to the state government level. If convergence is not practised at these two levels, it will not be practised at the field level.

There is need for demystifying the functioning and maintenance of the Cold Chain.The state governments should set up independent bodies consisting of experts and representatives of the public at state and district levels to oversee the operation and functioning of the Cold Chain so that the public is satisfied that the Cold Chain maintenance is efficacious and beyond any sort of doubt in terms of adequacy, timeliness of the flow of supplies and potency, from the point of manufacture to the user point at the anganwadi / sub centre level.

E. Health Check-up

This has failed because of absence of convergence affecting ante-natal checkups and the frequency of check-up of infants with low birth weight, and children 'at risk' to monitor their growth regularly and keeping a watch over repeated infections, especially diarrhoea. In 34 (22%) AWCs no checkups were ever done at all for children while in 23 (15%) they were not done regularly. In four AWCs it was done once in three months. The checkups were done as a ritual, without substance. Of the 73 AWCs, where sick children were identified, only in 36 were they referred to the PHCs or other hospitals. In AWCs it was reported that sick children were given medicines as some sort of first aid but since no medicines were supplied to the AWCs, these had to be obtained from the ANMs involving crucial delays. In regard to pregnant women, 92 (60%) AWCs reported making health checkups once in a month, while 41 (27%) centres reported that health checkups were not taken up on a regular basis. In nine AWCs no checkups took place at all. The main reason for irregular or absence of checkups of pregnant women is that ANMs are irregular in attending to their duties. In regard to nursing mothers no regular health checkups were reported in 55 (36%) AWCs, while in 8 AWCs there were no health checkups at all. Irregular and absence altogether of health checkups for nursing mothers were attributed to irregular working of ANMs in 47 (31%) AWWs; lack of coordination between ANMs and AWCs in 12 anganwadi centres and health checkups being done in "other" AWCs in the case of 10 AWCs.

A serious shortcoming in the AWCs regarding health check-up of pregnant women and nursing mothers is that most AWCs did not have adult weighing machines. 41 (27%) centres have not been supplied with them at all. In 53 (34%) centres these are not in working condition. 35 (24%) AWCs alone have the adult weighing machines in working order. Further, check of blood pressure (BP) and other blood tests are undertaken only at the PHC and not at the sub-centres.Non-residence or absence at

these centres of ANMs while they are on village visits means lack of attention to patients who visit the sub-centres. The result of all this is cursory examination of pregnant women. This serious situation calls for modernisation of mechanisms, provision of equipment and enforcement of rules of residence for the ICDS and health personnel. During the year preceding the social audit no medicines were supplied to as many as 128 (83%) AWCs.

F. Referral Services

For years together referral slips have not been supplied to any of the AWCs making the entire concept of accountability in regard to referral services an absolute mockery. This situation in regard to pregnant women is a matter of grave concern because in 26 (17%) AWCs not a single pregnant woman was referred to hospitals for institutional delivery. Further, under the Janani Suraksha Yojana (JSY), where payment of an incentive for delivery in government or private hospitals is provided for, some women reported that they did not receive the promised incentive while in other cases they were not paid the full incentive amount. Nursing mothers from a scheduled caste colony stated that instead of them receiving the incentive when they visited the PHC for delivery, money was demanded of them. Similarly, the incentive of insurance cover depending on the number of girl children parents have promised under the Girl Child Protection Scheme, has been a non-starter, mainly because adequate publicity has not been given for this scheme.

There is near-complete failure of the health referral services in the ICDS.

G. Iron and Folic Acid (IFA) and Vitamin A.

Iron is essential for healthy development including formation of haemoglobin, development of brain, and regulation of body temperature and muscle activity. Iron deficiency in diet leads to nutritional anaemia.

Deficiency of folic acid also contributes to anaemia. Anaemia is a widespread health problem affecting infants, children, adolescent girls and women of reproductive age. As a priority, all pregnant women irrespective of haemoglobin levels must be provided with the recommended dose of iron and folic acid supplements. Children born to iron-deficient anaemic mothers are known to be at great risk of being anaemic by their first birthday. Hence, the distribution of Iron and folic acid tablets mandated in the ICDS programme through the AWW. She hasalso to see that children receive at least nine oral doses of Vitamin A between 9 months and 5 years.

However, there is grave failure of this responsibility in regard to these. There was near total non-supply of IFA tablets to the target groups in many AWCs. There was acute confusion in regard to availability and distribution of IFA as also about the responsibility for this in the ICDS programme. The social audit clearly established that these tablets have not been supplied even to the extent of a fraction of the actual requirements.The conclusion is inescapable that there has been shortage of supply of IFA from the government itself over an extended period though adequate purchases had been claimed at the highest levels in the government. Where then did the stocks go? Considering the implications for maternal anaemia, unsafe pregnancies and consequential birth defects, we need an investigation into this by a high level national committee to determine the source and method of procurement of IFA in the country by the departments of health in the states; and its transport to, and availability in, every AWC so that this vital problem finds a solution once for all. The same goes for Vitamin-A. It was found in the social audit that not all the children had been supplied with Vitamin A in 79 (51%) anganwadi centres and a cross verification by way of discussions with the top officers of the ICDS programme revealed that Vitamin A had not been adequately supplied for nearly half a decade.It emerges that the shortage exists because the public sector enterprises that were

manufacturing Vitamin-A have closed down and the private sector has more or less the monopoly of manufacture of Vitamin-A. With little regulation of the private sector in this regard, the manufacturers are reportedly imposing their own prices leading to serious difficulties in procurement by the state government. The central and state governments need to sort out this problem keeping the interests of the marginalized target groups in view rather than the profits of the private sector. The supply of Vitamin A needs to be examined thus from an industrial policy angle as well.

These are among the most serious failures of the ICDS programme affecting the vital rights of women and children for generations to come.

H. Pre-school Education (PSE)

The need for the successful implementation of this service lies in its importance for the universalisation of primary education and, in particular, women's education. However, in 9 (6%) centres this service was not delivered at all. In 115 (75%) out of the 154 AWCs children were not attending pre-school regularly,that number ranging from 3 to 30 in each centre. In most AWCs there were no regular or uniform timings set apart for this activity. In one village this activity was not taken up because the AWC did not have space. The essential reasons for the failure of the PSE component in the ICDS programme are two : the failure on the part of the AWW to comprehend technically how to impart PSE to the 3-6 cohort (this was the case in as many as 74 (48%) anganwadi centres); and the cohort's non-attendance owing to physical reasons like ill health, nutrition interruption at the AWCs, absence of interest on the part of the anganwadi worker in this work observed in 30 AWCs, and most parents being indifferent to this activity and preferring to take the children to the fields where they work for their livelihood. These can be set right by improving the training content of PSE and constructive supervision of the work of the AWW so that the stipulated services are delivered which would, by

that very fact, improve PSE attendance. However, a problem faced by the working parents that affected 42 (27%) AWCs needs special attention from the point of view of several of their inter-connected human rights. The concern of the rural labour mother is that once the AWC was closed for the day at 1-30 PM there was no mechanism to care for the child till the toiling mother returned from her work in the evening. This results therefore in the childhood-destroying phenomenon of children even at a tender age staying back at home and looked after by older siblings, depriving the latter also of education and childhood joy. Or the mother takes the 3-6 year child to her work spot. Multiple jeopardy. The solution to this calls for a structural reform in the ICDS programme, namely, a day-long child care approach converting the current half-a-day, 4 ½ hour AWCs into daylong crèches that function from 8-30 AM to 5-30 PM, retaining all the current services of the AWC with additional provision for serving supplementary nutrition thrice a day, doubling the strength of the anganwadi workers and helpers and utilizing the voluntary services of trained and willing adolescent girls and raising the honorarium of the newly formed crèche workers for the longerhours of work. This would also encourage mothers having children in the 0-3 age grouptoleave them in the crèche with enormous benefits for them in terms of early childhood stimulation so essential for the overall development of the child, facility for their breastfeeding by the motherand appropriate nutrition complementary to mother's milk after they are 6 months old. The design of the crèche referred to above in the 3-6 contexts would be consistent with theneeds of the below-3 year cohort and its working mother as well. It is obvious, therefore, that in order to safeguard the early childhood care and stimulation needs of the children below 3 years; educational interests of the girl siblings; and the livelihood interests of the bread winning mothers, changes are required to be made in the structure of the ICDS programme and strengthening the adolescent girl programme so as to be able to utilize part-time the energy of the adolescent girls also to provide close care, security and stimulation to the under-3 cohort, provided they

were voluntarily willing to offer their services. This would, therefore, promote the basic rights related to gender as well. A crèche would also be better able to deliver services like immunisation. This reform of the ICDS programme will be fundamental for laying the foundation for building the future human and social capital of India. It is a pity that the National Food Security Act 2013 which made some references to the ICDS programme did not address such issues as these including the banning of the dysfunctional ready to eat foods.

A crèche approach and retraining of the AWWs for PSE is an urgent need, especially considering that still many mothers among the poorer sections of the people are quite clear in their mind that the AWCs are indeed relevant to them and to their children from the PSE angle but would also like proper PSE standards to be set up and practised at the AWC. A prerequisite for this would be the revision of the duration of the AWW's initial total job training period from one month to two months of which one month should be dedicated exclusively to PSE and similarly 15 days of an enhanced one-month refresher training should be dedicated exclusively to PSE. PSE also needs to be demystified as the teaching methods imparted by experts seem to be too abstract to engage the interest of an average AWW. District level ICDS functionaries need to be exposed to training-cum-orientation sessions and refresher lectures by, and interaction with, experts on PSE.

I. Adolescent Girls

The adolescent girl scheme is currently implemented in two parts - one which trains three girls attached to an anganwadi centre for 6 months so as to make her capable of managing the anganwadi centres by assisting the anganwadi worker in all matters; and the other implemented only in a certain percentage of the anganwadi centres in each project. The entire approach to the adolescent girl scheme requires an immediate review so as to abolish the needless dual approach through two different schemes

and merge them into a single universal scheme and cover all the adolescent girls in all the ICDS projects incorporating all the ingredients of the two schemes so that the situation of near total neglect of this most precious social asset and capital is reversed. The central theme of the programme should be an education that is a combination of personal hygiene, comprehensive nutrition and health education, skill training including in computers to enable her off farm employability, and skills in community leadership – an empowerment that endows her with the autonomy to make her own choices in regard to her life's priorities. A certain number of adolescent girls in every AWC area, tested for leadership qualities, should be trained in the AWTCs and MLTCs so that they in turn may train their peers in these ingredients of empowerment.

V. Other Issues of Governance

24. The objectives of the rights-based ICDS programme demand formidable job responsibilities of the AWW and the ICDS machinery as seen above. Rights are about their delivery by the Government with the involvement of the community as the primary stakeholder. That calls for good governance at its best where indifference, corruption and dysfunctional social attitudes should be anathema. Good governance is clearly absent in the real world of the ICDS programme as the facts and analysis in the foregoing paragraphs show. None of this is news to those in the Government particularly the political electives who make decisions in our democracy. They cannot hide behind the admittedly dysfunctional bureaucracy because among the reasons why they are elected to power is setting right the bureaucracy. This has not happened in the ICDS and therefore people's rights have been clearly violated.

The ICDS programme, being what it is, calls for a few responsibilities that the Prime Minister and the Chief Ministers themselves should assume as captains of the flagship as the ICDS programme has come to be known. These are:

A. Recognition for the Anganwadi Worker (AWW)

The AWW is key to the delivery of rights in the ICDS programme. There is need for a well-designed HRD strategy in the ICDS programme that spans selection, training, performance standards, performance assessment, discipline andsystems rewards.The foremost requirement to handle a job with such responsibilities as have been assigned to the AWW is the need for her to be properly qualified, recruited fairly, remuneratedand trained adequately, supervised constructively and provided with a spacious AWC equipped with all facilities relevant to the ICDS objectives discussed in this article, and motivated. That alonewould make the job responsibilities expected of her possible of delivery. Her residence where her AWC is located should be non-negotiable. The same principle should be enforced against the health staff.Her bonded labour-like monthly wages should be revised at least to Rs. 15, 000 per month.The manner of her recruitment and her service conditions have to be based on the lines of examinations held by the state's Public Service Commission eliminating political interference and corruption an example of which are thereliable reports in Andhra Pradesh that in the recruitment of AWWsbribes ranging from Rs. 30,000 to Rs. 100,000 are taken for each appointment. The AWWs training scheduleneeds to be revisited. The existing training institutions like the AWTCs run by NGOs need to be re-evaluated for the quality of staff and training imparted and training equipment and living facilities, and upgraded. Initial job training for all categories of ICDS functionaries should be for a period of 60 working days at least with emphasis on hands-on training as against the current, inadequate 26 days and the refresher training should be for 30 days as against the current 6 days. A substantial portion of that has to be earmarked for training related to PSE. She should not be used as a jack of all trades as currently done.

The same principles should apply to the regular cadres of the ICDS in regard to their working facilities including mobility and training.

B. Infrastructure Facilities and a Land Policy

Alongside the reforms in the service conditions of the AWWs the absence of infrastructure facilities at the AWCs described earlier and failure of supplies in regard to all the services should be addressed. These include: lack of their own buildings; bad maintenance and poor condition of the buildings; the buildings being far too small and located in unhygienic surroundings; absence of drinking water; absence of toilets; absence of open spaces for children to play; inadequacy of toys; interruptions in supply of the ready to eat food materials relating to supplementary nutrition; near absence of supply of Vitamin-A, medicines and IFA tablets; non-functioning or absent weighing scales, particularly the adult weighting scales; and lack of furniture even to keep records and containers for other material.Of the 154 AWCs studied, only 60 (39%) have their own accommodation. Only 26 (17%) had toilets. Only 88 (57%) AWCs had accessible drinking water sources.Among the most important policy incentives the ICDS programme needs in achieving its goals is, therefore, the basic infrastructure of a properly equipped AWC/ crèche. Such a policy should provide free land on priority for construction of crèches, including for model ones that can raise large kitchen gardens, facilitating actual consumption of nutritious foods at the AWCs/crèches and rendering dissemination of NHE to the people at large a demonstrable reality. This land policy should provide for ICDS office requirements in the field and ICDS Resource Centres for training adolescent girls in higher skills like those in computers.

C. Discrimination

The most atrocious social aberration of untouchability manifested through various kinds of discrimination was reported in the social audit from 20 (13%) AWCs affecting commensality, attendance, home visits and every other conceivable right enshrined in the ICDS programme. Government has laid down certain criteria for establishing the ICDS projects and AWCs,

where priority policy consideration is given to areas inhabited predominantly by scheduled castes or tribes. This was the very*raisond'etre* for the establishment of the ICDS programme. In this policy, primarily, the human rights of these classes of society are involved, which demand the execution of the ICDS programme in a manner that serves them fully. Yet, untouchability is dogging the ICDS programme. The problems faced on this account are not only related to poor governance but also related to the kind of society in which we are living. Therefore, in the ICDS programme, social action by activist groups is as much a need as improvement in various areas of governance and law enforcement. In fact, governance itself has to recognize that there is a grave social dimension that it needs to address all the time in the ICDS programme.

D. Children with Disability

Though in 56 (36%) AWCs children with disability were identified; only in 23 (15%) they were referred to hospitals, violating their right to equality and inclusiveness.Accountability should be established for the health and ICDS machinery through specific training for identifying defects associated with neural deficits, language and learning disabilities and ADHD so that these functionaries in the field better appreciate the connection that exists between appropriate nutrition including micro-nutrients and birth defects associated with the nervous system. Such awareness would lead to a better handling of nutrition and micro-nutrient related concerns in the context of pregnant women and early childhood care and stimulation of the 0-3 cohort, including timely referral of children for appropriate therapies.

E. Community Participation

ICDS is a community based programme. For its ownership, out-reach, effective implementation and accountability for the success or failure of the programme, members of the community such as the elected functionaries of the panchayat raj system; legislators; parliamentarians; mothers committees, self-help groups, other local leaders, voluntary

organisations and primary school committees should be got actively involved. The association of these stakeholders with the programme, including acting as pressure groups for the efficient functioning of the AWC in particular, would help create a demand for the ICDS services as a matter of right. The initial responsibility for creating this involvement of the community lies with the ICDS functionaries and the continuance of such involvement lies both with the ICDS functionaries and with these groups in the community. Delivering services fully at the AWC would have generated and reinforced faith in the ICDS programme in the community but this has not happened. These two defects need to be rectified through a conscious effort by the ICDS system.

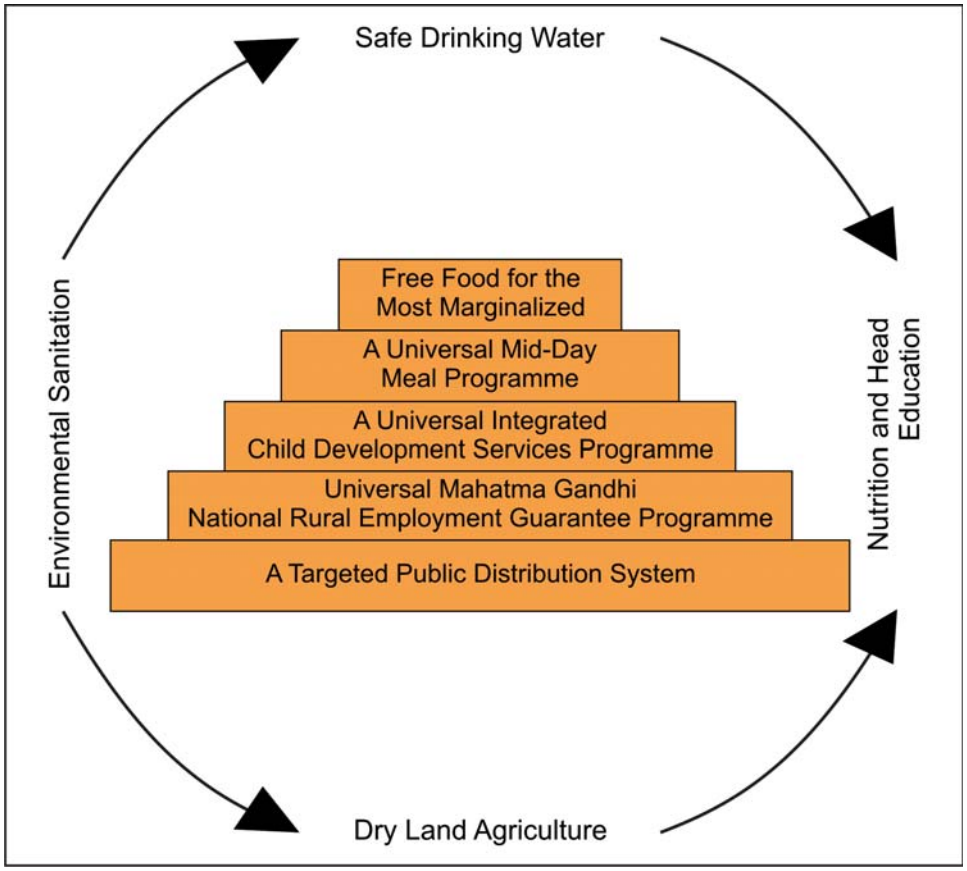
Delivery of rights is intimately linked to decentralised governance. Therefore implementation of the ICDS programme should be devolved to the PRIs. That should mean making grass roots democracy participatory to achieve greater accountability and empowering society so that its members may demand their rights. To achieve this, a forum should be created for various stakeholders in the gram panchayat area. *Mothers are important primary stakeholders as the programme is about them and their children*. A happy combination would be for the AWC to be guided by the departments concerned observing the principles of convergence; the gram panchayat having the power to supervise, guide and support the AWC's work; and the gram panchayat, in guiding the work of the anganwadi centre, enabling the mothers' groups to advise and initiate action in matters pertaining to them and the children. The mothers' committees should enjoy autonomy to get this done and thus be a source of support to the AWW in countering the many dysfunctional attitudes often exhibited by the political electives and the bureaucracy. Mother's committees have to be distinguished from self-help groups, who have a different role such as lending womanpower to support the activities at the anganwadi. The gram panchayat and self-help groups should not micro manage the AWC. None of these support structures should lead to dilution of the job responsibility or accountability of the AWW and the Government machinery in the

programme, as they have to carry out their work consistent with their accountability. In short, the gram panchayat will play a supportive and guidance role, respecting the autonomy of all the stakeholders.

VI. Conclusion

We began by recognising that convergence of certain components of the ICDS programme and the resulting synergy are fundamental to the success of the ICDS Programme. To generate that synergy political will and good governance are fundamental. The same paradigm is valid for the success of the ICDS Programme in relation to the pantheon of other rights-based allied anti-poverty programmes we implement in our country. We need good governance to successfully implement those programmes as well for the ICDS programme to succeed. Even as the varied services in the ICDS Programme would reinforce one another, these other programmes and the ICDS Programme also would reinforce one another. The diagram placed below developed by me several years ago would show the links between some of these programmes. Writing in the Hindu of the 20th October 2014 Dr. S. Mahendra Deo, Vice-chancellor, Indira Gandhi Institute of Development Research, Mumbai quotes the good news emanating from the 2014 Global Hunger Index Report of the International Food Policy Research Institute (IFPRI) that there is considerable improvement in India's Hunger Index and in the percentage of underweight children - from 24.2 in 2005 to 17.8 in 2014- and India's rank improving from 63 to 55, out of 76 countries. The IFPRI report has attributed this to the results of the expanded efforts in the ICDS as also in other antipoverty programmes. Despite this, Dev shows quoting the UNICEF that in 2011, 55 million of the world's 102 million underweight children under 5 lived in India as did 62 million of the 166 million stunted children of the world. India's hunger status continues to be classified as "serious". The ball is in the jointly-owned court of the State and the Community.

Diagram: Link between Govenment Programmes



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Human Rights Education Promoting Gender Equality

Dr. Ranjit Singh[*]

Introduction

The twenty first century is justly hailed as the age of human rights, which are no longer confined within the bounds of a nation state and has witnessed unprecedented denial of human rights, all over the world. Unfortunately, no country can look back on its record with any sense of pride but fortunately human rights jurisprudence has come of age. Well informed and enlightened citizens demand and obtain protection of their human rights because they have a voice and representation. Human rights postulate human dignity and recognize that every human being irrespective of caste, colour or race, is born equal and with certain rights as a human being. Human dignity is the spine of human rights, which is about the empowerment of people through development, security, justice, equality and raising awareness amongst the masses through human rights education.

Human rights education focusing gender equality without any indiscrimination is an indispensable part of the right to education and has of late gained larger recognition as a human right itself. The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as a fundamental means to assure the respect of rights and equality for every human being. The vital element of human rights education is that the education should not only aim at producing trained

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professional workers but also inculcating in them a sense of protecting and promoting human rights especially the women and marginalized section of the society. Human rights education aims at providing with the abilities to accomplish and produce societal changes towards equality and justice. Education is widely acknowledged and seen as a way to empower people to improve their quality of life and increase their capacity to participate in the decision making process, leading to most wanted transformation in the social, cultural and economic spheres. In fact, to achieve sustainable development, it is essentially important that education is to be viewed from holistic vision and that encompasses every particular dimension of human development. The human development index reveals the prosperity of a nation in terms not only of per capita income, in other words of economic growth, but also in the most vital areas like education, social, political and economic development . The genesis of development of a nation is gauged on the scale of education which leads to economic, social and other developments. Thus, higher the educational development of a country more it leads to prosperity, more the prosperity better are people of the nation and the betterment of the people needs to position of the nation in the world atlas. World bodies have defined gender equality in terms of human rights, especially women's rights, and economic development. UNICEF describes that gender equality "means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections." CEDAW lays down clear obligations to progressively realize the right to education and gender equality in and through education.

In the evolution of contemporary concept of human rights, the legal frame work of human rights is often described in terms of generations of rights. First generation human rights, which are civil and political rights, deal mostly with negative rights, i.e. right not to be interfered in private life, e.g. freedom of speech, protection of private life, freedom of religion, right to fair trail, right to personal freedom and safety, etc. The second generation human rights are economic, social and cultural rights, which

are positive rights, i.e. rights to be provided with something, such as right to be employed, right to education which includes human rights education, right to a decent standard of living, etc. The third generation human rights are collective rights, such as right to development, ecological rights, etc. These rights are not linked directly with 'person-state' relation, but are the rights of groups of people. These rights clarify international frameworks for human rights and show how solidarities can be achieved worldwide. A debate has now started to include fourth generation human rights which are concerned with human rights in the information domain. These rights are called 'communication rights and advocate the freedom of information.

The concept of rights of human beings is neither entirely western nor modern and is deeply rooted in the Indian cultural ethos and values. Maxims like *"Sarve Bhavantu Sukhinah"* Let all human beings be happy, and *"Jio aur Jine Do"* live and let live are values which Indian society has cherished and are reflected in the religious philosophy. Every religion preaches for peace, brotherhood, unity of the human beings and protection of the human rights. According to *Hinduism* "The whole Universe is one family" and *Bible says* "Love thy neighbour as yourself". The *Holy Koran* says "No one of you is a believer until he desires for his brother that which he desires for himself, regard your neighbour's gain as your own gain and your neighbour's loss as your own loss". The Koran Prohibits discrimination against all persons whether white or black. *Islam* like any other faith is a religion of peace and brotherhood. It addresses the whole of humanity as a family, believes in equal respect for all religions. The *Buddhism* propagates "hurt not others in ways that you yourself would find hurtful". Modern human rights law emerged at the end of World War II in response to violations and atrocities witnessed during the conflict. The Charter of the United Nations, the Genocide Convention and the Universal Declaration of 1948 were its first manifestations. These were amplified in two International Covenants adopted in 1966. Over the next few decades, a comprehensive structure of individual and group rights

was put in place, along with a modicum of operational guarantees, Acts and Legislations to protect and promote human rights regime in India.

Constitution of India: Teachers Training and Towards Gender Equality

Promulgation of the Constitution by the people of India in January 1950 is a watershed in the history of development of the concept of human rights. The Preamble, Fundamental Rights, Directive Principles of State Policy, Protection of Human Rights Act 1993 and Domestic Violence Act 2005 together provide the basic human rights for the people of India. A noteworthy encouragement in the National Policy on Education 1986 was with the modifications undertaken in 1992 which incorporates the basic spirit of Article 51A and reads thus: "The National System of Education will be based on a national curricular framework which contains a common core along with other components that are flexible. The common core will include the history of India's freedom movement, the Constitutional obligations and other content essential to nurture national identity. These elements will cut acrosssubject areas and will be designed to promote values such as India's common cultural heritage; egalitarianism, democracy and secularism; equality of the sexes; protection of the environment; removal of social barriers; observance of the small family norm, and inculcation of the scientific temper. All educational programmes will be carried on in strict conformity with secular values." This policy statement reinforces the concern for a total curriculum renovation. Besides, the teachers are made aware of the Constitutional provisions about equality and the need for non-discrimination which are the fundamentals of human rights education. It will also require educating them in communicating these ideas to the students and impressing on them the need to abide by the dictums of the same. For a serious business of education in Constitutional concerns at the school level, teachers of all subjects at all levels have to be oriented and trained. Accordingly, the curricular coverage of these concepts has to be deliberate and pre-designed.

It will be necessary to develop a blueprint indicating reflection of various concerns in different units and topics of the course papers in teacher education curricula. Preparation of teachers, through well-designed teacher education programmes, would actually play a very significant role in ensuring understanding and internalizing of these concepts in our schools and teacher education institutions.

The Constitution of India ensures gender equality in its preamble as a fundamental right but also empowers the state to adopt measures in favour of women by ways of legislation and policies. India has also ratified various international conventions and human rights forums to secure equal rights of women, such as ratification of Convention on elimination of all forms of discrimination against women in 1993. Women have been finding place in local governance structures, overcoming gender biases. Over one million women have been elected to local panchayats as a result of 1993 amendment to the Indian Constitution requiring that 1/3 rd of the elected seats to the local governing bodies be reserved for women. The passing of Pre-natal Diagnostic Tech Act in 1994 also is a step in removing gender discrimination. The Government also announced the National policy for empowerment of women in 2001 to bring about advancement, development and empowerment of women in all fields. The Government has also drawn up a draft National policy for the empowerment of women which is a policy statement outlining the State's response to problems of gender bias. As constant gender inequalities continue we need to rethink concepts and strategies for promoting women's dignity and rights. UN Secretary General Kofi Annan has stated, "Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance." There is a need for new kinds of institutions, incorporating new norms and rules that support equal and just relations between women and men. Today women are organizing themselves to meet the challenges that are hampering their development and they are in the apex positions

not only in the corporate world but also in the Constitutional appointments like Governor of States and places of decision making in the Government.

Strategy for Raising Awareness about Human Rights Education

To achieve such multi dimensional goals for education, it is essentially important to imbibe the ideals of human values amongst children, particularly during the shaping years. In other words, the human rights values need to be set in the young minds so as to create a society full of people who have an understanding to respect the rights of fellow beings. Human rights are essentially the rights of the people, both as individuals and in groups for protection of human dignity. Human rights activists, individuals, groups, NGOs, play a significant role in championing the cause of human rights, making protest against human rights abuses and creating general awareness about the observance and respect for human rights. Similarly, lawyers, teachers, journalists, and professional organizations contribute effectively for the same cause. But undoubtedly the most crucial contribution that could be made is by having a program of teaching about human rights at all levels of education.

The Universal Declaration of Human Rights (Art 26.2) gives expression to this proposition when it declares that:"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups." The first International Congress on the Teaching of Human Rights (Vienna, 1978) elaborated this point by inter alia stating that, human rights education and teaching must aim at fostering the attitudes of tolerance, respect and goodwill towards fellow human beings", and that teaching about human rights is a continuing process and should embrace all levels of the educational system – from primary school to university level and to professional education. Indeed, an essential pre-

requisite for progressive realization of human rights is popular awareness of and support for universally accepted human rights norms and standards.

In this regard, the national curriculum for school education of NCERT has already included the human rights education module in the social science subjects. The social science subjects being taught at the various levels of school education are already disseminating human rights education to the children and thus creating positive conditions for a better understanding of human rights in the young innocent minds. In this regard, the syllabus developed for framing the human rights module on issues of concern equip the teachers to deal in a better way with the human rights education. Thus, in turn, the teachers are able to address the issue of human rights and impart the same to the young children in the school much more systematically and effectively. Perhaps, in the same context, it would also address the issue of providing the sensitivity training or sensitizing the young children towards the issue of human rights in a more practical manner. The focus is on mutual respect, dignity and, on top of this, sensitivity towards the protection of human rights.

Another issue which merits attention is about creating and sustaining a faculty at all levels to impart human rights education. The present human rights education course for teaching professionals intended to help create the required knowledge base and provide an opportunity to have right attitude in the teaching professionals. Since human rights education is essentially based on live social interaction, course curriculum is imparted by way of an appropriate illustration focusing on human rights violations and their redressal mechanism. The focus is on the development of modules on human rights concerns which are used for training of teachers on human rights concern as well as the induction of human rights modules in the B.Ed, M.Ed courses and other professional degrees. This helps in creating a transformation and equips the teaching professionals with requisite expertise and techniques, which in turn have an effect on the very way of teaching human rights theme.

The primary aim of human rights educational guidance is to help organizing teachers training across the country through a focused module that will enable the potential teachers at all levels about the key human rights concepts with reference to realities prevalent in the society. The children will develop human rights mindset and a progressive attitude towards human rights education in the school environment. On the one hand, this will help them perceive the violations of human rights in society at large as their own, and, on the other, will share their deprivations with those to whom human rights mean the most. It is the result of a series of regional and national deliberations and discourse that have taken place both by ideologues and practitioners of human rights. The coverage of syllabus is designed keeping in mind that while teachers will know about the essence of human rights, they will also be informed about the genesis and basic tenets of human rights. The teachers will learn how to infuse human rights components in the subject of study and then taking it down to the classroom to inspire students to acquire knowledge and capacity from rights-based perspectives. The curriculum try to create appropriate human rights education modules for teaching professionals dealing with students at different levels i.e., primary, secondary and higher secondary. A clear roadmap is defined on how to make education perform this important role of transformation in the attitudes and awareness of the persons engaged in teaching and education, otherwise attaining these objectives will remain elusive. With this aspiration in mind, the National Human Rights Commission has facilitated a process of developing syllabus and curriculum guidelines of human rights education for the teachers of schools up to secondary level and higher levels.

Teaching of Human Rights

Human rights education in the institutions of higher learning universities and institutions providing professional education has virtually become a necessity. Firstly, while teaching at primary and secondary levels or adult literacy or post-adult literacy should not unnecessarily burden the students

with specific texts but the focus should be on inculcating an attitude of self-esteem, respect for ideas and belief of other people and plurality of culture and of fostering an attitude of tolerance and removal of prejudices. The need is to provide orientation programme on human rights for teachers, appropriate school settings and co-curricular activities. At higher education level, students have attained enough maturity to imbibe the meaning and evolution of the concept of human rights, norms and standards spelled out in various international instruments and also to discuss in depth specific human rights issues in the context of concrete social, economic, political realities with emphasis on needs and aspirations of the people. Secondly, and more importantly, institutions of higher education produce civil servants, law enforcements officials, lawyers, doctors, scientists, teachers, journalists and so on whose work makes a vital difference in progress of the community, country and society at large. The underlying assumption, at the level of higher education, is that human rights education would lead to a enlightened society which will respect human dignity. Indeed, those having higher education would be equipped with better capability to resist authority when abused and to promote respect for and protection of human rights.

Of late, there has been much intellectual activity seminars at all levels, workshops, studies, reports, etc., as a preliminary, to introduce teaching human rights at various levels of education. Indeed it is satisfying to note that there is wider awareness of this need and that National Human Rights Commission has taken initiative, on priority basis, to promote teaching human rights at various levels. Consequent to NHRC , the Ministry of HRD and national institutions such as UGC, National Council for Teachers Education, have become more pro active in planning for teaching human rights. Several universities have introduced courses on "International Human Rights Law". A few universities have also introduced "Post Graduate Diploma Course in Human Rights," which is a step in the correct direction.

Promoting Human Rights Education

While discussing the role of institutions of higher education, it is necessary to turn to some of the misnomers which are prevalent in the society in the domain of human rights, that human rights is a western concept. This kind of opinion is created by the people with vested interests using human rights issue as a political weapon, and also assuming the role of self-appointed guardian of human rights. It is a misnomer that the human rights issues are for the few but these are universal and applicable without caste or creed in the society . Another reason seems to be that world wide movement for human rights is largely controlled by the few transnational NGOs but that is also not true and civil society groups and volunteer organizations at the grass root level are taking the lead towards raising the awareness towards protection and promotion of human rights of the vulnerable groups. Invariably all of them lay emphasis on civil and political rights, but there is a growing need to promote economic, social and cultural rights and the factors responsible for their denial and the deeper, structural causes of injustice to be suitably addressed at all levels. Further, human rights literature is also dominated by the western authors who trace the origin of the concept to Greco-Roman period and highlighting, the western traditions and contributions of western philosophers. They hardly make even a passing reference to cultures and traditions of other regions. In brief, the concept of human rights is not the "monopoly" of Western civilization. Fortunately, now the Indian scholars like Upendra Baxi and others are writing excellent literature on the issue of human rights.

In devising teaching methodology, it has to be kept in mind that an educational course is effective if it is rooted in the concrete situations faced by the students. Every curriculum should take into account real life issues and problems of the students concerned and examine them and suggest appropriate ways of dealing with them. Students should be

encouraged to ponder over these issues and come out with their suggestions. This interactive or participatory mode of learning should become a part of the actual classroom pedagogy. Mere formal and theoretical instruction will not help in the sensitization of the students. For this purpose, co-curricular and extracurricular programmes like staging of plays and debates, essay competitions and seminars reflecting human rights problems have to be promoted. This will not only foster an awareness of human rights among the students, but will also motivate them to play a correct role in conflicting situations.

In any training or teaching programme, the role of the committed teacher as well as trainer is of vital importance. Teachers are the pivots around which all education revolves. Any attempt to introduce human rights education in schools will not be successful unless teachers and educators are properly oriented. In the field of human rights, teacher's own insight of human rights and commitments will count more than any well-prepared curriculum and elaborate guidelines. Unfortunately, teacher preparation is another major area of weakness. So far very little has been done to sensitize the teachers on human rights issues. Indeed teacher's attitude, style and responses will strengthen or undermine student's commitment to human rights. In this connection it has to be borne in mind that in the transfer process of knowledge about human rights, teaching methods which emphasize a hierarchical and authoritarian relationship between teachers and students has to be discouraged. This kind of transference will be self-defeating and will distort the content of human rights. The form, as experts in the field of education state, transforms the content. The manner in which the knowledge of human rights is imparted is interwoven with the essence of human rights content. An interactive approach which allows learners to pause and think over the core principles of human rights and imbibe them and reflect them in his work and conduct is the need of the day.

Justice Verma Commission Report: An Initiative towards Promoting Teachers Training

Justice Verma Commission Report exhaustively brought the fact that the teachers education should be a part of the higher education system. Based on the recommendations of the Justice Verma Commission which had been accepted by the Government of India, the NCTE comprehensively reviewed its systems and processes with a view to promote professional quality of teacher education at all stages of education, in accordance with the main thrust of the National Curriculum Framework for Teacher Education (NCFTE, 2009). This also caters in the perspective of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 which stressed on teacher preparation and teacher training for improving quality of school education. Further, the report of the Justice Verma Commission had recommended that: (i) There is a need to establish a national level academic body for continual reflection and analysis of teacher education programmes, their norms and standards, development of reading material and faculty development of teacher educators; (ii) The NCTE should set up a Teacher Education Assessment and Accreditation Centre (TEAAC), and constitute a Committee to prepare a comprehensive framework of accreditation, as suggested in this Report; (iii) The NCTE should set up an institutional platform in close coordination and collaboration with State Governments, Universities, UGC, Distance Education Council (DEC), etc. and take decisions on standards, procedures and quality parameters, concerning teacher education. From the report it emerged that majority of pre-service teacher education institutions are in the non- Government Sector, and most of the States of the Eastern and North-Eastern Region of the country are facing acute shortage of institutional capacity of teacher preparation in relation to the demand. It was recommended that the Government should increase its investment for establishing teacher education institutions (TEIs) and increase the institutional capacity of teacher preparation.

The Committee also deliberated on the ongoing teacher education programmes in the system, with a view to identify which category of programmes would potentially be addressed as "first professional degree programmes". The Committee was of the view that the implications of the recommendations could be misinterpreted to deduce that an ODL mode of training or teacher education programme would be permissible in situations when teachers already professionally trained for a particular stage of education, which becomes their first professional degree, want to train for another stage of education, which will get treated as a second degree. However, it was agreed that this interpretation would not be consistent with the spirit of the recommendation since each stage has its own specific instructions and thrust which needs to be imbibed by the qualifying teacher and therefore serves as the initial preparation for that stage. Therefore it may be better to refer to the 'first degree' as "initial teacher preparation" (NCFTE, 2009) or preservice teacher education programme, for operational reasons, for whichever stage of education the student teacher is enrolled.

Another issue which merits attention was the substantial inter-state variations in terms of percentage of untrained teachers, vacancy of teacher posts, additional teacher requirements under the RTE and the capacity of teacher Education Institutions (TEIs) to prepare professionally trained teachers. According to the Report Assam, Bihar, Chhattisgarh, J&K, Jharkhand, Orissa, Uttar Pradesh and West Bengal together account for 6.06 lac untrained teachers and 9.73 lac teacher requirement. These States also have inadequate capacity for teacher preparation and the training system to cater for all these inconsistencies. The Committee also brought that for the elementary school teachers, there are also emerging requirements for similar large scale training of untrained secondary teachers too from different states all over the country and holistically adopting a systematic and planned approach towards teachers training. In other words, teacher education should be a part of the advanced education

structure and due importance was given in implementing this vital piece of document towards teachers training.

Gender Equality and Education

Gender equality is a fundamental condition for the full enjoyment of human rights by women and men, and promoting gender equality. International instruments and domestic legislations now exist to promote and defend women's rights, but gender inequalities are persistent in a wide range of areas. Violence against women, gendered poverty, women's exclusion from decision-making in political and economic life, these are just examples of issues which must be resolved if gender equality is to be achieved. Overcoming these inequalities requires profound transformations in social structures and relations between men and women. United Nations Secretary-General Kofi Annan described gender equality as "a human right that benefits everyone." Equality, he added, "goes hand-in-hand with investments in education, economic opportunity and reproductive health – together a powerful force for progress in poverty reduction and development."

Gender education starts with building gender awareness. The outcome of gender education for girls is greater self-confidence, assertiveness, independence and engagement in the public sphere. An important function of gender education is to distinguish between facts and beliefs or opinions. Gender education, addresses both girls and boys, can and be a positive force for creating gender equality in modern society. It seeks to change the roles that girls and boys and women and men play in private and public life. By reducing gender stereotypes, gender education assists children in building a genuine civic equality. Gender education is an ongoing process that cannot be limited to specific educational activities. Educators must avoid gender stereotypical activities from early childhood and ensure that girls and boys have the same opportunities for participation and interaction in any activity. Girls should be encouraged to compete in

both academics and sports while boys should participate in caring activities. Both sexes should be encouraged to participate in all kinds of activities, e.g. choirs, drama and dance, woodwork, cooking, hiking, and chess. Another important aim of gender education is to help children recognize the social value of traditional female activities, such as motherhood, and characteristics such as caring, attention, cooperation and tolerance. This recognition can lead to genuine partnerships between men and women, which is a key goal of gender education. In this way, children learn that the different contributions of men and women to family and society are equally important and that both men and women have equal rights and responsibilities. The right of girls to education is one of the most critical of all human rights**,** because education plays an important role in enabling girls and women to secure other rights.

Initiatives of NHRC

National Human Rights Commission has devised a multi-pronged strategy for raising all round human rights literacy related to gender equality and awareness by focusing at all levels of education – primary, secondary and higher education. The Commission has been deeply concerned with the issue of human rights education ever since its inception in the year 1993. The Commission has constituted a task force which has elaborately undertaken the exercise of re-modeling course curriculum for different human rights education courses at the university level. For the primary and secondary education level the NCERT has made a significant contribution by developing a national curriculum that has infused human rights elements in social science paper at school level. The present endeavour focuses mainly on human rights education at the level of imparters of education, i.e. the teaching professionals involved in various professional courses. As a result of the efforts of the Commission, the human rights education has been introduced in the university and college system for the last decade.

It is all about giving them an opportunity to get sensitized towards the issue of human rights. Unless the children, who are going to be the future of the nation, are made to realize the human rights issues in particular, from the point of view of an understanding of mutual respect towards rights of others, brotherhood, peaceful co-existence, besides providing them an understanding of the dynamics of psychological, social and economic development, the purpose behind the human rights education can not be fulfilled. To meet this end the element of human rights education in the existing national curriculum may not serve the said purpose, because of the impracticability exhibited in the existing national curriculum, primarily from the point of view of the fact that the element of human rights involved therein is just to know it theoretically and simply to write an answer to the question on the human rights issues in the examination. Thus, there is a gulf between human rights education and its implication in day-to-day life. In order to bridge this gulf, there is a need to devise a mechanism so as not only to change the mind set of the children but also to imbibe human rights values and traditions and help children to develop positive attitude towards the promotion of human rights.

To nurture the value and culture of human rights in the child during the formative years, there is a serious need not only to think along these lines but also to work on the modalities by which it could be achieved. Keeping this in mind, the Commission constituted a Task Force to look at the prevailing human rights education scenario at school level right across the country, based on the information collected by the Commission, and to suggest as to how the human rights education could be made more effective at the school level. Further, the Task Force deliberated on the national scenario on human rights education at the school level and suggested measures to make human rights education effective at school level. The module which was envisaged and emerged has been carefully drafted in view not only of the existing human rights education but also

taking full count of the recent advancement in the knowledge of human rights.

The National Human Rights Commission on its part has taken a number of steps to promote human rights awareness and spread human rights literacy in the country. This function of the Commission has been outlined in Section 12(h) of the Protection of Human Rights Act, 1993. In pursuance of this statuary responsibility, the NHRC has strengthened the cause that subject of human rights in all its dimensions may find clear place in the curriculum of the universities. Research, seminars and publications concerning human rights should be encouraged. The Commission has also been informed by the Department of Education that the subject of human rights can form part of the modules of social science courses run by the National Open School at the Secondary and Senior-Secondary level. The Commission is also in touch with the Indira Gandhi National University in regard to the launching of a program on human rights using the distant education methodology. The National Council for Education, Research and Training has published with the support of the Commission a 'Source Book' on Human Rights. The purpose of the book is to make available to teachers and students, policy-makers and curriculum developers and other personnel involved in formulating and implementing educational programs, a selection of major documents in human rights and human rights education in one volume. In this connection it is necessary to reiterate that any teachers manual must adequately stress the fact that teachers themselves must demonstrate appreciation and understanding of human rights in their interactions with the students. Any human rights curriculum will fail to achieve its purpose if the teacher does not integrate the subject into his or her behavior and attitudes. This is also necessary from the viewpoint of effective implementation of human rights education curriculum at all the levels and obtain feed back both from the students and the teachers.

Role of Media in Promoting Human Rights Education

Media is a potent weapon, which is to be used by the nation towards empowerment of the people for human rights education and awareness. In an age where 24 x 7 instantaneous news coverage is a reality, paying attention to media is of paramount importance. The media should be employed to raise awareness and impart education at all levels. As part of its wider horizon, media will generate a favorable opinion in promoting the cause of human rights. Hence, the media can be employed to influence the perceptions, public opinion and the world opinion, which would set firm grounds for raising awareness. Introducing Community Radio at regional level within the country is another technique to promote human rights education amongst the masses of back ward regions. The community radio movement has recently gained momentum in a diverse nation like India where, one could well understand the problems that tribal, under-privileged, or minority cultures face in getting their voices heard. Identify it by any name, community radio, rural radio, cooperative radio, or development radio, its proponents feel that radio holds the key that will unite India's linguistic and ethnic diversity and improve the economic disparity and the huge rural-urban divide. This will facilitate in information dissemination of the government policies at the grass root level. The intent of the community radio license seekers should be propagating the government schemes for the welfare of the people and air the genuine collective grievances of the society including the human rights abuses.

Conclusion

In the last few decades there has been a growing worldwide awareness and explosion of interest in human rights education, which means "all learning that develops the knowledge, skills and values of human rights." Human rights education is "training, dissemination and information efforts aimed at the building of a universal culture of human rights through imparting knowledge and skills and the changing of attitudes amongst

masses." These efforts are designed to strengthen respect for human rights and fundamental freedoms, facilitate the full development of human personality, sense of dignity, promote understanding, respect, justice, equality and in improving quality of life. Human rights education, training and public information are, therefore, necessary and essential for the promotion and achievement of stable and harmonious relations among the communities and for fostering mutual understanding, tolerance and peace. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. As human rights education becomes a more widespread attribute of international policy discussions, national textbook reforms and grass root educational strategies including teachers training assumes worldwide greater significance. It should not be theoretical but must be relevant to people's lives in a practical way. It serves as means of understanding and embracing principles of human equality, dignity and commitment to respect and protect the rights of all. Dissemination of knowledge of human rights and duties must therefore aim at bringing about attitudinal change in human behavior which will facilitate peace, development and good quality of life.

Gender equality is, first and foremost, a human right. Women are entitled to live in dignity and in freedom from want and from fear. Empowering women is also an indispensable tool for advancing development and reducing poverty. Empowered women contribute to the health and productivity of whole families and communities and to improved prospects for the next generation. The importance of gender equality is essential component for the growth of society. Gender Sensitization is another vital issue which merits attention. This includes promoting societal awareness to gender issues and women's human rights, review of curriculum to include gender education, enhance dignity of women, use of different forms of mass media to communicate social messages relating to women's equality and empowerment. To sum up, the

United National General Assembly deems it as central to the achievement of the rights enshrined in the Universal Declaration of Human Rights that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.

References

Recommendations of National Human Rights Commission, Module on Human Rights Education for Teaching Professionals Imparting Education in Primary, Secondary, Higher Secondary Levels by National Human Rights Commission, New Delhi, Rajika Press Services Pvt. Ltd., July 2007. Web Site www.nic.in, accessed on 20 December 2011.

Justice Verma Commission Report on Teachers Training.

HRE Initiatives of the National Human Rights Commission of India.

Chief Justice (Retd) Delhi High Court, Justice Rajinder Sachar, on *Human Rights- From Rehetoric to Reality- Answer remains inconclusive* published in *Human Rights Year Book-2010* edited by Pravin H Parekh, Universal Law Publishing Co- Pvt Ltd. P-67.

Nomani W. A., Advocate, Supreme Court of India in his article, *Holy Prophet (P.B.U.H) the Best Protector of Human Rights* published in *Human Rights Year Book 2010* and edited by Pravin H. Parekh, International Institute of Human Rights Society (Regd.), Universal Law Publishing Co. Pvt. Ltd. p- 131.

Shanker Sen, human Rights in Developing Society, New Delhi, APH, 1998, VI PP. 63-66.

NHRC, Recommendations of NHRC, *Module on HR Education for Teaching Professionals Imparting Education in Primary, Secondary, Higher Secondary levels*, Justice S. Rajendra Babu, Chairperson, NHRC-2010). en.wikipedia.org/wiki/Human_rights_education accessed on 20 December 2011. www.amnesty.org.uk/content.asp, accessed on 20 December 2011

The History of Doing, An illustrated Account of Movements for Women's Rights and Feminism in India, 1800-1990, Radha Kumar.

A paper on National Policy For The Empowerment of Women(2001)

Annual Report 2009-2010 of National Commission of Women.

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RIGHT TO HEALTH

Ensuring Rights To Health Under National Rural Health Mission: Lost Opportunities In Uttarakhand

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Abstract

Rights to health comprise an important part of the overall menu of inalienable rights enjoyed by human beings. Ensuring such rights, however, is not easy and requires detailed micro-level data on population and health for use in monitoring, planning and programme implementation of an efficient service delivery system. This calls for the introduction of a Health Management Information System (HMIS). The launching of a national portal-based HMIS by Government of India in 2008, as an integral part of the National Rural Health Mission, was a bold and innovative step. However, there are several challenges that had to be overcome to develop HMIS as an effective tool for planning and monitoring. In particular, without training and motivating grass-root functionaries to report HMIS data in an accurate, timely manner and monitor its quality, HMIS data cannot be used for health sector planning. The study evaluates the experience with HMIS in the high focus state of Uttarakhand based

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on a field survey of selected health facilities in the state. The paper argues that, instead of suddenly losing interest in the HMIS, it could have been utilized to become an important monitoring and planning tool in National Rural Health Mission.

Introduction

Human rights are moral principles or norms that describe certain standards of human behaviour, and are regularly protected as legal rights in national and international law. They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. While human rights extend protection to rights of human being in several spheres, one of the important but often overlooked of such spheres is with respect to health. In 1948 the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. This charter declares:

> "Everyone 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."(our italics, Article 25, Universal Declaration of Human Rights, UN, 1948)

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, through access to medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment. The human right to health care means that hospitals, clinics, medicines, and doctor's services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis.

Over time the need to deliver health care services to the population has been recognized by policy makers. The Alma Ata Declaration in 1978

expressed the need for urgent action by all governments, all health and development workers, and the world community to protect and promote the health of all people. The Millennium Declaration Goals also emphasized on specific aspects of health—viz. maternal and child health. Despite the recognition of health as an inalienable right and the need to ensure this right through the extension of public health care services, in several Afro-Asian countries the health status remains a major challenge before the government. At the start of this century, India was one of these countries—with low public expenditure on health-GDP ratio, high out of pocket expenditure, high maternal, child and infant mortality rates and other poor indicators of health care.

Recognizing the challenge, in 2005, the Government of India had introduced the National Rural Health Mission (NRHM) as a flagship scheme of the Ministry of Health and Family Welfare (MoHFW). The objective of this scheme was to "carry out necessary architectural correction in the basic health care delivery system … to improve the availability of and access to quality health care by people, especially for those residing in rural areas, the poor, women and children" (Government of India 2005: 1). The overhauling and redesigning of the health system for efficient delivery of health care services requires availability of ready and accurate micro-level data to indicate gaps in the existing system and identifying remedial actions. At the same time, understanding the synergy between delivery of services, cost involved in provision of public health care services, expenditure and pattern of utilization among various sections of population, including vulnerable sections of the society, are important issues for policy makers. A continuous flow of high quality information on inputs, outputs and outcome indicators facilitates monitoring of the NRHM to ensure that it results in efficient service delivery, community ownership and protects human rights in health. This calls for an efficient Health Management Information System (HMIS).

HMIS may be defined as "A tool which helps in gathering, aggregating, analyzing and then using the information generated for taking actions to

improve performance of health systems." (GOI 2008: 2). It is a system of maintenance and taking care of health related data. This can be done either by using tradition and conventional methods like using paper for maintaining health records, or by adopting contemporary techniques like computing and web-system. It is an important tool in the management of health care services delivery in both developed and developing countries in two ways. Firstly, it enables assessing health needs of the population (and its geographical variations); secondly, it enables effectiveness and coverage of health programmes. The revolutionary progress made in the IT sector and its integration into the HMIS of even developing countries has provided speedy access to micro-level data that may be updated frequently. This greatly facilitates evaluation and assessment, and the designing of appropriate remedial strategies as long as the data quality is of a high order. This is particularly important given the drive to attain Millennium Development Goals and review the progress made in attaining these goals. Moreover, in developing countries where donors are increasingly linking release of funds to performance based indicators, HMIS can be linked to demand for greater resource inflow and guide allocation of such resources to specific areas in the health care sector.

The HMIS web portal launched by the MoHFW on 21st October, 2008 was a bold and innovative step in this direction. The objective of the HMIS portal was to capture public health data from both public and private institutions in rural and urban areas across the country. The portal was envisaged as a "Single Window" for all public health data for the MoHFW. The MoHFW initially rolled out the HMIS up to the district Level and, from 2011 onwards, this was expanded to allow the Sub District/Block level facility wise data entry. Currently, over 630 districts are reporting their monthly performance on a regular basis.

In spite of this important initiative by GOI, the HMIS remains unutilized by the district and state administration for monitoring the health sector and planning remedial intervention to improve delivery of critical

Maternal and Child Health (MCH) and other health services. This paper argues that the introduction of the HMIS could have incorporated micro-level health concerns into the NRHM planning and service delivery system. This would have generated a sense of community ownership and ensured rights to health in rural India. However, the failure to prepare grass-root level functionaries—the Auxiliary Nurse Midwives (ANMs), Lady Health Visitors (LHVs) and Block Programme Managers (BPMs)—to provide data in an accurate and timely manner, as well as monitor the quality of data being provided led to errors creeping in at the facility level, which get compounded as this data is aggregated at the district and state level. This has affected the quality of service delivery under NRHM and has failed to provide rights to health to the rural population.

The paper is based on visits to Sub Centres (SC), Primary Health Centres (PHC), Community Health Centres (CHC), District Hospitals (DH) and Sub-District Hospitals (SDH). During these visits, we examined registers and previous monthly reports, and interviewed Auxiliary Nurse Midwives, Lady Health Visitors, Staff Nurses and Block Programme Managers with semi-structured questionnaires. We also interacted with officers in the Uttarakhand State Health Mission and Chief Medical Officers (CMO) of districts surveyed.

Survey sites were chosen purposively on the following principles. We covered each District Hospital (DH) and Sub District Hospital (SDH) in both districts. Apart from this, two blocks were selected in each district. One of the blocks was close to the district headquarters whereas the other was at a distance from it. We visited the Community Health Center (CHC) of the block, one PHC and two SCs under the PHC. The specific sites were chosen after discussion with CMO and BPM of concerned districts and blocks. The field study was conducted during July to September, 2011.

Health Management Information System in India (HMIS)

The HMIS in India provides data on service delivery, physical infrastructure and financial performance of all public health facilities in rural areas. In some special cases, such as Delhi, even urban facilities are included within the system. The flow of information is shown in Fig. 1. SCs, PHCs and CHCs send data on a monthly basis using HMIS forms to the Block. This data is consolidated at the block level by the Block Program Managers and forwarded to the district. District Hospitals forward data directly to the District Programme Manager. District-wise data is forwarded to the State Health Mission, and then to the MoHFW. The upward flow of information is depicted by straight lines. Data is checked for quality and consistency at the block, district and state levels, and feedbacks provided to facilities (denoted by broken lines). Periodically, a national level meeting is called, where the performance of states are reviewed.

The HMIS provides information on service delivery relating to maternal and child health care utilization including Ante Natal Care (ANC), Post Natal Care (PNC), immunization, Janani SurakshaYojana (JSY) registration and beneficiary, and delivery details. Facilities also report on laboratory testing for disease like HIV, STI/RTI, TB and cataract operation under Blindness Control Program. These data are available on a monthly basis. In addition, the HMIS provides data on physical infrastructure and financial performance on a quarterly and annual basis, respectively.

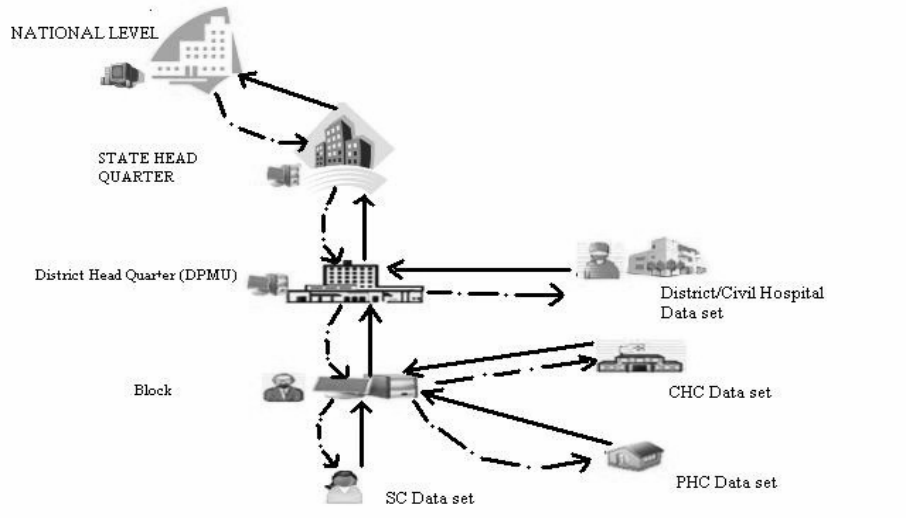
The HMIS provides critical micro level information on MCH and other service delivery related indicators on a monthly basis. Since this is important in achieving the millennium development goals 4 & 5 (Reduce child mortality and improve maternal health, respectively), the focus of the MoFHW is to streamline the service delivery component of the HMIS and enhance its capacity to provide policy inputs to monitoring and planning activities. This is very important as maternal and child health is often considered to be the starting point for extending universal health coverage—an issue that is increasingly becoming important in developing

countries with poor health indicators (GOI 2011). On a more general level, the HMIS can provide information on the performance of the health care system in specific micro-level geographical regions. It permits an assessment of whether the nature of the service and its level and quality matches with the needs of the people at the micro-level. A well functioning HMIS makes the NRHM more community-centric, facilitating regular feedbacks from users to planners, and enable society to fulfill its obligation to provide a minimum level of health standard.

The performance of the HMIS, however, varies from state to state. Although level of data uploading has been relatively satisfactory in almost all the states (Table 1), quality of data remains a major challenge, with many of the validity rules broken and existence of outliers in many variables. Effective data uploading (see Table note b), too, needs to be improved substantially. Such inadequacies pose a challenge to improve the quality of HMIS data.

This calls for a study to identify defects in the HMIS and suggest appropriate remedies. In this paper, we evaluate quality of HMIS in

Figure 1. Information flow from Sub-center to National Level under the HMIS



Source: GOI (2008): 4 .

Uttarakhand, a high focus state which performs poorly with respect to most parameters (consistently ranking among the bottom five states).[1]

Health Management Information System in Uttarakhand

Profile of State

Uttarakhand, formerly known as Uttaranchal, was carved out from Uttar Pradesh in November, 2000. It is spread across 51,125 km area. Located at the foothills of the Himalayan mountain ranges, 93 percent area is covered with mountainous regions and 64 percent is covered with forest areas. It is bounded by Himachal Pradesh in the north-west and on the south by Uttar Pradesh. The state is divided into two divisions (*mandals*), namely Kumaon and Garhwal, containing 6 and 7 districts respectively. The districts of Almora, Bageshwar, Champawat, Nainital, Pithoragarh and Udham Singh Nagar are under the Kumaon *mandal*. On the other hand, the Garhwal *mandal* comprises of the seven districts of Dehradun, Haridwar, Tehri Garhwal, Uttarkashi, Chamoli, Pauri Garhwal and Rudraprayag. The current study focusses on two districts namely, Udham Singh Nagar[2] and Rudraprayag.[3]

These districts differ sharply with respect to each other in terms of political, geographical, economic and other social indicators. For example,

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1 Except for data uploading without mortality statistics.

2 Udham Singh Nagar was a part of Nainital district before it gained the identity of a separate district in October 1995. The area of the district is 2,912 sq. kilometer. Udham Singh Nagar is basically an industrial district and many industry related professions are prevalent here. On the other hand, the fertile land lends itself to different forms of agriculture giving rise to agriculture related activities. This place is surrounded by Kumaon Himalayas on one side and Nepal on the other. The district is also called as the 'Gateway to Kumaon hills'. According to the 2011 Census, the population of the district is 1,648,367, which has grown at a rate of 3.34% per annum. HMIS figures for 2011 reveals that SCs, PHCS, SDHS and DHs in this area are 152, 26, 1 and 1 respectively. In addition, there are 25 private facilities providing reproductive and child health related facilities in Udham Singh Nagar.

3 Rudraprayag, located in the Central part of the state, was established in September 1997. It is the point of confluence of rivers Alaknanda and Mandakini. According to Census 2011, population of the district is 236,857 and it is growing at the rate of 4.14% per annum. The area covered by district is around 1,896 sq. km. As compared to Udham Singh Nagar, Rudraprayag district has higher sex ratio hovering at around 1120. Till July 2011, the number of SCs, PHCs and DHs in Rudraprayag are 68, 11 and 1 respectively, according to the HMIS. There are no private facilities offering reproductive and child health related facilities.

Table 1: Summary of HMIS in 2010-11: All-India and selected states (Percentages)

State	Data uploading[a]		Effective data uploading[b]		Data quality	
	All variables	Excluding mortality statistics	All variables	Excluding mortality statistics	Internal inconsistency[c]	Outliers[d]
Andhra Pradesh	100.00	100.00	91.20	92.80	8.70	4.30
Assam	100.00	100.00	91.92	94.44	10.23	3.87
Bihar	100.00	100.00	81.19	95.68	17.80	5.79
Chattisgrah	100.00	100.00	83.10	88.20	8.70	3.60
Delhi	98.56	97.82	84.80	89.32	17.05	3.28
Gujarat	100.00	100.00	95.35	97.22	10.23	3.19
Himachal Pradesh	100.00	80.66	85.60	0.00	0.00	3.73
Jammu & Kashmir	98.28	99.96	71.11	87.05	8.33	4.75
Jharkhand	100.00	100.00	87.87	92.91	9.09	3.93
Karnataka	94.50	93.90	87.60	90.30	19.70	1.90
Kerala	97.80	99.70	76.40	90.70	11.40	3.90
Madhya Pradesh	99.70	100.00	94.50	96.50	13.60	3.50
Maharashtra	99.60	100.00	82.80	95.10	4.5	5.1
Orissa	97.50	99.00	92.10	92.90	4.90	3.80
Rajasthan	100.00	100.00	94.70	96.20	9.50	3.40
Tamil Nadu	100.00	100.00	90.30	92.40	10.60	3.50
Uttarakhand	97.97	100.00	76.46	87.14	15.53	4.63
Uttar Pradesh	100.00	100.00	91.60	96.50	12.10	4.70
West Bengal	99.90	100.00	93.90	95.40	14.40	4.50
India	**100.00**	**100.00**	**99.75**	**99.96**	**12.88**	**2.26**

Source: Tabulated on data downloaded from HMIS portal from 1 to 16 December 2011.

Notes:

a. *Data uploading is defined as: 100*No. of cells with (zero or positive) entries/Total cells*

b. *Effective data uploading is defined as: 100*No. of cells with positive entries/Total cells*

c. *Internal inconsistency is measured as: 100*No. of validity rules violated in a year/(Total validity rules*12). MoHFW has defined 22 validity rules, which are available in HMIS portal.*

d. *Outliers are defined as values falling outside the range Q3±2IQR, when Q3 is median and IQR is Inter-quartile range. The proportion of outliers is: 100*No. of outliers in year/(12*Total cells)*

Udham Singh Nagar is a plain district in the Kumaon division whereas Rudraprayag is a hilly district in the Garhwal division. The hilly terrain in Rudraprayag has resulted in poor transport and communication facilities, and lack of industries. Udham Singh Nagar has a developed agricultural and industrial sector; this attracts migrant laborers from other districts and states. Rudrprayag, on the other hand, is primarily a service based economy. Out-migration is high in Rudraprayag—to the plains, or to other districts. Despite all these disadvantages, Rudraprayag has better sex ratio, higher literacy rates and higher per capita health infrastructure than Udham Singh Nagar.

The selection of such contrasting districts enabled us to see whether there are common areas of concern in HMIS data quality despite these differences. It also enabled us to see whether unique features of each district caused problems in HMIS data specific to the district.

Functioning of HMIS in Uttarakhand

In Uttarakhand, the reporting period is 21st to 20th of every month, and not the calendar month followed in other states. Based on registers available at facilities, ANMs at SCs and PHCs fill in the Monthly HMIS formats in the last week of the month. This has to be verified by LHV, who forwards the filled questionnaire/formats to the BPM at the CHCs. Data is thus forwarded by SCs and PHCs to CHCs around 26-28th of every month. The BPM also obtains data from the CHC and SC attached to the CHC in printed copy. This data was entered at the time of survey using the District Health Information System (DHIS),[4] and uploaded on to the HMIS portal. The electronic copy is accessed by the District Program Manager (DPM). Both DPM and BPM are supposed to evaluate the data.

[4] The District Health Information System (DHIS) is a free and open source software that is both platform and database independent. It was developed in 1997 by the Department of Informatics, University of Oslo, Norway for application in South Africa. DHIS is being used in more than 20 countries and has become an official component of the WHO Public Information Toolkit. The software can be deployed in online or offline settings so that it is compatible with the diversity of environments existing in the public health sector in countries like India. The main purpose of DHIS is to: [a] Provide comprehensive HMIS solution based on data warehousing principles and a modular structure that can be readily customized. [b] Provide data entry facilities. [c] Provide tools for data validation. [d] Provide tools for reporting. [e] Allow generation of health indicators for monitoring and evaluation.

The State Program Unit also evaluates the data and sends feedback to districts. The DHs upload their data directly, using the DHIS.[5]

For monitoring the flow of data, the process of data uploading is divided into four levels. In HMIS terminology, level 1 refers to the stage when district has not uploaded HMIS data on the portal, level 2 when data has been uploaded but not committed by district (that is, the data uploaded is being checked), level 3 when state has to commit the data, and level 4 when state, too, has committed and frozen the data, indicating that it is final and will not be changed in future. Thus, quality of the data is supposed to be checked in level 2 by district personnel and, in level 3, by state personnel. Unfortunately, revision of data uploaded continues for a much longer period than the scheduled one month. In 2010-11, for instance, in both districts, data is yet to be committed for the entire year by the district (level 2). The state should therefore seek to accelerate the process of data commitment.

Until March 2011, data was consolidated and uploaded only at district level, information was not available below district level for individual facilities in any districts of India. Thereafter there has been a shift to facility base reporting throughout India. In Uttarakhand, due to technical problems, the shift to facility-wise reporting was not completed at the time of our field visit. So there was consolidated upload of data at CHC level. After Uttarakhand shifted to facility based reporting in the latter half of 2011, SCs and PHCs started sending their data in HMIS formats to BPMs, who upload this data for each facility on to the HMIS portal.

Since data compilation for HMIS is often a major issue in Hospitals—because of their size and multiple departments–we paid special attention to the data collection and reporting system in District Hospitals of the two districts covered under our survey. In Rudrapur District Hospital, Udham Singh Nagar, the HMIS format has been broken into several

[5] In Rudrapur District Hospital, Udham Singh Nagar, the HMIS format has been broken into several components, relevant for each Department of the Hospital. The data submitted by each Department in the disintegrated HMIS form is collected centrally and uploaded on to the DHIS-2 portal.

components, relevant for each Department of the Hospital. The data submitted by each Department in the disintegrated HMIS form is collected centrally and uploaded on to the DHIS-2 portal. In Rudraprayag, on the other hand, the HMIS of the District Hospital is quite weak. In District Hospital, the DHIS format is circulated to the concerned Departments. The relevant information is filled in by the Departments, who also authenticate it by signing the section pertaining to their Department. However in practice, several departments do not fill in the data. For instance, data relating to patient services is not provided; data on laboratory testing is also not reported regularly. In addition to this, the DH has not provided computer facilities or a Data Entry Operator for HMIS purposes. So, the HMIS data is sent to the CMO office where the data is entered.

In Rudraprayag, there are no private health facilities (Table 2). This makes HMIS coverage easier than Udham Singh Nagar. All public sector units are reporting in this district. On the other hand, in Udham Singh Nagar, although public sector (SCs, PHCs and CHCs) coverage is 100%, only 11 out of 25 private facilities providing reproductive and child health facilities reported HMIS data – that, too, only on deliveries. Even these units reports such data irregularly, and only to the District Health Statistics Department. In Udham Singh Nagar, we found that the DPM was not accessing data on deliveries at private sector from the District Health Statistics Department. Subsequently, when this issue was raised before the CMO and DPM staff by us, data on private sector facilities was uploaded on the portal.

We now turn to an evaluation of the HMIS data coverage and quality.

Data Coverage and Quality

We examine the trend of missing data components since this provides a quick check of data quality. The trend of missing data components has been examined with and without mortality statistics (Table 3). This is because reported mortality statistics is often zero when such data is classified by different age groups and causes of death.

Table 2: Snapshot of HMIS in Udham Singh Nagar and Rudraprayag districts, Uttarakhand

Research Question	Udham Singh Nagar	Rudraprayag
Do the all service units report HMIS? If yes, since when?	All public sector facilities are providing HMIS data since inception of HMIS portal in 2008.	All public sector facilities are providing HMIS data since inception of HMIS portal in 2008.
What is the coverage of private sector health facilities?	14 (out of 25) private sector facilities providing MCH services are not reporting HMIS data at all. The remaining 11 facilities provide data irregularly to the Statistics unit, Health Department.	There are no private sector units providing MCH services Not applicable
Do the reporting units provide data on all health indicators in HMIS?	Public facilities are reporting data on all services provided by them. However, as the range of services provided by them is narrow, this is reducing effective data upload. Private sector units report only live births and immunization.	Facilities are reporting data on all services provided by them. However, as the range of services provided by them is limited, this is reducing effective data upload.
Are the reporting units regular in reporting?	SCs and PHCs are sending data to CHC by 28th of month (Reporting period is 20-19 of each month) SDH are forwarding data to CMO by 2-3 of next month.	SCs and PHCs are sending data to CHC by 28th of month (Reporting period is 20-19 of each month) SDH are forwarding data to CMO by 2-3 of next month.
Does proper mechanism exist to collect data from hospital?	HMIS reporting system exists in the public sector hospital (DH/SDH) and data is being reported regularly	HMIS reporting system exists in the District Hospital and data is being forwarded to CMO regularly. However, data capturing is weak as all Departments do not report data (e.g. patient services). Data on immunization is recorded by ANM attached to Agustmuni CHC and consolidated with their records.
What is the system of record maintenance of services rendered?	While records are being properly maintained in some facilities, in other facilities records could not be inspected due to absence of concerned staff (despite prior intimation of visit sent by CMO). Registers are properly maintained.	Variation in quality of record maintenance by facilities. Generally, hard copies of HMIS reports available with LHV or BPM. Registers are properly maintained.

Table 3: Trends in missing data in Uttarakhand during 2008-2011 in percent

State / District	Missing data	2008-09	2009-10	2010-11
Udham Singh Nagar	For all variables	60.44	54.9	54.62
	Excluding mortality	41.19	31.53	30.76
Rudraprayag	For all variables	79.65	68.27	71.79
	Excluding mortality	68.94	51.59	57.04
Uttarakhand	**For all variables**	**36.71**	**26.07**	**24.66**
	Excluding mortality	**13.23**	**12.29**	**14.36**

Source: Tabulated from HMIS portal data accessed on 26 July 2011.

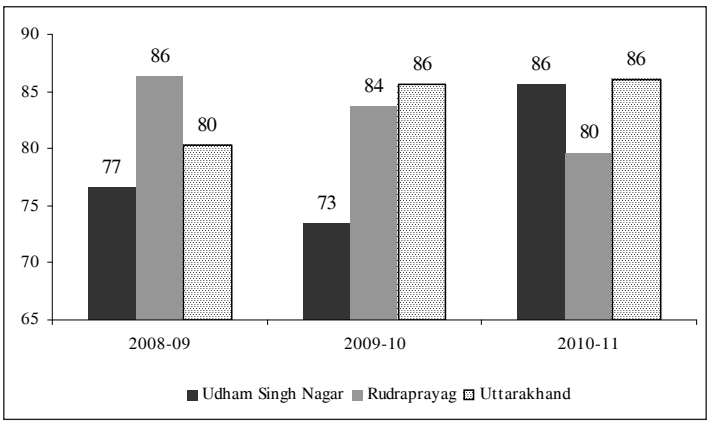
Table 3 shows that percent of missing data are substantially higher in both districts compared to that of the state. A positive trend of decreasing missing data from 2008-09 is observed in Udham Singh Nagar. In Rudraprayag, however, the trend in missing data is not satisfactory – with an increase of six percentage points being observed over the last two years (excluding mortality statistics).

The MoHFW has defined 22 validity rules in order to examine internal consistency. It was found that internal consistency (measured by proportion of validity rules satisfied) has improved in Udham Singh Nagar (Fig. 2). Although there is still scope for improvement, internal consistency levels of this district matches state level. In Rudraprayag, on the other hand, there has been a decline in internal consistency by six percentage points.

A third problem related to data quality is the presence of very high or very low values for a particular data component. It is very difficult to judge whether a value is very high or very low. The absolute number of outliers in HMIS data for Uttarakhand and the two districts studied is given in Fig. 3. In the year 2009-10 we found that the HMIS data in Udham Singh Nagar contained 97 outliers. This indicates that, over a period of 12 months, 295 HMIS indicators were found to be outlier 97 times. In Rudraprayag there were 86 outliers. This is relatively low compared to Uttarakhand (137 outliers). In the last year, 2010-11, the number of outliers in Udham Singh Nagar and Uttarakhand reduced—

number of outliers was 54 and 112, respectively (Fig. 3). In contrast, performance of Rudraprayag deteriorated, with number of outliers increasing to 96. Another interesting point to note is that a high proportion of these outliers were occurring in the last quarter of the financial years. In Udham Singh Nagar, 72% of outliers had occurred between January-March; in Rudraprayag this figure was 31%. In Uttarakhand, 52% of outliers were in the last quarter of the financial years. Examples of such outliers include number of laproscopic sterilization undertaken in SDH/DH and mini-lap sterilization undertaken in PHCs in Udham Singh Nagar,

Fig. 2: Trends in internal validity of HMIS data in percent terms - Uttarakhand



and number of pregnant women registered within first trimester and number of vasectomies conducted by PHCs and CHCs in Rudraprayag.

This indicates that such errors may be a possible result of deliberate manipulation of figures to attain targets set for ANMs. In the absence of DPM staff, some of ANMs reported that they often faced pressure to inflate targets for components like JSY, ANC registration and immunization during monthly meetings. This was also reported by the staff in several facilities in Rudraprayag. Rather than being singled out for poor performance in areas like IUD insertion, ANC services and

immunization, they admitted to inflating figures for such components in every month. This was reported by both BPM and ANMs in Udham Singh Nagar,[6] and corroborated by the state-level officers.

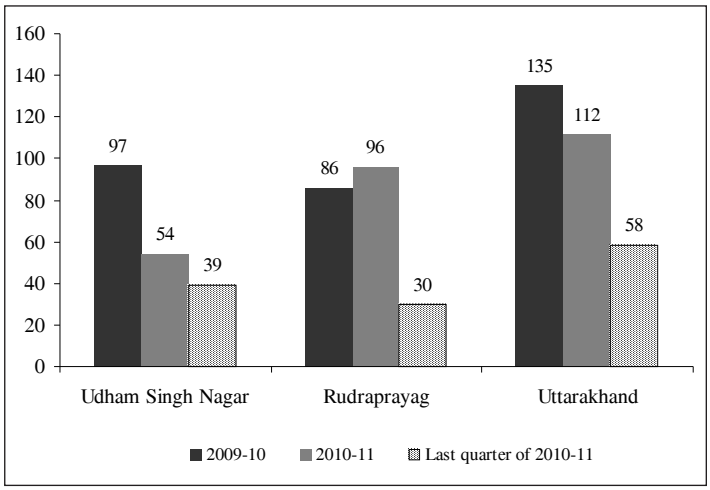
Challenges to Improve Quality of HMIS Data – What Does the Field Study Reveal?

During our field visit several issues were raised by the functionaries that have important implications for HMIS data quality. These are discussed below.

Training

Our survey reveals that it is imperative to train ANMs on HMIS in order to improve the quality of data reporting. Training has occurred in two stages. At the national level, MoHFW provided training in HMIS to state-level officers. The trainers were consultants from National Institute of Health & Family Welfare (NIHFW). Subsequently, these state-level officers

Fig. 3: Absolute number of outliers in state and districts studied - 2009-10 & 2010-11



[6] Unfortunately, it is difficult to detect such data manipulation based on outliers. The reason is that the rule adopted in the HMIS for detecting outliers works only if there are less than two extreme values. If figures are inflated over the entire year, or even the last quarter, then the quartiles get affected so that the inflated values fall within the inter-quartile range.

and consultants from NIFHW trained district level and block level officers.[7] The duration of workshops is too short (over two days) to cover every details of the complex HMIS format. In addition to this, most of the officers are non-medical persons for whom retaining instructions on health-related issues is not easy. Further, some of the BPMs opined that the state-level training was of a poor quality, as the trainers themselves did not seem to be aware of all concepts. Another complaint voiced was that trainers did not explain properly when BPMs had any queries; rather, they simply repeated themselves without addressing the query.

Although, ANMs and Staff Nurses—who are responsible for filling in the monthly formats in SCs and CHCs—have been given instructions on filling in forms at monthly meetings by BPMs, they have not been trained formally. Their misconception about different HMIS questions was clear during our field investigation. As a result, ANMs and Staff Nurses fail to understand the principles underlying HMIS data entry and often commit basic mistakes.

In Uttarakhand, the state government has translated monthly HMIS formats for SCs into Hindi. This is a welcome step as Hindi formats are more convenient to ANMs, who are often not very conversant in English. The problem was, however, poor quality of the photocopy of the forms, which often leads to wrong entries as row items are ineligible. This is a common complaint among ANMs from Sub-centre's of both districts, which could easily have been addressed by printing the forms at the state-level and charging ANMs on a cost basis.

Documentation

Given the issues of data quality in HMIS it is necessary to maintain proper documentation of the records submitted at each level. Although registers that form the core of the HMIS are generally maintained properly, HMIS monthly formats are hardly maintained in any facility. SCs or PHCs do

[7] Such training has been completed in June 2011.

not maintain copies of the monthly data submitted by them. One reason for this may be that SC forms are not used for HMIS data entry. It was reported in Rudraprayag district that Form 6,[8] circulated by the Govt. of Uttarakhand, to be submitted within 15th of each month was often used as the base for data entry. Form 6 is submitted on a separate date to the LHV by each sector under a CHC. She checks the data submitted on the spot and seeks clarifications. This data is subsequently used for data entry. In stark contrast, the HMIS forms are submitted by ANMs to LHVs, who forward it to the BPM without checking or seeking any clarifications. In fact, the ANMs generally leave after submitting the data, so that there is no scope to seek clarifications. In some cases, one of the ANM reported that she has not submitted HMIS form for several months prior to our visit whereas the BPM, who was also present during the interview, reported that HMIS forms were being received regularly from *all* the facilities.[9] Another unhealthy practice observed was the submission of monthly data by PHCs in Udham Singh Nagar on blank paper, or by phone—without using monthly formats.

Monitoring and Feedback of HMIS Data

HMIS data is supposed to be checked at several stages. For instance, ANMs submit monthly data to LHVs at PHCs, who forward it to the BPM at CHCs. The BPM is also supposed to check the data before uploading it. However, this is not happening in reality. For example, LHVs rarely check data. On inspection of HMIS forms at several facilities we found basic mistakes in the data submitted. However, the LHV had verified them without noting errors and inconsistencies. In one particular Block Primary Health Center the BPM was requested to identify errors in some of the HMIS forms submitted in earlier months. However, the BPM failed to identify any of the errors and was unaware of even basic terms like

[8] This form is used by the State Government to monitor progress with respect to the 20 Point Programme. When asked for information, the DPM claimed not to be aware about the form.

[9] The casual nature with which the HMIS forms are viewed may be seen from the fact that one ANM in Rudraprayag is notorious for filling in the forms when traveling to the CHC.

first trimester of pregnancy.[10] The DPM had also not sought clarification for many of the errors. This casts doubts on the extent to which HMIS data is being monitored at lower levels. In this context, the inability of respondents to recall instances of errors pointed out by the district HMIS officers or the BPM during our field visits is significant.[11]

Some discussion regarding HMIS data quality is undertaken at monthly meetings, where common errors are pointed out. However, the focus is more on data submitted in Form 6 and fulfillment of targets in indicators under the 20 Point Programme.

An indispensable step for the better performance of HMIS is to inculcate good reporting habits among ANMs. This is not an easy task. Generally, ANMs are aged above 40 years, were generally only Higher Secondary (Intermediate) qualified, were rigid in their attitudes and tended to look down upon BPMs because of the contractual nature of their post and low salary.[12] As a result, in several cases, ANMs were reluctant to change reporting practices even when their errors were pointed out to them. In fact, one BPM reported that he personally corrected the HMIS data when entering it using the DHIS software. Such detection is not always feasible. For instance, data on live births and number of children given birth dose of oral polio vaccine may not match. This is natural, as in Rudraprayag, a large number of the births are occurring in Srinangar District Hospital (in the adjacent district of Garhwal); mothers leave immediately after birth, often against medical advise, so that their children

[10] Examples of such errors were: data had been entered for PNC checkups even though no home deliveries had been reported, discrepancy between immunization and live births, and failure to note details of complicated pregnancies.

[11] For instance, the Staff Nurse attached to a CHC in Udham Singh Nagar reported that she had received feedback from the BPM about the inconsistency between DPT1 and OPV0 – a non-existent validity rule! On the other hand, though the BPM of another CHC in Rudraprayag was able to detect some errors, he had not checked the data submitted in HMIS forms by SCs under his jurisdiction. His justification was that he relied on data from Form 6 to fill in the consolidated data for his CHC.

[12] BPMs earn Rs.12,000 per month. In contrast, the monthly salary of ANMs were about Rs.30,000; LHVs earn about Rs.26,000 per month.

gets the vaccine in Rudraprayag. BPMs, however, assume that the first data (in this case, live birth) is correct and use it to 'rectify' the submitted data. Another instance of such errors is mismatch between ANC registration and JSY beneficiaries. In this case, also, the first entry (ANC registration) is assumed to be correct.

Monitoring and feedback is also supposed to be undertaken at the state level. Such supervision is cursory. Even when the State Health Mission seeks clarification on data-related issues, response to queries is slow. This is partly because both the district and facility staff is over burdened with work. Further, district or block staff may receive requests for data on some other aspect of NRHM on an urgent basis. As a result, response to clarifications may occur after the scheduled time for freezing HMIS data is over. This delays the process for committing HMIS data on the portal (see ff. 6). As a result HMIS data for 2010-11 in Uttarakhand is even now only in level 2 (data uploaded by district, but not committed) at the time of the survey (September 2011).

Although most ANMs and BPMs reported that they received feedback and queries about the HMIS data submitted by them to higher authorities, it is significant that few of them were able to report what such queries related to.

Physical Constraints to Data Uploading

During our field visits, BPMs complained about shortage of manpower. For instance, in Narayanpur BPHC has 17 SCs under it. Data for all these SCs have to be uploaded by the BPM himself in the absence of Data Entry Operators (DEOs). Although they are supposed to be dedicated to NRHM activities, in reality they are often multi-purpose workers typing letters, performing clerical jobs, and even paying telephone bills. BPMs, as well as ANMs, are also responsible for forwarding data on other schemes like *Rashtriya Swasthya Bima Yojana*. This is affecting data quality as sometimes BPMs are making wrong entries during data entry. For instance,

in Kashipur SDH, we observed a mismatch between C-section deliveries actually performed in May 2011 and the number entered in the HMIS.

As mentioned earlier, in some blocks we found BPMs were over-worked and served as multi-purpose workers. The low pay and contractual nature of their jobs is also affecting morale of BPMs. They often resort to absenteeism or do not perform the work properly. In some facilities, BPMs seemed to avoid their duties, shifting their responsibilities to other functionaries.

Another important problem is the lack of steady internet facilities. All BPMs complained of slow connectivity, which often broke down. Power supply too is not steady due to the heavy industrial demand for power. In several facilities in Udham Singh Nagar we found that lack of power at facility hinders data entering in facilty.

The problem is more serious in Rudraprayag, having a hilly terrain. The District HMIS Consultant reported that checking even emails was a problem. During our meeting with the CMO, Rudraprayag, in July 2011, there was no power for about two out of three hours. The BPM reported that there was no internet connectivity for the three days prior to our visit. Although data uploading is possible in the local office of National Informatics Centre (NIC), there are some problems. The office may not be accessible easily, or may be a distance from the facility. Further, the NIC office is also used by other Departments to upload data, so that a queue forms up, leading to delays.

Summary and Policy Recommendations

Ensuring that the state fulfils its obligation to protect human rights to health is a major challenge in India. In order to successfully meet this challenge, the authorities responsible for planning and monitoring service delivery at the Central and State level must receive regular feedback from the service providers and users. This can potentially be facilitated through

a well functioning HMIS. Recognizing this issue, the Health Ministry had introduced the HMIS on a grand scale as an integral part of the NRHM. Our study reveals that quality of the reported HMIS data remains a major issue that must be addressed for the HMIS to serve as a useful tool. Specifically, our experience during field visits show that the crux of the problem is at the grass root level.

The HMIS was introduced following a top-down approach, without adequately preparing the facility and block level staff for the critical role that they had to play in the system. This is very important in developing countries like India, where the level of education of health staff is low. ANMs and Lady Health Visitors—who are at the core of the HMIS—were not provided with any training. While Block Programme Managers were trained, the training was not consistent with their functions in HMIS, viz. monitoring and supervising, but prepared them for data entry. Further, the multiplicity of tasks that these functionaries have to undertake and uneasy working relations with ANMs do not motivate them to carry out their supervisory tasks effectively. As a result, errors are creeping in to the monthly data reported by facilities. When these data are compounded at the district and state level, they result in an information system that provides a faulty guide to assessing performance, resource allocation and target setting through District and State plans.

This brings us to the question, how can the HMIS be improved? Our analysis indicates some possible measures, which may be considered by policy makers.

Checking of HMIS data is a vital component of HMIS. Training modules of BPMs should, therefore, be redesigned to focus on detecting errors in data, possible reasons for such errors and how such errors can be eliminated. Since poor documentation is another constraint to monitoring HMIS data, all facilities—SCs in particular—should be instructed to maintain copies of data submitted by them as this will

facilitate checking of data. The feedback mechanism also needs to be overhauled. Currently, BPMs are correcting errors without sending them back to ANMs. Although this saves time, accuracy of data might be affected; further, this is not desirable in terms of accountability.

Most important, however, is to prepare the facility level staff and BPMs for their respective roles in HMIS. As mentioned previously, only BPMs have been trained in HMIS. However, most of the HMIS data is generated from the SCs, where such data is reported by ANMs and verified by LHVs. These people are neither trained, nor do they have the necessary aptitude for 'learning by doing'. In fact, their age, security of tenure and higher pay (relative to BPMs) make them resistant to suggestions. Training of ANMs and LHVs is essential to improve the quality of HMIS data. Such training should be followed by visits to randomly selected facilities to evaluate the extent to which the training has been understood by the facility staff. Forms for SCs, PHCs and CHCs should also be translated in Hindi/local language to facilitate easy understanding and use by ANMs.

To sum up, despite being the only data source in India at the facility-level and being available for every month, the potential utility of the HMIS in providing micro-level information for improving health care service delivery has remained largely unutilised because of the failure to prepare the grass root functionaries. Instead of rising to the challenge and realise the full potential of the HMIS by revamping it, surprisingly, the MoHFW suddenly lost interest in the HMIS towards the end of 2013 and began to focus on Plan Implementation Progress.

This resulted in a failure of the state to ensure one of the basic universal rights (viz. rights to health) to the rural population of India. Instead of utilising the HMIS as an tool to bring up micro-level health concerns of the rural population, thereby making the NRHM more community-oriented and effective in providing health services, the NRHM remained a centrally directed health programme catering to a broad category of needs identified by technocrats.

References

Government of India (2005) *National Rural Health Mission (2005-2012): Mission statement*. New Delhi: Ministry of Health & Family Welfare.

Government of India (2008) *Service providers' manual: Understanding Health Management Information Systems – Vol. I*. New Delhi: National Rural Health Mission, Ministry of Health & Family Welfare.

Government of India (2011) *High level expert group report on universal health coverage in India*. New Delhi: Planning Commission.

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Role of Safe Drinking Water and Sanitation in Improving Health Standards: A Human Right Policy-Framework Analysis

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Abstract

Safe water and sanitation is imperative to good health and wellbeing. There have been growing demands to recognize water and sanitation as a right. For the first time UN General Assembly Resolution recognised the right to water and sanitation in 2010. This historic declaration has obviously influenced a rights-based framework for water and sanitation policy of various national governments. Policy makers have increasingly specified water and sanitation as independent human rights. The current article analyses the importance of safe drinking water and sanitation for improving the health standards and outcomes. At the same time it critically analyses the water and sanitation situation and policies of India from a human rights-based framework.

Introduction

The UN General Assembly Resolution 2010 is a historic document as it specifies safe water and sanitation as an important entitlement of individual. For the first time, this UN Resolution formally recognises the right to water and sanitation and acknowledges that clean drinking water and sanitation are essential to the realisation of other human rights. The Resolution calls upon member States and international organisations to

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provide financial resources, help, capacity-building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all (UN Assembly Resolution 2010). Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life with human dignity. It is a prerequisite for the realization of other human rights (CESCR 2003: 1). The current article analyses the importance of safe drinking water and sanitation for improving health standards and role of drinking water, sanitation and hygiene (WASH) interventions for improving health outcomes.

Drinking Water and Sanitation Scenario: A Snapshot

Globally more than half the world's population, almost 4 billion people, now enjoy a piped water connection at their homes. But more than 700 million people still lack ready access to improved sources of drinking water. More than one third of the global population – some 2.5 billion people — do not use an improved sanitation facility, and of these 1 billion people still practice open defecation. In India, 792 million people are without access to improved sanitation. Globally, India continues to be the country with the highest number of people i.e. 597 million practising open defecation (WHO and UNICEF 2014: 6-21).

As per the Census of India (2011), 70.6 per cent of urban households use tap water for drinking, of which 62 per cent households get treated piped water while remaining 8.6 percent households do not get treated water. In rural India merely 30.8 per cent of households have access to tap water out of which 17.9 per cent households get treated piped water and 13 per cent households receive untreated pipe water. Urban populations tend to have better access to improved water supply and sanitation in comparison to their rural counterparts. However, there are also often striking intra-urban disparities in access to various basic services and facilities. Those living in low-income, informal or illegal settlements tend to have lower levels of access to an improved water supply. If we

analyze the census figures on location of source, availability of drinking water within the premises in rural India is 35 per cent and in urban India it is 71.2 percent. However within-the-premise access to improved water supply in slums is merely 56.73 (GOI 2012a).[1] The same gap is found in access to tap water as well. In urban India 71% households use tap water, 54% have access to drinking water source within the premises and 16% households walk 100 metres or more to collect water. Even though the 2011 Census data reveal that 74% of slum households use tap water (which is more than the overall urban households' access to tap water), only 46% of slums households have access to tap water within the premises. 28% of slum households have to walk 100 metres or more to collect tap water. Therefore, the connection of tap water at home is higher in non-slum households than in their slum counterparts (Satapathy 2014: 51). The table below represents main source of drinking water in rural, urban India as well as in the slums of urban India.

Table 1: Household by Main Source of Drinking Water and Location (in percentage)

Indicators	Total	Rural	Urban	Slum
Households main source of drinking water (in %)				
Household use tap water	43.5	30.8	70.6	74.00
Tap water from treated sources	32.0	17.9	62.0	65.3
Tap water from un-treated sources	11.6	13.0	8.6	8.7
Households use well water	11.0	13.3	6.2	3.02
Households use hand pump	33.5	43.6	11.9	12.67
Household use tube well/borehole	8.5	8.3	8.9	7.64
Location of source of drinking water				
Availability of drinking water within premises	46.6	35.0	71.2	56.73
Availability of drinking water near the premises	35.8	42.9	20.7	31.89
Availability of drinking water away from the premises	17.6	22.1	8.1	11.39

Source: Census of India, 2011, Houses Household Amenities and Assets

[1] Within the premises are assigned to the source located within the premises where households live, near the premises within a range of 100 meters from the premises in urban areas and within a distance of 500 meters in case of rural areas, away from premises if the water source was located beyond 100 meters from the premises in urban areas, and beyond 500 meters in rural areas (Census of India 2011).

Globally open defecation remains principally a rural phenomenon. As per census of India 2011, In India 69.3 % rural and 18.60 % of urban households do not have latrine facility within the premises, in slums it is 34 %. Households have no latrine within the premises, and therefore, either use public latrine or defecate in the open (GOI 2012a). Open defecation may be much more than the figure of access to latrine facility as all the members of households having toilets do not use them. Reasons for non-use include old practice of open defecation, lack of easy access to water, fear of filling of pits, in some cases cultural prejudices[2] etc.

Table 2: Households by Availability of Type of Latrine Facility, Census 2011 (in percentage)

Indicators	Total	Rural	Urban	Slum
Latrine facilities within the premises	46.9	30.7	81.4	66.01
Public latrine	3.2	1.9	6.0	15.09
Open	49.8	67.3	12.6	18.9

Source: Census of India, 2011, Houses Household Amenities and Assets

As per NSSO 69th round survey in 2012 in rural India 88.5 per cent households had improved source[3] of drinking water and 95.3 per cent in urban areas. 46.1 per cent households in rural India got drinking water within premises compared to 76.8 per cent households in urban India. 59.4 per cent and 8.8 per cent households in rural India and urban India respectively had no latrine facilities.[4] 31.9 per cent and 63.9 per cent households in rural India and urban India respectively had exclusive use of latrine facilities.[5] 38.8 per cent and 89.6 per cent households in rural

[2] For example, it is observed in some parts of rural Odisha one of the state in India, the use of same toilet by sister-in-law and the brother-in-law (a bride's husband's elder brother) is a taboo.

[3] Improved source of drinking water as per NSSO analysis include bottle water, piped water into dwellings, piped water to yard/plot, public tap/ stand post, tube well/bore hole, protected well, protected spring and rain water collection.

[4] Access to latrine defined in relation to the latrine that could be used by the majority of the household members, irrespective of whether it was being used or not.

[5] Exclusive use of latrine facility mean household's latrine facility was for its exclusive use and not shared with one or more households in the building.

and urban India respectively had access to improved source of toilet[6] (GOI 2013: 12-26). Census of India 2011 figure shows the shocking sanitation situation in India and 69th NSSO report on water sanitation and hygiene conditions reinforces that fact.

Access to Drinking Water and Sanitation: Bias in Data Assortment

Analysis of water and sanitation situation in India from various data sources reveals great degree of arbitrariness in data definition. For instance, the distance criterion used by Census of India for defining access to drinking water varies for urban and rural areas. The premises have been defined as building along with the land or common places attached to it. For the category of near the premises and away from the premises the assigned range of distance from the premises in rural and urban households differs. For near the premises the distance range is 100 meter in case of urban and 500 meters in case of rural. Such location specific differentiation in criterion shows the bias towards urban populace. Further there is no segregated data on access to water supply in three categories of slum-notified, recognized and identified slums, no data on seasonal variation in water supply, insufficient data on access by gender and differently able people. Experience says scattered settlements which are not recognized by Urban Local Bodies (ULBs) as slums do not get required pipe water connection, access to toilet and other sanitation facility like solid waste disposal and management system in their vicinity. In addition regarding drinking water supply both rural and urban areas consistently underperform in summer. Those who still lack access to water and sanitation tend to be poor and from marginalized groups. Moreover, improved WASH services have continued to be disproportionately available to more privileged populations.

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[6] Here improved source of latrine includes sources such as flush / pour – flush to : piped sewer system/ septic tank/ pit latrine, ventilated improved pit latrine, pit latrine with slab and compositing toilet.

Universal Access to Safe Water and Basic Sanitation as Human Rights

Unequal distribution of basic facilities of drinking water and sanitation resulted in uneven distribution of water borne diseases across the globe, even unevenness is found to be in the same country in different states and region. Usually cases of mortality and morbidity are high in least resource states and among poorest of population both in rural and urban areas. It is important to understand that pathogens do not distinguish between any class, caste or wealth groups; they can affect almost anybody if there is pathogen loads in the environment. So individual's behaviour, practices towards sanitation and hygiene affects others in the community. For such reasons universal coverage on saturation principle is quite important than sporadic individual effort and practices. Equitable access to safe water, improved sanitation and hygiene practices is an essential element of the right to water and sanitation. The concept of progressive realization inherent to the rights-based approach needs careful unbiased watch, intensive monitoring and advocacy with government at various levels for making them accountable to human rights obligations by universal access to WASH. Fundamental to the human rights framework is the concept of progressive realization. Governments cannot solve the drinking water and sanitation situation overnight, but they must make tangible progress towards the realization of this right. Human rights principles also define various characteristics against which the enjoyment of the right can be assessed, namely availability, safety, acceptability, accessibility, affordability, participation, non-discrimination and accountability. A distinctive feature of the human rights framework is the principle of non-discrimination. This requires looking beyond average attainment and disaggregating data sets to determine whether any sort of discrimination is occurring (WHO and UNICEF 2012: 35). Right to water and sanitation is hence basic and fundamental for bare human survival. Kofi Annan, former United Nations Secretary-General rightly mentioned 'Access to safe water is a fundamental human need and, therefore, a basic

human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity' (UN Information Service 2001: 1).

Access to Safe Water, Improved Sanitation and Impact on Health

Poor sanitation affects drinking water quality, and water is fundamental to ensuring good health and wellbeing. Disease burden from water, sanitation and hygiene is estimated to be four per cent of all deaths and 5.7 % of the total death burden (in DALY[7]) occurring worldwide taking into account diarrhoeal diseases, schistosomiasis, trachoma, ascriasis, trichuriasis and hookworm diseases (Prüss-Üstün Annette et al. 2002: 537). Over the years, evidence has been established that access to safe drinking water and basic sanitation facilities together with hygiene practices has significant and beneficial improvements on health standards. WASH interventions, including access to and use of safe drinking-water and sanitation, as well as promotion of key hygiene practices, provide health, economic and social benefits. An important share of the total burden of disease worldwide—around 10%—could be prevented by improvements related to drinking-water, sanitation, hygiene and water resource management (Prüss-Üstün *et al.* 2008: 7). The routes of pathogens to affect health via the medium of water are numerous and diverse. Five different routes of infection for water related diseases are distinguished waterborne diseases e.g. cholera, typhoid; water washed diseases e.g. trachoma; water-based diseases e.g. schistosomiasis; water related vector-borne diseases e.g. malaria, filariasis and dengue; and water-dispersed infections e.g. legionellosis (Hutton 2012: 27).While a complete analysis of safe water and improved sanitation services would consider pathogens

[7] The Disability Adjusted Life Year or DALY is a health gap measure that extends the concept of potential years of life lost due to premature death (PYLL) to include equivalent years of healthy life lost by virtue of being in states of poor health of disability. The DALY combines in one measure the time lived with disability and the time lost due to premature mortality. One DALY can be thought of as one lost year of healthy life and the burden of diseases as a measurement of the gap between current health status and an ideal situation where everyone lives into old age free of diseases and disability.

using all these pathways, the present article focuses predominantly on water-borne diseases. Furthermore, water-borne diseases are responsible for the greatest proportion of the direct-effect water and sanitation-related disease burden. In terms of burden of diseases, waterborne diseases consist mainly of infectious diarrhoea. Infectious diarrhoea includes cholera, salmonellosis, shigellosis, amoebiasis, and other protozoal and viral intestinal infections. These are transmitted by water, person-to-person contact, animal-to-human contact, and food borne, droplet and aerosol routes (*ibid*: 27).

Poor Sanitation Causing Faecally- Transmitted Infections

Very often water quality is compromised because of poor sanitation and improper hygiene practices. The most important contaminants from a public health perspective are faecal pathogens. The faecal contamination is monitored using E. coli as an indicator organism. Globally, India continues to be the country with the highest number of people - 597 million - practising open defecation (WHO and UNICEF 2014: 21). Such a gruesome situation of open defecation in India causes high faecal-oral-pathogen loads in the environment, by which people are widely exposed to faecally-transmitted infections (FTIs). The risk factor for FTI is due to inadequate access of water, lack of sanitation infrastructure, lack of water linked to inadequate hygiene, poor personal and environmental hygiene.

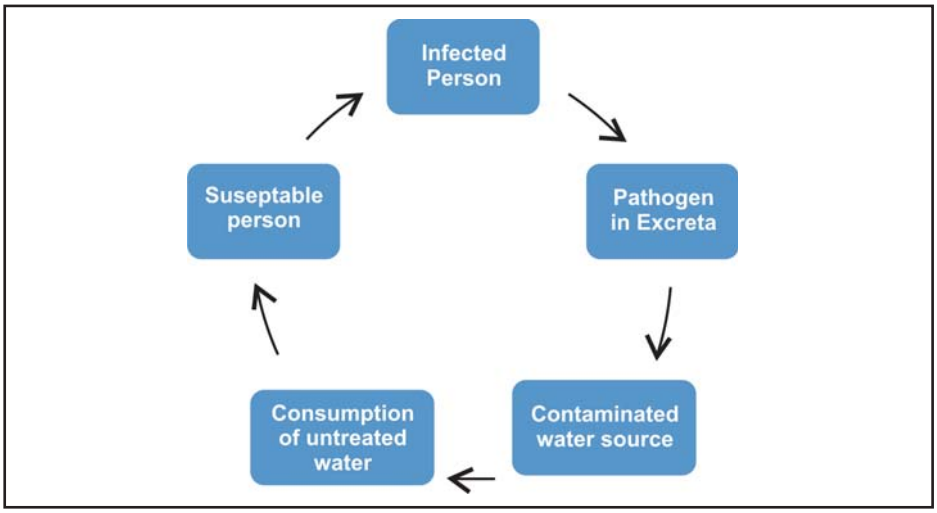
Diarrhoea is caused mainly by the ingestion of pathogens especially in unsafe drinking-water, in contaminated food or from unclean hands. The category diarrhoea includes some more severe diseases, such as cholera, typhoid and dysentery—all of which have related "faecal–oral" transmission pathways. An estimated 94% of the diarrhoeal burden of diseases is attributable to the environment and associated with risk factors such as unsafe drinking water, lack of sanitation and poor hygiene (Pruss-Ustun & Corvalan 2006: 9). Diarrhoea remains the second leading cause of death among children under five globally. Nearly one in five child deaths

– about 1.5 million each year –is due to diarrhoea. It kills more than AIDS, malaria and measles combined (UNICEF and WHO 2009:1). Of the 7.6 million deaths among children under age 5 in 2010 (including neonatal deaths), 18% were due to pneumonia and 11% to diarrhoea (Jennifer et al. 2012: 18). In India, diarrhoea caused the death of 0.21 million children younger than five years in 2010, accounting directly for 12.6% of child deaths (Liu *et al.* 2012: 5). It is estimated that around 37.7 million Indians are affected by waterborne diseases annually, 1.5 million children are estimated to die of diarrhoea alone and 73 million working days are lost due to waterborne disease each year (Khurana & Sen 2007: 2).

Faecal–Oral Transmission Pathways

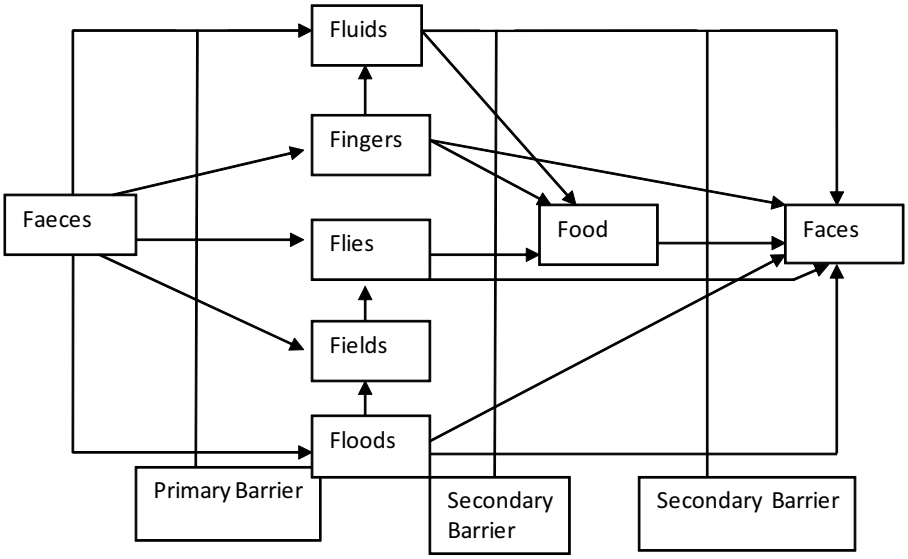
Infectious oral diseases are spread when a susceptible person ingests a pathogen that gives them diseases. The pathogen multiplies inside them and is subsequently found in their faeces. Excreta related water borne diseases can be transmitted by any route which allows faecal matter to enter the mouth; the faecal oral route. The movement of pathogens from the faeces of a sick person to the mouth of someone else that ingested can take many pathways. Some of them are direct and some others indirect. In 1958, Wagner and Lanoix identified the major means of transmission

Figure 1: Transmission route through contaminated drinking water



and produced what is known as 'f' chat (Reed 2012: 2). Diagram 1 illustrates the transmission route through contaminated drinking water. This diagram 2 illustrates the main pathways. They are easily memorised as they all begin with the letter 'f': fluid (drinking water), food, flies, field (crops and soil), floors, figures and flood (generally surface water).

Figure 2: 'F' Diagram showing main pathways of pathogen transmission



Adapted from factsheet 9, Developing Knowledge and Capacity in water and sanitation, WEDC, Jan 2012

Adapted from 'f' diagram, factsheet 9, Developing Knowledge and Capacity in water and sanitation, WEDC, Jan 2012

WASH Interventions as Barrier to "Faecal–Oral" Transmission Pathways

Safe water, improved sanitation and correct hygiene practices act as barriers that can stop the transmission of diseases. These can be primary barriers that prevents the initial contact with the faeces or secondary barrier which

prevents it being ingested by a new person. Protecting drinking water source by conducting sanitary inspection of drinking water sources[8] and water quality testing to screen bacteriological contamination in regular intervals, provisioning treated water to all, proper disposal of human waste[9] devoid of affecting the surface or ground water and environment, management of black water,[10] promotion of hand washing after defecation are some of WASH intervention that can act as the primary barriers. Safe transport of water from source to point of use, safe storage, treatment of water at household level, hand washing with soap before eating and handling food, covering of food, taking hot food, flies control, peeling and washing of food well before use, storing and cooking food carefully etc. acts as secondary barriers to "faecal oral" transmission pathways. Consumption of safe quality water along with proper personal and domestic hygiene practices ensures good health and does not account to a health hazard.

The root of water contamination also includes social elements, influenced by economic destitution, distress migration, and upheavals in living conditions. States need to ensure basic essentials for good living that is to guarantee adequate living standards to all. The essential entitlements include safe water to drink, living space, and basic sanitation. Many countries including India have geared public policy towards guaranteeing wide spread access to these basic ingredients of life. Such policy needs proper implementation of program by making it people centric than supply driven. Esrey's study suggests that for the high faecal-oral pathogen exposure group, a mean reduction in diarrhoea of 37.5% is possible following the introduction of improved water supply and

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[8] Sanitary Inspection is an on-site inspection of a water supply to identify actual and potential sources of contamination that pose potential danger to the health and well being of the consumers.

[9] Disposal of human waste means the entire faecal sludge management service chain, from the collection and transportation of sludge, treatment and the final end use or disposal of treated sludge.

[10] Blackwater is the mixture of urine, faeces and flushwater along with anal cleansing water (if water is used for cleansing) and/or dry cleansing materials. Blackwater contains the pathogens of faeces and the nutrients of urine that are diluted in the flush water.

sanitation in developing country environment (Pruss- Ustun 2004: 1322). The basis of universal provisioning such access to services needs to be equity and entitlement.

Household Water Treatment and Safe Storage an Essential WASH Intervention

In-house contamination of drinking water is a constant problem in developing countries like India. As per NSS report 69th round in 2012, 32.3 per cent and 54.4 per cent of households in rural and urban India respectively had treated water[11] by any method before drinking. At rural areas Gujarat had the highest 85.4 per cent, and in urban Kerala 90.1 per cent of households treat water before drinking. At the same time, in states like Uttar Pradesh 1.7 per cent, Bihar 2.2 per cent and Haryana 6.6 per cent households of rural area treat water before use. Similarly, in urban area States like Bihar with 11.9, Delhi with 44.1, Punjab with 31 and Odisha, 46.9 per cent households treat water before consumption (GOI 2013: 17-18). The treatment of water is found to be occasional and for specific targeted members of house. Usually water is boiled to feed babies and for patient with diarrhoea, beyond these occasions water is mostly not treated before use.

The treatment of drinking water at household level before its consumption acts as a barrier for occurrence of diseases. Household water treatment and safe storage popularly known as point-of-use approach towards safe drinking water is a preventive health intervention that requires individuals to use water treatment methods at household level - correctly and consistently – for water safety. Although home-based water treatment improved the quality of water immediately, the quality frequently worsened again in the drinking cups, thereby reflecting a recontamination just before drinking (Rufener *et al.* 2010: 39). In this context it is important to practice

[11] Treatment of water can be done through boiling, filtration, by using chemicals, by using electric purification or by any other method.

hygiene while handling water in each point of potential contamination path way. Hygiene practices include cleaning the container used for transportation from water collection point to household storage, cleaning of drinking vessels such as cups, glass and mug before its use for water consumption and handling of water with clean hand. Point of use water treatment along with safe storage and proper handling of water minimise the contamination at household.

Protect, Prevent and Treat Framework for Diarrhoea Reduction

Global Action Plan for Pneumonia and Diarrhoea (GAPPD) by 2025 envisions for three types of interventions such as protection, prevention and treatment for controlling diarrhoea for the age group of children less than 5 years (WHO and UNICEF 2013 : 6 - 7). Protection is by establishing and promoting good health practices. Prevention is from falling ill by ensuring universal access to basic safe drinking water in home and health care institutions, universal access to adequate sanitation in homes and health care institutions and its use, hand washing practice with soap at critical time[12], coverage of immunisation, and a healthy environment. Treatment is to provide appropriate treatment to those who fall ill from

Figure 3: Protect, Prevent and Treat Framework for reducing diarohea, morbidity and mortality

Source: Adapted from the Integrated Global Action Plan for Pneumonia and Diarrhoea (GAPPD)

[12] Critical time implies hand washing practice before eating, after defecation and before handling food.

diarrhoea. Such action requires greater coordination between ministries responsible for providing health services and ministries responsible for water supply, sanitation, education, nutrition and environment. An integrated framework of protection, prevention and treatment for diarrhoea reduction is specified in figure 3 for effective intervention.

Integrated WASH Intervention in Nutrition Programs and Child Health

It is accepted that WASH and nutrition programs are both necessary to achieve improved health outcomes. Correspondingly nutrition interventions neglecting safe water, sanitation and hygiene will not yield good result. Nutritional achievements may be strongly influenced by the provision of and command over certain crucial non-food inputs such as health care, basic education, clean drinking water, or sanitation facilities. It would, therefore, be a mistake to relate nutritional status to food input only (Sen & Dreze 1999: 44). Dean Spears in his analysis of 140 demographic and health surveys has found that the height of Indian children correlates with their and their neighbour's access to toilets, and that open defecation accounts for much of the access stunting in India (Spears 2012: 29). Causes of death since Jan 1992 were recorded in 1995 in all the Anganwadi Centres in urban Lucknow. Beyond neonatal period, pneumonia (23.4%), diarrhoeal disease (20.9%), malnutrition and anaemia (11.4%) formed major cause of death and disease burden (Awasthi & Agarwal 2003: 1146). Childhood underweight causes about 35% of all deaths of children under the age of five years worldwide. An estimated 50% of this underweight or malnutrition is associated with repeated diarrhoea or intestinal nematode infections as a result of unsafe water, inadequate sanitation or insufficient hygiene. The total number of deaths caused directly and indirectly by malnutrition induced by unsafe water, inadequate sanitation and insufficient hygiene is therefore 0.86 million deaths per year in children under five years of age. (Pruss – Ustun *et al.* 2008: 7)

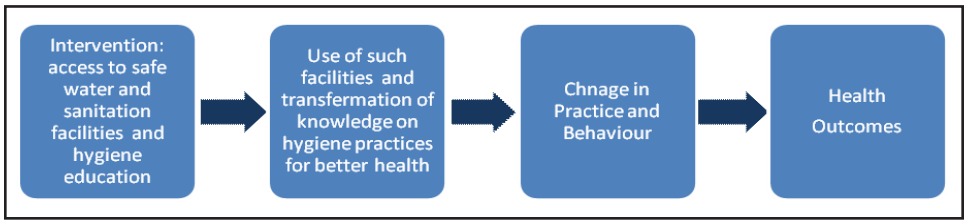
There are growing evidences that WASH interventions are crucial to child development. Research on the effect of toilet installed in India's national Total Sanitation Campaign (Spears Dean 2012: 29) has found reduced stunting in the districts where the campaign was implemented comparable with average impact of other health and nutritional programmes. A meta-analysis confirms the conclusion that the three most effective interventions to reduce diarrhoea morbidity in children under 5 are hand washing with soap (37%), improved sanitation (34%) and point of use water treatment (29%). (Waddington 2009: 27-29) It is important to prioritise nutrition interventions in WASH programming and vice versa to reduce morbidity and mortality from diarrhoea and other enteric infections. Sanitation and hygiene have been a professional blind spot for most of those concerned with child under nutrition (Chamber & Medeazza 2013: 15). The importance of sanitation and hygiene as the persistent cause of under nutrition needs to be recognised by policy makers and other professionals working in water, sanitation, nutrition and health sector and accordingly there is a need of transformation of policy, program and practice to mainstream WASH intervention in health and nutrition.

WASH Interventions and Good Health: Establishing a Causal Linkage

WASH interventions require focus on both access to basic services and persuasion for behaviour change. These two desired focus are popularly known as hard ware and software activity respectively in WASH sector. Access to safe water, improved sanitation along with mobilisation for the use, adoption of right hygiene practices would help in transformation of knowledge into practice to achieve greater health outcomes. In countries like India open defecation has been a long practice. Mobilisation for changing the age old practice of open defecation is of prime importance to overcome this state. It is consistently important to address the supply side along with demand generation for WASH services and practices. Supply chain management may include the availability of raw materials

for WASH facilities[13], facility for water testing,[14] water treatment options,[15] knowledge and skill at community for operation maintenance of the available resources[16] etc. Such an inclusive WASH intervention on saturation principles surely yields better results. The call to action on sanitation issued by the Deputy Secretary-General of the United Nations in March 2013 aims to focus on improving hygiene, changing social norms, better managing human waste and waste-water, and by 2025, completely eliminating the practice of open defecation, which perpetuates the cycle of disease and entrenched poverty. WHO underscores the objectives of the campaign and also highlights the need to go beyond ending open defecation to ensure universal access to sanitation and strengthening its activities in waste-water and excreta management and reuse. Interventions sans equity focus may exacerbate inequality by failing to reach the most disadvantaged groups. Ending these gaps requires explicit consideration of those who are being left behind. Diagram 4 shows the various linkages between WASH intervention and its ultimate objective of improved health and well being. The key task is to provide access to improved sanitation and safe water. This must be matched with simultaneous effort in hygiene education at school and other levels.

Figure 4: Flow chart showing WASH intervention in improving good health and well being



[13] It may be toilet pans, for pour flush leach pit latrine squatting plates, u trap providing 20 mm water seal, bricks, cement rings, cement, wash basins etc.

[14] Water testing labs, water testing field test kits etc.

[15] Availability of water filter, chlorine tablets for household level use

[16] Knowledge on safe water, improved sanitation, correct hygiene practices, linkage of WASH with health outcomes, house hold water treatment method, conduction of sanitary survey, minimum knowledge and skill of operation and maintenance of drinking water sources, understanding of factors that affect the contamination of water source etc. This also includes the availability of skilled masons and labourers for installation of toilets. Government front line workers of various departments, local civil society organisations, non-government organisation may help community in transferring the knowledge and skill to people in their respective locality.

Economic Impacts of Sanitation on Health and Poverty

Lack of access to improved sanitation goes hand in hand with poverty. According to the estimate of WSP the Economic Impacts of Inadequate Sanitation in India the total annual economic impact of inadequate sanitation in India in 2006 is estimated to be a loss of 2.4 trillion ($53.8 billion). In purchasing power parity (PPP) terms, the adverse economic impact of inadequate sanitation in India was $161 billion, or $144 per person. These economic impacts were the equivalent of about 6.4 percent of India's gross domestic product (GDP) in 2006. The health-related economic impact of inadequate sanitation was 1.75 trillion ($38.5 billion), which was 72 percent of the total impact (WSP 2011: 1). According to the call to action on sanitation issued by the Deputy Secretary-General of the United Nations in March 2013, open defecation perpetuates the vicious cycle of disease and poverty and is an affront to personal dignity. Those countries where open defecation is most widely practised have the highest numbers of deaths of children under the age of five, as well as high levels of under nutrition, high levels of poverty and large disparities between the rich and poor. There are also strong gender impacts. Lack of safe, private toilets makes women and girls vulnerable to violence and is an impediment to girls' education. (UN Deputy Secretary General 2013: 1)

Policy Framework on Right-Based Equitable Approach for Accessing Water and Sanitation in India

Water is a natural resource indispensable for human being of each category women, men and children for leading a healthy life. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements (CESCR 2003: 1). Adequate sanitation at the same time is a prerequisite for leading a life in dignity. Consequently, there is an emerging view to treat water and sanitation

potentially as a twinned right. This right demands access to sanitation facilities within, or in the immediate vicinity, of each household, educational institution, workplace and public places, and which are in a secure location. Further, it holds that sanitation must be safe, adequate and conducive to the protection of public health and the environment and address the needs of different groups. In this context, there have been consistent efforts on part of the state in India to ensure universal access to water as well as sanitation through the preceding decades, although progress on provisioning treated water to masses needs improvement and in sanitation front the advancement has been abysmally low.

Policy Environment on Drinking Water and Sanitation

Article 21 of the Indian Constitution guarantees the right to protection of life, within the scope of which right to safe drinking water is recognized. There have been the evolution of policy environment at promoting water supply and sanitation coverage for all in India but there is a need to focus on effective policy implementation. In 1987 India adopted its first water policy. The policy accorded top priority to drinking water. This National Water Policy recognized the provision of adequate safe drinking water facilities as one of the priority areas for action. The new National Water Policy 2012 continues to recognise the right to water and sanitation and also affirms that the Central, State and Local bodies must ensure a minimum quantity of potable water, available within easy reach of the household, for essential health and hygiene to all citizens. Access to safe and clean drinking water and sanitation should be regarded as a right to life essential to the full enjoyment of life and all other human rights. As such, water for such human needs should have a pre-emptive priority over all other uses (GOI 2012b: 3). National Health Policy of 2002, drafted by the Ministry of Health and Family Welfare, maintains that the attainment of improved health levels would be dependent on population stabilization, efforts from other areas of the social sectors such as improved drinking water supply, basic sanitation, and minimum nutrition. National Policy

for the Empowerment of Women, 2001 of Department of Women and Child Development, Ministry of Human Resource Department states that special attention will be given to the needs of women in the provision of safe drinking water, sewage disposal, toilet facilities and sanitation within accessible reach of households, in rural areas and urban slums. National Urban Sanitation Policy, 2008 of Ministry of Urban Development envisions all Indian cities and towns become totally sanitized, healthy and liveable and basic sanitation should be de-linked from the issues of land tenure (Saxena & Satapathy 2013: 3).

For translating the policy guidelines into action, a number of programs and schemes have been implemented on drinking water and sanitation. However, the desired results are yet to be achieved. Some of the national drinking water and sanitation schemes and programs that have been implemented in rural India include Accelerated Rural Water Supply Program (ARWSP: 1972-73), National Rural Drinking Water Program (NRDWP: 2009), Central Rural Sanitation Program (CRSP: 1986), Total Sanitation Campaign (TSC, 1999), Bharat Nirmal Abhiyan (NBA, 2012) and the urban counterpart programs specific to drinking water and sanitation or integrated with other urban housing, infrastructure development program includes Accelerated Urban Water Supply Programme (AUWSP, 1993-94), Integrated Development of Small and Medium Towns (IDSMT, 1979-80) Urban Infrastructure and Governance (UIG 2005-6), Urban Infrastructure Development Scheme for Small and Medium Towns (UIDSSMT 2005-6), Integrated Low Cost Sanitation (ILCS, 1980-81), Rajiv Awas Yojana (RAY, 2009) etc. Although India is poised to meet its Millennium Development Goal for providing access to safe drinking water, there remains a worrying discrepancy in access between urban and rural areas, between urban poor and non-poor and a long way to go to achieve the sanitation target.

Recognition of water and sanitation as a human right is seen as an important stepping stone in the endeavour to bring about sustainable

development in general and universal access to water and sanitation in particular. Of course, recognition as a human right does clarify the role of States in ensuring provision of water and sanitation, help set standards that can be monitored, for which they can be held accountable, and prioritize access for those currently without access, particularly the vulnerable and marginalized (Singh 2013: 944). Moreover the rights and duties are two sides of the same coin. People, the right holders, have to be duty bearers to achieve water security and protect their environment for good health and well being by adopting good sanitary practices.

Note

The views expressed herein are those of the author and do not necessarily reflect the views of Health of Urban Poor program implemented by Population Foundation of India or USAID.

References

1. CESCR. 2003 Jan 20. Committee on Economic, Social and Cultural Rights*; General Comment 15*; *The right to water (Arts. 11 and 12 of the Covenant)*. adopted at Twenty-ninth session, UN Geneva. http://www1.umn.edu/humanrts/gencomm/escgencom15.htm dated 14.09.14.
2. Chamber, Robert and Medeazza , Gregor Von. 2013. 'Sanitation and Stunting in India Undernutrition's Blind Spot'. *Economic and Political Weekly*. Vol XLVIII. June 22, pp. 15-18.
3. Prüss-Üstün, Annette, Kay, David, Fewtrell, Lorna and Bartram, Jamie. 2004. 'Unsafe water, sanitation and hygiene'. In Majid Ezzati, Alan D. Lopez, Anthony Rodgers and Christopher J.L. Murray (eds). *Comparative Quantification of Health Risks Global and Regional Burden of Disease: Attributable to Selected Major Risk Factors*; Volume 1. 1321-1352; Geneva: WHO.
4. Government of India (GOI). 2012a. *Census of India 2011, Houses, Household Amenities and Assets, Delhi: Ministry of Home Affairs.*
5. GOI; 2012b; Ministry of Water Resource; *Draft National Water Policy.*
6. GOI. 2013; NSS 69th round(July 2012- Dec 2012). *Key indicators of drinking water, sanitation, hygiene and housing condition*; Ministry of Statistics & Program Implementation. National Sample Survey Office.

7. Hutton, Guy. 2012. *'Global costs and benefits of drinking-water supply and sanitation interventions to reach the MDG target and universal coverage'*; Geneva; WHO.

8. Jennifer, Requijo, Jennifer Bryce, Cesar Victora. 2012. *Countdown to 2015, Maternal, New born & Child Survival : Building a Future for Women and Children The 2012 Report*, Washington DC, WHO and UNICEF.

9. Khurana Indira and Sen Romit; 2007; *Drinking Water Quality in Rural India: Issues and Approaches*, New Delhi, Water Aid.

10. Liu, Li Johnson, Hope, L. Cousens, Simon, Perin Jamie, Scot, Susana, Lawn, Joy E., Rudan, Igor, Campbell, Harry, Cibulskis, Richard, Li, Mengying, Mathers, Colin, Black, Robert E. 2012; 11th May 2012; 'Global, Regional, and National Causes of Child Mortality: An Updated Systematic Analysis for 2010 with Time Trends since 2000'. *Lancet*, *published online www.thelancet.com*, pp. 1-11.

11. Pruss-Ustun, A. & Corvalan, C.; 2006. *Preventing disease through healthy environments: towards an estimate of the environmental burden of diseases*. Geneva. The World Health Organisation.

12. Prüss-Üstün Annette, Bos Robert, Gore Fiona, Bartram Jamie; 2008; *'Safer water, better health: Costs, benefits and sustainability of intervention to protect and promote health'*; Geneva; World Health Organisation.

13. Prüss Annette, Kay David, Fewtrell Lorna, and Bartram Jamie; May 2002 'Estimating the Burden of Disease from Water, Sanitation, and Hygiene at a Global Level'; *Environmental Health Perspective*; Volume 110, number 5, pg.537-542.

14. Read Brain; 2012; *Preventing the transmission of faecal-oral diseases*; fact sheet 9; Loughbrough University, UK, Developing knowledge and capacity in water and sanitation; WEDC.

15. Rufener S., Mausezahl D, Mosier HJ, Weingartner R, Feb 2010, *Journal of Health Population and Nutrition*, 'Quality of Drinking – water at source and point of consumption – Drinking cup As a High Potential Reconstruction Risk : A field Study in Bolivia', Volume 28, Number 1, pp. 34-41

16. Satapathy Kabi Biraja. June 14. Safe drinking water in slums from water coverage to water quality. *Economic and Political Weekly* Vol. XLIX, No 24, Mumbai pp. 50-55

17. Saxena Shipra and Satapathy Kabi Biraja; 21st March 2013; 'Urban India's deprived lot'; *Down to earth* (web special), pp. 1-4 http://www.downtoearth.org.in/content/urban-indias-deprived-lot dated 13.09.14.

18. Sen Amarya & Omnibus Jean Dreze; 1999; OXFORD University Press, Poverty and Famines pp: 48-49, Hunger and public action, p. 44.

19. Singh, Nandita. 2013; *'Translating human rights to water and sanitation into reality: a practical framework for analysis'*; water policy (15), IWA publishing, 943-960

20. Shally Awasthi and Siddhartha Agarwal . Dec. 2003. 'Determinants of Childhood Mortality and Morbidity in Urban Slums in India'. *Indian Pediatrics* Vol.40, 1145-1161

21. Spears, Dean. 2012; *'How much international variation in child height can sanitation explain?'*; Rice working paper, 10 December 2012, pp. 1-50.

22. UN Deputy Secretary General's Call to Action on Sanitation; March 2013. http://www.un.org/millenniumgoals/pdf/DSG%20sanitation%20two-pager%20FINAL.pdf dated 15.09.14.

23. UN General Assembly Resolution; (A/RES/64/292), July 2010. http://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_milestones.pdf dated 14.09.14.

24. UNICEF and WHO; 2012; *Progress on Drinking Water and Sanitation 2012 update*; United States of America.

25. UNICEF and WHO;2009; *Diarrhoea : Why children are still dying and what can be done* ; UNICEF(New York), WHO (Switzerland).

26. United Nations Information Service; March 13, 2001; '*UN Secretary-General's Message on World Water Day'*. Available at http://www.unis.unvienna.org/unis/pressrels/2001/sgsm7738.html. dated 11.09.14.

27. Waddington, Hugh, Birte Snilstveit, Howard White and Lorna Fewtrell . 2009. *Water, Sanitation and Hygiene Interventions to Combat Childhood Diarrhoea in Developing Countries*, Synthetic Review 001 (Washington DC: 3ie).

28. WHO and UNICEF; 2014; *Progress on drinking water and sanitation 2014 updates*; Switzerland.

29. WHO and UNICEF.2013; 'Ending Preventive Child Death from Pneumonia and diarrhoea by 2025: The integrated Global Action Plan for Pneumonia and Diarrhoea (GAPPD)'. Geneva.

30. WSP 2011. Economic Impact of Inadequate Sanitation in India (Washington DC: Water and Sanitation Program, World Bank) New Delhi.

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UNORGANIZED SECTOR AND RIGHTS OF WORKERS

Organising for Social Security: From Grassroots Action to Legislation, Policies and Effective Implementation

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The world of work has changed significantly over the last two decades. India has always had a large informal or self-employed worker's segment in its workforce, but it has now grown to about 93 per cent or over 43 Crore workers. As far as the women's workforce is concerned, over 94 per cent are informal workers, predominantly in the agriculture sector.

These workers have no fixed employer-employee relationships, if at all. A large segment of them are purely self-employed like small and marginal farmers, streetvendors, small producers and artisans. They are left to eke out a living through one or more economic activities. Till recently, these workers had almost no access to social security, including health care, child care, insurance, pension, housing with water and sanitation, and other basic amenities. With the introduction of the Rashtriya Swasthya Bima Yojana (RSBY), pension programmes, some amount of maternity benefits and protection, and now the latest Jan Dhan Yojana, informal workers have begun to obtain some basic social security coverage. How adequate this coverage is and importantly, whether it actually reaches the workers, and especially women workers, continue to be important questions and ones that are fraught with challenges.

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Women in the informal economy are the poorest and most vulnerable of workers. In fact, there is an overlap between informality, gender and poverty, with women more likely to be engaged in informal work arrangements, undertaking work that is poorly paid, and often hazardous, and that men will not do. This work includes construction work and manual labour, including in the *Mahatma Gandhi National Rural Employment Guarantee Scheme* (MGNREGS), applying pesticides in fields as farmers or agricultural labourers, making bricks, handling chemicals and sorting waste materials which are often toxic. With no sick leave, maternity leave, health, life or accident insurance, and even child care for their young children, women workers of India toil in difficult conditions and often, in exploitative work arrangements.

Yet it is these women, along with their men-folk also engaged in the informal economy, who are contributing significantly to India's GDP and ongoing development. In fact more than 50 per cent of our country's GDP comes from the informal economy. Despite being active economic actors, informal workers remain poor, unrecognised and vulnerable. They do not as yet have minimum social security and social protection against the many risks that they face in their lives.

Women are the most vulnerable, not only due to their economic status as informal workers, but also their social, cultural, educational, health and nutritional status, all of which are still generally low and lower than that of men. They also have additional roles and responsibilities as mothers, home-makers and care-givers for their children and elderly family members. Given the division of labour in India, and their productive and reproductive roles, it is they who undertake most of the work, often called the "double" or even "triple burden".

Given this scenario and the challenges faced by workers, especially women, several organizations and unions like the *Self-Employed Women's Association*, SEWA, were formed in the 1970s and even later, to organize informal or unorganised workers for their rights, including basic social

security and social protection. One of the major issues faced by such organizations when they began organizing workers, especially informal women workers, was the lack of statutory social protection. Given this gap, and that of appropriate policies, these organizations began inventing and developing their own services and social protections systems. It was both a response to the needs of their members, all unorganized or informal workers, and also a creative solution to the lack of laws and policies at that time.

Social Security at SEWA

The Self-Employed Women's Association, SEWA, is a national union of almost 20 lakh women workers in 13 States across the country. Its founder, Ela Bhatt, a labour organizer and lawyer, was moved to act and organize women into their own union, the first of its kind in India. She and a small group of streetvendors, garment and bidi workers set up SEWA in 1972. It was formed to address the many issues of exploitation and vulnerability mentioned above.

One of the earliest demands of SEWA's members was for child care for their children, followed soon after by health care. They explained that they had to carry their children to work or leave them with older siblings, who then could not attend school. There was no child care, forty years ago, to take care of their young children while they were working. SEWA staff members often saw young children left alone while their mothers were away at work. Often there were accidents like when a worker had tied a sari between two trees as a cradle for her baby, who then fell out and was badly injured, while she worked in the fields. Still others administered a little opium to the infant or young child, to make her sleep while they harvested their crops.

SEWA's earliest members also explained that if they or any of their family members were sick, they had to lose their daily wages and also incur expenditures for health care. They asked for some basic preventive

health information and later for a full-fledged primary health care programme that would take care of their basic health needs. The child care and health programmes developed then led later to ones for more comprehensive social security, including insurance, pension and housing.

Grassroot Action for Social Security: Case Study of SEWA's Initiatives

As SEWA is one of the largest unions of unorganized workers and has one of the most extensive experiences of developing social protection for informal workers, some of its efforts to develop social security and social protection programmes at the grassroot level will be outlined here. As mentioned above, many of these were developed out of necessity. SEWA saw the difficulties and needs faced by its members and at first, tried to gain access to the formal systems in banking, insurance and health. Sometimes, like in the case of the public health system, SEWA was able to obtain some measure of access and the required services, and actively collaborated with the government's system to strengthen access. Other times, our members were excluded for legal and policy reasons. The biggest barrier was the conceptual gap—policy-makers and administrators did not understand the nature and scope of the informal economy and the reality of informal workers, especially women, forty years ago. Fortunately, this has changes quite significantly, with appropriate laws and policies in place, as we shall see later.

One of the earliest social security efforts of SEWA was setting up a Women's Cooperative Bank for its members. It was to serve the twin purposes of financial inclusion, especially preventing crippling debt, and also through providing a safe haven for their savings, which in turn, was their security in times of need or crisis like sickness. We soon learned that women took loans for sickness, death of spouse or close family member, injury or other risks that they faced. Hence, whatever they earned and saved was used up during a family crisis, and they had to mortgage their

land and other assets, borrow from family and others, and often ended up with huge debts. We also learned that these risks were frequent, and generally were faced by the poorest of women—the widows and female-headed households. Yet there was no insurance for these women. When we approached the insurance companies, all nationalized at that time, they said our members were "bad risk" and not insurable.

Faced with exclusion from services like insurance, limited or unavailable child care and health care, SEWA had to develop its own alternatives. The first grassroots action we took was to set up crèches for the infants and young children of our members, and in their own neighbourhoods. The crèches were run according to the working hours of the parents, especially the mothers, and by local women trained by SEWA to be crèche workers. They were the neighbours, sisters and friends of our members, who were, therefore, comfortable with leaving their children in their charge. Further, from the very first day, women contributed foodgrains, fruit or vegetables and later on fees towards the running of these crèches.

After a few years of running 25 creches, SEWA members decided to form a cooperative of crèche teachers and mothers, with each contributing Rs 100 as shares, thereby creating a small child care fund within the cooperative. The cooperative, called *Sangini*, has now been working for almost 30 years and is rated as an 'A' Grade organization by the cooperative department.

The lessons learned from running their own crèches, and in a sustainable way, have been shared over the years with other NGOs, unions and the government, and have contributed to policy and programmatic changes in the *Integrated Child Development Scheme* (ICDS), making it more responsive to both the needs of young children for holistic early childhood care, and also to working women's hours of work.

Similarly, while curative care was provided by the government's public health system, in the absence of primary health care with a preventive focus at their very door-steps, and health insurance for hospitalizations, SEWA created its own health cooperative in 1990, and a few years later, in 1992, began its microinsurance services which developed into India's first national insurance cooperative called "VimoSEWA". Both the health and insurance cooperatives are run and owned by women workers of the informal economy. In both of these cooperatives, we first developed services in close consultation with and then actually implemented by the women workers' themselves, as trained health workers and insurance promoters. The training and capacity-building is undertaken by the cooperatives, and the women themselves volunteer for these services as providers.

When the health cooperative, *Lok Swasthya Mandli* (LSM), learned that medicines resulted in heavy out of pocket expenditures, it developed a chain of low cost pharmacies that made medicines available to all at a much-reduced rate. Similarly, when women needed cashless health insurance, VimoSEWA developed a system which was later used in developing the RSBY all over India. Thus, the grassroot-level alternatives developed by SEWA, in response to the absence of social security and social protection, were shared with government and others to develop similar nation-wide programmes or to make changes in existing ones, such that they were more suitable for poor working women and their families.

Organising Campaigns for Legislation

Being a trade union, SEWA has always worked for the rights of its members, in addition to setting up alternative organizations and systems as described above. We have seen that when enshrined in the law, workers can and do get their entitlements when they organize and come together, as in the case of our members who are Bidi and Tobacco Workers. These

workers have availed of the Beedi and Cigar Worker's Act, 1966 to organize and unite, liaise with government labour authorities for their entitlements and then further organize beedi and tobacco workers for better working conditions. When the workers obtain concrete benefits, and as a right, they are motivated to organize further, to build up their union and to work with the labour department, not only to obtain entitlements, but also to ensure that they reach the poorest and most vulnerable in an effective and transparent manner. The law sets standards and provides entitlements, and when these actually reach the workers, they become forward-looking and optimistic about their future and that of their families.

The experiences with implementing the Beedi and Cigar Act prompted unions like SEWA to examine legislation for other groups of workers, like construction workers and streetvendors.The campaign for construction workers rights and a law ended with a positive outcome—a national law with construction workers' boards to be set up in each state. In many states, the boards are established but this has not resulted in concrete benefits. The boards have accumulated crores of rupees from employers, as per the Act, but in several states the funds have not been spent on welfare measures, as stipulated in the law. Today construction workers are organising and raising their voices in many states like Madhya Pradesh, Tamil Nadu, Kerala and Gujarat to ensure implementation. They are actively participating in the boards and helping to devise social security schemes.

The struggles of streetvendors all over the country are now well-known. After city-by-city and town-by-town approaches yielded limited benefits, the *National Association of Streetvendors of India*, NASVI, was established with the support of organizations working with streetvendors, including SEWA. NASVI, SEWA and others formulated the *Streetvendors Bill* which was eventually passed by Parliament in early 2014. Now as in the case of the Construction Workers' Act, streetvendors will have to work hard for the actual implementation of the Act, the setting up of

town-vending committees for space to sell their goods, and an end to the harassment they face every day.

All of these initiatives and struggles informed the campaign for a law for social security for the informal sector or unorganized sector workers. There were some national level policy initiatives which gave momentum to the campaign. First, the Second Labour Commission was formed in which SEWA's Founder Ela Bhatt was a member. The Commission recommended an umbrella legislation for the social security of all informal workers. Second, the late Dr Arjun Sengupta Committee on the Unorganised Sector recommended a law as well for minimum social protection of all informal or unorganized workers.

Meanwhile, several national and local unions, NGOs and concerned researchers and lawyers stepped up the grassroots campaign for a law that would provide social protection and social security for unorganized sector workers. SEWA was one such union that was actively mobilising women workers across the country towards obtaining legislation.The National Advisory Council (NAC) also took up the issue and recommended a law. While there were some differences in approach, all were united in pressing for legislation to address the social security needs of the 43 Crore workers of the informal economy or unorganized sector. Workers from several states gathered at Jantar Mantar, marched towards Parliament which was debating the Bill, met with and lobbied with individual Parliamentarians from all the political parties, and even came on motor-cycles from Maharashtra to press the point. Parliamentarians discussed with streetvendors, home-based workers and domestic workers on what they would like in the Bill, as never before.

There was jubilation when the Bill became an Act in 2008, though the provisions did not fully reflect the demands of the workers. One of the weakest aspects of the Act is the implementation mechanism. The Act has suggested the creation of schemes for insurance and pension,

and these indeed have been done—the RSBY, the *Janshree Bima Yojana* (JBY) and the *Swavalamban Pension Scheme*. However, the Act has not adequately spelled out the implementation measures which the Campaign led by unions like SEWA had clearly spelled out. What was suggested was Workers Facilitation Centres (WFCs) to be run by unions and NGOs which would register workers for social security, inform them of their entitlements and ensure that they reach. Without education and this kind of hand-holding through WFCs, it will not be possible for the benefits of legislation to reach the workers. This realization has come from years of practical experiences from unions and NGOs. Not only does the delivery mechanism be at workers' door-steps, but also they need the information and support to navigate the system, stand up for their rights when officials delay or ask for bribes. They also need to register their complaints and grievances at sites near their homes and workplaces.

Some of these important gaps in the law vis-à-vis implementation are seen in the way in which the current schemes are implemented. Even the RSBY which has much greater outreach leaves out many workers and the information is not provided to workers to enable them to demand their entitlements. Another opportunity for providing minimum social security for informal workers and with better implementation measures came up again in 2012 through the National Advisory Council (NAC). Working with the Ministries of Labour and Employment and Finance, both the funding and the mechanisms were worked out afresh. The idea of implementation through WFCs was revived and a taskforce to work on implementation details, including several concerned ministries, was recommended. Most importantly, the NAC recommended starting with providing social security to women workers, and though them their spouses and later children. A phased roll-out plan was recommended which would throw up lessons, result in mid-course amendments and further implementation. The finances for this were also worked out and would work out to only a small per cent of GDP. Unfortunately, perhaps due to

the current fiscal deficit, this essential extension of minimum social protection has not seen the light of day yet.

While the law is in place since 2008, large numbers of informal or unorganized workers, especially in the poorest regions and states of India, are still without basic and minimum social protection. The reasons for this gap in implementation of the law in letter and spirit are well known and have been written about at length in the media, in journals and in popular magazines. Among the many reasons, one of the main ones is that unorganized sector workers are not organized into their own membership-based organizations like unions, cooperatives and SHGs.

As a result of this, they do not have access to information on their rights and entitlements, where to go to access services and to file their complaints. Perhaps most importantly, they do not have the strength and wherewithal to navigate the system, being poor and often illiterate, with little awareness of how and whom to approach. Being organized builds their collective strength and bargaining power, and gives them the support they need through their own organizations to demand their rights without fear or favour.

By way of illustration, the case of the *Rashtriya Swashtya Bima Yojana* (RSBY) is a case in point. In states and districts where workers are more literate and aware of their rights like Kerala, the scheme has spread rapidly and become popular. In other states, like Jharkhand, and even in some districts of states with better governance and services like Gujarat, the workers have not obtained claims to the extent envisaged. The latter is due to the fact that they do not understand the concept of insurance nor do they know how and where to claim. Further, RSBY, like many other government schemes has not invested much in education and awareness of the entitlements of the scheme. Without this key intervention, and without actively involving worker's organizations in an awareness campaign, enrolment drive and education sessions on how to put in one's

claim, and with the required hand-holding support, the off-take of these schemes will remain less than planned.

Several unions, including SEWA, have been actively offering their services at no cost to enrolling workers, and ensuring that their claims are serviced, in the case of RSBY. For example, we have collaborated with the insurance and smart card companies to ensure full enrollment of workers for RSBY, including helping to inform about enrolment dates, explaining about insurance and how it works and which hospitals to go to for services, that this is a free service apart from the Rs 30 registration fee and other features. In Tapi district of South Gujarat, an entirely Adivasi area, we worked with the local authorities to ensure that all the eligible families were enrolled, were aware of all aspects of the scheme and where to go in case of hospitalization. The authorities later told us that the marked increase in enrolment as well as claiming benefits was due to our partnership in implementation.

Some Lessons on Combining Grassroots Action with Policy and Legislation

All of the above experiences with grassroots organizing of workers, concrete and practical action for social security and eventually policies and laws have thrown up important lessons. First, even though India is a signatory to the Universal Declaration of Human Rights including social security, health and basic services, as outlined in Articles 22 and 25, we are far from realizing these. We have learned that only by organizing, building worker's solidarity, initiating campaigns and working at both grassroot and policy levels, can laws be formulated, enacted and finally, and most importantly, be implemented. Pressure and push from workers, especially women, exercising their democratic rights at every stage, is needed to move them closer to obtaining even minimum social security as a right. We have learned that women workers are ready to lead the campaign for social security for all workers, take care to see that all workers

are included and that as comprehensive social security as is possible is developed.

Second, these are long and difficult campaigns, and workers and their organizations need to be prepared for the long haul. It took more than thirty years for streetvendors to realize their dream of a law protecting their livelihood. Construction workers are still struggling for proper implementation of their hard-won Act through their own boards, and social security remains under-funded and limited for informal workers, despite having a law since 2008.

Third, in order to eventually obtain a law, it is often better to first work out a policy, as was done in the case of streetvendors, and work out implementation details for the law after experiencing the implementation of the policy. The gaps and possible lapses are then more visible to both policy-makers and legislators, and the workers themselves. Solutions to address the gaps in implementation can then be worked into the law, once the policy is tested out at the ground or grassroots level.

Fourth, workers organized into their own membership-based organizations like unions and cooperatives are in the best position to suggest what works and what does not for them and their families. One of the best ways, we have found, to convince policy-makers and legislators to frame appropriate programmes, laws and policies, is to show what works at the grassroot level and what it will cost. Legislators and administrators are often surprised to learn that there are several low cost or no cost mechanisms and that the total burden on the exchequer is often much less than imagined, especially when the workers themselves implement the laws and policies through programmes and mechanisms like the WFCs or through their own cooperatives.

Fifth, we have seen that it is important to work with states and municipalities. They often not only understand the ground realities better than others located far from the grassroots level, but also have themselves

come up with innovative solutions and workable models. An example is the Bhubaneswar Municipal Corporation's excellent initiatives to accommodate streetvendors in their urban planning. Other examples are the social security initiatives, especially in health insurance of the Karnataka government through the *Yeshaswini* and other schemes, and that of Andhra Pradesh and Gujarat to provide protection to the poor during catastrophic illnesses, through free tertiary care.

Finally, the laws and policies if properly implemented not only help them emerge from poverty and towards self-reliance, but also are empowering for the workers. When they sit together with officials and legislators and share their practical experiences, when they find voice and recognition at the policy table, when they actually provide the services themselves and in a sustainable manner, they feel empowered to act in other aspects of their lives. This is especially true of women workers of the informal economy who, in our experience, make the best providers of social security like child care, health care, pension and insurance. When they make a living from this work, they have a greater sense of self-worth, are further respected by their families and communities and even become leaders, elected to local self-government and beyond. Thus, implementation should be carried out in partnership with women workers and their organizations, and preferably left to them, as in the case of *Society for Elimination of Rural Poverty*, SERP, in Andhra Pradesh. Aware of their rights, supported by their organizations, these women not only exude a confidence hitherto unknown in their communities, but also more often than not, continue to work for basic services and rights. Ultimately, it is these grassroot change-makers who uphold our collective, democratic and constitutional rights and ensure their implementation in the poorest and most vulnerable of households.

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Informal Workers and Their Rights

Srijit Mishra[*]

Introduction

The informal or unorganised sector has an important role in the economy. The National Commission for Enterprises in the Unorganised Sector (hereafter, NCEUS) defines the unorganised (informal) sector to include "all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten workers" (Srija and Shirke, 2014: 40). A recent report points out that nearly 90 per cent of the workforce and 50 per cent of the national income is from this sector and that there are growing economic linkages between the unorganised and the organised sector (Government of India, 2012). An informal worker can be working in either the unorganised or in the organised sector. NCEUS defines an informal worker as follows: all those working in the unorganised sector or households (excluding regular workers with social security benefits provided by the employers) and all those working in the organised sector without any employment and social security benefits provided by the employers (Srija and Shirke, 2014: 41). Thus, the informal workers may not have security of tenure and other rights (NCEUS, 2008). These rights can be civil, political, social, and

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economic. We raise issues on the rights of the worker based on international agreements and some discourse in the Indian context.

International Rights

The International Labour Organization (ILO) adopted a declaration on four fundamental principles and rights at work in 1998.[1] These are:

- freedom of association and the effective recognition of the right to collective bargaining,
- elimination of forced or compulsory labour,
- abolition of child labour, and
- elimination of discrimination in respect of employment and occupation.

Further, the declaration also clearly pointed out that these rights are universal in nature and that all member countries have to abide by these even if they have not ratified the relevant conventions. It applies to all workers including the unemployed, the migrants or those with special needs. What is more, the four fundamental principles and rights have important implications and are also associated with two conventions each.

The freedom to associate and collectively bargain are important tools of governance. They can facilitate negotiation in conflict situations through a democratic medium and also help guard against arbitrary decisions or unfair disadvantages that the worker's may face. It will also foster camaraderie and make the work atmosphere congenial. It is linked with two conventions, namely, Freedom of Association and Protection of the Right to Organise Convention, 1948; and Right to Organise and Collective Bargaining Convention, 1949. It will also provide them a space to exercise their voice, a voice that is not only individual, but also one that is collective

[1] This section largely draws from the relevant declaration, ILO (2014).

and representative; a voice that will also articulate for their rights – both economic and social (Chen et al 2013).[2]

Economic disadvantages may make people trade away their freedom and also being subjected to exploitation, but forced labour is an exacting situation. Individuals or even the State would intimidate people by abusing their power and coerce people to work against their will. The individuals could be subjected to mental and physical abuse, deprived of food, sleep, and even their mobility could be restricted. Slavery, debt bondage and serfdom all fall under this. The international articulation against this dates back to the Forced Labour Convention, 1930; and the Abolition of Forced Labour Convention, 1957. In 2012, the ILO estimated 2.1crore forced labourers, of which 22 per cent are in sexual exploitation, 68 per cent are labour exploitation in economic activities like agriculture, construction, domestic work and manufacturing, and the remaining 10 per cent are state-imposed forced labour (ILO, 2012).

The case against child labour has been articulated through the Minimum Age Convention, 1973; and the Worst Forms of Child Labour Convention, 1999. The latter was largely on account of the work by Kailash Satyarthi, a recipient of the Nobel peace prize for 2014 with MalalaYousafzai, a child education activist. Of course, children have the same rights, as adults. However, their inability to defend themselves puts them at a greater disadvantage. Besides, certain kind of work could have adverse implications on their physical and mental health.

Discrimination in job could be because of caste, class, gender, disability or some health condition among others. Any form of discrimination acts against fair equal opportunities. These have been

[2] A simple articulation of rights by informal workers, as Chen et al (2013) indicate, is 'do no harm' and 'provide support'. These are similar to 'negative liberties' and 'positive liberties' in political philosophy. The former is a right to be free from barriers and constraints and the latter is about legal and social protection as also about the provisioning of other facilities (skill development, financial training, leveraging with new technology, and marketing among others).

addressed through the Equal Remuneration Convention, 1951; and the Discrimination (Employment and Occupation) Convention, 1958.

It would be interesting to view these fundamental principles through the prism of Rawls. We take that up now.

Bringing in Rawls and Sen

The four fundamental principles and rights at work are intrinsic. One need not invoke Rawls and Sen to justify their relevance and that is also not our purpose here. We just show some underlying relationship that adds to our understanding of these rights.

It is argued that Rawlsian justice is abstract and transcendental whereas applications to real life situations should be drawn from pragmatic considerations (Sen, 2006, 2009) and in that sense one could argue that the four fundamental principles are pragmatic and would help in enhancing the capabilities of the workers to reach their potential and enhance human development.[3] Without denying their pragmatic relevance, one still sees an underlying relationship between the four fundamental principles and the two principles of justice by Rawls (1971, 2001). The two Rawlsian principles are as follows:

- Each person has the same indefeasible claim to a fully adequate scheme of *equal basic liberties*, which scheme is compatible with the same scheme of liberties for all; and
- Social and economic inequalities are to satisfy two conditions:
  - first, they are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*; and
  - second, they are to be the *greatest benefit of the least advantaged* members of society (the difference principle).

To elaborate, the first fundamental principle of freedom to organize enables democratic participation of the workers and in that sense would

fit into the scheme of equal basic liberties, the first Rawlsian principle of justice. The fourth fundamental principle of doing away with discrimination would foster fair equality of opportunity, which is identified with the first part of the second Rawlsian principle of justice. The second and third fundamental principles of abolishing forced labour and eliminating child labour, respectively, as also the other two fundamental principles can also facilitate in providing the greatest benefit to the vulnerable sections, which in essence is the second part of the second Rawlsian principle of justice. Further, asserting the intrinsic relevance of these fundamental principles and rights at work, without invoking utilitarianism or through any other means, get strengthened through the Rawlsian dictum of reasonable pluralism that is built on the premise that multiple things matter.

Keeping the four fundamental principles and rights at work in the background, we would like to discuss the prevailing scenario in the Indian context. We do this by discussing the following provisions given in the Constitution of India through Fundamental Rights and Directive Principles, an empirical assessment of the state of informal workers, opportunities for informal workers to organise themselves, some aspects of modern day slavery, existence of child workers, and raise some issues on discrimination against workers. We begin with the constitutional provisions.

The Indian Scenario

Fundamental Rights and Directive Principles

The Government of India is a member state, and hence, should adhere to the four fundamental principles and rights at work. Independently, some of these are also reflected in the Constitution of India.

[3] For a discussion linking human rights and human development see the overview and introduction in United National Development Programme, hereafter UNDP (2000).

- Article 19 (1) (c) gives all citizens the right to form associations or unions, and read with Article 19 (1) (a) on freedom of speech, Article 19 (1) (b) on right to assemble peacefully, and Article 19 (1) (f) to practise any profession, occupation, trade or business. This comes under the Right to Freedom.
- Article 23 prohibits traffic in human beings and forced labour. This comes under the Right against Exploitation.
- Article 24 prohibits employment of children in factories and in any other hazardous occupation. This comes under the Right against Exploitation.This read in conjunction with Article 21A calls on the state to provide free and compulsory education to all children from six to fourteen years of age. This comes under the Right to Freedom and has come into force from April 2010.
- Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and Article 16 calls for equality of opportunity in matters of public employment. These come under Right to Equality and they do allow the State to make special previsions for certain vulnerable sections.

The directive principles, which are not enforceable in a court of law, also suggest some enabling conditions with relation to livelihood and work. We elucidate some of them that are in line or somewhat facilitate the four fundamental principles and rights at work.

- Article 43A is to secure the participation of workers in the management of the establishments that are working.
- Article 39 (e) suggests that workers (including children) should not be abused and forced into avocations that is not suitable for their age and strength.
- Article 39 (f) suggests that children should be given facilities to develop in a healthy manner and they should be protected against exploitation and against moral and material abandonment.

- Article 39 (d) suggests equal pay for equal work. In addition, Article 41 suggests provisioning for unemployed, old, sick, disabled and other vulnerable; Article 42 is about just and humane conditions of work; Article 39 (a) calls for providing adequate means of livelihood; Article 43 is provisioning a living wage ensuring a decent standard of living; and Article 38 (2) suggests that the State should promote welfare of people and endeavour to reduce inequities amongst people, regions and vocations.

It is remarkable that the Constitution of India through its Fundamental Rights and Directive Principles has provisions that resonate with the four fundamental principles and rights at work. We will take up a discussion on these four aspects with regard to informal workers. Hence, we now point out the status of informal workers in India

State of Informal Workers

Using the NCEUS definitions, Srija and Shirke (2014) estimate that the total workers increased from 45.96 crore in 2004-05 to 47.42 crore in 2011-12 (Table 1). In both these years, the proportion of informal workers is more than 90 per cent. A matter of concern is that the proportion of informal workers in the organised sector increased from 6.9 per cent in 2004-05 to 10.3 per cent in 2011-12.

Some other observations for informal workers from a reading of Srija and Shirke (2014) indicate the following:

- From the 43.56 crore informal workers in 2011-12 the distribution by employment status is as follows: 56 per cent are self-employed, 11 per cent are regular wage earners or salaried, and 33 per cent are casual workers.

Table 1:

Distribution of Formal and Informal Workers across Organised and Unorganised Sectors

Workers	2004-05			2011-12		
	Organised	Unorganised	Organised + Unorganised	Organised	Unorganised	Organised + Unorganised
	(1)	(2)	(3)	(4)	(5)	(6)
Formal	3.21	0.13	3.34	3.72	0.14	3.86
	(52.0)	{1.44(0.3)	(7.3)	(45.4)	(0.4)	(8.1)
	[96.0]	[4.0]	[100.0]	[96.4]	[3.6]	[100.0]
Informal	2.95	39.67	42.62	4.47	39.09	43.56
	(48.0)	{1.44(99.7)	(92.7)	(54.6)	(99.6)	(91.1)
	[6.9]	[93.1]	[100.0]	[10.3]	[89.7]	[100.0]
Formal +	6.16	39.80	45.96	8.19	39.23	47.42
Informal	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)
	[13.4]	[86.6]	[100.0]	[17.3]	[82.7]	[100.0]

Note: The number of workers are in crore. Round parenthesis is for proportion of column totals and square parenthesis is for proportion of year-specific row totals. Source: Srija and Shirke (2014: 41)

- The broad industry wise distribution of informal workers in 2011-12 is as follows: 53.2 per cent are in agriculture (1.7 per cent in the organised and 59.1 per cent in the unorganised), 12.0 per cent are in manufacturing (29.6 per cent in the organised and 10.0 per cent in the unorganised), 11.9 per cent are in non-manufacturing (39.9 per cent in the organised and 8.7 per cent in the unorganised), and 22.9 per cent are in services (28.8 per cent in the organised and 22.2 per cent in the unorganised).
- Between 2004-05 and 2011-12 from the total workers in the organised sector, the per cent of informal workers increased from 48 per cent to 55 per cent. Further, across broad industry division this increase was as follows: agriculture (from 57 per cent to 73 per cent), manufacturing (from 63 per cent to 65 per cent), non-manufacturing (from 73 per cent to 85 per cent), and services (from 30 per cent to 33 per cent).

- Between 2004-05 and 2011-12 from the total informal workers in the non-agriculture sector, the per cent of informal workers in the organised sector has increased from 15.6 per cent to 21.6 per cent. The absolute increase for the number of informal workers in non-agriculture was from 16.1 crore to 20.4 crore (from 2.5 crore to 4.4 crore in the organised sector and from 13.6 crore to 16.0 crore in the unorganised sector).
- Between 2004-05 and 2011-12 from the total informal workers in the specific industry division within the non-agriculture sector, the per cent of informal workers in the organised sector has increased as follows: mining (from 50 per cent to 55 per cent), manufacturing (from 20 per cent to 25 per cent), construction (from 22 per cent to 33 per cent), hotel, trade and restaurant (from 4 per cent to 5 per cent), transportation, storage and communication (from 9 per cent to 13 per cent), real estate and other business activities (from 14 per cent to 21 per cent), education (from 47 per cent to 56 per cent), finance (from 36 per cent to 37 per cent), health (from 29 per cent to 38 per cent), public administration (from 93 per cent to 100 per cent). It decreased for the following specific industry divisions: electricity and water supply (from 67 per cent to 64 per cent), and other services (from 5 per cent to 4 per cent).

In an independent exercise, NSSO (2014b) restricts the analysis of informal sectors to non-agriculture and other agriculture (excluding crops grown) and only for those engaged in proprietary and partnership (P&P) enterprises only.[4] From the usual status (principal + subsidiary) workers,

[4] The activities under non-agriculture are: mining and quarrying; manufacturing; electricity, gas, steam and air conditioning supply; water supply, sewerage, waste management and remediation; construction; wholesale and retail trade including repair of motor vehicles and motorcycles; transportation and storage; accommodation and food service activities; information and communication; financial and insurance activities; real estate activities; professional, scientific and technical activities; administrative and support service activities; public administration and defence including compulsory social security; education; human health and social work activities; and arts, entertainment and recreation. Other agriculture (excluding crops grown) comprises of: animal production, support activities to agriculture and post-harvest activities, hunting/trapping and related service activities, forestry and logging, and fishing and aquaculture. The excluded agriculture activities are: growing of crops, plant propagation, and mixed farming that combine crop and animal production without a specialised production in any of them. The enterprises excluded are government/public sector, private limited company, co-operative societies, trust, and employer households (who employ maid servant, watchman, and cook among others).

51.1 per cent are in non-agriculture and 3.8 per cent are in other agriculture (excluding crops grown). Further, from among these workers, only 72.4 per cent (75.2 per cent rural and 69.1 per cent urban) engaged in proprietary and partnership enterprises are informal workers. We make some further observations based for this subset of informal workers. These are the following:

- The proportion of informal workers for males is 73.4 per cent (76.2 per cent in rural and 70.4 per cent in urban), for females is 69.2 per cent (72.7 per cent in rural and 63.6 per cent in urban);
- The proportion of informal workers in other agriculture is 92.3 per cent (92.4 per cent in rural and 92 per cent in urban), and that for non-agriculture is 71 per cent (73 per cent in rural and 68.7 per cent in urban);
- Across states, a cross tabulation between proportion of informal workers (restricted to non-agriculture and other agriculture engaged in proprietary and partnership enterprises) and workers without any association in work place (Table 2) indicates that most of the smaller states and union territories have a relatively lower proportion of informal workers (25-55 per cent); that some of the states with high incidence of poverty (Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha) are in the middle zone with regard to proportion of informal workers (55-72.4 per cent); that the states with relatively higher proportion of informal workers seem to cut across different categories of states, but some of them (Punjab, Rajasthan, West Bengal, Uttarakhand and Uttar Pradesh) have a relatively higher proportion of Scheduled Caste population.

The state of informal workers point out to an increase in informalisation in the organised sector and this cuts across broad categories of industry divisions. An analysis across states for a subset of informal workers also points out a relatively higher incidence of informal workers to states with relatively higher proportion of Scheduled Castes. Now, we

propose to further discuss the Indian scenario with regards to the four fundamental principles and rights at work.

Freedom to Organise

In 2011-12, the National Sample Survey Office (hereafter NSSO, 2014a) estimates a population of 108.8 crore for India out of which 38.6 per cent are usual status (principal + subsidiary) workers in the age of 15 years and above. From among these workers, 51.2 per cent are rural males, 22.4 per cent are rural females, 21.2 per cent are urban males and 5.2 per cent are urban females. More than four-fifth of these workers did not have an association or union in their place of work that would have given them an opportunity to organise (Table 3). What is more, the proportion of regular wage/salaried workers whose work place had no assocation or union was nearly three-sixth.

Table 2
Informal Workers in Non-agriculture and other Agriculture restricted to P&P Enterprises and Workers without any Association in Work Place, 2011-12

Workers without any Association in work place (per cent)	Informal Workersin Non-agriculture and Other Agriculture restricted to P&P(per cent)			
	25.0-55.0%	55.0-72.4%	72.4%	72.4-80.0%
	(1)	(2)	(3)	(4)
25.0-60.0%	Daman & Diu, Goa, Lakshadweep, Mizoram, Nagaland Tripura	Puducherry		Kerala
60.0-80.2%	A&N Island, Arunachal Pradesh, D&N Haveli, Manipur, Meghalaya Sikkim	Assam, Bihar, Chandigarh, Delhi, Haryana, Jammu & Kashmir Karnataka, Tamil Nadu		Punjab, West Bengal
80.2%			All-India average	
80.2-90.0%	Himachal Pradesh	Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha		Andhra Pradesh, Gujarat, Rajasthan, Uttarakhand, Uttar Pradesh

Note: Workersare those engaged in usual status (principal + subsidiary) and of age 15 years and above. Association also refers to union. Other agriculture excludes crops grown. P&P refers to proprietary and partnership enterprises.Source: NSSO (2014b: 102, 168)

Table 3: Proportion of Workers with no Association in their Work Place, 2011-12

Category	Self-employed	Regular wage/ salaried	Casual labour	All workers
	(1)	(2)	(3)	(4)
Male	81.0	58.5	85.6	77.9
Female	88.8	62.4	91.5	86.2
Persons	83.3	59.3	87.3	80.2

Note: Workers denote usual status (principal + subsidiary) of age 15 years and above. Association also refers to unions.

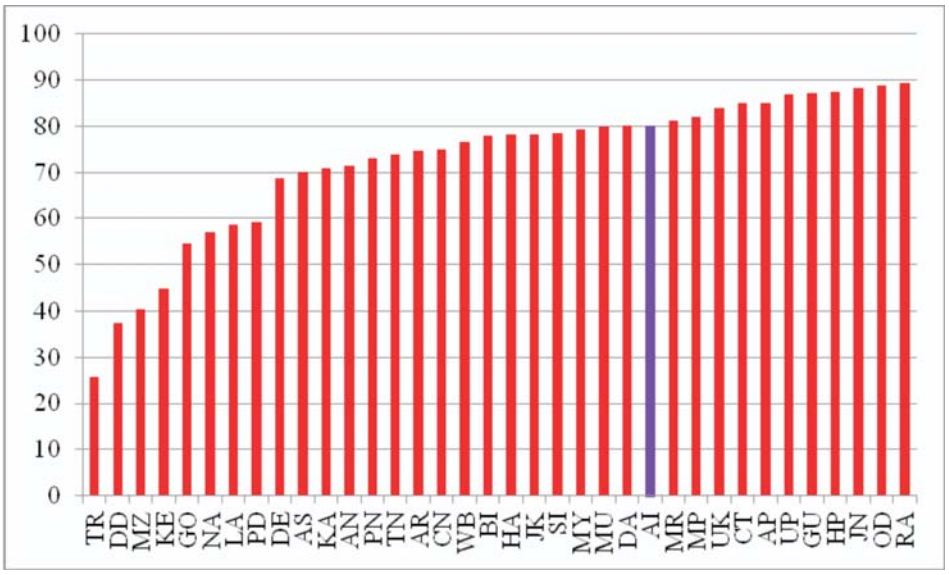
Source: National Sample Survey Office (2014b: 168)

Across states, the best state is Tripura where only one-fourth of the workers place of work has no association or union (Figure 1). Further, in Tripura, only 25 per cent of the self-employed, 8 per cent of those with regular wages or salaries, and 30 per cent of the casual labourers' place of work did not have an association or union. It may be mentioned that the Left front has been in power in Tripura during 1978-1988 and again since 1993 till date.

Kerala is one of the first states to have democratically elected and Left government anywhere in the world in 1957 and since then the Left parties have either been the ruling front or the dominant opposition. The organisation of workers in Kerala can trace its origin to the left-oriented political and peoples' movements. In fact, Heller (1996) informs that in Kerala the agricultural labourers as also construction workers and headload workers or those working in traditional industries like coir workers and services like mahouts (elephant riders) are organised and all this has been possible through state intervention. Thus Kerala does relatively better than other states. In spite of these initiatives, 41 per cent of self-employed, 44 per cent of those with regular wages or salaries and nearly 50 per cent of casual labours worked did not have any association or union in their work place.

Unlike, Tripura and Kerala, the state of West Bengal, which also saw the rule of a Left front government for more than three decades from

Figure 1
Proportion of Workers with no Association in their Work Place across States of India, 2011-12



Note: Workers denote usual status (principal + subsidiary) of age 15 years and above. Association also refers to union. Acronym for states are as follows: AP is Andhra Pradesh, AR is Arunachal Pradesh, AS is Assam, BI is Bihar, CT is Chhattisgarh, DE is Delhi, GO is Goa, GU is Gujarat, HA is Haryana, HP is Himachal Pradesh, JK is Jammu & Kashmir, JN is Jharkhand, KA is Karnataka, KE is Kerala, MP is Madhya Pradesh, MR is Maharashtra, MU is Manipur, MY is Meghalaya, MZ is Mizoram, NA is Nagaland, OD is Odisha, PN is Punjab, RA is Rajasthan, SI is Sikkim, TN is Tamil Nadu, TR is Tripura, UK is Uttarakhand, UP is Uttar Pradesh, WB is West Bengal, AN is Andaman & Nicobar Islands, CN is Chandigarh, DA is Dadra & Nagar Haveli, DD is Daman & Diu, LA is Lakshadweep, PD is Puducherry, AI is All-India.Source: NSSO (2014b: 168)

1977 to 2011, has not been that successful in providing options for workers to organise themselves. More than 80 per cent of self-employed, 84 per cent of the casual labourers, and 50 per cent of those with regular wages or salaries do not have any association or union in their place of work.

In Daman and Diu, the proportions of workers whose work place do not have any association or union are relatively high for self-employed (75 per cent) and casual labourers (100 per cent). The aggregate lower figure is because of a relatively higher share of workers with regular wages

or salaries from among whom the place of work that does not have any association or union is only 8 per cent. The reasons are somewhat similar for the states/union territories of Goa, Nagaland, Lakshadweep, and Delhi.

The states of Sikkim and Assam have around 20 per cent of those with regular wages and salaries whose work place do not have an association or union. This could be because a relatively larger proportion of these workers may be working in the public sector. In fact, from those workers in regular wages or salaries, only 29 per cent in Sikkim and 53 per cent in Assam do not have a written job contract, while the figure is at 65 per cent for the all-India average.

Relatively speaking, Puducherry also seems to be doing reasonably well with regard to self-employed and casual labourers. The proportion of workers whose work place does not have any association or union is 57 per cent for self-employed and 58 per cent for casual labourers. Except for Tripura, Kerala and Mizoram, its scenario with regard to the self-employed is better than most other states. One should, however, concede that its performance is relatively worse-off with regard to regular wage earners and salaried workers.

The state of Gujarat is among the relatively poor performers in terms of work places having an association or union. It is worth mentioning that this state is home to a successful mobilisation of informal workers through the Self Employed Women's Association (SEWA). The story of SEWA started in 1972 with a group of migrant women workers in the cloth market of Ahmedabad to negotiate against unfair treatment by the cloth merchants (Chen et al 2013; World Bank, 2013). In January 2014, SEWA has been successful in providing a voice to its 19 lakh members constituting hawkers and vendors, home-based workers, domestic workers and manual labourers among others that is spread out not only across Gujarat (52 per cent of its members are from this state), but is also present

in other parts of the country spread across 13 states (SEWA 2014). SEWA has also been instrumental in setting up of a number of national and international networks for informal workers.

The worst case scenario is Rajasthan where nearly nine-tenth of the workers place of work does not have an association or union. It is also a state amongst those with the highest proportion of workers without any written job contract or social security. However, we would like to mention about PRADAN (Professional Assistance for Development Action), a Non-Governmental Organisation, which mobilises communities in the poorer regions of India through the formation of Self-Help Groups, as it formed its first SHG in Rajasthan in 1987 (Mishra and Sengupta, 2013). In 2012-13, PRADAN worked with 18,736 SHGs spread across seven states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan and West Bengal that helped transform 2.7 lakh families in more than 5000 villages (PRADAN, 2013). What is more, today, many other NGOs as also some governmental line departments are working to mobilise poor and vulnerable communities through SHGs and other mediums to empower them.

India has a long way to go in providing a space for workers to organise. The State and other non-governmental organisations should facilitate. In its absence, the workers will have no space to articulate their disadvantages. We will now discuss some aspects of modern day slavery in the context of India.

Modern Day Slavery

It is difficult to survey and obtain estimates of people who are forced to work under bondage or in other subtle forms of slavery. Nevertheless, a recent estimate suggests that 3.6 crore people are under modern global slavery worldwide and 40 per cent of these are in India (Walk Free Foundation, 2014). The methodology that extrapolate the numbers for India using information from surveys in Haiti, Nepal, Niger and Pakistan

does raise eyebrows. Independent of those methodological misgivings, one should be concerned about the prevalence of modern slavery through bondage, human trafficking for sexual exploitation and forced marriage. It occurs in brick kiln, carpet weaving, forced prostitution, agriculture, mining, domestic servitude, bidi making, salt pan workers, fish processing, stone and gem polishing, and organised begging ring among others (also see NCEUS, 2007; Srivastava, 2005). It is in this context that the recommendations in the report on global slavery to the Government of India are important. The recommendations are as follows:

- Ratify and implement the Worst Forms of Child Labour Convention (1999) and the Domestic Workers Convention (2011). It is an irony that the Nobel peace laureate from India, KailashSatyarthi, was instrumental in getting the former Convention passed, but till date, India is one of the six member states that has not ratified this.
- Requires all States to follow up on the Supreme Court Judgment of October 15, 2012, to identify and release those in bonded labour. It requires setting up of district vigilance committees that would carry out surveys to facilitate this.
- Update regulations and processes for the implementation of the Bonded Labour System (Abolition) Act, 1976, and report on its implementation. This will improve transparency and facilitate discussion among stakeholders.
- Implement a new National Action Plan that targets the full spectrum of modern slavery.
- Continue to strengthen protections for victims of modern slavery and ensure that they are not criminalised. Victims must be protected (including protecting their identities) throughout the duration of their court cases.

The State has to make greater efforts to address the subtle forms of slavery, particularly when much of it would be done covertly. It is a matter

of concern that some of these – particularly debt bondage and trafficking for sexual exploitation – involve children. Even without being forced, it is worrisome if children are made to work. We now discuss the problem of children engaged as workers.

Child Workers

The 2011 census of India indicates that 1.01 crore workers are children (age group of 5-14 years), of which one-fourth are in the age group of 5-9 years. From among these child workers, as Table 4 indicates, 16.9 per cent are scheduled tribes and this proportion is 1.7 times more than their share in the population for this age group; 17.6 per cent are scheduled castes, which is almost equal to their share in the population for this age group; the remaining 65.5 per cent of child workers are from other castes. Gender-wise share of workers indicates that, except for the scheduled tribes, the proportion of males are relatively higher; but, if one compares

Table 4: Social Group wise Share of Workers and Population by Gender and Gender wise Share of Workers by Social Group in India, 2011

Social Group	Gender	Children (5-14 years)				Total			
		Social group wise			Gender wise share of workers	Social group wise			Gender wise share of workers
		Share of workers	Share of population	Ratio of (1) to (2)		Share of workers	Share of population	Ratio of (1) to (2)	
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Scheduled Tribe	Male	15.1	9.6	1.57	49.6	8.5	8.4	1.01	55.6
	Female	19.2	10.1	1.90	50.4	15.1	8.8	1.71	44.4
	Persons	16.9	9.8	1.72	100.0	10.6	8.6	1.22	100.0
Scheduled Caste	Male	17.7	17.6	1.00	56.0	16.5	16.6	0.99	66.4
	Female	17.4	17.8	0.98	44.0	18.5	16.7	1.11	33.6
	Persons	17.6	17.7	0.99	100.0	17.1	16.6	1.03	100.0
Other Caste	Male	67.2	72.8	0.92	57.0	75.0	75.0	1.00	71.4
	Female	63.4	72.1	0.88	43.0	66.4	74.5	0.89	28.6
	Persons	65.5	72.5	0.90	100.0	72.4	74.7	0.97	100.0
Total	Male	100.0	100.0	1.00	55.6	100.0	100.0	1.00	68.9
	Female	100.0	100.0	1.00	44.4	100.0	100.0	1.00	31.1
	Persons	100.0	100.0	1.00	100.0	100.0	100.0	1.00	100.0

Source: Census of India 2011, Table B1, Table B1-ST and Table B1-SC

these proportions for children workers with that of total workers then in all social groups the proportion of females are relatively higher.

A recent report by Bachpan Bachao Andolan (hereafter, BBA, 2013) mentions that the census figures on child labour are underestimates. Based on the non-governmental organisations working in this area, they estimate that child labourers are likely to be around 6 crores. Further, they point out that many rescued child labourers are enrolled and marked present in their village schools when they were employed and working in a different location. Another earlier study by BBA (2011) based on a survey in 251 schools of 33 districts in nine states indicates that 24 per cent of the children drop out from schools, education is not completely free-20 per cent of schools charge fees during admissions and 40 per cent charge for other study material, only textbooks are provided in 37 per cent of schools (no free notebooks, uniform and bags), 16 per cent schools do not have any drinking water facilities and 33 per cent have no separate toilets, there were no school management committees that are entrusted to prepare a school development plan and monitor its functioning (including fund utilisation) in 50 per cent of the schools.

In another study, Rustagi (2013) points that over the years, increased physical and financial inputs have improved educational attainment reducing disadvantages of socially excluded groups, the girl child or those in remote locations. However, the study also suggests that one needs to go beyond achieving targets of increasing enrolment and reducing dropouts, that the identity of schools should go beyond mid-day meals, that the emphasis should be on the quality of education and knowledge imparted, and that the opportunity cost of an economically vulnerable household also needs to be addressed.

To be consistent with the Right to Education, the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 calls for banning employment of children below 14 years in any occupation and prohibits employment of those aged 14-18 years in hazardous occupations. With a

child rights activist from India receiving the Nobel peace prize in 2014, it will be a fitting tribute that this Bill is soon made into law.

Almost everyone would have come across children being employed as domestic help or in road side eateries. Many a times the arguments in favour of such arrangements point out to a philanthropy motive of the employer because in its absence the child might not have got enough access to foods and would have probably remained malnourished. Or, because the arrangement is mutually beneficial because a relatively poorer entrepreneur employs a disadvantaged child and the consumer gets a cheaper meal. Hidden in the philanthropyor the social win-win arguments are the subtle forms of exploitation that take advantage of someone's vulnerabilities and the greater social evil that everyone is a part of. There are no two arguments that such a society is worse-off than a society that does not have any child labour. In some sense, a society where a child ends up working and not going to school is also because the adults who should be taking care of them do not earn enough and face disadvantages in their work. We now raise some issues on discrimination against workers.

Discrimination against Workers

Discrimination against workers can be manifested through gender, caste, and religion among others. They can take myriad forms: working without a proper contract, not being eligible for paid leave, having no social security benefits, and the nature of employment being temporary among others. NSSO (2014b) elucidates some of these facets of those informal workers engaged in non-agriculture and other agriculture (excluding crops grown). One observes the following:

- The proportion of workers without a written job contract is 78.9 per cent (64.7 per cent for regular wage earners or salaried and 96.6 per cent for casual workers);
- The proportion of employees not eligible for paid leave is 71.2 per cent (50 per cent for regular wage earners or salaried and 97.7 per cent for casual workers);

- The proportion of employees not eligible for any social security benefit is 72.2 per cent (55.5 per cent for regular wage earners or salaried and 93.3 per cent for casual workers); and
- The proportion of temporary employees is 42.1 per cent (27.7 per cent for regular wage earners or salaried and 60.2 per cent for casual workers).

Looking into the period of booming economy (1999-200 to 2009-10) Ramaswamy and Agrawal (2013) show that in urban India the services-led growth benefitted skilled workers, particularly women. However, the services sector also showed greater duality in terms of informality as also in wage inequality. What is more, the social security conditions neither improved over tie nor were they relatively superior in the services sector when compared to the manufacturing sector. While looking into job contracts that were for three years or more the situation seems to have worsened.

In 2011-12, one also observes gender-wise differences in average earnings in rural and urban regions for regular wage earners when one controls for educational category and also for casual labourers after controlling for work types (Table 5). For regular wage earners, the average female earnings as a proportion of female earnings are 69 per cent in rural India and 78 per cent in urban India. The difference is the least for Diploma/Certificate and if one excludes this category then the differences decrease with increase in educational attainment.

These differences persist for the regular wage earners even after bringing in additional controls of age and industry division or type of occupation (NSSO, 2014a: 520-531). Similarly, the differences also persist for casual labourers when one brings in additional controls for age, industry division, and sub-round of survey (NSS), 2014a: 532-543).

A study of recent entrants to engineering colleges, business schools and higher civil services by Krishna (2013) points out that the factors that

hinder social mobility are: rural upbringing, parents employed in agriculture or as homemakers, relative poverty, and parent's (especially mother's) lack of high school or college education. Over the years, there is improvement in the number of students who are women, scheduled social groups, or whose parents are agriculturalist.[5] However, they are most likely to be from an urban setting or at least studied in schools and colleges located in urban areas, and hence, are likely to be from relatively better-off households.

Table 5: Gender-wise Average wage earnings in Rupees for Regular Wage Earners of age 15-59 years by Different Educational Categories and for Casual Labourers by Different Work Types, 2011-12

Category Status of Employ-ment	Category	Rural			Urban		
		Male	Female	(2)/(3) ((%)	Male	Female	(5)/(4) ((%)
		(1)	(2)	(3)	(4)	(5)	(6)
Regular Wage Earner	Not literate	174.4	89.3	51.2	207.7	123.4	59.4
	Literate &upto Middle	202.5	104.3	51.5	237.2	132.8	56.0
	Secondary/H. Secondary	319.5	180.0	56.3	358.5	307.0	85.6
	Diploma/Certificate	450.3	428.7	95.2	524.3	391.4	74.7
	Graduate & Above	550.2	377.9	68.7	805.5	609.7	75.7
	All	322.3	201.6	62.5	469.9	366.2	77.9
Casual Labourers	Public Works (NREGA)	127.4	110.6	86.8	NA	NA	NA
	Public Works (Others)	112.5	102.0	90.7	NA	NA	NA
	Other Works	149.3	103.3	69.2	182.0	110.6	60.8

Note: H. Secondary denotes Higher Secondary. NREGA denotes National Rural Employment Guarantee Act. NA denotes Not Applicable.Source: NSSO (2014a: 118, 121)

The large majority of informal workers do not have minimum working conditions. They work in an easy to hire and fire mode and without any social security provisions. The job growth linked to the economic growth does not necessarily reduce informalisation or improve social security conditions. Further, there are wage differential because of gender and other considerations and social mobility is limited.

Concluding Remarks

An informal worker make ssubstantial contributions towards the economy. Further, there are important productivity linkages not only within the unorganised sector, but also between unorganised and organised sector (Bhalla, 2003). There is an increasing incidence of informalisation of the workforce even in the organised sector. In this context, the rights of the informal worker are important. The four fundamental principles and rights provide an important starting point. These principles are not only pragmatic, but could also be interpreted from a Rawlsian perspective that adds to our understanding of their underlying relationship, and they are also echoed in the Constitution of India through different Rights and Directive Principles. However, we need to go beyond them.

For instance, our evaluation of existing data shows that about 80 per cent of the workers place of work does not have any association or union. This limits their opportunities to organise among themselves. The existence of modern day slavery through debt bondage and trafficking for sexual exploitation is a matter of concern. Children are particularly vulnerable, but what is appalling is the hypocrisy of justifying everyday forms of child labour as do-good to mask the greater social evil.

Providing for minimum working conditions and provisioning for social security is as important as are specific requirements for each category of workers – agricultural labourers, farmers, or for the broad spectrum of non-agricultural workers including hawkers and street vendors, and domestic workers among others (NCEUS, 2007). Equally important is strengthening the data base for this sector (Government of India, 2012), in all it facets, as it will help our understanding and help take informed and reasoned decisions.

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[5] The crisis in Indian agriculture is discussed in Mishra and Reddy (2011) and Reddy and Mishra (2009) among others. On farmers' suicides see Mishra (2014).

References

BBA (2011) *Right to Education Impact 2010-2011: A Short Report by BachpanBachaoAndolan*, BBA, New Delhi.

BBA (2013) *In School and Working Children: Reality of Right to Education Act's Implementation*, BBA, New Delhi.

Bhalla, S. (2003) *The Restructuring of the Unorganised Structure in India*, Institute for Human Development, New Delhi.

Chen, M., Bonner, C., Chetty, M., Fernandez, L., Pape, K., Parra, F., Singh, A., and Skinner, C. (2013), Urban Informal Workers: Representative Voice & Economic Rights, Background Paper for the World Development Report 2013.

Government of India (2012) Report of the Committee on Unorganised Sector Statistics, National Statistical Commission, New Delhi (Chair: R Radhakrishna)

Heller, P. (1996) "Social Capital as a Product of Class Mobilization and State Intervention: Industrial Workers in Kerala, India," *World Development* 25(6): 1055-1071.

Krishna, A. (2013) "Making It in India: Examining Social Mobility in Three Walks of Life" *Economic and Political Weekly*, 48(49): 38-49.

ILO (2012) *ILO Global Estimates of Forced Labour: Results and Methodology*, ILO, Geneva.

ILO (2014) *ILO Declaration on Fundamental Principles and Rights at Work*, ILO, Geneva, http://www.ilo.org/declaration/lang—en/index.htm (accessed 27 October 2014).

Mishra, S. (2014) Farmers' Suicides in India, 1995-2012: Measurement and Interpretation, Asia Research Centre Working Paper 62, London School of Economics and Political Science, http://www.lse.ac.uk/asiaResearchCentre/_files/ARCWP62-Mishra.pdf (accessed 26 November 2014).

Mishra, S. and Reddy, D.N. Redy(2011) Persistence of Crisis in Indian Agriculture: Need for Technological and Institutional Alternatives, in Dilip M. Nachane (ed) *India Development Report 2011*, Oxford University Press, New Delhi, pp.48-58.

NCEUS (2007) *Report on Condition of Work and Promotion of Livelihood in the Unorganised Sector*, NCEUS, New Delhi.

NCEUS (2008) Report on Definitional and Statistical Issues Relating to the Informal Economy, NCEUS, New Delhi.

NSSO (2014a) *Employment and Unemployment Situation in India, NSS 68th Round (July 2011-June 2012)*, NSS Report No. 554 (68/10/1), Ministry of Statistics and Programme Implementation, Government of India.

NSSO (2014b) *Informal Sector and Conditions of Employment in India, NSS 68th Round (July 2011-June 2012)*, NSS Report No. 557 (68/10/2), Ministry of Statistics and Programme Implementation, Government of India.

PRADAN (2013) *30 Years of Transforming Lives: PRADAN Annual Report 2012-13*, PRADAN, New Delhi.

Ramaswamy, K.V. and Agrawal, T. (2013) Services-led Growth, Employment, Skill and Job Quality: A Study of Manufacturing and Services Sector in Urban India, in S. MahendraDev(ed.) *India Development Report 2012-13*, Oxford University Press, New Delhi, pp.116-131.

Rawls, J.B. (1971)*A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts.

Rawls, J.B. (2001)*Justice as Fairness: A Restatement*, Harvard University, Cambridge, Massachusetts.

Reddy, D.N. and Mishra, S. (eds.) (2009), *Agrarian Crisis in India*, Oxford University Press, New Delhi.

Rustagi, P. (2013) "Challenges for Right to Education in India," in S. Mahendra Dev (ed.) *India Development Report 2012-13*, Oxford University Press, New Delhi, pp. 247-264.

Srivastava, Ravi (2005) Bonded Labour in India: Its Incidence and Pattern, Working Paper No. 43, International Labour Office, Geneva.

Sen, A.K. (2006) "What do we want from a Theory of Justice?," *Journal of Philosophy* 103(5): 215-238.

Sen, A.K. (2009) *The Idea of Justice*. Penguin, London.

SEWA (2014) SEWA Annual General Meeting 2014, *We the Self-Employed: SEWA's Electronic Newsletter*, 55, http://www.sewa.org/Fifty-five.asp (accessed 23 November 2014).

Srija. A. and Shirke, S.V. (2014) "An Analysis of the Informal Labour Market in India," *Economy Matters* 19(9): 40-46.

UNDP (2000)*Human Development Report 2000: Human Rights and Human Development*, Oxford University Press, New York and Oxford.

World Bank (2012) *World Development Report 2013: Jobs*, The World Bank, Washington D.C.

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RIGHT AGAINST TORTURE

Custodial Torture: Legal Perspectives

Sanjay Kumar Jain and Viplav Kumar Choudhry***

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."

The above quote of Adriana P. Bartow, mentioned by the Supreme Court of India in the case *Shri D.K. Basu* v. *State of West Bengal*[1], very aptly describes custodial torture as one of the most serious forms of human rights violations.

Definition of Torture

Definition of torture can be seen in some of the prominent international human rights instruments. Article 7(2)(e) of the Rome Statute of the International Criminal Court[2] states: "*Torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions".*

The most comprehensive and internationally agreed definition of torture is contained in in the 1984 United Nations 'Convention against

* SSP, NHRC ** DIG, NHRC

1 AIR 1997 SC 610

2 The Rome Statute of the International Criminal Court was adopted at a diplomatic conference in Rome on 17 July 1998 and entered into force on 1 July 2002. It established the International Criminal Court and provides for criminal prosecution of individuals responsible for genocide, war crimes, and crimes against humanity.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'[3] Article 1(1) of which defines torture as*"...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions"*.

According to this definition, torture has the following elements[4]:

1. Torture involves the infliction of *"pain or suffering, whether physical or mental"*. Thus torture is not restricted to infliction of physical pain only; it includes infliction of mental pain or suffering also.
2. The pain or suffering inflicted should be *"severe"*. If the intensity of the pain or suffering inflicted is not severe, the act does not amount to torture, although it may amount to illtreatment.
3. The pain or suffering is inflicted *"intentionally"*. Pain or suffering which is not inflicted deliberately and "*arising only from, inherent in or incidental to, lawful sanctions"* does not amount to torture.
4. The pain or suffering is inflicted for a specific *"purpose"* such as for obtaining information, punishment or intimidation, as listed in Article 1 of the Convention, or *"for any reason based on discrimination of any kind"*.

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[3] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987.

[4] Combating Torture – A Manual for Action, Amnesty International Publications, 2003

The pain or suffering is inflicted *"by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity"*. Thus to constitute torture the pain or the suffering should have been inflicted either by the state authorities themselves, or else they knew it, or they ought to have known about it but did not try to prevent it.

Article 1 of the UN Convention Against Torture[5] as cited above, gives a comprehensive definition of torture but it does not clearly specify the types of ill-treatment or techniques which will amount to torture. It only sets out certain essential elements, presence of which will make an act to be considered as torture in legal sense. Section 3 of the Prevention of Torture Bill, 2010[6] contained a relatively more precise definition of torture and provided as under:

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:

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.

Explanation.—For the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.

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5 Ibid. 3

6 The Prevention of Torture Bill, 2010 was introduced in the Lok Sabha on April 26, 2010, and was passed by that House on May 6, 2010. The Bill was referred to the Select Committee by the Rajya Sabha and thereafter lapsed. (http://www.prsindia.org/billtrack/the-prevention-of-torture-bill-2010-1129/, accessed on 22/09/2014)

'Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', commonly known as the "Istanbul Protocol", published by the United Nations Office of the High Commissioner for Human Rights (2004)[7] mentions that torture methods include, but are not limited to the following:

(a) Blunt trauma, such as a punch, kick, slap, whipping, a beating with wires or truncheons or falling down;

(b) Positional torture, using suspension, stretching limbs apart, prolonged constraint of movement, forced positioning;

(c) Burns with cigarettes, heated instruments, scalding liquid or a caustic substance;

(d) Electric shocks;

(e) Asphyxiation, such as wet and dry methods, drowning, smothering, choking or use of chemicals;

(f) Crush injuries, such as smashing fingers or using a heavy roller to injure the thighs or back;

(g) Penetrating injuries, such as stab and gunshot wounds, wires under nails;

(h) Chemical exposure to salt, chilli pepper, gasoline, etc. (in wounds or body cavities);

(i) Sexual violence to genitals, molestation, instrumentation, rape;

(j) Crush injury or traumatic removal of digits and limbs;

(k) Medical amputation of digits or limbs, surgical removal of organs;

(l) Pharmacological torture using toxic doses of sedatives, neuroleptics, paralytics, etc.;

[7] Available at http://www.ohchr.org/documents/publications/training8rev1en.pdf (accessed on 29/10/2014)

(m) Conditions of detention, such as a small or overcrowded cell, solitary confinement, unhygienic conditions, no access to toilet facilities, irregular or contaminated food and water, exposure to extremes of temperature, denial of privacy and forced nakedness;

(n) Deprivation of normal sensory stimulation, such as sound, light, sense of time, isolation, manipulation of brightness of the cell, abuse of physiological needs, restriction of sleep, food, water, toilet facilities, bathing, motor activities, medical care, social contacts, isolation within prison, loss of contact with the outside world (victims are often kept in isolation in order to prevent bonding and mutual identification and to encourage traumatic bonding with the torturer);

(o) Humiliation, such as verbal abuse, performance of humiliating acts;

(p) Threats of death, harm to family, further torture, imprisonment, mock executions;

(q) Threats of attack by animals, such as dogs, cats, rats or scorpions;

(r) Psychological techniques to break down the individual, including forced betrayals, accentuating feelings of helplessness, exposure to ambiguous situations or contradictory messages;

(s) Violation of taboos;

(t) Behavioural coercion, such as forced engagement in practices against the religion of the victim (e.g. forcing Muslims to eat pork), forced harm to others through torture or other abuses, forced destruction of property, forced betrayal of someone placing them at risk of harm;

(u) Forcing the victim to witness torture or atrocities being inflicted on others.

A term 'third degree methods' is often used in the context of torture. The term is said to have been coined, in about 1911 by Major Richard H. Sylvester, superintendent of police in Washington, DC. He divided police procedures into the arrest as the first degree, transportation to jail as the second degree, and *interrogation* as the third degree.[8] This term has however no strict legal meaning and is used as a euphemism for the inflicting of severe form of torture on a suspect to extract confessions.

Reasons for Torture

The reasons why policemen often resort to torture is not far to seek. In their own perception, the policemen torture a suspect with the 'professional objectives' to get evidence. These objectives may be the following.[9] Torture in Asia, Asian Human Rights Commission, available at:

1. to extract information or confession from the suspect in order to solve a case;
2. to recover stolen property or weapons of offence;
3. to unearth other crimes which an arrested hardened criminal may have committed;
4. to ascertain the whereabouts of the associates.

On the rationale by the police for resorting to torture on the suspect of the crime, the K. Padamanabhaiah Committee on Police Reforms[10] made following observations:

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[8] http://en.wikipedia.org/wiki/Third_degree_(interrogation)

[9] Torture in Asia, Asian Human Rights Commission, available at http://www.humanrights.asia/resources/books/monitoring-the-right-for-an-effective-remedy-for-human-rights-violations/torture-in-asia (accessed on 29/09/2014)

[10] K. Padamanabhaiah Committee on Police Reforms was constituted by the Government of India in January, 2000.

> "Other circumstances have also played a role in pushing the police into resorting to torture. First, if a suspect is formally arrested, he has to be produced in court within twenty-four hours. These twenty-four hours are barely enough for the police to interrogate a suspect thoroughly, break his initial resistance, and ascertain the entire sequence of the offence he would have committed. Since the courts do not easily give police remand, the tendency is to apprehend a suspect and keep him in illegal custody in order to be able to interrogate him at some length. Whenever a serious crime like a robbery or a major burglary takes place, the area police swoop on all possible suspects of the vicinity. They are picked from their homes and kept in the police station over several days, not formally in a lock-up, but in some other remote room, to escape detection. ….. As the police are not quite comfortable keeping a man in illegal custody (because of fear of being discovered by the judiciary or the magistracy or the media or the human rights groups), the tendency is to get over with the whole thing quickly by the short-cut method of third-degree. In case a suspect confesses to his crime and the case is worked out, the police then document it formally. The criminal's arrest is shown in a dramatic kind of way. If he is a burglar, a story is built around his arrest, generally to the effect that he was found "lurking" at the dead of night and that his physical search led to recovery of tools and master keys which showed that he was planning to commit a cognizable offence and that his subsequent interrogation led to the recovery of the stolen property.[11]

The above observation of the Padamanabhaiah Committee also indicates that the police resort to torture for detection of crime as the police often tend to follow the 'criminal to crime approach' instead of the 'crime to criminal approach' which should be the norm. The

[11] Ibid. Chapter 11

observation of the Supreme Court in *Sube Singh* v. *State of Haryana*[12] succinctly describes this approach.

> "Unfortunately, police in the country have given room for an impression in the minds of public, that whenever there is a crime, investigation usually means rounding up all persons concerned (say all servants in the event of a theft in the employer's house, or all acquaintances of the deceased, in the event of a murder) and subjecting them to third-degree interrogation in the hope that someone will spill the beans. This impression may not be correct, but instances are not wanting where police have resorted to such a practice."

Lack of awareness about scientific methods of investigation is another reason for use of torture by the police for collection of evidence as was observed by the Padamanabhaiah Committee:[13]

> "Formal training in the skills of interrogation is hardly imparted to policemen, apart from a few odd lectures during training. As a result, a policeman learns the skills on the job, largely by improvisation and by watching his senior peers successfully extracting confessions by the rough and ready method of torture. Since they have no real experience of scientific and painstaking interrogation and since time is anyhow at a premium with the police, they tend to gloss over the merits of sustained interrogation in favour of the quick results that torture brings".

Police Sub-culture

Use of torture methods in detection of crime has thus become part of the police sub-culture for which colonial legacy of the Indian police is one of the important reasons. The British rule and its instrumentalities in

[12] AIR 2006 SC 1117

[13] Ibid. 10, Chapter 11.

India, during the initial period, focussed primarily on collection of revenue. Use of torture by the officials including 'Kotwals' was quite prevalent in this period. The Select Committee on East Indian Affairs (1832) noted:"There is ample evidence that colonial administration was aware about excessive pain by revenue and police officials used purposely to extort confessions, money or taxes".*Torture Commission (1855)* appointed by the British Government for investigation of alleged cases of torture in Madras Presidency in its report also highlighted that police torture was quite prevalent in the Madras Presidency. Subsequently, enactment of criminal and procedure laws namely Indian Penal Code, 1860, Indian Evidence Act, 1872 and Indian Code of Criminal Procedure, 1898 incorporated provisions such as sections162, 163, 172 and 173 of the Code of Criminal Procedure and sections 24 and 25 of the Indian Evidence Act which prohibited any form of torture during interrogation. Besides, sections 330 and 331 of the Indian Penal Code made punishable causing hurt or grievous hurt to extort confession or information from a person in the custody of police[14].

However, in the subsequent decades, with the freedom movement gaining momentum, particularly in view of the Home Rule agitation, Non-Cooperation Movement, Civil Disobedience Movement and finally the Quit India Movement, the British rule used police for protecting the interests of 'the Raj'. Police often used brutal force against the natives and a police sub-culture developed wherein use of brutal force and methods of torture gained acceptance in the system. This situation unfortunately did not change after independence despite a democratic form of government in the country. Instead, in the free India, use of torture in police custody became a very visible feature of the police sub-culture. After Independence, almost all the Police Commissions appointed by the Union and State Governments to look into the performance and methods of working of the Police have noted widespread use of 'third

[14] http://shodhganga.inflibnet.ac.in/bitstream/10603/2714/11/11_chapter%202.pdf (accessed on 10/10/2014)

degree' methods in police custody in the country. *The National Police Commission* in its Fourth Report particularly mentioned[15]:

> "Police are frequently criticized for their use of third degree methods during investigation while examining suspected or accused persons. ….. Interrogation of a person, whether he be a witness or suspect or accused, is a difficult and delicate exercise for any police officer and calls for enormous patience and considerable understanding of human psychology. …. Unfortunately several police officers under pressure of work and driven by a desire to achieve quick results, leave the path of patient and scientific interrogation and resort to the use of force in different forms to pressure the witness/suspect/ accused to disclose all the facts known to him."

In the prevailing police sub-culture infliction of torture is considered very effective in detection of crime, particularly in the cases related to offences against property where solving of crime depends to a large extent in getting a confession from the suspect. Third degree methods are also often used in sexual offences. Use of torture in interrogation of the suspect is also considered a deterrent to potential criminals. Further, torture of a suspect during the interrogation is generally not discouraged by the supervisory police officers which further strengthens the sub-culture wherein use of torture methods find acceptance .This sub-culture is further reinforced, as was observed by the Supreme Court in the case *Smt. Shakila Abdul Gafar Khan* vs. *Vasant Raghunath Dhoble*[16], due to the following:

> "Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood,

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15 Available at http://bprd.nic.in/writereaddata/linkimages/8939843683-FOURTH%20REPORT.pdf(accessed on 12/10/2014)

16 AIR2003SC4567

> it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues…… It reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture."

Sanction by Society

Sometimes it is seen that the society also supports and sometimes even 'demand' torture of the apprehended alleged offender to extract confessions or leads from him. Particularly the victims in property offences such as burglary and theft often complain that in their cases the police did not do enough to extract a confession and to recover stolen property from the suspects. People generally expect the police to use strong-arm methods against the criminals and anti-social elements.

Incidentally in ancient India too, there appears to be some instances of sanction to the use of torture for extracting evidences/confession from the accused or the suspected person. For instance Chanakya in his famous book 'Arthashashtra', in Chapter VIII of Book IV (The Removal of Thorns) under the heading 'Trial and Torture to Elicit Confession', mentions:[17]

> "WHETHER an accused is a stranger or a relative to a complainant, his defence witness shall, in the presence of the complainant, be asked as to the defendant's country, caste, family, name, occupation, property, friends, and residence. The answers obtained shall be compared with the defendant's own statements regarding the same. Then the defendant shall be asked as to not only the nature of the work he did during the day previous to the theft, but also the place where he spent the night till he was caught

[17] http://merki.lv/vedas/Artha%20shastra%20(eng).pdf (accessed on 12/10/2014)

> hold of. If his answers for these questions are attested to by reliable referees or witnesses, he shall be acquitted. Otherwise he shall be subjected to torture (anyatha karmapráptah)."

One of the main reason for societal sanction to the torture of the suspect is, as was observed by the Supreme Court in *Sube Singh* v. *State of Haryana*[18] that "the public (and men in power) expect results from police in too short a span of time, forgetting that methodical and scientific investigation is a time consuming and lengthy process. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high-profile or heinous crimes build enormous pressure on the police to somehow 'catch' the 'offender'. The need to have quick results tempts them to resort to third degree methods."

Torture-a Matter of Concern

Use of torture in detection of crime is however a matter of concern for many reasons. Observations of the Supreme Court in the case *Raghubir Singh* v. *State of Haryana*[19] reproduced as under, very aptly depicts the magnitude of the problem of custodial torture:

> "We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scarce in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death."

Torture amounts to dehumanising treatment given to a defenceless person and violates his most fundamental human rights as was observed by the National Police Commission in its Fourth Report[20]:

> "While law recognizes the need for use of force by the police in the discharge of their duties on some specified occasions like

[18] Ibid. 12

[19] AIR 1980 SC 1087

[20] Ibid. 15

> the dispersal of the a violent mob or the arrest of a violent bad character who resists the arrest, etc., the use of force against an individual in their custody in his loneliness and helplessness is a grossly unlawful and most degrading and despicable practice that requires to be condemned in the strongest of terms."

Torture is a Crime

Torture is a crime under the international laws and there is an absolute prohibition on torture under the international law. Article 5 of the Universal Declaration of Human Rights (UDHR)[21] expressly declares that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Article 7 of the International Covenant on Civil and Political Rights (ICCPR)[22] contains similar provisions. Under Article 7 of the Rome Statute of the International Criminal Court[23], torture may be considered a crime against humanity "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack". Article 8 of the Rome Statute provides that torture may also, under certain circumstances, be prosecuted as a war crime.

Under Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(CAT)[24] also there is complete prohibition of torture. Article 2(2) of the Convention provides that *"No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture"*. Further, Article 5 of the Code of Conduct for Law Enforcement Officials[25] also indicates complete prohibition of torture and provides:"

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[21] UDHR was adopted by the UN General Assembly in the year 1948.

[22] ICCPR was adopted by the UN General Assembly on 16 December 1966, and came into force on 23 March, 1976.

[23] Ibid.2

[24] Ibid. 3

[25] Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx (accessed on 29-09-2014)

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

In India, the Constitution contains express provisions prohibiting custodial torture. Article 20(3) of the Constitution has direct relevance to protection from torture. It contains the principle against 'self-incrimination', based on the legal maxim '*nemo tenetur sceipsum accusare'* which, literally translated, means, a man cannot represent himself as guilty[26]. Article 20 (3) expressly declares that "No person accused of any offence shall be compelled to be a witness against himself". In the case *Nandini Satpathy vs. P.L Dani*[27] the Supreme Court discussed the ambit of the expression 'compelled to be a witness against himself' occurring in Article 20(3) of the Constitution in view of provisions of section 161(2) of the Criminal Procedure Code, 1973 (Cr.PC)[28] which casts a duty on a person to truthfully answer all questions to an investigating officer, except those which would establish personal guilt.

In this case Smt. Nandini Satpathy, a former Chief Minister of Orissa was asked to appear at the Vigilance Police Station, Cuttack, for being examined in connection with a case registered against her under the Prevention of Corruption Act on the allegation of acquisition of assets disproportionate to the known, licit sources of income. During the course

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[26] Nandini Satpathy vs. P.L Dani (AIR 1978 SC 1025)

[27] Ibid.

[28] Section 161.Cr.PC. Examination of witnesses by police. - (1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

of the investigation she was interrogated with reference to a long string of questions, given to her in writing. She refused to answer the questionnaire on the grounds that it was a violation of her fundamental right against self-incrimination. On her refusal to answer the questions a complaint was filed by the Deputy Superintendent of Police, Vigilance (Directorate of Vigilance), Cuttack, against her under section 179 of the Indian Penal Code, 1860 (IPC)[29] before the Sub-divisional Judicial Magistrate Sadar, Cuttack. Thereupon the Magistrate took cognizance of the offence and issued summons for appearance against Smt. Nandini Satpathy. Aggrieved by the action of the Magistrate she moved the High Court challenging the validity of the magisterial proceeding, making submissions that the charge rested upon a failure to answer interrogations by the police but this charge was unsustainable because of the constitutional shield of Article 20(3). Upon rejection of the plea by the High Court she appealed to the Supreme Court. The issue before the Supreme Court was therefore, whether an accused had a 'right to silence', that is, to refuse to answer questions during investigation that would point towards his guilt.

The Supreme Court observed that "there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess". It also noted that "crimes, in India and internationally, are growing and criminals are outwitting the detectives" and "conspiracies to defeat the law have, in recent decades, become widely and powerfully organized and have been able to use modern advances in communication and movement to make detection more difficult". Despite this, the Court said, the protection of fundamental rights enshrined in our Constitution is of utmost importance, and in the interest of protecting these rights, "we cannot afford to write off the fear of police torture

[29] Section 179 of the IPC provides that "Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".

leading to forced self-incrimination". The Court held while "any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence", but "if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Article 20(3)". The Supreme Court held that the accused has a right to silence during interrogation if the answer exposes her/him into admitting guilt in either the case under investigation or in any other offence.[30]

Apart from Article 20(3) which contains provisions directly relevant to prohibition of torture, Article 21 of the Constitution is also relevant in the context in view of judicial pronouncements. This Article provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Though it does not contain any express provision against torture, the expression "life or personal liberty" occurring in the Article has been interpreted by the Supreme Court to include a constitutional right against torture. In the case *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors.*[31] the Supreme Court held as under:

> '….that any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21….. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the

[30] http://www.humanrightsinitiative.org/publications/hrc/humanrights_policing.pdf (accessed on 20/09/2014)

[31] 1981 AIR 746, 1981 SCR (2) 516

components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights…."

Again in *Smt. Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble and Anr*[32] the Supreme Court stated:

"Article 21 which is one of the luminary provisions in the Constitution of India, 1950 and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The Article mandates that no person shall be deprived of his life

[32] AIR 2003 SC 4567

> and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the State or its functionaries."

Articles 22 of the Constitution further manifests the constitutional protection from torture extended to every citizen. Clause (2) of Article 22 provides that "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate". The right to be produced before a Magistrate under Article 22(2), thus gives the arrested person an opportunity to express his grievance which he might have against the treatment meted out to him in custody.

In addition to the aforesaid Constitutional provisions, protection against torture has also been provided in the statutory laws. For instance, the Indian Penal Code, 1860 (IPC) provides for punishment for causing injury or torture of a person in custody. Most of the provisions contained in Chapter XVI of the IPC containing provisions relating to offences against the human body cover persons in custody as well. Sections 330 and 331 of the IPC however expressly declare torture to extract a confession a crime. Section 330 provides that "whoever 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, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." Illustrations (a) of the section provides that if 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. Illustration (b) provides that if 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. Section 331 provides enhanced punishment for voluntarily causing grievous hurt to extorting any confession or any information which may lead to the detection of an offence, for a term which may extend to ten years, besides fine.

Further, Section 166 of the Penal Code provides that "Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant intending to or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both." The expression "injury", as defined by Section 44 of the Penal Code, covers harm illegally caused to body, mind, reputation or property. Section 348 of the Code also provides for punishment to a person who wrongfully confines any person for extorting any confession, etc. The section also punishes extortion committed to extract information leading to the detection of offence or misconduct.

The procedural laws, the Criminal Procedure Code, 1973 (Cr.PC) and the Evidence Act, 1872 also contain certain provisions which operate as a safeguard against custodial torture. For instance, section 163(1) of the Cr.PC expressly provides that "No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872". Section 24 of the Evidence Act provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused

person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him." Section 25 of the Indian Evidence Act further provides that confession made by a person accused of any offence to a police officer shall not be admissible as evidence. Section 29 of the Police Act, 1861 also declares torture in custody a punishable offence. This section lays down that 'Every police officer …. who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both".

The constitutional and the statutory provisions as discussed above have been further supplemented by judicial pronouncements. In a catena of decisions, particularly in *Nilabati Behera* v. *State of Orissa* (1993 AIR 1960, 1993 SCR (2) 581) and *D.K. Basu* v. *State of West Bengal* (AIR 1997 SC 610), apart from the criminal liability of the concerned police official for an act of torture the liability of the State for damages for violation of Constitutional rights of life, liberty and dignity of individual has also been recognised and established as a part of public law regime by the Apex Court. Even the claim of sovereign immunity arising out of the State's discharging sovereign functions has been held to be no defence against the acts of violation of constitutional rights.

In the case *Smt. Nilabati Behera Alias Lalita* v. *State of Orissa and Ors*[33] the Supreme Court considered the award of compensation as part of the legal consequences of the contravention of the constitutional right of life and liberty. In this case a letter sent to the Supreme Court by Smt. Nilabati Behera alias Lalita Behera was treated as a Writ Petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son Suman Behera,

[33] 1993 AIR 1960, 1993 SCR (2) 581

aged about 22 years, in police custody. The said Suman Behera was taken from his home in police custody at about 8 a.m. on 1.12.1987 by Sarat Chandra Barik, Assistant Sub-Inspector of Police of Jeraikela Police Outpost under Police Station Bisra, District Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the Police Outpost. At about 2 p.m. the next day on 2.12.1987, the petitioner came to know that the dead body of her son Suman Behera was found on the railway track near a bridge at some distance from the Jeraikela railway station. There were multiple injuries on the body of Suman Behera when it was found and his death was obviously unnatural, caused by those injuries. The allegation made was that it was a case of custodial death since Suman Behera died as a result of the multiple injuries inflicted to him while he was in police custody; and thereafter his dead body was thrown on the railway track. The prayer made in the petition was for award of compensation to the petitioner, the mother of Suman Behera, for contravention of the fundamental right to life guaranteed under Article 21 of the Constitution.

The defence of the respondents was that Suman Behera managed to escape from police custody at about 3 a.m. on the night between the 1st and 2nd December, 1987 from the Police Outpost Jeraikela, where he was detained and guarded by Police Constable Chhabil Kujur. He could not be apprehended thereafter in spite of a search and his dead body was found on the railway track the next day with multiple injuries which indicated that he was run over by a passing train after he had escaped from police custody. In short, on this basis the allegation of custodial death was denied and consequently the respondents' responsibility for the unnatural death of Suman Behera.

In view of the controversy relating to the cause of death of Suman Behera, a direction was given by the Supreme Court to the District Judge, Sundergarh in Orissa, to hold an inquiry into the matter and submit a report. Accordingly the District Judge submitted the Inquiry Report

containing his finding that Suman Behera had died on account of multiple injuries inflicted to him while he was in police custody at the Police Outpost Jeraikela. The correctness of this finding was disputed by the respondents following which the matter was examined afresh by the Supreme Court in the light of the objections raised to the Inquiry Report.

The Court pointed out that prisoners and detenues are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detenues. The Court observed:

> "Convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental rights by such persons. It is an obligation of the State, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under- trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to the procedure- established by law. The death of petitioner's son was caused while he was in custody of the police by police torture. A custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law."

The Court observed that it was admitted that Suman Behera was taken in police custody on 1.12.1987 at 8 a.m. and he was found dead the next day on the railway track near the Police Outpost Jeraikela, without being released from custody, and his death was unnatural caused by multiple injuries sustained by him. The burden was, therefore, clearly on the respondents to explain how Suman Behera sustained those injuries which caused his death. Unless a plausible explanation was given by the respondents which were consistent with their innocence, the obvious inference was that the fatal injuries were inflicted to Suman Behera in police custody resulting in his death, for which the respondents were responsible and liable.

While dealing with the question whether it was a case of custodial death as alleged by the petitioner, the Court observed that the admitted facts were that Suman Behera was taken in police custody at about 8 a.m. on 1.12.1987 by Sarat Chandra Barik, Assistant Sub-Inspector of Police, during investigation of an offence of theft in the village and was detained at Police Outpost Jeraikela; Suman Behera and Mahi Sethi, another accused, were handcuffed, tied together and kept in custody at the police station; Suman Behera's mother, the petitioner, and grand-mother went to the Police Outpost at about 8 p.m. with food for Suman Behera which he ate and thereafter these women came away while Suman Behera continued to remain in police custody; Police Constable Chhabil Kujur and some other persons were present at the Police Outpost that night; and the dead body of Suman Behera with a handcuff and multiple injuries was found lying on the railway track at Kilometer No.385/29 between Jeraikela and Bhalulata railway-stations on the morning of 2.12.1987. The Court observed that it was significant that there was no cogent independent evidence of any search made by the police to apprehend Suman Behera, if the defence of his escape from police custody be true. On the contrary, after discovery of the dead body on the railway track in the morning by some railwaymen, it was much later in the day that the police reached the

spot to take charge of the dead body. The Court observed that this conduct of the concerned police officers was also a significant circumstance to assess credibility of the defence version.

The Court also discussed the injuries found on the body of the deceased during post-mortem examination. The doctor who had conducted the post-mortem examination deposed that all the injuries were caused by hard and blunt object; the injuries on the face and left temporal region were post-mortem while the rest were ante-mortem. The doctor excluded the possibility of the injuries resulting from dragging of the body by a running train and stated that all the ante-mortem injuries could be caused by 'lathi' blows. It was further stated by the doctor that while all the injuries could not be caused in a train accident, it was possible to cause all the injuries by 'lathi' blows. Thus, the Court observed, that the medical evidence comprising the testimony of the doctor, who conducted the post-mortem, excluded the possibility of all the injuries to Suman Behera being caused in a train accident while indicating that all of them could result from the merciless beating given to him.

The Court also referred to the Report containing the findings in a joint inquiry conducted by the Executive Magistrate and the Circle Inspector of Police, made under Section 176 Cr.PC. The Court noted that in the first place, an inquiry under Section 176 Cr.PC is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry. The joint finding recorded was that Suman Behera escaped from police custody at about 3 a.m. on 2.12.1987 and died in a train accident as a result of injuries sustained therein. There was hand-cuff on the hands of the deceased when his body was found on the railway track with rope around it. The Report of the Regional Forensic Science Laboratory mentioned that the two cut ends of the two pieces of rope which were sent for examination did not match with each other in respect of physical appearance. The Court observed that this finding about the rope negatived the respondents'

suggestion that Suman Behera managed to escape from police custody by chewing off therope with which he was tied.

The Court held that the death of Suman Behera was caused while he was in custody of the police by police torture. On the question of award of compensation as part of the legal consequences of violation of the constitutional right of life and liberty the Court held as under:

> "Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. ..... 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..... A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection, of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers,

and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution."

In the present case, on the finding reached, the Court observed that it was a clear case for award of compensation to the petitioner for the custodial death of her son and directed the respondent-State of Orissa to pay the sum of Rs.1,50,000 to the petitioner as compensation.

Again *in Shri D.K. Basu* v. *State of West Bengal*[34] the Supreme Court extensively discussed custodial torture and laid down certain requirements to be followed in all cases of arrest or detention to prevent third-degree methods. The Court also reiterated monetary or pecuniary compensation to be an appropriate and effective remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants, and that the State is vicariously liable for their acts.

In this case the Executive Chairman, Legal Aid Services, West Bengal, a non-political organisation registered under the Societies Registration Act, on 26th August, 1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph dated 20, 21 and 22 of July, 1986 and in the Statesman and Indian Express dated 17th August, 1986 regarding deaths in police lock-ups and custody. The Executive Chairman after reproducing the news items submitted that it was imperative to examine the issue in depth and to develop "custody jurisprudence" and formulate modalities for awarding compensation to the victim and/or family members of the victim for atrocities and death caused in police custody and to provide for accountability of the officers concerned. It also stated in the letter that efforts are often made to hush up the matter of lock-up deaths and thus the crime goes unpunished and "flourishes". It was requested that the letter along with the news items be treated as a writ petition under "public interest litigation" category.

[34] AIR 1997 SC 610

Considering, the importance of the issue raised in the letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock up, the letter was treated as a writ petition. Showing its anguish over the practice of custodial torture the Court observed:

> "Custodial violence, including torture and death in the lock ups, strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by person who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society."

On the issue whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India, the Court observed:

> "It is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is victoriously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to

apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be fell to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damage which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

Plea of Superiors' Order is no Defence

Torture is thus a crime and police personnel committing the act of torture are liable for criminal prosecution. Often it is seen that that the police officers resort to committing torture of the arrested accused persons to extract confession or evidences from the arrested person at the instance of their senior officers or under pressure from them. However the plea of superior's orders - a *plea* that a subordinate should not be held guilty for actions which were ordered by a superior officer- as a defence to an otherwise criminal act is not considered an absolute defence if the order of the superior was manifestly illegal. Article 2 (3) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment[35] specifically provides that "an order from a superior officer or a public authority may not be invoked as a justification of torture". Inadmissibility of the plea of superior order as a defence has also been incorporated in the Indian law, as is specifically manifest from the provisions contained in section 76 and section 79 of the Indian Penal Code[36] .

Torture not even in exceptional circumstances

One reason why the police officers sometimes question absolute prohibition of torture is due to the belief that a good result produced by torture justifies the evil act of torturing someone. Torture is thus justified in some circumstances due to the ethical dilemma faced by them, in some situations, as explained by the hypothetical 'ticking bomb scenario' discussed below (described by the BBC in a survey)[37]:

- A terrorist group states that it has concealed a nuclear bomb in London.
- The authorities have captured the leader of the group.
- The leader of the group says that he knows where the bomb is.
- He refuses to reveal the location.
- Torture is guaranteed to produce the information needed to ensure the authorities find and make the bomb safe.

In such a scenario some police officers may be of the view that it is ethically acceptable to torture the suspected criminal (or even his family

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35 Ibid. 3

36 Section 76 of the Indian Penal Code (IPC) provides that "Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it." Illustrations (a) of the section provides that if a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law, then A has committed no offence. Section 79 of the IPC further lays down that "Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."

37 http://www.bbc.co.uk/ethics/torture/ethics/tickingbomb_1.shtml (accessed on 29-09-2014)

members) to find out where the bomb has been placed and thus save thousands of lives.

Law however does not permit use of torture even in such exceptional circumstances. For instance, Article 2 (2) of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[38] expressly provides that "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 as a justification of torture".

In the case *Gäfgen* v. *Germany*[39] the Grand Chamber of the European Court of Human Rights held that torture cannot be resorted to even under such circumstances as in a "ticking time bomb' scenario. In this case the applicant, Gäfgen, on September 27, 2002, lured a 12 year old boy Jakob von Metzler to his apartment in Frankfurt am Main by pretending that the child's sister had left a jacket there. He then killed the boy by suffocating him and disposed the body beside a lake. Subsequently, he sent a ransom note at Jakob's parents' place of residence stating that Jakob had been kidnapped and demanding one million euros. The note further stated that if the kidnappers received the ransom and managed to leave the country, then the child's parents would see their son again. Gäfgen collected the ransom, and was arrested attempting to flee from Frankfurt airport later that afternoon. He told police that the boy was alive and being held by two other (fictional) kidnappers in a hut by a lake, but repeatedly refused to disclose the location.

Believing the boy's life to be in grave danger, and in the face of the applicant's continued resistance to police questioning, the next morning the Deputy Chief of the Frankfurt police Wolfgang Daschner authorised

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[38] Ibid. 3

[39] Application No. 22978/05,The European Court of Human Rights, available athttp://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-99015#{"itemid":["001-99015"], (accessed on 29/10/2014)

Officer Ennigkeit to threaten Gäfgen with considerable pain, and to inflict that pain if necessary. The infliction of pain on the applicant was to occur under medical supervision by a specially trained police officer who was en route to Frankfurt in a helicopter at the time. The authorisation was fully documented in the police file, and was taken in defiance of explicit orders to the contrary by superiors. A mere ten minutes after the threat, Gäfgen made a full confession and admitted that the boy was dead. He agreed to take police to the lake where he had hidden the body.

He was convicted of murder and kidnapping with extortion and sentenced to life imprisonment in July 2003. His appeal to the Federal Court of Justice was rejected in May 2004 and his complaint to the Federal Constitutional Court was also rejected in December 2004. In 2005, he filed a complaint against Germany at the European Court of Human Rights. The Grand Chamber of the European Court of Human Rights held Germany liable for violation of Article 3 of the European Convention on Human Rights which states that "No one shall be subjected to torture or inhuman or degrading treatment or punishment".

The Grand Chamber accepted that the police officers had acted in an attempt to save the child's life. However, the Court stated that the philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue.

Torture may Change Complexion of the Crime

One reason why torture should be avoided is that torture may sometimes even change the complexion of the crime. Facts and circumstances of the case *Ramdhani Pande* v. *The State of Madhya Pradesh*[40] clearly demonstrate this aspect wherein an innocent person confessed of having committed a crime which he had not committed, under pressure of the police.

[40] 1973 CriLJ 1880

The accused-appellant in this case, a Sub-Inspector of Police, was posted as Station Officer, Police Station, Shahnagar, district Panna (MP) in November and December 1966. A corpse was found near a place called 'Dana Baba Ki Bhatia' in the forest near village Kurena. The identity of the corpse could not be established as it had decomposed, only bones being left. Near the dead body, amongst other things, an empty paper packet of sweets bearing the name 'Khanna Stores, Jabalpur' was found. The accused-appellant, who was in charge of the investigation in respect of the aforesaid death, believed it to be the case of a suspected murder and, presumably because an empty paper bag of sweets bearing the name 'Khanna Stores, Jabalpur' had been found near the dead body, came to Jabalpur for further investigation. At Jabalpur he learnt that on 1-11-1966 two reports had been lodged. One report was lodged by one Mst. Harchhatia, mother of one Phoolchand, at Police Station, Khamaria complaining that her son Phoolchand was missing since 26-10-1966, and that the last she had heard of him was that he had been taken by one Sukku to Pamagar. The other report was lodged by one Sukku at police-station, Ranjhi stating that while he and Phoolchand were going to Bombay by train, Phoolchand got down at Bhusaval and did not enter the train again and had not been heard of since then. On the basis of the aforesaid reports and other material, the accused-appellant conjectured that the dead body found in the forest of village Kurena was that of the missing Phoolchand and that his murder had been committed by Sukku.

It was alleged by the prosecution that on 22-11-1966 the accused-appellant went to village Piparia and took into custody Sukku, and between the period 23-11-1966 to 3-12-1966 kept him under wrongful confinement at police-station, Jabalpur Cantonment where he beat him and tortured him to confess to the commission of the murder of Phoolchand. In the result, on or about 28-11-1966 Sukku confessed that he had murdered Phoolchand with the help of one Chandan Singh and Dranari. The accused-appellant thereafter took Sukku along with Chandan Singh to

Panna where they were formally arrested on 5-12-1966 and produced before the Additional District Magistrate, (Judicial), for remand. Sukku was in jail on remand from 7-12-1966 to 27-12-1966. However, before a 'challan' (charge sheet) could be filed, Phoolchand returned home. Consequently on 27-12-1966 Sukku was ordered to be released by the Additional District Magistrate (Judicial), Panna.

Later an FIR (First Information Report) dated 13-1-1967 was filed by Sukku. It was stated by Sukku that he and Phoolchand left Jabalpur by train for Bombay. On the way, at Bhusaval railway station he saw that Phoolchand was brushing his teeth on the platform. When the train started he shouted to Phoolchand to sit in any compartment at the back but on reaching Bombay he found that Phoolchand was not in the train. After searching Phoolchand for a couple of days, he returned to Jabalpur where he learnt that Phoolchand had not come back home, and on or about 28-10-1966, he reported the matter of the missing of Phoolchand from Bhusaval at police station Khamaria. He alleged that on 22-11-1966 he was taken to police station, Jabalpur Cantonment by the accused-appellant who charged him with the murder of Phoolchand and tortured because he would not confess to a murder which he had not committed. He was also tortured by being applied electric current from a mechanical machine. On being so tortured, he confessed that he had killed Phoolchand and thereafter he was confined in the lock-up at police station Jabalpur Cantonment for about seven days and further tortured till he agreed to confess that Chandan Singh and Dumari were his associates in the killing. He was then produced before a Magistrate and remanded to jail custody.

The accused-appellant denied having beaten or tortured Sukku during investigation. He contended that the confession made by Sukku, that he had committed the murder of Phoolchand, was voluntary and not the result of any beating or torture.

The Court however found the evidence of Sukku as to the torture and wrongful confinement amply corroborated on a number of important

and material particulars by the other independent evidences on record. The Court observed that the very fact that the complainant Sukku had confessed to the murder of Phoolchand who to his knowledge, was last seen by him at railway-station Bhusawal, and whom he had not murdered as the subsequent appearance of Phoolchand at Jabalpur amply showed, raised a suspicion that his confession could not be and was not voluntary, and made the story of assault and torture narrated by Sukku highly probable. The Court also observed that the complainant, a village rustic and a simpleton did not complain of the beating or torture to the Magistrate who remanded him to jail custody. After considering the evidences the Court came to the conclusion that Sukku was beaten and tortured at police station Jabalpur Cantonment. As a result he confessed to the commission of a crime he had not committed, and the accused-appellant Sub-Inspector was held guilty for offences under sections 330 and 348 of the Indian Penal Code.

The above instance shows that torture by police in detection of crime may change complexion of the crime, resulting in injustice, which does not at all serve the purpose of the criminal justice system.

Preventing Custodial Torture

Law is thus clear that custodial torture is a criminal act. It not only undermines human dignity but also exposes the police officer to the risk of criminal liability. Large scale use of scientific aids in investigation can perhaps prove to be the most effective in reducing resort to third degree measures by the police in cracking cases. Forensic science (ballistics, chemists, biologists, finger print specialists, etc.) can play extremely useful role in investigation of cases. Similarly adoption of latest technology and large-scale computerisation for promptly preparing police station records can bring openness and transparency in the working of police to a great extent. This, coupled with effective supervision by the senior police officers, can be very effective in curbing the use of third-degree methods.

The most important thing for preventing custodial torture however, would be that the senior police officer themselves do not indulge in custodial torture, and at the same time, strictly deal with the instances of custodial torture, giving exemplary punishment to those indulging in such practices. In no case a senior police officer should try to cover-up and protect his subordinate.

Supreme Court of India in the case *Sube Singh* v. *State of Haryana*[41] has suggested some very practical and effective methods to prevent custodial violence, reproduced as under.

> "Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

a) Police training should be re-oriented, to bring in a change in the mind set and attitude of the Police personnel in regard to investigations, so that they will recognize and respect human rights, and adopt thorough and scientific investigation methods.

b) The functioning of lower level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation.

c) Compliance with the eleven requirements enumerated in *D.K. Basu* (1997 AIR SCW 233) should be ensured in all cases of arrest and detention.

d) Simple and fool-proof procedures should be introduced for prompt registration of first information reports relating to all crimes.

[41] 2006 AIR SCW 779

e) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to FIRs, Mahazars, inquest proceedings, Port-mortem Reports and Statements of witnesses etc. and to bring in transparency in action.

f) An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power, to investigate complaints of custodial violence against Police personnel and take stern and speedy action followed by prosecution, wherever necessary.

Conclusions

Collection of evidence is the main objective of any police investigation. Tendency to obtain confessions from the suspect is the primary reason for why policemen resort to torture. There is however an absolute prohibition on torture under the national as well as international laws. Torture in custody violates the fundamental rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Torture in police custody is also a crime, and for solving a crime there is no justification of commission of another crime.

Custodial torture is thus a matter of concern for a number of reasons. Further, the overall consequences and impact of use of custodial torture is self-defeating. It puts a question mark on the very credibility and trustworthiness of the actions of the police and brutalises the image of the police in public perception. The result is erosion of confidence of public in the police system and bringing into disrepute the police authorities. This adversely affects police – public relations which is vital in prevention and detection of crime-one of the primary functions of the police.

References

1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
2. Combating Torture – A Manual for Action, Amnesty International Publications, 2003
3. Fourth Report of the National Police Commission
4. Francis Coralie Mullin vs.The Administrator, Union Territory of Delhi & Ors. (1981 AIR 746)
5. Gäfgen vs. Germany, Application no. 22978/05,The Grand Chamber of the European Court of Human Rights.
6. International Covenant on Civil and Political Rights
7. Report of K. Padamanabhaiah Committee on Police Reforms
8. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol"), published by the United Nations Office of the High Commissioner for Human Rights (2004)
9. Nandini Satpathy vs. P.L Dani (AIR 1978 SC 1025)
10. Nilabati Behera vs. State of Orissa (1993 AIR 1960)
11. Ramdhani Pande vs. The State of Madhya Pradesh (1973 CriLJ 1880)
12. Raghubir Singh vs. State of Haryana AIR (1980 SC 1087)
13. Sube Singh vs. State of Haryana (AIR 2006 S C 1117)
14. Smt. Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble(AIR 2003 SC 4567)
15. Shri D.K. Basu v. State of West Bengal (AIR 1997 SC 610)
16. The Indian Penal Code, 1860
17. The Criminal Procedure Code, 1973
18. The Indian Evidence Act, 1872
19. The Police Act, 1861
20. The Prevention of Torture Bill, 2010
21. The Rome Statute of the International Criminal Court
22. Universal Declaration of Human Rights

Volume-13, 2014

IMPORTANT RECOMMENDATIONS/SUGGESTIONS OF THE COMMISSION

NHRC Recommendations on Health Care as a Human Right[1]

I. ACCESSIBILITY, QUALITY & AFFORDABILITY OF HEALTH CARE

(A) Priority recommendations Related to Necessary Legal Frameworks

National and State Governments should adopt following essential legal frameworks and accountability frameworks that ensure:

1. Free Access to Health and Health Care Services as fundamental right of all citizens
2. Graded norms and standards for health and health care services, including medical, surgical care, diagnostics and other health care services, with a patient's rights charter on services for all levels of health care delivery.
3. Arrangements for assuring availability of quality essential drugs and supplies free of cost to all patients in need, with essential mechanisms for fair and economic procurement of these, and for rational production, prescription and use of these.
4. Arrangements for proper regulation of health care and related services, through regulation of providers and establishments, both public and private, based on the specific norms for each of these entities.

[1] These recommendations were made on the basis of the National Conference on Health Care as a Human Right held on 5-6 November 2013

5. All other health related human rights that has been agreed upon by the country through different international covenants and agreements.

6. That all the needy and vulnerable population groups are covered properly through all these initiatives with mechanisms put in place for their inclusion.

7. That community has full ownership and oversight on these initiatives through sufficient mechanisms for the same, and platforms to raise their concerns and grievances with responsive mechanisms for grievance redress.

8. That proper monitoring and information systems are put in place for all the above, with built in feedback and correction loops.

9. Commitment of State and National governments to ensure adequate and efficient human resources, physical infrastructure and institutional arrangements for ensuring all above.

10. Commitment of the National and State governments for sufficient, efficient and timely provision of finances and other resources required to fulfill these.

    - *The High Level Expert Group set up by the Planning Commission on Universal Health Coverage has set out details on all these. This to be used for detailing while formulating these.*
    - *Existing legal frameworks may be re-examined to avoid contradictions and duplications.*
    - *Implementing this recommendation should not be seen as a limited responsibility of the MoHFW, but of all concerned sections in National and State governments– in order to ensure larger accountability.*

(B) Recommendations on Different Specific Areas of Health Systems

Essential Health Care Service Entitlements

- Entitlements for all citizens to essential primary, secondary and tertiary level health care services, to be guaranteed by the governments through appropriate legal instruments. These should include OPD & IPD care for common illnesses, accident and emergency care, obstetric and gynecologic care, basic surgical care, mental health care, referral transport services , community based care and other essential services. These should also include all essential preventive, promotive and rehabilitative care services. Health care services for different vulnerable populations – women, children, adolescent girls, tribal, people in vulnerable occupations and others should also be prioritized.
- Entitlements related to all emergency and essential drugs and supplies should be notified for each level of services.
- All OPD and IPD patients belonging to either BPL category or those who cannot afford without going through finance hardship, to have access to all common diagnostic tests such as pathological tests, X-rays, ECGs etc. free of cost. Those who can afford, it will be worthwhile to give them at subsidized rates so as to generate some resources as in AIIMS & PGI.
- These entitlements should be graded for different levels of facilities, based on the capacities and standards for the levels of facilities.
- Citizens charters to be prominently displayed by all facilities, with clarity for citizens on the available services for their level, in the form of a citizens charter.

- Accountability of officials and department or the establishment to be specified and fixed, in case of failure to meet the commitments as given in citizens charter.

Accountability and Grievance Redress Mechanisms

- Independent bodies/ authorities at National, State and District levels to enforce the provision of health care entitlements and to lead grievance redress around these for Government as well as Private Facilities.
- Accountability of health care providers to be properly set out, to these bodies.
- Arrangements such as Citizens Health Rights Councils at the level of different facilities.
- Regular social mobilization activities with NGO, civil society and elected representatives support.
- Community based monitoring and public hearings can support the grievance redress bodies for identification of gaps.
- All these arrangements to be adequately supported through sufficient HR, physical infrastructure and other resources.

Essential Medicines and Supplies

- Availability of all emergency and essential medicines, surgical, sutures and other consumables specific to the level of care should be ensured in all health facilities, free of cost.
- Set up transparent mechanisms for fair procurement and supply of drugs for health services such as medical and health supplies corporations, drug warehousing facilities and software-based inventory management arrangements.
- Adopt and ensure use of Standard Treatment Guidelines, Essential Drug List, Drug Formulary, Rational Use of Drugs and evidence based medicine.

- Ensure price regulation of all essential drugs, based on manufacturing costs.
- Strengthen the public sector drug and vaccine units in order to ensure quality and availability of vaccines and essential drugs.
- Acquisition and mergers of domestic companies by multinational corporations should be disallowed.
- Augment production capacity of generic drugs domestically.

Human Resources

- New medical, dental, nursing and pharmacy colleges to be set up limited to needy areas of the country, in public sector, at district level with Zila Panchayat support , with district hospitals as teaching institutions.
- National Government to support States in ensuring competent faculty.
- local selection of meritorious students, financial support for those poor students.
- 3 year BSc courses in community health to be accredited for primary level health care and these Community Health Officers will be posted at sub centre level where there is no position of medical doctor at present.
- For immediate fulfillment of specialties, certificates, diplomas, family medicine and multi-skilling to be considered.
- Nurses, nurse practitioner development to be taken in priority.
- Development and deployment of Lab technicians and other paramedical personnel to be focused-with opportunities for professional advancement.
- Formulation and strict enforcement of Posting and Transfer policies.

- First posting of staff after education could be based on merit cum choice system, to avoid influences.
- Counseling model from Tamil Nadu/Karnataka could be an option.
- Matching of infrastructure, human resources and facilities to be done properly, while posting people.
- Sufficient wages and adequate incentives for all health care staff. Special cadre for difficult areas with attractive additional wage and incentive packages, to achieve a 'no post vacant' status at all levels.
- Expand the strength of managerial/ leadership workforce at all levels.
- AYUSH doctors to be involved prominently as caregivers.

Promoting Professionalism and Excellence

- Integrate all professional councils such as medical, dental, nursing, pharmacy etc.
- Ensure that best possible medical knowledge and skills are imparted to all the health professionals.
- To promote professional conduct and ethics of the highest order and check malpractices.
- Ensure continuing medical education through stipulated programmes.
- Set up periodic evaluation (of competence and skills) and licence renewal mechanisms for all professions registered with the council(s).
- Rework the norms for opening new medical colleges so that adequate number of MBBS, specialists and super-specialist doctors are available as required.

- At least 1 year compulsory rural posting for undergraduates-posting of these people to be assured in time.

Quality of Care

- Lay down mandatory quality standards for all levels of facilities, for the services entitled for.
- Compulsory accreditation in a stipulated period of time, and annual renewal.
- An independent accreditation authority for public and private health care facilities at national and state levels.
- Norms for private and public facilities could be different, based on the objectives of institutions.

Referral System

- To and fro referral systems to be set up at all level of facilities, to enable health facilities to act as interconnected networks.
- Referral cards to support documentation and to facilitate transfer.
- Facilities for referral transport.
- Charitable hospitals which are supposed to give free services may also act as referral destinations – at par with public institutions.

PPP/ Bringing in Private Sector for Health Care Services

- PPPs/purchased private services to be brought under fair procurement processes, with transparent mechanisms put in place.
- PPPs should supplement and not substitute the efforts of the government to strengthen the public health systems.
- To be adopted in those areas where public facilities are deficient.

There should be clear evidence that they improve availability, accessibility and affordability.

Effective Regulation of the Private Sector

- Ensure appropriate regulation of private and corporate health care providers.
- Clinical Establishment Act to be enacted and implemented by all States in a stipulated timeframe.
- Standards for infrastructure, HR, services, costs and quality of care to be enforced for all private and corporate providers.
- Private and corporate facilities to be brought in under the grievance redressal mechanisms.
- Enforce private or charitable hospitals which got land or any other public aid to provide free and concessional services for the deprived as committed by them.

Physical Infrastructure

- Availability of health facility based on both *distance and population* norms for health facilities to be included in the entitlement package. Difficult areas, as envisaged in the National Health Policy, to have differential norms.
- Primary Health facilities to be made available to people within 3-5 km of travel.
- Mechanisms to ensure adequate and timely maintenance and proper cleanliness of physical infrastructure.

Monitoring and Remedial Action

- Set up an IT based Health Management Information System.
- Ensure periodic monitoring of actual availability of health services, access, quality of services and outcomes.

- Monthly monitoring and feedback loops.
- Coupled with evaluation, prompt and effective remedial measures in case of service break down.
- Bio metric attendance device to be deployed in health facilities to ensure timely reporting and check work absenteeism.
- To create state level live health care database of hospitals, HR, services and caseload- to ensure rational allocation of resources.

(C) Cautions

Infrastructure

- Proper analysis required before sanctioning new facilities- existing resources should not be splintered or duplicated
- GIS mapping of existing infrastructure prior to declaring new ones.

Financing

- While considering financing options for reimbursing private service providers, public financing models to be considered. Full care to be taken to avoid insurance programmes managed by profit making bodies that leads to partial usage of public money earmarked for the purpose and pilferage.
- Karnataka Government's public institution based non-insurance, risk pooling arrangement (*Suvarna Arogya Trust*) could be a way for reimbursing the private.
- Independent watch on existing arrangements to audit and to ensure public interest.

II. WOMAN AND CHILD HEALTH – IMPORTANT ISSUES

(A) Policy

1. A *rights based approach* as against a Welfare or Beneficiary based one.
2. Removal of two child norm as an incentive / disincentive for all policies.
3. Removal of distinction between APL and BPL for access to health care.
4. Integration and convergence of State and Central child and maternal health schemes.
5. All social and economic health determinants need to be addressed for a holistic approach. Structural factors that perpetuate discrimination against women and impact access to health care and should be factored into policy.
6. Legislative enablement to fill human resource gap, trained professional mid wives / nurses trained in delivery / MBBS doctors without specialization requirements. Public Health Service and Public Health Cadre needed.
7. Registration of all births and deaths. Effective policy needs data.
8. Unconditional wage equivalent maternity allowance to be made available to women three months before and six months after childbirth.
9. Home-based deliveries should not fall off the policy map. Training for home based neo-natal and maternal care.

10. Focus on high priority districts / talukas at policy level.
11. National policy for children refers to all children up to the age of 18 years. It should be the same in health policy.

(B) Implementation

12. Facilities for delivery should be made available in at least a 15 km radius of remote areas with provision of mobile health clinics where there are no PHCs.
13. Proactive tracking of pregnant women to ensure planning and preparation. Mapping at PHC level of Expected Date of Delivery.
14. Blood storage facility should reach at least up to First Response Unit (FRU) level.
15. Up-grading of technological facilities at FRU. Implementation of technical guidelines.
16. Assured supply of Vitamin A and Iron Folic Acid tablets to be available at PHC level.
17. Data tracking, monitoring and up to date record keeping essential.
18. More flexibility in State PIP process of NRHM.
19. Linkage with private sector and professionals, including contracting in and contracting out. Mechanism to be evolved in private hospitals/ colleges for providing free services to poor people.
20. Facility for transfer of PHC card from one unit to another.
21. Proactive transport arrangement.
22. Maternity kit as provided in Karnataka.
23. Identification and tracking of the most vulnerable and acutely malnourished women and children.
24. Similar provisions for the acutely malnourished children.

25. As provided in the Food Security Act, hot cooked food to be served to all women during pregnancy and six months after child birth through the local Aganwadis to meet the minimum nutritional standards specified in Schedule-II of the Act.
26. Capacity building / training of ANMs (who is responsible for what) and education of families.
27. Inter-generational inequities among women to be assessed and addressed and convergence of various programmes ensured to this end.
28. Menstrual health and sanitation to be addressed.
29. Training staff in soft skills.

(C) Accountability and Redressal

30. Management and regulatory structures at the top inadequate.
31. Accountability at all levels.
32. Independent data monitoring and review boards at District and State levels.
33. Need to address problem of absenteeism – monitoring and accountability.
34. Health ombudsperson in every district to ensure accountability.
35. Regular assessment of effectiveness of input schemes and course corrections accordingly.

III. CLEAN DRINKING WATER, HYGIENE AND SANITATION

People for whom the government programmes are made are largely unaware of these programmes. Need of organised means of sharing information and group to support people on the ground, so that they can avail the benefits of these programmes.

(A) Clean Drinking Water

1. Equitable distribution of water to all irrespective of economic status, castes, religions.
2. Protection of existing water bodies so that they can be used for potable purposes.
3. Use locally appropriate and available technology for providing safe drinking water especially to people residing in far off areas like primitive tribal groups.
4. Tapping and protection of springs is a good source of drinking water at hilly areas. The use of this resource and its protection should be propagated.
5. Action to be taken against the unauthorised tapping of water since this leads to contamination of water.
6. System of monitoring quality of water not only at the source level but also at user level. Regular and periodic check-up of drinking water is essential.
7. Step should be taken for inter-sectorial collaboration and coordination between different uses and users.

8. Strict action to be taken against those responsible for contamination of water and for assuring its quality.
9. People should also be educated to exhibit responsible behaviour with use and misuse of water.
10. Prevention of over exploitation of ground water by industries. Before licensing, industry should disclose its water regeneration plan.

(B) Sanitation

11. Sanitation will only be successful if there is water available within or close to the toilets. Water must be made available.
12. Operation and maintenance of school toilets should be the responsibility of the school authorities. The students must be encouraged and motivated to clean the school toilets in tune with dignity of labour and without showing any discrimination.
13. Bathing room should be provided so that woman can maintain personal hygiene and dignity.
14. Personal hygiene needs more focus. Awareness programme for children should be developed thorough curriculum. Stress should be laid on hygiene including personal hygiene.
15. Government should provide drinking water and toilet facilities to all, irrespective of title of the land. Title of the land should not be an impediment for constructing community toilet for the use of the marginalised people who are living in unauthorised areas.
16. NHRC and SHRC should play a more proactive role in the eradication of manual scavenging.
17. Campaign to educate/aware slum dwellers about sanitation.
18. Health care facility should have adequate water and sanitation facilities.
19. Appropriate and enabling legislation for universal and equitable access to drinking water and sanitation should be brought forward.

IV. OCCUPATIONAL HEALTH AND SAFETY

A special report on the prevalent of silicosis was prepared by NHRC and was forwarded to the Ministry of Home Affairs far back in 2011. In the National Conference organised by the NHRC on health care as human rights the issue of occupational health and safety was discussed in detail. After deliberations with resource persons, officials attached to the respective department of the government and representative from various NGOs, the Commission recommends the following on the issue of occupational health and safety:

1. It is recommended that as per section 2(C) of the Factories Act 1948 necessary rules can be made by the State Governments in exercise of the powers u/s 85 of the Factories Act, 1948 to bring the following units/work place under the purview of the Factories Act, 1948 where one or more workmen are employed. During the deliberation it is brought to the notice of NHRC that rules are in terms of Section 85 to bring the units where one or more workers are employed who are suffering with various occupational diseases. For example units like Ramming Mass (Quartz grinding), Stone crusher, Iron ore crusher, Bauxite grinding, Sponge iron plants, Refractories foundries, gems and jewellery.

2. Though the Employees Compensation Act mainly deals with the payment to the workmen, the immediate and required medical facilities shall be made available to the workmen injured and suffering any illness due to the workload. It is recommended that necessary rules can be framed by the State making the employer to provide such immediate and required medical treatment to the workmen concerned.

3. Considering the structure of the Employees Compensation Act the Commission recommends that necessary rules can be framed by the State, fixing time limit for the disposal of application filed by the workmen and the compliance of the orders by the Commissioner.

4. It is recommended that the appropriate Governments shall make rules for the health and safety of the children covered under the Child Labour (Prohibition and Regulations) Act, 1986, keeping in mind sub section (2) of section 13.

5. Though Section 26 of the Bonded Labour System (Abolition) Act, 1976 empowers the Central Government to make rules, the said rules do not cover provisions for affording medical facilities to the rescued bonded labourers and no rules have been framed so far. Therefore, it is recommended the relevant provisions of the Bonded Labour (Abolition) Act, 1976 shall be suitably amended enabling the Central Government to make rules in this regard.

6. After deliberations and discussions, it is recommended to the Government that the following provisions of the various Acts are to be strictly complied with:

    a. Sections 7, 7(A), 8, 9, 10, 11 to 20, 41(B), 41(C), 41(F), 85, 87, 89, 90, 91(A), 101(A), 113 of the Factories Act, 1948

    b. Sections 2(J), 5 to 9, 11, 16, 22, 9(A), 23, 25, 26, 27, 48 of the Mines Act, 1952. It is also recommended that the Mines Worker Welfare Board should also include all minor minerals.

    c. Section 3 of Employees compensation Act, 1923.

    d. Sections 2(8), 51(A), 52(A) of ESI Act, 1948.

7. It also recommended that the Government shall make a provision for appointment of Doctors, Para medical technicians, support staff and opening of separate occupational disease detection centre in all Government and ESI hospitals with suitable infrastructure.

Volume-13, 2014

NHRC Recommendation on Human Rights of Women

I. Women's Sexual and Reproductive Health and Rights Including Provisioning of Incentives and Disincentives for Adopting Small Family Norms

1. India being a signatory to the International Conference on Population and Development (ICPD) in 1994 should be adhering to the principles laid down in the ICPD Programme of Action in letter and spirit by accepting that choice of the individual has to be respected and appropriate mechanisms should be created to fulfil those choices.

2. NHRC declaration made at a National Colloquium organised during 9-10 January, 2003 and attended by representatives of State Governments and civil society acknowledged the reproductive rights, set on the foundation of dignity and integrity of an individual. It encompassed several aspects such as:

   - The right to informed decision-making, free from fear and discrimination;
   - The right to regular accessible, affordable, good quality and reliable reproductive health care services;
   - The right to medical assistance and counselling for the choice of birth control methods appropriate for the individual couples; and

[1] These recommendations were made on the basis of the National Conference on Human Rights of women held on 18-19 February 2014

- The right to sexual and reproductive choices, free from gender-based violence.

The above aspects of the declaration need to be reaffirmed.

3. Enforcement of a two child norm and coercion or manipulation of individual fertility decisions through the use of incentives and disincentives violate the principle of voluntary informed choice and the human rights of the people, particularly the rights of the child. Keeping this in view, there is a need for a review petition in the Hon'ble Supreme Court on its verdict in the case of *Fakir Chand* v. *State of Haryana*. In this judgment, the Supreme Court upheld the legislation enforcing two child norm for eligibility to contest election to the Panchayat, which is against the National Population Policy as well as the ICPD principles.

4. Reproductive justice, covering a range of services including facilities for safe abortion as a right, should be ensured as this will create enabling conditions for promotion and safeguarding of reproductive rights.

5. Regulation of the practice of commercial surrogacy is required to protect the interest and rights of surrogate women. In this regard, enactment of the pending Assisted Reproductive Technology (ART) Bill should be undertaken with necessary amendments after a consultative process with all the concerned stakeholders.

6. Rights of sexual minorities (LGBT) to avail of all health services without any bias or discrimination and their right to exercise independent sexual and reproductive choices must be affirmed.

7. The right of an adult to marry a person of his / her choice is often infringed by extra constitutional authorities. Couples who are under threat of such infringement should be provided supportive measures including protection by law enforcement agencies.

8. A large scale campaign needs to be launched to sensitize all stakeholders including judiciary, police, policy-makers, law-makers regarding the right to free choices of marriage and living with dignity without infringement.

9. Proper implementation and strict enforcement of Medical Termination of Pregnancy Act, 1971 is required since a large number of unauthorised and ill-equipped abortion centres are existing which leads to possibility of large scale abortions carried out under unsafe conditions. State Governments should take the responsibility to provide properly licensed /authorised and well-equipped abortion facilities which are accessible and affordable to women.

10. After nearly two decades of the enactment of the PCPNDT Act, widespread illegal sex determination and subsequent sex selection is taking place across the country as is evident from the skewed child sex ratio. Hence, proper and strict implementation of the PCPNDT Act by making the Appropriate Authorities at the State and the District levelfully accountable, is required.

11. Other related laws that empower women and safeguard their interest like Dowry Prohibition Act, Inheritance Laws, and Protection of Women from Domestic Violence Act also need to be effectively implemented to counter "*son preference*"

12. Age appropriate gender sensitive, sexuality and reproductive health education should be provided in schools, especially for the adolescents. Similar attention needs to be given to the children who are out of school also.

13. Poorna Shakti Kendras set up under the National Mission for Empowerment of Women needs to be strengthened as one stop window for providing various services for women.

14. Appropriate Governments should ensure that individuals, irrespective of their marital status are not denied access to contraceptive facilities at public health care centres.

15. The need for proper, acceptable and affordable reproductive health services for men as a target group should be equally addressed in the population policy as neglect of these needs may have repercussions on the rights of the women. The needs of other group such as childless women, unmarried women, single women also need to be equally addressed.

16. Comprehensive affordable and acceptable health services for women during the entire life cycle needs to be in place as against just concentrating on the reproductive stage. The problems faced by women during pre and post menopause would include lifestyle diseases, psychological problems etc.

17. Violence against women can have implication on her health including physical, mental, sexual and reproductive health.Hence, there is need for one stop crisis centres in preferably, public hospitals,with the involvement of the Gram Panchayat / other local bodies for attending to their needs such as psychological counselling, medical and other social assistance. Sensitization and training of the Gram Panchayat along with other village level functionaries should be taken up on priority for responding to incidents of violence.

18. Periodic capacity building of the functionaries of the State Human Rights Commissions and State Women Commissionsand all other stakeholders on the issues relating to reproductive and sexual health rights should be undertaken by National Human Rights Commission.

II. VIOLENCE AGAINST WOMEN AND GIRLS

1. There should be effective implementation of existing enabling legislations for women and girls. The law requiring police to register all complaints of sexual assault should be strictly implemented without questioning the credibility of the complainant. If evidence does not prove the offence a final report can be filed before the court.

2. Sensitization, training and strengthening the capacity of public officials and professionals, including the judiciary, police, military and public prosecutors, as well as those working in the sectors of education, health, social welfare, justice, defence and immigration on offences against women and children. Public officials should be held accountable for not complying with laws and regulations relating to violence against women and girls. Modules for sensitisation training should be effective and need to be administered frequently at various stages of the career of the functionary.

3. Adequate allocation of financial and human resources for implementation of laws and for rehabilitation and reintegration of women and girl-child victims and survivors of violence is necessary. Adequate protection homes for women victims are required to be established.

4. Patriarchal, social and cultural practices that perpetrate discrimination and violence against women in areas such as Haryana, western Uttar Pradesh, West Bengal, etc. should be addressed with the whole might of the State and the law. Clear guidelines may issue from the government to ensure responsive action from the authorities.

5. More women should be involved in law enforcement and posted in concerned agencies of the government.

6. Ensure women's and *girl's* unimpeded access to justice and to effective legal assistance on violence related issues. It is equally important to ensure that they have access to just and effective remedies for the harm suffered.

7. Violence against women should be tackled in multipronged approach of convergence model whereby all Ministries (Women and Child Development, Health and Family Welfare, Planning Commission, Home, Social Justice and Empowerment, Rural and Urban Development, Law and Justice, Labour and Employment, Finance etc.) Departments, Government Institutions, Legal bodies should come together to fight it.

8. New legislative interventions for the most vulnerable and marginalized women affected by violence should be devised for women in State run protective homes, single women, widows, women in armed conflict areas, displaced women, refugee women, women of sexual minorities, disabled women, women affected by customary practices such as witch hunting and honour crimes, women affected by communal violence against religious minorities, women in the organized sector, trafficked women, women affected by HIV/AIDs, surrogate mothers etc.

9. Sensitisation and training of medical and health professionals with regard to sexual and other violence against women and girls.

10. Action plans for addressing violence against women may be drawn up at the District level and implemented with the help of District level coordination committee involving various government agencies and NGOs'.

11. The law on sexual harassment at the workplace should be extended to the workers of the unorganized sector and the complaints mechanism should be effectively implemented in all sectors of the economy.

12. Standard Operating Procedures be devised for all stakeholders (Police, Judges, Lawyers, Counsellors, Doctors) in dealing with cases of violence against women and girls.

13. For attitudinal change intervention at school level is necessary. There is a need to develop requisite material for teacher education and training programmes for both formal and non-formal education.

14. Provision of infrastructure and shelters for protection of homeless and mentally unstable homeless women is necessary. Separate shelters/homes for mentally handicapped/ disabled women and girl-children to be established.

15. Making safe spaces for women and girls by creating fast track courts, mahila thanas, and gender cells within police stations for effective adjudication of cases.

16. Infrastructure may be created for garnering gender disaggregated data on all counts so that effective women oriented policies are drafted and legislated, as well as developing a strong database of all forms of violence against women and children issues in India. It should be state-by-state and research/data of highest value and latest date.

17. Rehabilitation and compensation for victims needs to be a priority action. Issues related to exploitation of women in Women Rescue Homes, Nari Niketans, etc are alarming and such institutions must be subjected to regular social audits and immediate action needs to be taken against exploitative elements.

18. Facilitating access to justice through strengthening of supply mechanisms (courts and legal aids cells) and creation of demand (legal literacy and awareness).

19. Violence against street children, mentally and unstable and homeless should be attended without any exception. A committee at district level under the chairmanship of District Magistrate, along with one

police officer at the level of Superintendent of Police, Senior Medical Officer of the district, representative of local NGO, should be constituted for the above purpose. Hospitals, exclusively for mentally and unstable people in each district and manned by doctors having expertise to treat such illnesses. Schemes like *Swadhar* and *Ujjwala* should be strengthened and implemented.

20. Police reforms to foster autonomy, quality, transparency and accountability should be given priority.

21. Compensation and redress for violence need to be included in all legislative enactments.

22. There is little visibility of offences related to domestic violence against senior women. Free legal aid should be arranged for senior women in old age homes. Senior citizen's schemes need to be extended to ensure safety of such women.

23. Reporting by media of offences against women should be free of sensationalisation. Objectification of women and exploitation of sexually explicit images should be avoided. Self-regulation codes should be drawn up by media. Public service messages should also be carried for awareness.

24. Infanticide and foeticide need to be addressed aggressively. Schemes, such as Cradle Point (to encourage unwanted children to be deposited for adoption), incentives for birth of girl-child, simplification of adoption procedures and concerted action against prenatal sex determination be prioritized.

25. There is a need to create safe public spaces and public transport systems. Appointment of women in the transport system to create a safer and women friendly utility be created.

26. Awareness generation in the public and society through media and seminars/street theatre etc.

27. Separate Courts be identified for violence against women, children and elderly. Public Prosecutors well versed with the issuebe appointed for such cases. Free legal aid be provided to all such victims.

28. Training and Sensitisation of judicial officers through informal and formal training programmes be carried out.

29. Involving the community is important. Neighbourhood level women protection groups be set up to identify vulnerable areas and families and for creating community awareness.

30. Study and assessment of Juveniles at the time of entry in juvenile homes as to the behaviour, habits, psychology by experts must be made mandatory and properly implemented. Uniform rules should be adopted to enable the Juvenile Justice Committee to determine age.

III. WOMEN'S EMPOWERMENT AND GENDER EQUALITY

The Constitution of India guarantees gender equality, women's rights and women's empowerment. These have also been enshrined in global treaties and international instruments to which India is a party. However, much remains to be done. This has been accepted in the 12th Five Year Plan, which states that "Ending of gender based inequities, discrimination and all forms of violence against girls and women is being accorded overriding priority in the Twelfth Plan. This is fundamental to enabling women to participate fully in the development process, and in fulfilling their social, economic, civil and political rights."

The National Conference on the human rights of women recalls that the Beijing Platform of Action, adopted at the Fourth World Conference on Women in 1995, outlined twelve areas of critical concern – women and poverty; education and training of women; women and health; violence against women; women and armed conflict; women and the economy; women in power and decision-making; institutional mechanism for the advancement of women; human rights of women; women and the media; women and the environment; and the girl-child.

Women will be empowered, their rights will be fully protected, and there will be gender equality in India only if these areas of concern are fully addressed, individually and collectively, with actions taken that complement and reinforce each other.

The Conference notes that the National Mission for the Empowerment of Women has been set up with a mandate to work on poverty alleviation and economic empowerment of women; social empowerment and education; health & nutrition; gender rights, gender

based violence and law enforcement; gender budgeting, gender mainstreaming & gender audit; and empowerment of vulnerable and marginalized groups and women in difficult circumstances. It is the consensus among all stakeholders that much more must be done on all these sectors, with monitorable targets and within short and realistic time-frames.

The Conference notes that the National Mission has identified the following challenges faced by women and the campaign to empower them:

- Legal and policy frameworks:
  - Gender-blind laws
  - Lack of supportive macroeconomic policies - trade, fiscal management, debt financing, banking policy
  - Lack of convergence between implementing agencies
  - Women's restricted access to and control over resources
  - Limited enforcement of laws
- Challenge of service delivery
  - Insensitivity of enforcement agencies and deep-rooted cultural mindsets that discriminate against women
  - Poor capacity of implementing and facilitating structures
  - A non-conducive environment
  - A top-down approach, not demand-driven
- Challenge of exclusion
  - Inaccurate poverty estimates
  - Exclusion of the most marginalised
  - Unrealistic budgetary allocations
- Barriers to access

- Lack of knowledge and awareness of rights and entitlements
- Complex delivery mechanisms
- Complicated procedures
- Onus on the poor to prove that they are poor

The Conference believes that, unless these impediments are urgently removed, it will be difficult to empower women or pay more than lip service to gender equality.

The Conference noted that the High Level Committee on the Status of Women in India has submitted a preliminary report which highlights *violence against women,* the *declining sex-ratio* and the *economic disempowerment of women* as three key issues that need urgent attention. The Conference agrees with this assessment.

The Conference also noted that the High Level Committee has recommended immediate action in several areas, including the following:

- Enactment of a law to reserve 50% of seats in all decision-making bodies.
- The formulation of a National Policy and Action Plan to end violence against women.
- Institutional mechanisms to be strengthened and well-resourced.
- More resources to be allocated for gender concerns.
- The Parliamentary Committee on the Empowerment of Women should examine the gender implications of all proposed legislation.
- There should be gender-responsive budgeting coupled with gender audits.
- The development paradigm should be decentralized. This would

draw larger numbers of women into the process of development.

- Assessments should be made, and submitted to the people, every two years on the status of women in India.

The Conference endorses these recommendations.

The National Conference also recommends that:

Laws and Policies

- Laws, regulations and policies that discriminate against women should be reviewed, amended or abolished to bring them in line with international human rights instruments.
- The design, planning and monitoring of laws, policies and programmes to achieve gender equality should address the multiple forms of discrimination and marginalization that particular groups of women continue to face, in particular tribal, rural, disadvantaged and older women, women belonging to minorities and women with disabilities.
- A *National Action Plan* should be drawn up, which would specify objectives and commitments, detail the policies that would be adopted to meet them, the investments that would be made, and the measures that would be put in place to implement the programmes and to monitor them.
- There should be a clear articulation of the strategies that will be adopted to address, at the national and local levels, the twelve areas of critical concern in the Beijing Platform for Action.
- A *Bill of Women's Rights* should be adopted, as a reaffirmation of the nation's commitment to gender equality and women's empowerment, setting out the rights guaranteed to all women by the Constitution and domestic laws, or embodied in international instruments accepted by India.

- The 16th Lok Sabha should urgently pass the *Constitution (108th Amendment) Bill*, to reserve for women one-third of the seats in the Lok Sabha and in the State Legislative Assemblies, acknowledging that it will be critical for the success of other policies to have a much higher representation of women in political and public life and in power and decision-making.
- Temporary special measures should be adopted to ensure that women are sufficiently represented in elected as well as appointed positions within the executive, legislative and judicial arms of Government.
- Political parties should adopt affirmative measures to support more women candidates.
- The gender perspective should be mainstreamed into laws, policies, programmes, projects and processes, which must also be monitored through a gender lens.
- There should be a codification of the property rights of women, regardless of caste, class, religion or ethnicity, which should take precedence over all personal laws and customary practices.

Planning, Budgeting and Implementation

- There should be a greater use of gender-responsive planning and budgeting, taking into account in resource allocation the diversity of needs and circumstances of women and girls, and providing the necessary human, financial and material resources for targeted activities which respond to local demands and felt needs.
- There must be greater convergence between programmes and projects and closer coordination between implementing agencies, so that synergies are created.

- There should be a strengthening of consultative processes, and closer collaboration among different stakeholders working for gender equality, including line ministries, parliamentarians, the judiciary, national and State human rights institutions, civil society, the private sector and the media.
- Best practices should be collected and replicated within and across States.
- Implementation must be regularly reviewed to eliminate obstacles to the full realization of women's rights.
- The capacity of national mechanisms for gender equality to participate effectively in the planning, development, implementation and evaluation of all policies, programmes and strategies, as well as in the collection and analysis of data, should be strengthened.
- Importance should be given to the collection of data, disaggregated by sex and age, and to the development of gender-sensitive indicators, where many gaps remain. More resources should be allocated to data collection and analysis.

Economic Empowerment

- Since, without economic empowerment, gender equality cannot be achieved, the macroeconomic policy framework and economic structures must be tailored to ensure that women have equal access to and control over economic resources.
- Close attention should be paid to the priorities and needs of women and girls in the planning, development, implementation and evaluation of economic policies.
- Priority should be given to making women aware of their rights, and of the laws and policies adopted to increase women's ownership of productive assets, including land and housing.

These laws and policies must be fully implemented to ensure that women have equal access to and control over economic resources.

- Women's access to the labour market and decent work is critical. Though in recent years, women's access to employment opportunities has increased, they are concentrated in low-paid jobs with little security, while occupational segregation and gender wage gaps persist. This must change, and the principle of equal pay for work of equal value applied in practice.
- Because the unequal sharing between women and men of unpaid work, including care-giving, constrains the ability of women to fully participate in the labour market, it is important to promote practices that would redistribute unpaid work between women and men, including parental leave policies for both genders.
- There should be greater investment in infrastructure, such as energy, water and sanitation, childcare facilities and transportation systems, which would facilitate the participation of women in the labour market.
- Greater attention should be given to social protection measures such as unemployment insurance schemes, universal health coverage and social pensions, which have played critical roles in promoting gender equality and the empowerment of women.
- Measures such as cash transfers, the provision of cheap fertilizers, microcredit schemes, the establishment of women's cooperatives and the promotion of women's entrepreneurial activities, through reservations and allotments for women's self-help groups, should be used to tackle women's poverty.

- It would be useful for all States to set up employment exchanges exclusively for women, both to give a single window for the exploration of employment opportunities and to build up a data bank of women in need.
- Poverty alleviation programmes should focus on the rights and the empowerment of women.

Education, Awareness-Building and Sensitisation

- Closer attention must be paid to the critical role of education. While the school curriculum might vary between States, all States should adopt a uniform message on gender equality, conducting a thorough review of text-books, weeding out passages that perpetuate gender stereo-types, and instilling an enlightened and modern approach on gender issues in the minds of children.
- The education of the girl-child is crucial, in itself and as a catalyst of social and economic change. It is essential to meet national targets for improving girl's access to education, particularly at the primary level, where progress is uneven between States and Union Territories.
- It is as important to ensure secondary, senior secondary and university education for girls.
- Non-formal education, including vocational training and skills-development, is an important complement to formal education, and must receive close attention.
- Educational gains that women and girls make should translate into better employment opportunities.
- Assistance should be given to help women overcome social and economic barriers to public and political participation, such as illiteracy, language, poverty, and impediments to their freedom of movement.

- It is essential to *eliminate practices and customs that discriminate against women.*
- A sustained campaign must be launched to change mindsets and educate the public on gender equality and the rights of women, so that no stigma attaches to women and girls who come forward to claim their rights or who protest when their rights are violated.
- Innovative ways should be found to engage community leaders in efforts to eliminate practices and customs that discriminate against women.
- A national campaign should be launched against female foeticide. This will entail raising public awareness and ensuring that the PCPNDT Act is implemented.
- Child marriage must be stopped through the effective implementation of the Prohibition of Child Marriage Act, 2006, including measures like compulsory registration of all marriages, keeping girls in school and awareness-raising programmes to mobilise communities against the crime.
- The Government of India should withdraw the Declarations it made while acceding to the Convention for the Elimination of Discrimination against Women, qualifying its acceptance of Articles 5(a), 16(1) and 16(2).
- It is essential to sensitise public servants, including judicial officers and the police, to the rights of women and to their duties under the laws enacted to protect them.
- It is equally important to train public servants, deployed in service delivery on projects and programmes tailored for women, on the functions they must perform.

- All stakeholders should be briefed on new laws, projects and programmes in simple language that they understand.
- 50% of the funds that companies now devote to CSR activities should be earmarked for projects and activities that directly benefit and empower women.

IV. TRAFFICKING IN WOMEN AND GIRLS

At the outset, the chair of the Working Group-IV, entrusted with the responsibility of drafting recommendations/suggestions on trafficking in women and children, decided to adopt a framework for its deliberations and recommendations. The framework as given below was decided:

1) The Extent, Magnitude and the various Dimensions of the Problem of Trafficking of Women and Girl Child

2) Adequacy or Otherwise of the Existing Legal Framework to deal with the problem

3) Issues relating to Enforcement viz., Training of Enforcement Officers in the Police, the Prosecution, the Judiciary and capacity building in related areas

4) Issues relating to Rescue and Rehabilitation

5) Generating Awareness about the Seriousness of the Problem of Human Trafficking and Educating public with a view to contain demand.

6) Leveraging Technology to Prevent and Combat Human Trafficking.

7) Creation of Institutional Framework for Coordination and Monitoring.

1. Extent and Magnitude of the Problem both Intra-country and Inter-country

Undertake need-based situational analysis in the form of research studies, surveys, action research and vulnerability mapping to know ground realities within the country and outside.

The earlier Action Research on Human Trafficking by NHRC is more than a decade old, and since the dimensions of both trafficking and anti-trafficking have drastically changed over the period of 10 years, NHRC should either undertake or facilitate comprehensive research/survey on all aspects of human trafficking. In this context, the proposal for a comprehensive research on trafficking by TISS is relevant.

Information gathering should be more focused, aiming at influencing policy and filling existing gaps in the available initiatives and efforts towards trafficking. Such information should cover causes, types and modes of trafficking, community responses to trafficking, gender differences and specific gender based violations and analysis of the operations of trafficking syndicates.

The collection of information should result in development of a national database and a centralized info-focal point. This should include disaggregated data, sex, age and category wise, relating to victims, place of origin, transit and destination, trafficking routes, methods and means, trafficking patterns and dynamics, cross border & transnational, numbers and outcome of prosecutions.

Data should also cover latest trends in trafficking like cyber pornography, child trafficking, micro-economic policies and impact on trafficking migration.

2. Adequacy of Existing Legal Framework

Repeal the existing domestic legislation on trafficking – the Immoral Traffic (Prevention) Act 1956.

Enact a new comprehensive legislation on human trafficking from a gender and rights perspective in accordance with the Trafficking protocol, the Convention on the Rights of the child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The content of domestic trafficking legislation must strictly criminalize traffickers including agents or middlemen, brothel owners and managers, as well as institutional networks that are used in organized crime.

Stiffer punishment must be introduced to reflect the grievous nature of the crime. This must include the introduction of penal sanctions against persons in position, who are directly involved in, or collude with traffickers and other perpetrators of commercial sexual exploitation.

Provisions should be made for the confiscation of assets for the benefit of 'victim services'. Confiscated assets could also be used towards funding service provision and reintegration of victims of trafficking.

Victims of trafficking should be provided all support and protection including free legal assistance. This should include information on their rights and access to legal redress and court proceedings, in a language they will understand.

The privacy and identity of victims of trafficking must be protected at all times to safeguard them from attempts at retaliation by their traffickers.

Victim witnesses need State protection if they are to testify safely in criminal proceedings against traffickers. It is therefore essential that witness protection programmes be developed to protect victims and their families, who may face retaliation and threats from traffickers in their country of origin. States should ensure that such programmes do not violate the dignity and rights of the victims.

3. Enforcement

Strengthening of Enforcement Machinery

Each District should have dedicated Anti-Human Trafficking Unit. These Units should have dedicated manpower and resources.

Dovetailing of Anti-Human Trafficking Units and Missing Children Cells/Squads with an emphasis on locating these missing children. Linkages with Child Helpline, Child Welfare Committees and Ujjawala should be strengthened.

Emphasis on Training

It should be ensured that law enforcement authorities and officials are provided with adequate training in the investigation and prosecution of cases of trafficking along with non-governmental/civil society organizations on regular basis. This should be followed with refresher training programmes.

Special emphasis should be given to sensitization of all police, judicial authorities, prosecutors, border, immigration and social and public health workers with regard to the problem of trafficking. Their training should lay special emphasis in prevention of trafficking cases, identification of vulnerable persons, combating trafficking and protecting the rights of victims.

For purposes of carrying aforementioned training programmes, it would be essential to have a panel of national/state level trainers. The BPRD training relating to human trafficking should be strengthened/ revamped. It should further take the responsibility of conducting training of trainers programmes in relation to trafficking.

Attitudinal Change

There should be regular training in gender sensitiszation at all levels including police, prosecutors, judicial officers, doctors, social workers, aftercare providers, etc.

4. Rescue and Rehabilitation

Assistance to Victims of Trafficking

The comprehensive legislation must ensure that rehabilitation is mandatory and made accountable.

Any rehabilitation measure should take into account psychological, economic and civic empowerment of victims. It should take into account the specific damages of the organized crime on a human being and ensure restoration of dignity.

Government and registered NGOs providing services to trafficked victims must ensure safe accommodation and guarantee that essential services are readily accessible. These should include psychological/ counselling services for crisis intervention and longer-term counselling; referral to health services for assessment and care, if required; access to free legal assistance and information; financial assistance for subsistence; and Police protection/assistance in situations where the victim or her family are at risk of retaliation from traffickers.

In order to protect the rights to safety and privacy of victims, and to prevent stigmatization, the victims should be facilitated to have the facility of 'in camera/video conferencing' testimony in court.

Setting up of Fast Track Courts for trial of trafficking cases within a specific time limit.

The victims in country of destination be given temporary legal assistance in order to access and attend to their immediate physical and psychological needs.

The rehabilitation and reintegration of victims of trafficking is a long-term process and, as such, must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims.

Victims of trafficking are often frowned upon as outcasts in the communities they return to. Efforts to reintegrate trafficked women often require community support and participation. This means preparing families and communities through enhancing their awareness of trafficking generally and of the impact of trafficking on the individual. Sensitizing

families and communities is integral for ensuring understanding, acceptance and the prevention of re-trafficking.

States should enable victims of trafficking to access both formal and non-formal education. Education should also be made accessible to adults.

Gender-sensitive, market-driven vocational training should be widely available, and could include training targeted at agriculture, microcredit, information technology and financial management etc. Government and non-governmental actors should work together to develop partnerships with public and private sector employers in order to facilitate/devise training and work placements as part of the reintegration process.

5. Education

Awareness of, and sensitization to, the issue of trafficking, particularly its adverse impact on the rights of women and children, is an important element of prevention. Despite efforts of Government and NGOs to raise awareness, particularly among vulnerable groups, greater attention needs to be given by them especially where the problem is rampant.

Further, any gender and rights training must encompass legal literacy on economic rights particularly for women. There is inadequate knowledge and information for potential victims to make informed decisions that affects their lives. Most trafficked persons believe that they are going to be working in domestic service, waitressing, babysitting, nursing, and that they will be paid well. The reality is often otherwise – forced prostitution, debt bondage and confiscation of travel documents.

Efforts should be made to raise awareness in communities and peer groups at all levels. Vulnerable groups should be targeted as priorities. In doing so, potential victims will be made aware of the dangers of trafficking and be able to make a more informed decision regarding potential immigration.

The media has an important role to inform and educate the public through newspapers, radio and other modes of communication, and should be targeted as a key partner in combating trafficking. It is recommended that media practitioners should first be educated with regard to the phenomenon and its complexities. This will ensure accurate reporting of the problem to the general public.

Need to review and revise the education syllabi of schools and universities and incorporate human rights and gender sensitive concerns.

Encourage gender and rights training programmes for public office holders and law enforcement personnel such as the judiciary, police, immigration and customs officials. This will promote better understanding of the issue and in the process enhance the safety and well-being of trafficked persons.

Training should also be provided on investigation and prosecution techniques with recourse to the practical and psycho-social needs of the victims. This will facilitate law enforcement officials to recognize and respect women's rights and dignity as 'victims' instead of as perpetrators.

Education and the awareness –raising of trafficking should also be aimed at the tourism industry, including airlines, hotels, travel agents, bars, package holiday companies etc.

Targeted communication strategies should be applied to target demand for various forms of trafficking.

All line ministries such as education, rural development should mainstream contributory factors for trafficking in their regular efforts.

6. Leveraging Technology in Combating Trafficking and Related Issues

Integrating technology in all aspects of law enforcement including investigation, documentation, prevention, presentation etc.

Video conferencing facilities during trial of cases be facilitated so that the rights of the victims and witnesses are ensured.

In order to address the issue of missing children, in the light of the Supreme Court order in *BBA* v. *Union of India* and in the light of the concern of NHRC on the seriousness of the matter, it is essential to empower and facilitate the law enforcement agencies with technological integration in addressing the issues of missing children. In this regard, the various schemes in India like *Track the Missing Child, Zipnet* as well as other innovative programmes like the '*Missing Child Alert* project of Plan International need to be facilitated by NHRC. Digital data recording and dissemination need to be facilitated.

NHRC may organize a conference of all stakeholders involved in addressing the issues of missing children, including MHA, MWCD, MOL, NCPCR, NCW, Plan International etc. as well as the various technical agencies, and facilitate the technological integration in the best possible manner, by bringing the stakeholders on a common platform.

Technology should be leveraged for the purposes of prevention strategies and also for crime detection.

7. Creation of Institutional Framework for Coordination and Monitoring Mechanism

Institutionalization of a reward system by the District and the State authorities for exceptional work done with regard to human trafficking especially trafficking in women and children.

Based on the Supreme Court ruling in *VishalJeet* and *Gaurav Jain*, all State Governments have constituted Committees at the State level under the chair of Chief Secretary and in the Districts under the chair of DM. These bodies, even though created, are presently dysfunctional. They have to be activated and strengthened. SHRC's may monitor their functions.

There is a need for a national implementing agency for implementation,coordination and monitoring of activities across the country and region, especially inter-state and international trafficking issues. This body needs to be set up immediately and may be called National Anti-Human Trafficking Agency (NAHTA).

There is a need to have institutional linkages of skill building agencies with the care providers for effective rehabilitation of the rescued persons. The National Skill Building Authority be advised to develop special schemes for rehabilitation of trafficked persons and make it available to the government and non-governmental agencies. The linkage be provided by the State Human Rights Commissions and facilitated by a focal point in the NHRC.

A meeting of the concerned stakeholders including National Skill Building Authority may be organized by NHRC.

Considering the fact that several Ministries and Departments of Government of India, various State Governments, NGOs, Corporates, Women's Commissions, Child Rights Commissions, INGOs, etc. are involved in the various activities in preventing and combating trafficking within the country and the region, it was felt essential that the Focal Point in NHRC on Anti-Human Trafficking be revived and made functional and effective.

Conclusion

The problem of human trafficking especially of women and girl child is of a humongous dimension. It goes largely unrecognized, unreported and as a result has not received the attention which it deserves. Though there are islands of excellence in preventing and combating human trafficking, the response has been highly uneven. Overall, the response systems presently in place are grossly inadequate. It is high time that human

trafficking which violates both the body and mind of the trafficked persons receives due attention and is dealt with the seriousness which it deserves.

A comprehensive and integrated plan of action to prevent and combat human trafficking with special focus on women and children was prepared by the Ministry of Women and child Development in association with NHRC, MHA, NCW and the UNICEF in the year 2007-08. The above recommendations have drawn upon the said integrated plan of action and they supplement the recommendations made therein. These recommendations need to be forwarded to the MWCD to revisit the integrated action plan and revise the same.

Volume-13, 2014

Recommendations on Manual Scavenging and Sanitation*

Recommendations of Group I: S*teps to be taken for Eradicating the Practice of Manual Scavenging*

1) The Act provides comprehensively for prevention, rehabilitation and supervision. The aim of everybody should be that Manual Scavenging should be totally eradicated. Both State Government and Central Government should take effective steps in constituting various Committees for effective implementation of various provisions.

2) Though in exercise of power under Section 36 and Section 37, the Central Government has framed rules/model rules, as per the scheme of the Act, the State Governments should also make necessary rules for effective implementation of the Act, particularly with reference to the Constitution of Sub-Divisional /District/State level Committees including the Vigilance Committee to be formed under Section 24 of the Act.

   The framing of Rules by the respective States is necessary and assumes importance as the State Governments are mandated to notify these Committees in the Gazette which may not be possible in the absence of the Rules.

3) Benefits conferred under the SC and ST (POA) Act, 1989 particularly with reference to prosecution and compensation

* These recommendations were made on the basis of the National Conference on Manual Scavenging and Sanitation held on 25 February 2014

must be extended to all those covered under the definition of "Manual Scavengers" under the present Act.

4) Prescription of period of three months to take cognizance of the complaint to the District Magistrate/Judicial Magistrate as the case may be under Section 10 should be removed and the provisions prescribed for limitation under Cr.PC can be adopted.

5) In terms of Sections 8 and 9 in addition to sentencing to prison, a provision for imposition of fine is also prescribed. The fine amount so imposed and collected shall be made available to the benefit of the victim namely the Manual Scavenger so that they can rehabilitate themselves in a better manner. This payment should not be detrimental to other benefits already provided under the Act or under various schemes.

6) For effective implementation there should be determination in the mindset of the persons /officers representing Committees at all levels including all local bodies.

7) National level campaign should be organized through local areas specific IEC activities for creating awareness regarding the various provisions of the Act amongst the Civil Society.

8) A Nodal Officer should be notified at the District and Sub-Divisional level to enable the affected people for redressal of their grievances.

9) A single window system should be in place at the district level for coordination and implementation of the Act.

10) There is need for convergence of all the activities of all concerned Departments and agencies responsible for implementation of the Act.

11) While identifying the Manual Scavengers by the District administration, those working in the Indian Railways as manual scavengers should also be included.

12) NGOs need to be actively involved in identification as well as rehabilitation under the Act.

13) Before the one time financial assistance of Rs. 40,000/- is exhausted it should be supplemented by other schemes like vocational training.

14) On seeing the presentation by the Railways, it is recommended that the focus should not be restricted to sanitation alone and it should be also to focus on the Manual Scavengers and their rehabilitation.

15) Under Section 2(g) of the Act both the Central and State Governments may notify "such other spaces or premises". Such notifications must be made expeditiously in order to give the full meaning of the definition of Manual Scavengers.

16) The time limit prescribed by the Railways upto period of 2021-22 to completely remove dischargeable toilets in Railways is too long a period and it should be completed in a period of five years.

17) Separate guidelines need to be issued for identification of Manual Scavengers by the urban local bodies as the local bodies are required to do the survey only if they have reasons to believe under the Act.

Recommendations of Group II:

Steps taken for Rehabilitation of Manual Scavengers

While the Act focuses on both the elimination of manual scavenging and the rehabilitation of those who have been forced into this livelihood, and the two are equally important, it is essential that rehabilitation should not depend on or be linked to the elimination of the practice. It must be taken up immediately, independently and receive the highest priority, since the human rights of very large numbers of vulnerable people are involved.

1. ***National Survey:*** All States must complete within two months a survey to identify and enumerate

i) those who are manual scavengers;

ii) those who have been manual scavengers, and have been rehabilitated;

iii) those who have been manual scavengers, but have not been rehabilitated;

iv) the members of families of those who are or have been manual scavengers.

2. Report the findings of the Survey: All States must send the findings of this survey by April, 2014, to the Union Ministries concerned, to the National Human Rights Commission and the National Commission for Safai Karmacharis.

3. Quarterly Updates: Starting from April, 2014, a quarterly report must be sent by each State to the National Human Rights Commission and the National Commission for Safai Karmacharis on

i) the number of individuals who have been identified for rehabilitation in the last quarter;

ii) the number of individuals who have been rehabilitated in the last quarter;

iii) the details of the rehabilitation provided, including cash assistance, project support, skills-development, etc.;

iv) the details of the training provided in livelihood skills to rehabilitated manual scavengers;

v) the number of grants given or houses provided to former manual scavengers under the IAY, the RAY and cognate State schemes;

vi) the educational support, including scholarships, provided to children of those who are or have been manual scavengers;

vii) the relief provided to families of manual scavengers who have been killed in the course of their work

4. Nodal Authorities: All States shall ensure that by April 1, 2014

i) Every district has appointed an officer who shall be the nodal officer for the implementation of the Act. This official will be responsible for the prevention of manual scavenging and the rehabilitation of manual scavengers;

ii) A list of the nodal officers of the State, with their names, official addresses, telephone numbers, etc is compiled and widely disseminated, including on the internet;

iii) This list is sent to the National Human Rights Commission and to the National Commission for Safai Karmacharis.

5. Vigilance Committees: All State Governments shall ensure that by April 1, 2014

i) Vigilance Committees are appointed in each District;

ii) Their names, designations, telephone numbers etc are compiled and widely disseminated, including on the internet;

iii) This list is sent to the National Human Rights Commission and to the National Commission for Safai Karmacharis.

6. Special Provision: One-time cash assistance should be provided to manual scavengers who have left their former profession before December 6, 2013, but have not received any rehabilitation benefit, either from Governments or from banks.

7. *BPL cards:* An individual identified as a manual scavenger, who is issued with a photo-identity card u/s 13 (a) (i) of the PEMS&R Act, 2013, containing details of all members of his family dependent on him, should simultaneously be issued with a BPL card.

8. Amendments to Social Welfare Programmes: On the lines of the Indira Awas Yojana, which has laid down that individuals rehabilitated from manual scavenging would get priority in the allotment of grants, provisions should be made in

1) Rajiv Awas Yojana to stipulate that priority in the allotment of houses or allocations of grants would be given to manual scavengers being rehabilitated in urban areas;

2) Rehabilitated manual scavengers should get priority for work under the National Rural Employment Guarantee Scheme, and be allowed work for 200 days for five years after they are freed;

3) In NREGA, schemes should be drawn up for rural sanitation, for which preference in employment will be given to individuals and to the households of families redeemed from manual scavenging;

4) It is important that there be convergence of all schemes, including the social welfare schemes that are used to rehabilitate redeemed manual scavengers.

9 Education of Children of Manual Scavengers:

i) Ensure that all are in school and receive quality education. Close attention to check that they are not forced to drop out either because of discrimination at school or pressure to earn. This should be part of the work of the Vigilance Committee;

ii) Special attention in Anganwadi Centres. Ensure that all settlements of manual scavengers have anganwadi centres close to them;

iii) SNPs (Special Nutrition Programmes) should be automatic for them;

iv) Scholarships for the children of individuals who are or have been manual scavengers will be provided throughout their

school lives and upto the tertiary level, irrespective of their religious affiliation.

10. ***Special health measures for those who have been Manual Scavengers:***

    i) Special, monthly health checks through mobile vans in areas where there is a concentration of those who are or have been manual scavengers;

    ii) Identification of occupational health problems that affect manual scavengers, and the provision of medical and financial resources to treat them;

    iii) A more generous ceiling for manual scavengers under the Rashtriya Swasth Bima Yojana, given the extreme hazards to health to which they have been exposed.

11. **Relief for Families after Deaths:** For the families of any person killed while working as a manual scavenger

    i) Immediate payment of a minimum of Rs. 10 lakhs to the next of kin;

    ii) Free rations for a period of three months;

    iii) A permanent government post on compassionate grounds to at least one member of the family;

    iv) A pension of Rs. 5000/- per month for the widow;

    v) Scholarships for the children without limitation of the number to two, till the university level.

12. ***Corporate CSR:*** 5% of corporate CSR should be devoted to the rehabilitation of manual scavengers.

13. ***Financial Assistance:*** Since financing is crucial to rehabilitation and so far banks have been reluctant to provide this assistance to manual scavengers and their families

i) All project assistance under the Act should be channeled only through the National Safai Karamchari Finance Development Corporation;

ii) State Governments should stand guarantee for loans given by the NSKFDC to manual scavengers;

iii) Managers of all banks at the district level should earmark 1% of their total sanctioning power for soft loans to redeemed manual scavengers.

14. ***Performance Audit:*** All institutions of civil society that receive Government funding for the rehabilitation of manual scavengers should be regularly audited by independent agencies to ensure that the money is properly utilized.

Volume-13, 2014

NHRC Recommendations on Mental Health and Human Rights[1]

The following recommendations emanated from the deliberations of the 'National Conference on Mental Health and Human Rights':

1. The NHRC has been playing a pivotal role in monitoring and improving the standards of mental health care in mental hospitals under the Supreme Court directive and later extended the mandate of supervision to other mental hospitals and institutions across the country. It should continue to play the role of a facilitator and a watchdog by using 'monitoring' as a tool of correction and promotion of human rights of mentally ill persons.

2. Reflecting the paradigm shift from hospital to community-based care, which was also the basis of the National Mental Health Programme (NMHP) that was launched in 1982 and under it the District Mental Health Programme (DMHP) in 1996, a vast majority of patients, including those suffering from acute psychotic illness or severe depression can be safely treated in General Hospital Psychiatric Units (GHPUs) rather than in a mental hospital where de-socialization is an almost inescapable hazard. Many among them can also avail psychiatry OPD services. This calls for integration of mental health with general health and establishment of GHPUs in all medical colleges/district hospitals, and proper implementation of DMHP in all the districts of the country in order to take psychiatric in-patient/out-patient care to the community. This will

[1] These recommendations were made on the basis of National Conference on Mental Health and Human Rights held on 30 May 2014.

also take care of the problems of chronicity and abandonment by the families.

3. Laying emphasis on community mental healthcare facilities, it was recommended that large custodial mental hospitals should be renovated/rebuilt to make the environment pleasing. Buildings with individual cells should be converted into blocks or dormitories. Availability of different services for mentally ill persons should be spread over in the premises so that the patients can move freely. This shift also requires health workers and rehabilitation services to be available at the community level, along with the provision of crisis support. Other different facilities required are day care centres, half-way homes, long-stay homes, de-addiction centres and suicide prevention centres. All these facilities should be made available at the district level first and gradually at the level of taluks.

4. Need to initiate mental health care for homeless persons with mental illness. One way of doing this could be by networking and liaison with NGOs and civil society organizations working in the community.

5. There is a need to fill up all posts lying vacant across mental health hospitals/ institutions in the country on priority. Some mental hospitals do not have even a single psychiatrist on their permanent roster. While the Medical Council of India (MCI) and the Ministry of Health & Family Welfare, Government of India have introduced Psychiatry at the undergraduate level and have also increased the total number of seats in MD (Psychiatry) during 2013-2014, they need to further augment their efforts in meeting the demand of adequate manpower in the field of mental health, especially that of Psychiatrists, Clinical Psychologists, Anaesthetists, Psychiatric Social Workers and Psychiatric Nurses. This would facilitate in overcoming the shortage of trained professionals and para-professionals in mental healthcare service delivery system in the country.

6. Development of adequate and trained manpower is another most glaring deficiency in mental healthcare service delivery system. Though there has been a marginal improvement in the number of hospitals/institutions offering post-graduate training in mental health care, majority of the hospitals/institutions still do not offer any post-graduate courses/training in any of the mental health disciplines. This shortage of training facilities for mental health care needs to be addressed. Correspondingly, there is a need to conduct basic and applied research in these fields. Such a measure will prepare general Doctors, Psychologists, Social Workers, Nurses and other health personnel/para-professionals to acquire the skills for taking care of the mentally ill.

7. There is a need to develop medical courses for Doctors/para-medical staff, which includes mental health care component in the curriculum. This would facilitate training of general health personnel in the essential skills of mental healthcare. Such training would ensure the best use of available knowledge in the management of mental disorders enabling them to deliver successfully.

8. It was recommended that an appropriate training module should be developed for families of mentally ill persons as families are primary care providers. Apart from making them understand mental illness, the module should focus on skills for care of the mentally ill. In addition, the module should cover information on aspects like medication compliance, regular checkups, encouraging positive changes, handling negative symptoms, recognizing early signs of relapse, swift resolution of crisis including short-term respite care whenever required. Such trainings can be organized for family members at the taluk and district level by mental health care professionals.

9. The advent of newer drugs and essential drugs should be made available at all levels of mental health care, i.e., PHC, taluk, district

and State levels. These medicines should also be included in the essential drugs list and given free of cost to the patients as they often provide the first line treatment, especially in situations where psycho-social interventions and highly skilled professionals are unavailable.

10. There is a need to adopt and promote a multi-disciplinary approach to mental healthcare through convergence of various disciplines including psychiatry, social work, neurobiology, ayurveda, yoga for the overall well-being of mentally ill persons.

11. There is an urgent need to undertake public education and awareness campaigns on mental health in local vernacular with the aim of informing people about common mental disorders, mental illness, available treatment, the recovery process and the human rights of people with mental disorders. Well planned public awareness and education campaigns can reduce stigma and discrimination, increase the use of mental health services, and bring the branches of mental and general health care closer to each other. Such programmes should also target college going population. For this purpose, maximum usage must be made of the folk media, print media and electronic media.

12. Need to establish full-fledged Departments of Mental Health in all the proposed All India Institutes of Medical Sciences and also set up institutions like NIMHANS across various States in the country during the Twelfth Five Year Plan. This will ensure development of facilities for the undergraduate and postgraduate training of doctors in all branches of psychological medicine, the promotion of research in the field of mental health, and participation in the organization of a mental health programme for the area in which the institute is located.

13. Ensure that minimum standards of mental healthcare in prisons and correctional institution settings are followed and laws relating

to the mentally ill are continuously reviewed in order to make them rights sensitive in accordance with the United Nations Charter and provisions of the Indian Constitution, and also bring them in tune with societal change/needs.

14. There is a need to expand the knowledge base of community healthcare workers on mental healthcare as well. This would ensure early identification of symptoms of mental disorder and treatment by way of referral.

15. There being a gross lack of information/database on mental illness in the country, it was recommended that the NIMHANS must seriously consider developing a 'Mental Illness Morbidity Index' (MIMI).

16. The proposed National Mental Health Policy encompassing extension of basic mental healthcare facilities to the primary level, strengthening of psychiatric training in medical colleges both at the undergraduate and postgraduate level, modernization and rationalization of mental hospitals to develop them into tertiary care centres of excellence, empowerment of Central and State Mental Health Authorities for effective monitoring, regulation and planning of mental healthcare delivery systems and promoting research in frontier areas to evolve better and cost-effective therapeutic intervention and generate seminal inputs for future planning understanding should be expedited.

17. Efforts must be made to identify clusters in each district of the country and assign each of these to a nodal medical officer. These officers must be imparted training over a long duration of 3 months in mental health care and these nodal officers must, in turn, train other healthcare givers such as community health workers, NGOs, police personnel, nurses, general practitioners etc.

18. All cases pertaining to alleged human rights violations of mentally ill persons should be registered and given due consideration by concerned agencies. Where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, due compensation or damages to the victim or the members of his/her family be given and proceedings for prosecution should also be initiated against the culprits.

19. There is need to sensitize other stakeholders as well on mental health such as judicial officials, police officials, health officials, media personnel, NGOs, etc.

20. The Central and State Governments need to increase their overall budget earmarked for mental health. As part of their corporate social responsibility (CSR), the corporate sector also needs to spend a part of their CSR fund on mental healthcare.

21. There is a need to cover mental health under the Health Insurance Scheme. Limitations imposed on mentally ill in the area of insurance should be rectified.

22. There is a need to start a twenty four hours dedicated mental health helpline. This helpline should provide psycho-social support, information on mental health resources, emergency management, access to preventive services, registration of complaints pertaining to human rights violation of mentally ill persons, and assistance on medico-legal issues.

23. The mental health care of vulnerable groups like children, women and elderly subject to domestic violence should receive priority attention. Similarly, women and girl children who are victims of rape, incest and sexual abuse require special care and their cases should be assigned to "fast-track courts" and dealt by specially trained judicial officers to ensure expeditious disposal.

Volume-13, 2014

NHRC Recommendations on Silicosis[1]

Based on the deliberations held in all the plenary sessions, the following recommendations emanated from the National Conference:

1. All States and Union Territories should provide complete information along with action taken on the following recommendations which the Commission has earlier made on the problem of silicosis:

   - To furnish complete information with regard to ten points sent to the State/UT Governments in the year 2009 for an action taken. **(Annexure I)**
   - To furnish the action taken by the State/UT Governments on the sets of recommendations prepared by the Commission on Preventive, Remedial, Rehabilitative and Compensation aspects relating to silicosis vide letter No. 11/3/2005-PRP&P dated 13 December 2010. **(Annexure II)**
   - To furnish the action taken by the States/UT Governments on the recommendations emanated during the National Conference on Silicosis held on 1 March 2011 vide letter No. 11/3/2005-PRP&P dated 11 April 2011. **(Annexure III)**

Action taken on all these 3 (three) sets of recommendations made by the Commission should be furnished by the end of December 2014. A copy each of these recommendations is enclosed for reference. While doing so, the State/UT Governments must also furnish to the Commission

[1] These recommendations were made on the basis of the National Conference on Silicosis held on 25 July 2014.

their respective action plans for elimination of silicosis.

2. All States and Union Territories must particularly report to Commission the findings of the detailed survey of industries conducted by them, especially of hazardous and suspected hazardous industries in both organized and unorganized sector, where workers are likely to be affected by silicosis. Besides, their survey should throw light on the status of ex-workers. States and Union Territories who have so far not acted upon to the aforementioned direction must complete their survey immediately and report its findings to the Commission latest by December 2014.

3. The States/UTs should maintain and share detailed information on:

   (i) Number of workers in silica prone industries;

   (ii) Total number of incidents/cases of silicosis;

   (iii) The status of treatment being given to victims;

   (iv) Kind of screening test being carried out by the employers of various industries for detection of silicosis cases;

   (v) Type of special measures being taken by employers in suspected cases of silicosis;

   (vi) Whether the employers of various industries were maintaining a proper register for purposes of recording the daily attendance of workers, salary paid to each worker, leave given to each worker including medical leave;

   (vii) Steps taken by the State/UT for violation of labour laws regarding the erring employers;

   (viii) Whether any kind of insurance cover given to the workers by their employers;

   (ix) Measures undertaken for prevention of silicosis.

(x) In the case of ex-workers, apart from making an assessment about their actual number, the kind of treatment, rehabilitation and compensation package given to them by their employers;

(xi) In case of death of a worker, their respective family is taken care of or not.

4. Some States have launched special drives for identification and registration of all unregistered factories where workers are likely to be affected by silicosis. Other States and Union Territories may also launch similar drive/effort.

5. The States and Union Territory Governments that have not yet notified smaller units having potential to cause silicosis notwithstanding that the number of persons employed therein being less than ten, if working with the aid of power, may be declared to be a factory under Section 85(1) of the Factories Act, 1948. Besides, States and Union Territories should ensure strict enforcement of the Factories Act, 1948 by appointing Inspectors and Certifying Surgeons under the Act.

6. Similarly, the manufacturing processes or operations carried out in factories in which manipulation of stone or any other material containing free silica is carried on need to be notified as "dangerous operations" under Section 87 of the Factories Act, 1948 by all States and Union Territories. The Ministry of Labour and Employment, Government of India through DGFASLI has framed modified Model Factories Rules (MFR 120) on 27 dangerous operations and processes under Section 87 of the Factories Act 1948 including manipulation of stone or any other material containing free silica (Schedule XIII). These Model Factory Rules under Schedule XIII shall also apply to stone or other material that contain not less than 5 percent of free silica, by weight which includes stone crushers, gem and jewellery, slate pencil making, agate industry, pottery and glass manufacturing. Precautionary measures need to be taken by

employers for protection of all persons employed therein by way of periodical medical examination, providing welfare amenities and sanitary facilities and the supply of protective equipments and clothing. Employment of women, adolescents and children in any of the operations involving manipulation or at any place where such operations are carried out should be completely prohibited.

7. As of now, there seems to be considerable variation in standards of medical protocol to confirm cases of silicosis. There is thus a need to adopt uniform diagnosis procedure across the country primarily consisting of detailed occupational history, chest radiography, C.T. scan and lung biopsy. There is also a need to create occupational disease centres in all ESI Hospitals and OPDs for occupational diseases in all civil hospitals. These should be well equipped with Chest Specialists, Radiologists and other technical staff for proper diagnosis, treatment and referral. In addition, districts having high rate of silicosis, their District Hospitals must be well prepared for diagnosis and management of silicosis.

8. As prevention is the only remedy, it will be paramount to lay emphasis on preventive/control measures by all States/UTs as specified in their respective State Factories Rules, by taking recourse to engineering control, medical control and administrative control measures. Besides, imparting training to all workers and employers should become an annual feature whereby they are sensitized to the health effects of silica dust exposure including operations and material that produce silica dust hazards, application of engineering controls and work practices that reduce dust concentration, personal hygiene practices, etc. For this purpose, DGFASLI has also prepared a checklist for prevention of silicosis, which can be availed of by all States/UTs for usage of employers and workers. Moreover, there is need to empower State officials as this would enable them to judiciously undertake safety and occupational health survey.

9. Immediate recruitment of Chest Specialists, Certifying Surgeons and Radiologists and their capacity building and training on dust diseases as per WHO and ILO standards. Many States have nominated officers from associated Departments fulfilling medical qualifications and other requirements as Certifying Surgeons so as to overcome their shortage. This may be replicated by other States as well.

10. Need to issue identity cards to all workers so that the responsibility of employers is ensured and it is possible at any future point of time to establish an employee, employer relationship.

11. In Andhra Pradesh, workers in the unorganized sector are covered under the *Rajiv Aarogyasri Community Health Insurance Scheme*. The scheme provides financial protection to families living below poverty line up to ₹ 2 lakhs in a year for the treatment of serious ailments requiring hospitalization and surgery. A scheme on similar lines could be put in place by other States/Union Territories if not already there in view of large number of affected workers in the unorganized sector.

12. The Government of Andhra Pradesh has also constituted the *Building and Other Construction Workers Welfare Board* under which schemes for the welfare of building and other construction workers are being implemented for all those working in the unorganized sector and afflicted by silicosis. Workers employed in stone quarries and stone crushers have further been declared building workers and are entitled to benefits extended by the Construction Board. Likewise, the Government of Madhya Pradesh has established *Slate Pencil Workers Welfare Board*. The fund collected by the Board through cess is used for providing social security to workers and their dependents. A Policy on Silicosis has also been framed by the Government of Madhya Pradesh under which various schemes are being provided to affected workers. In addition, the Government of Madhya

Pradesh has successfully relocated polluting units from residential areas to industrial estate, thereby reducing the exposure of silica. There is a need to replicate these best practices by other States and Union Territories as well.

13. The Andhra Pradesh Factories Rules, 1950 under the Factories Act, 1948 and Madhya Pradesh Factories Rules, 1962 should be examined and similar Rules put in place in other States and Union Territories.

14. There is a need to set up a separate Silicosis Board/Fund, similar to the one set up by the Government of Odisha, in all the States and Union Territories as a single window for purposes of claiming compensation by workers affected by silicosis and in the event of death of the worker by their dependants.

15. Need for better coordination between various Departments of Central and State Governments to deal with the problem of silicosis which includes the Departments of Health, Labour, DG FASLI, Labour Institute, Occupational Health Institutes, T.B. Association and the Civil Society. Similarly, there is a need for better coordination among States from where the workers migrate for better opportunities. However, it would be useful to evolve a comprehensive strategy to check migration which can include modifications in the MGNREGA Scheme by providing for more number of wage days in the interest of migrant workers as recommended by the NHRC in its earlier National Conference on Silicosis held on 1 March 2011.

16. States and Union Territories have not taken sufficient interest in dealing with the occupational health hazards of mining and related milling operations leading to silicosis. The implementation of the Mines Act, 1952 has revealed a number of defects and deficiencies which hamper its effective administration. Some of these necessitate new forms of control while others require strict enforcement of the existing legal provisions. Till the time, the existing Mines Act is

recast, there is need to strictly enforce Sections 5-9, 11, 22, 23, 25, 26 & 27 of the Act. Simultaneously, there is need to strengthen the office of Director General of Mines Safety.

17. The National Institute of Occupational Health or the National Institute of Miners' Health should undertake a study about difficulties associated with mining and problems faced by mine workers.

18. Pollution from thermal power stations across the country need to be brought under surveillance for risk of silicosis of not only to workers but to the neighbouring population in residential areas as coal and coal ash contains silica ranging from 18% to 30% approximately.

19. Silicosis is not only a notifiable disease under Section 89 of the Factories Act, 1948 and Section 25 of the Mines Act, 1952 but also a compensable disease under Schedule III, Part C of Workmen's Compensation Act, 1923, now known as Employee's Compensation Act, 1923. As per the Act, amount of compensation is calculated on the basis of actual disability. For victims of silicosis, this disability should be considered 100% as per order passed by the High Court of Gujarat in case 3449 of 1999 (*Babubhai* v. *ESIC*). ESIC should resolve to make it a rule so that the victim is compensated without the burden of proof.

20. Simplification of mechanism for compensation for occupational diseases needs to be carried out. For this purpose, there is a need to amend the Employees' Compensation Act, 1923 as well as Employees' State Insurance Act, 1948. In both these Acts, there is a 'qualifying period' for claiming compensation. This acts as a hindrance for workers to claim compensation. This should be removed and any worker found to be suffering from silicosis should be compensated. All compensation claims filed under the Acts

should be processed urgently and disposed within three months from date of filing of claims.

21. 'Occupational Health' should be made part of MBBS curriculum.

22. The Unorganized Workers Social Security Act, 2008 provides for National/State Social Security Boards. On the same lines, Mine Workers Welfare Boards may be constituted for recommending welfare schemes to be formulated for the welfare of mine workers employed in the unorganized sector.

23. A national helpline with Directorate General of Mines Safety should be started for registration of complaints and accidents of employees working in mines.

Annexure I

Ten Points

(i) What steps the Government is taking to prevent and ultimately eliminate the problem of silicosis, within how much time-frame and how it proposes to monitor its actions?

(ii) Whether the Government has undertaken any survey regarding the prevalence of silicosis? If yes, the total number of victims identified and the status of their treatment.

(ii) How many complaints have been received by the States/Union Territories regarding the problem of silicosis and what steps have been taken by the Government?

(iv) What steps have been taken to implement Schedule No. XIII prepared by Directorate General Factory Advice Service and Labour Institute under model Rule 120 framed u/s 87 of the Factories Act?

(v) How many Hospitals/Treatment Centres exist for diagnosis and treatment of the occupational disease – silicosis?

(vi) Whether a policy has been formulated for simplifying the procedure to enable the workers to file claims for compensation?

(vii) Whether the States/Union Territories have paid any compensation to the victims of silicosis? If yes, the details of such persons and the amount paid.

(viii) What steps are contemplated by the Government to ensure that the workers employed in industries/factories/quarries/ mines received compensation?

(ix) Whether the Government has evolved any policy for prevention

and cure of silicosis and payment of compensation to the persons working in the unorganized sector?

(x) Whether the Government proposes to constitute any Board or set up any fund for the rehabilitation and insurance of all the workers affected by silicosis?

Annexure II

Recommendations of National Human Rights Commission on Preventive, Remedial, Rehabilitative and Compensation Aspect of Silicosis

Preventive Measures

1. The occupational health survey and dust survey on half yearly basis may be made mandatory in suspected hazardous industries. All the enrolled workers must be medically examined before entering into the employment. The workers should be clinically examined with Chest radiography and pulmonary function test to rule out any respiratory disorder.
2. State/UT governments should encourage development and promotion of various cost-effective engineering control measures to manage silica dust through surveillance of processes or operations where silica is involved.
3. Implementation of precautionary measures including the protective gears for the workers of silicosis prone industries to be made mandatory by the concerned enforcement authorities.
4. Dust control devices should be installed to reduce the dust generation at the workplace. National Institute of Occupational Health (NIOH) has developed control devices for agate, grinding and quarts crushing industries based on the principle of local exhaust ventilation. The use of wet drilling and dust extractors may be enforced by respective regulatory authorities.
5. The workers vulnerable to silicosis need to be made aware of the disease through wide publicity campaigns with the use of electronic

and print media. This will also improve self responding of cases and facilitate early detection.

6. Silicosis is a notified disease under Mines Act 1952 and the factories Act 1948. Silicosis may also be made a notifiable disease under the Public Health Act. As such all district/primary health centres/ hospitals in the country will have to report the cases/suspected cases of silicosis to the Government.

7. There is a necessity to develop Master Trainers to impart training to all public health doctors/paramedics for early diagnosis and detection of silicosis.

8. Less hazardous substitutes to silica should be found out for use in place of silica.

9. Industrial units which are silica prone should have an ***Occupational Health and Safety Committee (OHSC)*** with the representation from workers and Health Care Providers.

10. Silicosis control programme should be integrated with already existing Revised National Tuberculosis Control Programme (RNTCP).

11. A mechanism to have intersectoral coordination among departments such as Ministry of Health & Family Welfare, Ministry of Labour & Employment, Directorate General of Factory Advice Services Labour Institute, National Institute of Occupational Health, Tuberculosis Association of India and civil society organizations to evolve an appropriate strategy to deal with the dual problems of silicosis and tuberculosis may be set up at the central and state level.

Remedial Measures

1. In each of the district where silicosis prone industry, quarrying or big construction projects are on, there is a need to identify a facility for diagnosis of silicosis.

2. The District Tuberculosis Officer must collect and maintain accurate information and documentation on number of workplaces and workers at risk from silica exposure.

3. The accountability for the implementation and control over the rules & regulation of Laws must be reviewed time to time.

4. The National /State Social Security Board set up under The Unorganized Worker's Social Security Act, 2008 should recommend welfare schemes to be formulated for the welfare of the unorganized workers who are at the risk of contracting silicosis as well as those already affected and their families.

5. The Central Government may consider extending the Rashtriya Swasthya Bima Yojna, a health insurance scheme for BPL families and extended subsequently to some other vulnerable groups, to the workers at risk of contracting silicosis and their families.

Rehabilitative Measures

1. The treatment cost of the silica affected person including permanent, temporary or contractual worker should be borne by the employer. The district administration should ensure its implementation and treatment.

2. The victims of silicosis should be rehabilitated by offering an alternative job or a sustenance pension if they are unable to work.

3. NGOs should be involved in monitoring and implementation of the programmes initiated for the benefit of silica exposed workers.

4. Appropriate Counseling should be provided to the person affected by silicosis.

Compensation

1. The silica affected person should be adequately compensated.

2. Silicosis is a compensable injury enlisted under the ESI Act and the Workmen's' Compensation Act. Therefore a separate Silicosis Board similar to the one set up by the Government of Orissa may be formed in every State. The guidelines and model calculation of compensation may be framed under the ESI Act and the Workmen's Compensation Act.

3. The Board can carry out surveillance of silicosis cases and assessment of disability/loss of earning capacity resulting from the diseases for the purpose of compensation and rehabilitation.

4. The compensation could be calculated based on Disability Adjusted Life Year (DALY) developed by World Health Organisation. The attached annexure could be used as a reference for calculating compensation.

Abbreviation

DALY	Disability Adjusted Life Year
ESI	Employee State Insurance
NIOH	National Institute of Occupational Health
OHSC	Occupational Health and Safety Committees
YLD	Years Lost due to Disability
YLL	Years of Life Lost

Annexure III

Recommendations of the National Conference on Silicosis held on 1 March 2011

- All State Government should complete a detailed survey of the industries within 6 months, unless specific period indicated by the Commission as in case of some States.
- The Commission to call review meetings of concerned officials of few States in batches every two months.
- Silica detection equipment should be provided to factory inspectorate to identify industries producing silica.
- Survey should be divided into two parts. Apart from survey of workers, in silica producing factories, quarries etc, survey of ex-workers is needed.
- Silicosis Board of Mandasor pattern should be extended to affected districts of all States.
- Need to differentiate between relief and compensation
- In MP, the status of victims is very poor and ill and therefore, NHRC recommendation of granting sustenance pension should be implemented early.
- All affected persons should be treated as BPL.
- Separate programme specially targeting silicosis victims should be designed which should cover health education as well as livelihood /social security.
- Earlier recommendations made by CPCB and DGFASLI made on behest of NHRC should be implemented.

- When a victim suffering from Occupational Disease dies, ESIC is to be notified before last rites are performed to ascertain cause of death. They also want post mortem to be done. It is difficult for the people from poor strata of the society to follow the process involving police. Also, it is not in line with the culture to keep the body for long time before funeral. This stipulation, therefore, requires change.
- Method of diagnosis should involve:1st Step-Screening of persons who worked in silica dust producing factories and have symptoms like cough-breathlessness. 3 simple questions -(a) Are you breathless? (b) Have you worked in a "high risk industry"- to be defined; (3) Did you have the symptoms before starting work? 2nd Step-Medical examination and chest X-rays by doctor at designated "X-ray" center. 3rd step- Sending of X-rays to expert readers for final opinions.
- Comprehensive strategy to check migration should be designed which can include modifications in the MGNREGA scheme to provide more number of wage days.
- Many hazardous factories are still working, they should be closed.
- State should initiate criminal proceedings against the factories under the provisions of IPC, 1860 and Factories Act 1948, where the labourers have contracted silicosis.
- DGFASLI should give standard questionnaire to all States. This should include name, address etc, work history- worked/is working in identified industries, duration of work, hours of work each day, type of work done, level of dust exposure, wages received, symptoms related to chest, wasting, weight loss, record of employment etc.
- Silicosis is a public health issue and it should be taken up at national level.
- Govt. of MP has done some relocation of industry from residential area to industrial area successfully. This may be replicated elsewhere.

- Gujarat High Court has passed order to the effect that all cases of Silicosis be given 100% disability. ESIC should resolve to make it a rule.
- All State Factory Inspectorate should have at least one Industrial Hygiene Expert.
- ESI Act is applicable to units employing less than 10 in Mandsaur. This should be extended to whole of India.
- All civil hospitals should have OPD for occupational diseases.
- Moreover, a worker may not have required legal documents to support his employment like identity card or attendance card or pay slip as well as length of exposure, when he is out of employment. This stipulation, therefore, requires change.
- Functioning of separate cell under NRHM / state health department should be started.
- Introduction of special courses of "Environment & Occupational Health" for the Junior Doctors and interns which has to be initiated by the State Government.
- Immediate recruitment of certified surgeons, radiologists and chest specialists and their capacity building & training arrangement to be made on dust diseases as per WHO & ILO standard.
- Setting up of the Occupational Disease Diagnosis Centre (ODDC) at district level ESI, Government hospitals and NRHM centers at different location.
- Limiting exposure to harmful dusts can be achieved further by suppressing dust generation, filtering or capturing dust particles, diluting the concentration with fresh air, and using personal protective respiratory equipment as further possible means of preventing silicosis.

- All the workers migrating from one State to Other state could be given identity cards to make it easier for the treating doctors to get the history of the work place, their exposure to the silica dust, working conditions and health conditions of the workers.

Volume-13, 2014

SUBMISSION OF NHRC, INDIA BEFORE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

NHRC, India Written Submission to the Committee on the Elimination of Discrimination against Women on the Implementation of CEDAW in India with Special Reference to Combined Fourth and Fifth Periodic Reports of India

Introduction

As per Census of India 2011, women constitute 48.46 per cent of the total population. Hence, the importance of women as human resource in the overall development and progress of the country is without doubt. The Constitution of India has enshrined the principle of gender equality. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive intervention in favour of women. Within the framework of a democratic polity, the development policies, programmes and laws have been aimed at women's empowerment. In the Government of India, the Ministry of Women and Child Development (MWCD) is the nodal Ministry for all matters concerning women. At the State level there are similar Departments dealing with women issues.

A number of other institutions are also in place like the National Commission for Women and State Commissions for Women to help women get speedier justice like establishment of women police cells in police stations and exclusive women police stations. The MWCD, NCW and concerned Departments at the State level also work in partnership

with bilateral, multilateral and UN agencies on women-specific and women related projects.

In a few metropolitan cities, Rape Crisis Intervention Centres have been set up in police stations. Helplines for women in distress have also been set up. Women self-help groups are being organized and involved in the formulation and implementation of various schemes and programmes.

However, despite the above institutional and programmatic framework, the women of India still suffer from a large number of problems due to poor implementation on ground.

Role of National Human Rights Commission of India in Protecting and Promoting Women's Rights

The National Commission for Women (NCW) was established by an Act of Parliament in 1992 to safe- guard the rights of women. It acts as a statutory ombudsperson for women. Its Chairperson is a deemed member of National Human Rights Commission.

The NHRC is an embodiment for the promotion and protection of human rights. Ever since it came into existence in October 1993, its efforts to protect and promote the rights of women have evolved in a variety of inter-connected ways over the past two decades. Gender related issues and especially discrimination against women have been a matter of concern for the Commission since it was constituted. During 1994-95, it recommended vigorous implementation of the country's obligations under the CEDAW. It also recommended that well-coordinated steps be taken to act upon the Declaration and Programme of Action adopted at Beijing.

The violation of the rights of women was also considered from the point of view of health. Maternal anaemia was identified as a rights issue in 1996-1997. In 2000, it focused on HIV/AIDS, Public Health and Human Rights related issues impacting on the rights of women.

During 1999-2000, the Commission took up issues regarding the elimination of gender discrimination in the light of the concluding observations made by the CEDAW Committee on India's first country report and the concluding observations and recommendations made by the CRC Committee on India's initial country report.

In 2000-2001, it called for a concerted effort to end the misuse of sex- determination tests which encouraged the evil practice of prenatal sex selection having ramifications like adverse sex ratio.

In 2000, it took keen interest in the implementation of the Vishaka guidelines prescribed by the Supreme Court of India on preventing and combating sexual harassment of women at the workplace. It also organized a Colloquium on Population Policy, Development and Human Rights and took up the issue of incentives/disincentives in the population policies of State Governments/Union Territories vis-à-vis the National Population Policy.

It organized a National Conference in January 2013 on Violence against Women in the wake of the brutal rape and death of a young woman in Delhi. In February 2014, it again organized a two-day National Conference on Human Rights of Women and had detailed discussions with all stakeholders on the problem areas relating to rights of women. Many of the concerns raised below are an outcome of the work carried out by NHRC-India since its inception.

Civil and Political Rights

Rising sexual crimes against women and girls is a cause of concern. A total of 293 cases of rape were registered in NHRC from January to April 2014, clearly indicating that women and young girls continue to be the worst victims of violence, in particular, sexual violence and have little or no access to justice. This is despite the recent Criminal Law (Amendment) Act, 2013 that seeks to make more rigorous various sections

of the Indian Penal Code, 1860; Code of Criminal Procedure, 1973; the Indian Evidence Act, 1872; and the Protection of Children from Sexual Offences Act, 2012. There is immense need for law enforcement officials including the judiciary to be sensitized and held accountable for not complying with laws if strict enforcement of the existing laws and policies for the protection of women is to be achieved. The National/State/District legal services authorities must also create awareness among women and girls about women enabling laws and their rights, which is not adequate at present. The NHRC is making efforts in this direction but other concerned agencies also need to devote attention to this issue.

Similarly, women continue to be victims of domestic violence in the absence of a coordinated implementation mechanism consisting of protection officers, service in the form of facilities and shelter homes that are mandated to provide better access to justice and other support services under the Protection of Women from Domestic Violence Act, 2005. Despite guidelines issued by the MWCD to State Governments/ UTs for proper implementation of the Act, there is still no proper coordination and the designated authorities remain dysfunctional.

Acts of sexual harassment including sexual harassment of women at the workplace are still frequent and these acts take a variety of forms. In 1997, the Supreme Court in *Vishaka* v. *State of Rajasthan* recognized sexual harassment of women at the workplace as a human rights violation. However, even in 2006, 420 cases of sexual harassment of women (general), 63 cases of sexual harassment of women at the workplace (government offices) and two cases of sexual harassment (army/para military personnel) were registered in NHRC. In spite of India's obligations under CEDAW and other human rights instruments, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted as late as 2013.

The status of implementation of the Family Courts Act, 1984 can also be easily gauged that only 212 Family Courts are functional across the country.

The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights, including that of women.

The Hindu Succession (Amendment) Act, 2005 was enacted to guarantee property rights to a daughter and bring her at par with a son or any male member of a joint Hindu family. However, its implementation is poor on account of deep-rooted cultural mindsets and lack of knowledge and awareness of rights and entitlements among women and girls. There is need for a codification of the property rights of women, regardless of caste, class, religion or ethnicity, which should take precedence over all personal laws and customary practices.

The Pre-Conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 was amended in 2003 prohibiting use of technologies for detection and disclosure of sex leading to termination of female foetuses and its resultant implication on sex ratio. Its implementation is still weak and to enhance its effectiveness, there is a need to sensitize all implementing authorities - Central Supervisory Board, State Supervisory Board, State Appropriate Authority, District and Sub-District Appropriate Authorities, Advisory Committee - regarding their role, functions, investigative powers and tasks including issues around adverse sex ratio and the given Act.

The existing Immoral Traffic (Prevention) Act, 1956 is inadequate and in need of a thorough review. There is a need to enact a new comprehensive legislation on human trafficking from a gender and rights perspective in accordance with the Trafficking Protocol, the CRC, the CEDAW and the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking.

NHRC, carried out a comprehensive action research on trafficking in women and children, and then formulated an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children

and Women along with MWCD, MHA and other line Ministries but the same is yet to be adopted and subsequently implemented by the Government. The Integrated Plan of Action (IPOA) on adoption by the Government of India would replace the 1998 Plan of Action to Combat Trafficking and Commercial Sexual Exploitation of Women and Children, which is ineffective as human trafficking especially of women and girls is rampant. In fact, trafficking is taking new forms both for purpose of sexual exploitation as well as for forced/bonded labour.

The 'Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill' was initially introduced in the Rajya Sabha in 2005. A parliamentary standing committee rejected the bill and called for a new bill. The new bill – 'Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011' – was approved by the Government for introduction in Parliament. But the same could not be tabled. It may be stated that the legal framework should be strictly used to prevent communal violence as it has severe repercussions on the rights of women and children.

The scheduled caste and scheduled tribe women remain particularly vulnerable despite laws to protect them because of the indifference of public servants. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 seeks to protect people belonging to these communities. However, its implementation is ineffective, which results in the culprits not being punished even in cases of severe crimes like rapes, etc. This is equally true of other disadvantaged women, especially those belonging to minorities, older women and women with disabilities. Large number of widows suffer from lack of financial security and many of them are homeless and find refuge in cities like Vrindavan where they live on charity. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 seeks to protect the rights of older persons, including widows but its implementation is weak.

The practice of bonded labour continues unabated both in the agriculture and non-agriculture sectors due to insensitiveness of the government machinery. In 2012, a total of 503 cases of females were registered under 'bonded labour' in NHRC. This is in spite of the Bonded Labour System (Abolition) Act, 1976 according to which no activity of bonded labour is permissible. The officials responsible for implementation of the Act are not only unaware of their provisions but also indifferent. As a result, not only male earning members but in many instances entire families including women suffer bondage.

Protection of human rights defenders, especially women, is another area of concern. In 2011, the focal point for protection of human rights defenders that was set up in the NHRC in 2009, registered 33% of cases of female victims relating to different kinds of harassment including false implication and unlawful detention.

Women's Reservation Bill that proposes 33.3% seats to be reserved for women in Parliament and state legislatures has been pending for long. The 16th Lok Sabha should urgently pass the Constitution (108th Amendment) Bill, to reserve for women one-third of the seats in the Lok Sabha and in the State Legislative Assemblies, since it will be critical for the success of other policies to have a much higher representation of women in political and public life and in power and decision-making.

The Government needs to take urgent steps to sign and ratify the Optional Protocol to CEDAW.

Economic, Social and Cultural Rights

The Government of India in its combined fourth and fifth periodic reports as well as in its replies to the list of issues and questions in relation to the combined reports has mentioned about health, employment, education and other programmes/measures concerning women. However, the actual status of these areas remain a matter of concern as follows:

While there has been an appreciable gain in the overall sex ratio of 7 points from 933 in 2001 to 940 in 2011, the decline in child sex ratio (0–6 years) by 13 points from 927 in 2001 to 914 in 2011 is a matter of grave concern.

India leads a group of high-burden countries with respect to one more health indicator – neonatal (0-27 days) deaths. Of the three million neonatal deaths globally in 2012, some 779,000 were in India. Also, globally there were 2.6 million stillbirths in the same year, of which 600,000 were in India. Of the one million newborns dying globally on the first day of birth, nearly one-third are in India. The country, which had a neonatal mortality rate of 29 per 1,000 live births in 2012, recorded an verage annual rate of reduction of just 2.6 % during 1990-2012.

Despite the National Rural Health Mission, a flagship programme of GoI, many deliveries still take place at home, especially in the States of Uttar Pradesh and Bihar. There is thus a dire need to increase the number of well trained birth attendants and an urgent need to improve the quality of care. These initiatives would not only save neonates but would also help in reducing maternal mortality. With 50,000 deaths, India has the highest maternal mortality in the world.

Emphasis should be laid on universal access to reproductive health by promoting full antenatal care of pregnant mothers, institutional deliveries, availability of Emergency Obstetrics Care (EmOC) and postnatal care irrespective of place of birth. Coupled with this, there should be universal access to information/ counselling, services for fertility regulation and contraception with a wide basket of choices for men and women, including spacing of births and information on sexuality, maternal health and HIV- AIDS. These were stressed upon by NHRC to all stakeholders during a national colloquium held in 2003.

Public spending on total health (core and broad health components) continues to be measly, 1.97% of GDP during the Eleventh Five Year

Plan (2007-2012). It needs to increase much more over the next decade. The public health system has its own set of problems – vast numbers inthe villages get little or no medical care in the absence of sub-centres, primary health centre, community health centres and district hospitals.

Gender equality cannot be achieved without economic empowerment. Therefore, the macroeconomic policy framework and economic structures must be tailored to ensure that women have equal access to and control over economic resources.

Women's access to the labour market and decent work is another area of critical concern. Though in recent years, women's access to employment opportunities has increased, they are concentrated in low-paid jobs with little security, while occupational segregation and gender wage gaps persist. This must change, and the principle of equal pay for work of equal value applied in practice.

Another limitation which hinders the ability of women to fully participate in the labour market is the unequal sharing between women and men of unpaid work, including care-giving. It is important to promote practices that would redistribute unpaid work between women and men, including parental leave policies for both genders.

There should be greater investment in infrastructure, such as energy, water and sanitation, childcare facilities and transportation systems, which would facilitate the participation of women in the labour market.

Greater attention should be given to social protection measures such as unemployment insurance schemes, universal health coverage and social pensions, which have played critical roles in promoting gender equality and the empowerment of women.

Measures such as cash transfers, the provision of cheap fertilizers, microcredit schemes, the establishment of women's cooperatives and the

promotion of women's entrepreneurial activities through reservations and allotments for women's self-help groups, should be used to tackle women's poverty.

Poverty alleviation programmes should focus on the rights and the empowerment of women.

Closer attention must be paid to the critical role of holistic education and human rights education. While the school curriculum might vary between States, all States should adopt a uniform message on gender equality, conducting a thorough review of text-books, weeding out passages that perpetuate gender stereotypes, and instilling an enlightened and modern approach on gender issues in the minds of children.

The education of the girl-child is crucial, in itself and as a catalyst of social and economic change. It is essential to meet national targets for improving girl's access to education at the primary level. Along with this, it is important to ensure secondary, senior secondary and university education for girls. There is need to bridge the gender gaps in enrolment ratios at all levels, especially for scheduled castes and scheduled tribes children. Drop out rates among girls need to be brought down. One of the factors responsible for high drop out rates among girls is the lack of toilet facilities in schools in many States. Other reason is also that girls have to walk long distance to reach schools. This is in spite of the fact that implementation of Sarva Shiksha Abhiyan has made lot of improvement in the availability of physical infrastructure relating to schools. However, lot more needs to be done.

Lack of toilet facilities in large percentage of households in many States resulting in open defecation has repercussions relating to health of people. Need for open defecation, especially in rural areas, also increases the vulnerability of girls to rape and other forms of violence.

Volume-13, 2014

Oral Statement by Justice Shri K.G. Balakrishnan, Chairperson, National Human Rights Commission, India at the Informal Meeting of the Committee on the Elimination of Discrimination against Women with NHRIs on 30th June 2014

Respected Chair & Members of the CEDAW Committee,

India's ratification of the Convention on the Elimination of all forms of Discrimination against Women was in accordance with the spirit of Articles 14 and 15 of Constitution of India, which provide for equality before law and non-discrimination respectively. A large number of legislations are also in place seeking to protect and safeguard rights of women and promote their status in the society. However, proper implementation of these legislations as well as policies and programmes have been a problem area. Hence, a large percentage of women in India still suffer from various disadvantages and denial of their legitimate rights.

They still suffer from various forms of violence which include dowry deaths, domestic violence, abductions, acid attacks as well as female infanticide. Women belonging to rural areas and those from Scheduled Caste/Scheduled Tribe communities are especially prone to such forms of violence. This is despite the recent Criminal Laws (Amendment) Act, 2013 brought in the wake of gruesome rape in Delhi of a young woman on 16th December, 2012. Despite the Dowry Prohibition Act, 1961 being in place, a large number of dowry demand related deaths take place. It

reflects the need for an overhaul of the Criminal Justice System, which at present has proved to be unable to respond to the needs of widespread gender based violence. It also points to the need for greater accountability from the police authorities, who are seen to be insensitive to such cases due to traditional and patriarchal mind-sets.

Most often, in such cases, the legal process is unduly long before the final verdict is reached leading to lot of harassment of the women victims especially in cases of rape. Many a times, they are also discouraged by the community and even police, from resorting to legal redressal. This situation leads to impunity among the perpetrators and has a detrimental effect on the safety of women. Moreover, conviction rates are low. This fact is indicated by the Government's own admission as per NCRB statistics that conviction rate in 2012 for rape cases is only 24 per cent and for dowry deaths it is only slightly higher at 32 per cent. Many of these cases are not being well prosecuted and inadequate proof is tendered before the courts.

The Twelfth Plan document on the basis of NCRB data indicates total number of crimes against women having increased by 29.6% between 2006 and 2010. The NFHS-3 statistics for 2005-06 reported that one third of women between 15- 49 years had experienced physical violence and approximately 1 in 10 had been a victim of sexual violence. Early marriage makes women more vulnerable to domestic violence.

A total of 288 cases of sexual harassment against women and 59 cases of sexual harassment at workplace in Government offices were registered in the Commission during 2013 in spite of the Supreme Court guidelines laid down in the famous case of *Vishakha* v. S*tate of Rajasthan* in 1997.

Implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 is ineffective, resulting in culprits not being punished even in cases of severe crimes like rapes, etc. Cases

of stripping, naked parading and other caste related abuses of women belonging to these communities are not rare. Other disadvantaged women like older women and women with disabilities face additional hardships. The practice of manual scavenging is still prevalent and many women are involved in this work.

Trafficking of women and girls still continues, both for sexual exploitation as well as for illegal labour, inspite of the Government initiatives like *Ujjwala* scheme.

Protection of human rights defenders, especially women, is another area of concern. They face different kinds of harassment including false implication and unlawful detention.

The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights, including that of women.

Women's Reservation Bill needs to be passed so that one third of the seats in Parliament and State Legislature are reserved for women. In fact, much more needs to be done in this area as there is no dearth of evidence which indicates that dalit women elected representatives face severe barriers in accessing their legal rights and performing their role as leaders within the community.

Poor maternal health is reflected in high maternal mortality rate (MMR) of 212 deaths per 1,00,000 live births. As per the NFHS-3 statistics, the prevalence of anaemia in the age group of 15 – 49 years was 55.3 per cent in 2005-06. Inspite of schemes like *Janani Suraksha Yojana* (JSY) being implemented since 2005 to bring down MMR, institutional deliveries at 73% in 2009 still need improvement.

The gaps between infant mortality rate(IMR) at 49 for girls as compared to 46 for boys as well as under 5 years mortality rate for girls at 64 as compared to 55 to 1000 live births for boys need to be reduced.

Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994 as amended in 2003, prohibits use of diagnostic technologies for detection of sex. But, widespread misuse of the diagnostic techniques continues. As a result, while overall sex ratio has increased from 933 in 2001 to 940 in 2011, the child sex ratio (0 – 6 years) has dropped by 13 points from 927/1000 in 2001 to 914/1000 in 2011.

India also continues to have high number of child marriages despite legal and policy frame-work to eliminate this practice. High level of unmet needs for contraception, low couple protection rate and unsafe abortions as well as sterilizations are other problems needing to be addressed.

While overall literacy rate among women has increased between Census 2001 to Census 2011 from 53.67% to 65.46%, gender gap at 16.68% needs to be bridged.

In school education, the All India Gross Enrolment Ratios (GER) for girls is 36.1% as against 42.2% for boys at senior secondary level in 2010- 11. Respective GER for SC girls is 36.1% and for ST girls is 24.8% against the corresponding ratio of 40.3% and 32.7% for boys indicative of the gender gaps in enrolment.

Open defecation is rampant due to lack of toilet facilities in large percentage of households in many States having repercussions on health of people especially women and children. Need for open defecation, especially in rural areas, also increases vulnerability of girls to rape as seen in the recent case of rape of girls in Budaun in Uttar Pradesh.

The progress towards reaching the millennium development goals (MDGs) by 2015 is slow and need renewed efforts especially in the area of maternal health.

Volume-13, 2014

REVIEW REPORT

International Human Rights Law and Practice[#]

Prof. (Dr.) Ranbir Singh[*]

Human Rights Law is an extremely important and complex area of study. Therefore any engagement with human rights law demand a firm grasp of both the theoretical and practical perspectives involved in protecting, preserving and promoting human rights. Those desirous of engaging with it, be it human rights professionals, judges, advocates, activists, policy makers, students or research scholars, require a firm grasp of principles, concepts, standards and rules of human rights law. Necessary therefore is the skill to understand intricate concepts, and at the same time carry the ability to ensure their pragmatic application.

The authors begin by perceiving human rights as a direct result of intense struggle and constant contestation of power relations between the power wielders and power yielders. To them human rights is not a static idea, rather an evolving concept that constantly develops in the face of persistent interaction among right holders. A continuous dialogue among stakeholders, for them, provides a platform for reflection on challenges and dilemmas faced while putting into practice promises contained in international human rights law theory. However there remains a substantial gap between the exposition of law and its practical application. The authors, through this book, attempt to bridge that gap, by going beyond theory and seeking to capture complex realities of practical application of human rights law. They do so by critically scrutinising the

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claim that law remains a suitable vehicle to promote and protect core human rights values by engaging in a systematic study on how international human rights law theory translates into in practice.

Various chapters in the book can broadly be classified under the following thematic categories: International Human Rights normative framework (Chapter 1, 2, 8, and 9); Institutional framework of protection and related procedures (Chapter 3, 4, 5, 6 and 7); Vulnerable sections requiring special protection (Chapters 10 and 11); and Emerging areas of concern and new challenges faced by international human rights legal regime (Chapter 12, 13, 14, 15, 16 and 17).

Under the broad thematic classification of International Human Rights Framework the authors chart the evolution of human rights jurisprudence from its hesitant beginnings to the current almost entrenched non-derogable status in international law. In various chapters contained in this thematic classification the development of international human rights law, various theories of human rights and their critiques are discussed elaborately. The authors clearly outline the expansive global international legal framework governing human rights; analyse its key components such as nature of rights and obligations; and discuss various issues involved in implementation and enforcement of human rights law. The authors specifically delineate both the first and second generation rights in considerable detail, including identifying nature of violations and discussing challenges of giving effect to these rights especially the socio-economic entitlements. To that effect they identify and discuss four particular entitlements, namely rights to food, water, health and education. They further focus on particular contributions of various human rights actors such as civil society, social movements, and NGOs in promotion and protection of human rights. Throughout the noted chapters the authors are able to juxtapose foundational issues in contemporary settings.

The broad thematic classification of institutional framework of protection and related procedures focuses primarily on treaty bodies. The

authors undertake a detailed appraisal of working of various bodies including those that are directly or indirectly charged with protection of human rights under the United Nations Framework such as General Assembly, Security Council, Human Rights Council, Committee on Elimination of Discrimination against Women, and other international bodies such as European Court of Human Rights, Inter American Court of Human Rights, etc. The section elaborates on their functions and distinctive contribution to the development of human rights jurisprudence. This section also provides a detailed account of complaint procedures before human rights bodies such as UN Treaty bodies and regional human rights commissions and domestic courts. The analyses include examination of various stages of complaints procedures before different human rights bodies, such as admissibility requirements, merits, nature of decisions and judgements, and their implementation. It further discusses challenges of legitimacy faced by these institutions especially when dealing with politically sensitive issues of impunity and domestic acknowledgment of violations.

Under the broad thematic classification of vulnerable sections requiring special protection the authors discuss third generation human rights (i.e. group rights) in general and rights of women in particular. The authors note that though the existence of collective rights are not self evident, yet in the recent past much emphasis has been placed on them. International law, according to them, has however remained hesitant of granting these rights owing to reluctance of States that remain weary of the effects of collective entitlements. In this section the authors catalogue the basis and development of these rights in international human rights law. From the point of view of human rights law practice, the authors discuss and criticise international efforts including those of international bodies such as assistance policies adopted by the World Bank, for its deleterious effects on rights of indigenous people. This section also focuses on rights of women and various debates surrounding it including meaning and scope of non-discrimination, and public-private divide. The enquiry

grounds itself in feminist legal theory, and examines the practical challenges faced in advancing these rights both into work-related and domestic spheres.

The broad thematic classification of emerging areas of concern and new challenges faced by international human rights legal regime traces the link between protection of human rights and a globalising world. It revisits the 'development versus poverty' debate arguing that working of international financial system impedes attainment of development, which is an essential requirement for fulfilment of all other entitlements. It argues that global developments such as trade liberalisation and restrictive intellectual property regime are having a ruinous effect on global food security and availability of life saving drugs. This section also explores the linkages between human rights and anti-terrorism operations, international humanitarian law, and international criminal law, focussing on safeguarding of human rights during armed conflict and counter terrorism operations, and challenges faced in securing individual criminal accountability of perpetrators of human rights violations. In this context the section discusses the challenges faced in holding non state actors such as multinational corporations, etc., accountable for violations of human rights. In addition to the above there is also included a much needed discussion on rights of victims. The authors examine the development of rights of victim within the human rights paradigm and examine innovative methods utilised to ensure adequate and fair representation of victims in any discussion on issues relating to them for instance reparations for violation of human rights.

This book is meant to be a textbook on international human rights law and therefore discusses in elaborate detail theory of human rights. Its unique contribution however lies in the practical perspective it provides. To that end it carries interviews of twenty two practitioners drawn from diverse backgrounds including grassroots activists from NGOs, lawyers, military advisors, and members of human rights bodies. The participants

have at various times engaged with human rights in diverse capacities for instance litigating human rights cases before international, regional and national institutions, documenting violations, evaluation of compliances of state practice with international human rights law, etc. Of particular interest are the challenges faced and lessons learnt in efforts to promote and protect human rights at the grassroots level. For instance the authors discuss works of Sohail A Warraich, a human rights campaigner, who utilised street theatre to raise awareness on women rights in Pakistan; or that of Clive Stafford Smith, a British Lawyer specialising in human rights and civil liberties, who had on numerous occasions defended Guantanamo Bay detainees. These and similar interviews with practitioners including functionaries of human rights implementation bodies provide the reader with a critical insider outlook.

The authors also include case studies to illustrate challenges faced when confronting embedded practice that violate human rights. For instance the authors discuss efforts of Lawyers for Justice in Libya (NGO) and the challenges faced by them in documenting, reporting and monitoring violations; or efforts of Khartoum Centre for Human Rights and Environmental Development and their endeavour in pursuing rights protection under repressive regimes; or that of PRAKSIS, a Greek NGO and its efforts to ensure implementation of right to food for the socially marginalised in Greece. Case studies included in the text provide a comprehensive review of issues faced while implementing basic human rights at the grassroots level. Also included are further readings and list of questions on topics to stimulate research and provide a platform for classroom discussions.

The book is a comprehensive work and provides readers with an in-depth, rigorous and realistic understanding of issues involved in application of human rights to real world situations. The authors combine information from a range of sources to discuss in elaborate detail various themes and concepts of international human rights law. Their ability to present and

discuss difficult and intricate issues in a simple and lucid manner enables a straightforward and thorough understanding of matter at hand. Extensive research, clarity in exposition, engaging style of writing, intuitive structure, and a capacity to discuss existing debates in contemporary settings only adds to the overall worth of the book. On the whole, Ilias Bantekas and Lutz Oette's '*International Human Rights Law and Practice*' is an important effort for its twin contribution in identifying and discussing complex topics under the International Human Rights law, and exploring them both from a theoretical and practical perspective, making it an important reading for all engaged in the study of Human Rights law.

This book is a welcome edition in the books on Human Rights and will further strengthen the understanding and research in Human Rights especially from the practical point of view.

Volume-13, 2014

Changing Dimensions of Social Justice in the New Global Era: Indian Experiences

Prof. Shri Prakash Singh[*]

Globalization is influencing immensely the State, its politics, policies and institutions. In this neo- liberal phase, the nature of state is changing because of non- state players who have taken over the agenda of social justice and social welfare. State and its institutions are facing various challenges to achieve the desired target of social justice such as economic, social disparities, inequality, gender discrimination, failure of law and order and governance etc. Social justice is an important social issue which needs urgent attention in changing contemporary Indian perspective. Discourse in social sciences is full of concerns of justice. Justice has always been a core concern of classics all over the world including India. Like western countries, in India also, concepts like social justice and inclusive growth are influencing the policy making and its implications. This has become crucial because Indian society is passing through a transformative stage. In this largest democracy, the focus is on the 'sabka saath sabka vikas' at the place of selective inclusion.

India's bold experiment with politics of social representation and policies of affirmative action in the twentieth century is among the largest and more successful examples of social engineering across the globe. The system of reservations for Scheduled Castes and Scheduled Tribes

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in government jobs and legislatures continues to yield positive outcomes, better than anything that existed earlier, or any scheme that seeks to replace it. If the concept of social justice has a wide presence in our public life today, it is because social justice has turned into a thin foil that can be used to wrap virtually any substance. On the one hand, the success of politics of social justice is limited to the accession of leaders from dalit-bahujan communities to governmental power, detached from any substantive consequences for dalit-bahujan communities, on the other, at the place of affirmative action, the policies of social justice are confined to implementation of reservations in government jobs and educational opportunities. Both end up drawing upon, if not reinforcing, the same caste system that they set out to annihilate.

Affirmative action policies announced with much fanfare at the highest level are quietly subverted by other arms of the state. Those who shared the conviction for affirmative action, yet wanted the system to be fine-tuned, were left with no option but to come to the defence of the reservation regime. The end product of such a deadlock is that the policies of social justice are increasingly weak in the moral and ideological contestation for legitimacy. This leads them to a primeval partisanship for anything associated with the politics of social justice or anyone who represents SC, ST or OBC.

The book on '*Changing Dimensions of Social Justice in the New Global Era: Indian Experiences*' by the editors *Kamlesh Gupta, Trivikram Tiwari and Nandini Basistha* is a welcome addition on a discussion which could culminate into the changing scene and dimensions of social justice. This book, which is divided into five parts (Part I-V) and comprises twenty three chapters besides introduction, pursues the line of inquiry on social justice related issues providing students, scholars and policy makers with an extensive review of research on social justice. Part – I deals with "Social Justice in the New Global Era"; Part –II focuses on the issues related to "Constitutional Vision and Indian Reality"; Part -III deals with

"Public Policy and Inclusive Growth"; Part-IV throws light on "Justice, Gender and Democracy"; and the last part, Part-V deals with "Marginalities and Justice".

The book also contains papers presented by various renowned scholars and authors in a two day seminar on "Social Justice in India: Emerging Issues" organized by the Rajiv Gandhi Chair in Contemporary Studies of University of Allahabad in September 2010. The book deals with various aspects of Social Justice in India and the issues involve therein. Starting with the "Philosophical concerns of Social Justice in India" to "Global Justice in Rawls", "Social Justice: The Affirmative Negative", leading to major debates of "Social Justice in India", the "Constitutional Vision", "Multiculturalism", "Social Justice: Policy Initiatives in India", "inclusiveness", "Affirmative Action", "Gender and Social justice" "Women's Movement", "Migrant Labourers", "Reservations in Private Sector" etc. are the major issues which ends with the "Health and Human Rights in the Era of Globalization". In a nutshell, the book underlines that Indian Constitution is a social document and social justice has been conceived as a key to social reconciliation and power sharing. Keeping this in view, it also suggests that the nation is to be governed with absolute commitment, positive thinking, judicious planning, optimum effort, harmonizing initiatives and relentless determination or to sum it up, a perfectly proactive and sensitized governance, to lead the nation in an era of development where the ideal development would not need a contradistinctive term as "Social Justice" but justice itself would come to mean a natural, homogeneous and integral part of governance.

Therefore, a central theme running throughout this book is the contemporary dimensions of social justice in India. This volume conceptualizes the theories of social justice and other related issues which have been widely discussed above. But, there is no light on the role of global agencies like UNO, UNESCO, World Bank etc. It would have been much better if the editors had taken care of the role played by global

organizations in dealing with or rather ensuring justice to the society at large.

Nonetheless, the editors need to be congratulated on undertaking this bold and greatly successful venture. It is not only a must read for all students, scholars and researcher but also policy makers and practitioners of governance. A very good global text book is much needed also to understand the evolving direction of the discipline. The book is a very welcome addition at a time when the whole world is debating globalization and demanding a better managed state and also good governance. Looking at the concern of society, state and non- state players, this book emerges as a significant contribution to the world of academics and research.

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