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Editorial Perspective

Human Rights in Conflict Zone

In traditional Indian society, it was the ordained duty, termed *Dharma*, which was over emphasised. Over-emphasise on rights was the result of the interaction between the mindsets of the colonizers and the colonized in predominant colonial ethos. And of course, over-exploitation was in-built in colonization itself. The english educated advocates predominated among the framers of Indian constitution. And hence the emphasise on fundamental rights, and ignoring the fundamental duties in the original document.

An ideology, rather criminal one, dominating Indian intellectual arena during colonial and post-colonial days, beleved every body to be an exploiter. It wanted to bring change using gun. Another ideology, a religious one, also believed in and used violent means to meet their ends. Yet, the third one wants to replace the indigenious belief systems by the one the belief to be 'only real'. All these groups, playing their roles in making India a conflict zone, have their Human Rights protagonists, who are colour-blind and fail to see the colour of the blood shed by the outfits they support. Needless to say that such H.R. outfits do not generate confidence. They would like the policemen/ security agency to preach rather than protect the sufferers of violence, for which they are employed and paid.

Unlike the normal life situation in any country the human right (HR) issues have a different character and solutions and the HR issues in conflict zones have a different trajectory and present an altogether different challenge. In normal times these may take form of illegal custody/detention, torture, death in custody, demands of development or rights guaranteed by law etc, as its horizons are expanding. However it's the HR in conflict zones across the world that attracts the largest attentions in media and public discourse. The nature of the conflict, location and protaganists and the issues behind the conflict assume

importance. Only thing common is use of idiom of violence to articulate the grievances-perceived or real – and seek solution.

The use of violence complicates and makes difficult the upholding and mitigation of HR issues in conflict zones. India is facing a number of such violent movements based on ethnic, regional or secessionist beliefs, besides a serious left-extremist ideology based Maoist violence in the heartland of India. The largest number of complaints of HR violations against the state/security forces emanate from these conflict zones and need comprehensive and effective attention. But unfortunately this does not happen and the real sufferers and victims are the innocent people of these areas.

The responsibility for such a situation must be shared both by the govt. agencies and HR activists and NGO's. The root cause is attitudinal and lack of trust. While the govt. must be held to higher standard of accountability for its conduct to the people and the laws, the HR activists and NGO's should also appreciate the compulsions and difficulties of the govt. combating a violent movement. Nobody in the govt. approves of or is willing to tolerate HR violations against its own citizens. But some violations or losses are in-built in the nature of the situation itself.

The matters can be improved by cooperation, understanding and interaction. But most of the HR activists and NGO's, at times, egged on by the interested and pro-insurgent/Maoist groups, adopt a highly moralistic and anti-govt. stand and paint the govt./security forces in the darkest hues. So much so that some of them behave like "Ayatollahs" of HR. A report brought out in 2012 described the govt. as a "predatory state". The result is that the govt. agencies and security forces go into a defensive mode and dig in their heels on HR issues raised by even well meaning HR groups, as the govt. suspects their motives as some of them do act as proxies for the insurgent cause, affecting even the genuine ones. This is true of even well known international HR groups vis-à-vis HR issues in Iraq, Afghanistan, Syria, Palestine etc. The end result is an adversarial relationship and stalemate. The HR NGO's/activists must understand that their job is not only criticism and condemnation but also mitigation of the situation and that can happen only in cooperation with govt. in an environment of understanding and trust. For most of the NGO's and activists condemnation and criticism has become an end in itself and they have become part of the problem.

The govt. on its part defends its position against these allegations forgetting the real victims and sufferers. All this when neither the govt. nor the genuine HR activists wish it to happen. The change of mindset on both sides is required to improve the HR situation in conflict zones. Given the good will on both sides this is not difficult. For this to happen the HR NGO's must have a clear and practical objective and the govt. a transparent stand and mechanism to resolve HR issues.

As is clear, we have ideologically tainted human-rights activists. Many Western HR agencies have neo-colonial agenda also. Yet, they are doing useful work and an awareness about human rights as a whole is essential.

—B.B. Kumar

Forthcoming Issues of Dialogue

For the last eleven and half years every issue of Dialogue (total 46 issues) has focused on a particular topic or subject. We have endeavoured to get contributors from experts of the subject and at times even our readers have shown interest and contributed. In forthcoming issues during 2013-14 we intend addressing following issues and would welcome suggestions from our readers.

- (1) India's historical/chronological antiquity
- (2) Nature, Development and Disaster – Linkages and Relationship
- (3) India: Water and related issues like availability, utilisation management, privatization etc.

Dissolving DoNER—a variant view

D. N. Bezboruah*

It is no great secret that the UPA government has not been quite happy with the functioning of the Ministry of Development of the North Eastern Region (DoNER). The Centre's development funds for the Northeast have rarely been utilized as they were meant to be, and the utilization reports as well as the detailed accounts for projects have rarely been submitted in time (if at all) and there have been serious allegations of large sums of money being siphoned out to private coffers. All said and done, there were legitimate complaints that the DoNER Ministry was functioning inefficiently. As a consequence, a parliamentary committee was appointed to look into the functioning of the DoNER Ministry and to make recommendations. Not surprisingly, the committee has recommended that the Union government dissolve the DoNER Ministry and put it under the Prime Minister's Office (PMO). The reason for the dissolution of the Ministry has been attributed to plummeting efficiency levels and achievement rate in its planned schemes. The committee therefore strongly recommended that the government should consider the handicaps of the DoNER Ministry seriously. It has recommended that the government should either place the ministry under the PMO directly or evolve some other mechanism so that planned projects could get implemented properly and in time. This is what the report of the standing committee on Home Affairs, submitted in the Rajya Sabha recently, said. The committee also said in its report that the purpose for which the ministry was set up has not been fulfilled, and that it appears as though implementing ministries do not pay heed to requests or suggestions from the DoNER Ministry. All these observations appear

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to have shocked DoNER Minister Paban Singh Ghatowar who said that he had not read the report but could not fathom how the Ministry could be brought under the PMO. “The PMO can supervise but the DoNER is an independent Ministry. So how can they (the committee) say that it should be brought under the PMO?”.

It will be recalled that the DoNER Ministry was first set up as a department in September 2001. Thereafter it was upgraded to a ministry in May 2004. However, in 2008 the Administrative Reforms Commission under Veerappa Moily had also recommended the dissolution of the DoNER Ministry for similar reasons.

There is no doubt that the standing committee’s latest report recommending the dissolution of the DoNER Ministry will create quite a bit of hue and cry within the north-eastern States. When this happens, very few people will remember that the standing committee’s recommendation for its dissolution is a justifiable one. In fact, during the 12 years of its existence the DoNER Department/Ministry cannot justifiably claim any marked improvement in the development of the north-eastern States. There is no denying that this is largely due to the attitude of the State governments concerned to the funds allocated by the Union government for the development of the north-eastern States. Had the Ministry been genuinely concerned about the initiatives needed for the long-term development of the region, the emphasis would have been on concerted efforts at skill development in all the States. Keeping in mind both the unwillingness for hard work and the almost total lack of skills required for industrial development, the prescription for the north-eastern region should have been accelerated initiatives for skill development even if this called for ramming such skills down the throats of unwilling recipients in the initial stages. In fact, the ground rule for releasing development grants to the north-eastern States should have had a close linkage with the rate at which such skills were acquired. Instead of viewing the differential in development as a function of the lack of requisite skills, the Centre has always adhered to the simplistic notion that development would come about merely through the pumping in of huge amounts of money. How ill founded the notion is can best be assessed from what happened in Nagaland soon after it was created. When Nagaland became a State, it had a population of just 3,71,000 and a gross domestic product of just Rs 17 lakh! The Centre committed the folly of pumping in hundreds of crores of rupees into an economy that did not have the infrastructure to absorb and properly utilize that kind of money. Nor did the State have the skills required to convert

such huge funds into utilities geared to the needs of development. As a result, much of the funds from the Centre leaked out and was mopped up by the suppliers of goods and services from mainland India. Very little of the development funds resulted in the creation of infrastructure either for agriculture or industry. And quite expectedly these funds also failed to create employment in the State.

This is what inevitably happens when a State or an entire region is regarded as weaker than the rest of the country and special provisions are made for such States or regions. We have seen where special provisions for Jammu & Kashmir have taken the State over the years. And yet, it is a State that has drawn most heavily on the Centre for funds. Providing special provisions for specific States or regions because they are regarded as weaker or less developed is like handing over crutches to a perfectly healthy person without any handicap. In such situations, the recipient States and regions get the wrong notion that they are indeed weaker or handicapped and therefore deserve special provisions. Such an attitude conditions people to accept undue favours not backed up by work. It also goads people to be parasites on a host called the Centre and to devise ingenious ways to siphon out money meant for development projects. It cannot be the responsibility of the Centre to develop such an attitude unless it has diabolic plans of keeping the Northeast as India’s hinterland for all times to come. Besides, much of the money that comes to the Northeast as 90 per cent grant and 10 per cent loan goes also to the Bangladeshi migrants that have already become a majority in ten of our 29 districts. India has no constitutional, legal or moral responsibility for this huge segment of our population.

We must accept the reality that special provisions make a State or a region weaker. There are no separate ministries of the Union government for the development of the southern, northern or western region. Why should there be a special set-up for the Northeast? It is through tough competition with the other States of India that we must become their equals—not by being eternally pampered as weaker States of the Union. There are other regions of the country like the parts of Jharkhand and Chhattisgarh inhabited by tribals that are in need of accelerated development projects. The Centre’s failure to ensure this has come in very handy for Christian missionaries that have undertaken conversion in these areas with a vengeance. They have also become the hotbeds for Maoist activities—all because we have failed to take accelerated development where it was in greater need.

The sensible course of action is to dissolve the DoNER Ministry and to put the Northeast on a par with the other regions of India and to ensure development through identification and development of skills and a fair deal based on equal opportunities for all States and all regions. We have a superstate for the Northeast in the form of the North Eastern Council in any case. Why do we need another? In fact, the best medicine for the States of the Northeast would be to reduce or completely take away development grants wherever the implementation of projects has been unsatisfactory or the utilization reports hazy or the accounts fudged or unavailable. The Centre has no responsibility of allowing State governments to let development funds be siphoned out by the blue-eyed boys of the ruling party. A bit of occasional fasting is good both for the body and the soul.

AFSPA - an oxymoron in a democratic polity and a Human Rights issue

Patricia Mukhim*

The Armed Forces Special Powers Act (AFSPA) dates back to 1958 when it was passed by the Indian Parliament to quell the Naga rebellion in a so-called disturbed area. Later it was extended to the states of Assam, Manipur, Tripura, parts of Meghalaya and Arunachal Pradesh and later to Jammu and Kashmir in 1990. This Act is a legacy of a colonial power. The Armed Forces (Special Powers) Ordinance, 1942, was used by the British to quell dissent during the Second World War. But even before that it was used as an instrument of repression which led to the Jallianwala Bagh massacre. It is ironic that a free country would be waging a war against its own people using all forms of brutality to secure the nation-building agenda of the State. Why else would you use the military for an internal rebellion? And why, in over

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55 years, has the state not created a counter-insurgency outfit which is drawn from the police force and trained to tackle insurgents/militants etc? Counter-insurgency is not war. This unfortunately has not been understood by the state.

The AFSPA is contentious because of the impunity with which it has been applied in the North Eastern states for over 50 years. Section 4 of the Act which says that sufficient warning is given before firing on a suspect even to the point of causing death is a licence to eliminate anyone 'suspected' to be a terrorist. The state has used this Act to justify its actions of killing those it 'suspects' are aiding and abetting terrorists. Section 4 of AFSPA is a violation of article 21 of the Constitution which speaks of the right to life. The Fundamental Rights guaranteed in Part III of our constitution and those propounded in the UN Declaration of Human Rights (1948) are almost identical.

Some argue that AFSPA stems from article 355 of the Constitution which gives the state authority to protect its territories from external aggression by declaring an emergency. In an emergency the Constitution is temporarily suspended and civil rights curtailed. But is the situation in the North East and J&K equivalent to an external aggression? An emergency proclamation is subject to parliamentary review. The civil and constitutional rights of the people of Northeast India have been suspended for over 55 years. Is this just? More important is to ask why the Assam Rifles, a para-military organisation being led and trained by the army replete with all brutalities of dealing with "suspected" insurgents? To say that the Act cannot be revoked as long as the army operates in a certain area defies the very notion of justice and shows the Indian state as a brutal force targeting a population it considers as renegade and belonging to different race. There is enough internal rebellion in other parts of India. Why is the AFSPA not applied there despite the loss of lives of security forces? These ambivalent stances by the state create dystopia in a region which is already reeling from a sense of deprivation, isolation and a sense of separateness. .

That we from the region have never made common cause for revocation of this Act is one reason why AFSPA continues. Irom Sharmila from Manipur has been the only symbol of protest against this Act. North East India has 26 Members of Parliament to represent our aspirations in the highest edifice of democracy, the Lok Sabha. But till date the MPs have never converged to demand the revocation of AFSPA or the withdrawal of armed forces from the region. Civil society

from the entire region too have never attempted to network with their larger Indian counterparts to make common cause on the issue.

Recently the North East Social Science Research Centre (NESRC) led by Dr Walter Fernandes in collaboration with the Indian Council for Social Science Research (ICSSR) organised a series of meetings to protest the continued use of AFSPA. The meeting was held in Delhi on April 6, at Mumbai on April 10 and in Bangalore on April 13. This is perhaps the first time ever that civil society, academicians, activists and concerned citizens from at least three important metros are meeting to demand the revocation of AFSPA.

However, other issues need our attention too. While we are all making a hue and cry about removing the AFSPA many of us have glossed over the fact that the Disturbed Areas Act which precedes the invocation of AFSPA and which used to be a state law and can therefore be revoked by the State Government after which AFSPA becomes redundant, now lies with the Parliament. Interestingly this matter does not seem to have disturbed the state governments whose autonomy is further eroded. Recently the army while responding to Omar Abdullah's call for revocation of Disturbed Areas Act (DAA) by the Jammu and Kashmir government said revocation of DAA will not affect the applicability of AFSPA in the state as the two laws are not interlinked. In fact the DAA is written into the DNA of the AFSPA. It is also surprising that Union Home Minister P Chidambaram and several other politicians and legal experts have stated that state governments can make AFSPA redundant by revoking DAA. So where do we stand here? Who is correct? The army and by extension the Defence Ministry? Or the Union Home Ministry? Is this not a political decision and hence a decision that the UPA-2 should be taking?

Decisions to extend or revoke the DAA and AFSPA are taken after reports given by the security forces. If there is a vested interest in continuing AFSPA as is seen in Manipur where about 55,000 army and para-military forces are parked, why should the security forces ever admit that the situation has improved, even if it did? There has been no social audit of the ground situation in the regions where AFSPA is in force. Sustained periods of militarisation has reduced the people of the North East into a captive population unable to state their case with any authority in any forum. The greater problem is that even the Supreme Court of this country has on more than one occasion upheld the legitimacy of AFSPA by stating that it is a Constitutional mandate to impose the Act to protect the territorial integrity of the country and to put down the forces of secessionism.

What is questionable is whether the AFSPA can still be applied in areas where the state is already in talks or has suspended operations against the militants/insurgents and where it can be fairly stated that there has been no public disorder to warrant extraordinary measures. This is true of Nagaland and Assam. The NSCN (IM) has been engaged in peace talks with Government of India since 1997. In Assam most of the ethnic militant groups such as the NDFB, the DHD, etc have expressed keenness to come to the talks table. Even the ULFA, one the most virulent militant groups whose Chairman had come over-ground is now ready for talks. Casualties on account of militancy are on the wane. To continue with the AFSPA in such a situation is to lend credence to the allegations that the region is a police state where all constitutional rights and liberties are suspended.

It is therefore a great opportunity for all the seven states to make common cause on AFSPA and to get on board the entire civil society of the country to make a pitch for revocation of this draconian law. Also, it is time for the Indian state to change the lenses it uses to view the North East and Kashmir. How long should it take for people here to prove their good conduct? The Indian state must understand the genesis of armed conflict here and address the root causes rather than use extraordinary measures to quell such violence without having adequately understood the larger aspirations of the people of the North East.

Opportunity knocks to further campaign for UNESCO Heritage Site recognition

Pradip Phanjoubam*

The news that the battle of Imphal-Kohima during the Second World World War (WWII) was voted in Britain as Britain's most hard fought and significant battle in its entire history, ought to excite more than mere wonderment in the two states that remote as they are, they had

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been the pivot around which an important chapter of the history of the world actually turned so significantly. There undoubtedly would be a mixed sense of awe, pride and victimhood in both the places at the confirmation that they had been in the eye of a violent campaign of a magnitude they had never ever imagined before. There would also be an equally understandable sense of sudden importance at this revelation. These senses of elation, expectations and awe however can only at best be ephemeral, acquiring a place in the iconic memory of the place for a brief period before fading and ultimately disappearing into the nebulous pit of oblivion public memory is generally destined for. That is, if no tangible official effort is made to capitalise on this sudden turn of world consciousness.

More than all else, it ought to be the Government of Manipur whose antennas are up at the news. It would be display of criminal myopia on its part if it did not think of making this development leave a permanent mark in the way Manipur (and Nagaland) is looked at by the world. In all these years, the Manipur government has been toying with the thought, though rather half-heartedly, of campaigning for the Kangla Fort to be recognized as a UNESCO world heritage site. If at all it is still serious about this desire, the recent importance given to the battle of Imphal-Kohima in Britain cannot but be a golden opportunity to push the issue. No doubt, the orientation and strategy of this campaign would have to adjust to the nature of the opportunity. The WWII heritage of the Kangla Fort needs to be placed at the focal point of the new campaign. The Kangla Fort, as it is, is important and probably deserves to be a UNESCO site in its own right as a unique centre of an isolated civilisation, but its intimate association with the WWII campaign in this sector has now given it an immense contemporary significance as well, and this can be, and indeed needs to be capitalised on. Should the government manage to get the UNESCO recognition for it, the touristic significance of the Kangla Fort would have taken a quantum leap. The government should now think of urgently bringing heads together to consider new relevant preparatory projects, such as converting the Slim Cottage inside the Kangla Fort, as well as other structures from where the military administration and strategies of this war front were drawn up, into a WWII museum.

There are more sites of extreme significance beyond the Kangla in the light of this new development. The record book mentions of five wartime airfield in the Imphal valley. Three of them are all weather facilities and still exist today, the Tuliha airport, the abandoned

Koirengei airstrip, and another abandoned one at the Pallel-Kakching area. Two more fair weather airstrips have now been reclaimed by paddy fields, but they too can still be marked out for preservation. All of them could and should become part of this heritage project and preserved as places of historical importance for posterity, and more immediately, to bolster war tourism in the state. There are also a great many battle sites all over the state where the battling armies suffered great human casualties. They too could become important sites of war heritage. Many of these could be converted to outstanding eco-trek destinations. The Nungshigum hills near Sawombung where more than 200 Japanese soldiers are estimated to have lost their lives, along with a lesser number of the Allied troops including five tank officers of the Grenadiers of Scotland, is one such. The Laimaton ranges where the Japanese set up a stronghold and later came down to fight the Red Hills (Mibam Lokpa Ching) battle in which another 400 Japanese troops are estimated to have perished, is another. Likewise the Sinam ranges on the Tengnoupal-Moreh stretch of NH-39, Shangshak village in Ukhrul district, Sanakeithel along the Iril River, Maram, are some more places which could be developed for the same purpose.

If the government, and in particular its tourism department has any foresight that extends beyond daily politicking and other governmental grinds of routine matters, it should already have been in the process of making hay while the sun shines. In this effort, there will be no dearth of private partners. As for instance, there is already a commendable Indian National Trust for Art and Cultural Heritage, INTACH- associated project to develop WWII tourism in the state which the government could approach for possible partnership.

This would also be a fine opportunity for Nagaland and Manipur to sink their petty differences and cooperate for mutual benefit, and to preserve a common heritage from the not so distant past.

As most newspaper readers in the state would be aware by now, the following is an abridged account given in a report in the *The Telegraph*, London, in its April 20 issue of the manner this war front was voted as the most significant:

The two victories over the Japanese, which took place in the same region of north east India over the same period in 1944, were voted the winner of a contest run by the National Army Museum to identify "Britain's Greatest Battle".

Taken as a single victory, Imphal-Kohima was on a shortlist of five battles which topped a public poll and on Saturday, they were selected

as the ultimate winner by an audience of more than 100 guests at a special event at the museum, in Chelsea, west London. Imphal-Kohima received almost half of all votes.

In second place was D-Day and Normandy, in 1944 (25 per cent), ahead of Waterloo, in 1815, (22 per cent), Rorke's Drift, during the Zulu War in 1879 (three per cent), and Aliwal, during the First Sikh War in 1846 (two per cent).

At the event, each contender had their case made by a historian giving a 40 minute presentation. The audience, who had paid to attend the day, then voted in a secret ballot after all five presentations had been made.

The case for Imphal and Kohima was made by Dr Robert Lyman, an author and Fellow of the Royal Historical Society.

An article by Dr. Robert Lyman will be appearing in an INTACH published book edited by Pradip Phanjoubam, editor Imphal Free Press, and conceived by Hemant Katoch of INTACH, due to hit the stands this year.

The full story in *The Telegraph* can be accessed at: <http://www.telegraph.co.uk/history/10008053/Second-World-War-clashes-named-as-Greatest-British-Battle.html>

Developmental and Identity Aspirations in North-East India: Conflicts to Synergy

M P Bezbaruah*

The twin factors of developmental backlog and ethnic identity aspiration of groups with ambitions for separate homelands have kept the Northeast Region of India in a perpetual discontentment in the entire post independence period. Such discontentment has continually disrupted peace and normalcy in various parts of the region preventing economic and institutional stabilization required for higher attainments of human achievements and wellbeing. The present paper begins with a historical perspective of the region in the post independent India and looks out for an approach for addressing the twin issue as a single undertaking for a lasting solution to the region's vexed problems.

Comprised of the seven states¹ of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, 'the Northeast' is that compact landmass which is connected to the rest of India through the Siliguri 'chicken neck'. The region constitutes a land surface of 2,62,613 square kilometers where, as per 2011 census, a population of 45.6 million belonging to different ethnic and cultural groups inhabits. Broadly the region constitutes 8% of total area, 4% of total population and 2% of the economy (in terms of contribution to Gross Domestic Product) of India. Despite its rather small size, the region constitutes an important part of the country because of its special geo-political position. The region is land locked and surrounded virtually by foreign countries from all sides and shares only 2% of its boundary with rest of India.

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Topographically the region is a mixture of hills and plains. While Arunachal Pradesh, Meghalaya, Mizoram and Nagaland are almost entirely hilly, about four fifths of Assam are plains. Manipur and Tripura have both plain areas and hilly tracts. The hills account for about 70% of area and accommodate about 30% of population of the region and the plains constituting the remaining 30% of area hold the rest 70% of its population. The lower overall density of population of 176 persons per square kilometer for the region compared to the all India density of 364 is due to the fact that the hills are sparsely populated. The density varies from 17 in mountainous Arunachal Pradesh to 397 in Assam, 80% of which is plain.

The Northeast Region of India: A Broad Profile

State/ Region	Area (in sq.km) census	Population as per 2011	Population Density (persons per sq.km) Sq.km) in 2011	NSDP per Capita at current prices in 2010-11 (in Rs)
Arunachal Pradesh	83,743	13,82,611	16.5	55,789
Assam	78,555	3,11,69,272	396.8	30,569
Manipur	22,347	27,21,756	121.8	29,684
Meghalaya	22,720	29,64,007	130.5	47,164
Mizoram	21,081	10,91,014	51.8	48,591
Nagaland	16,579	19,80,602	119.5	52,966
Tripura	10,491	36,71,032	349.9	44,965
Northeast	2,62,613	4,55,87,982	176.0	34,982
			{364.0}	{53,331}

Note: The figures within {} is population density of India, while the one within [] is India's NNP per capital at current prices.

Sources: Census of India 2011 for population related data and Economic Survey 2013, Ministry of Finance, Government of India for the NSDP and NNP figures

Organization of economic life traditionally evolved into two distinct patterns in the plains and the hilly parts of the region. The thickly populated plains have had settled agriculture and some industry and plantation initially developed from investment of colonial capital. Community ownership of land and predominance of shifting cultivation

are some of the distinctive traditional features of the hills. The fact that all states in the region have per capita income levels well below India's NNP per capita is an indication of relative economic backwardness of the region. ,

At the time of independence, the entire region administratively comprised of the colonial Assam Province and the two princely states of Manipur and Tripura. In 1951, Assam ranked among the top few states of the country in terms of per capita income. It is, however, debatable if the living standard of an average resident of the region was any better than that of an average Indian. The height of the per capita income of Assam at that time arose from the colonially exploitative plantations, mining and other extractive industries and trade and commerce, in which participation of the local population was at best minimal (Ganguly, 1986). Yet it cannot be denied that there was some development of the economy in terms of rail and road connectivity and introduction of modern industrial activities. But within a decade of independence the region quickly slipped in all-India ranking in terms of per capita income. A number of exogenous and endogenous turns of events at the time of independence and soon after contributed to this down-slide.

The partition of the country at independence struck a big blow to the process of development of the region in a number of ways. Partition cut off the region's approach routes to the rest of the country and the world through East Bengal. Consequently the narrow corridor of North Bengal remained the only link of the region with the rest of the country and the region got burdened with a transport bottleneck and high cost of movement of man and material to and from it. On top of that, the wars with neighboring countries in the 1960s raised security concerns about the region among potential investors. Consequently, attractiveness of the region as a destination of investment took serious beating (Sarma, 1966).

Moreover, partition also caused influx of refugees to the region. There had been inflow of immigrants to the region even in the decades before independence and indeed the inflow of population in those days had some positive contributions to the region's economy. As Ganguli (1986:20) puts it 'there was growth of agri-cultural production through extension of cultivation over larger and larger areas (in Assam plains), which was possible owing to the immigration of farm population from the neighboring dis-tricts of Bengal'. However, sudden increase in the rate of immi-gration following partition and consequent step-up in the rate of growth of population in the post-independence period has had several adverse consequences². Exceptionally higher rate of growth of population in the decades following independence put pressure on the

region's natural resources of land and forests, and its inadequate social and economic infrastructure besides acting as a drag on the per capita indicators of development (Bhattacharjya 2010). Moreover the heavy influx of population has also been at times the source of considerable social tension in the region.

Internally the period also witnessed a surge of identity aspirations of one ethnic group after another, which found expressions in various forms of mobilisation and movements, often leading to disruption of regular life and giving birth to insurgency. It has been mentioned that besides Manipur and Tripura, the region at the time of independence consisted of only the undivided Assam Province. Under colonial rule, the administrative arrangement throughout the then Assam province was however not uniform. While the plains were under effective administration of the provincial government, the hills inhabited mostly by tribes were virtually left out of that system of administration. In fact the hills were classified as 'excluded' or 'partially excluded' areas depending on 'whether the area was inhabited by a compact aboriginal population or the aboriginal population was mixed with the other communities' (Agnihotri, 1996). The 'excluded' areas were subject to the 'inner line' restrictions, which restricted the entry of people from other areas to these areas. This British policy effectively kept the hill tribes isolated from socio-economic interaction with the population in the plains. With the goal of integrating the erstwhile 'excluded' and 'partially excluded' areas to the administrative network of the new nation without infringing upon the traditional self governance of the tribes in such areas, the instrument of district/regional 'councils' were designed as outlined in the 6th Schedule of the Constitution of India. This arrangement, however, did not meet the aspirations of a section of newly emerging political leadership of some of these tribes. They came up with political mobilisations with demands for greater autonomy or separate statehood, and even complete 'self determination' in some cases accompanied by violent means. Besides causing frequent disruptions to normal life through agitations, these movements have also contributed directly or indirectly towards perpetuation of insurgency and bloodshed in the region. Needless to emphasize that such things vitiate the environment required for developmental activities to flourish.

During the early plan period, when India pursued a public sector led development programme, there was little appreciation of these difficulties faced by the region at the central policy making circle (Goswami, 1981). Policy response of the central government began to change somewhat in the 1970s. In response to the demands for territorial

autonomy by tribal groups, a process of political-administrative reorganization of the region was set in motion, which culminated in the creation of the present structure of seven full fledged states. In recognition of interdependence among these states, North Eastern Council (NEC) was formed in 1972, which was to take up Regional Plans consisting mainly of projects which would be of common importance to more than one state in the region⁴. Investments by some central Public Sector Undertakings (PSUs) also started to flow in. The creation of fiscally unviable small states in the region also necessitated concessional and enhanced inflow of the central fiscal resources by placing these states in special category. The whole process actually created some growth impetus in some of the newly formed states – so much so that in mid-1980s Arunachal Pradesh, Mizoram and Nagaland managed to record per capita income levels higher than the all India level. This spurt was, however, driven primarily by expansion in 'public administration' and 'construction' sectors resulting from intensification of the administrative apparatus in these newly formed states rather than by growth impetus in agricultural, manufacturing or even trade and commerce related activities (Bezbaruah, 2001). Such a growth source obviously has a limit. Hence, it is hardly surprising that the spurt was short-lived.

Liberalization since 1991 created a new set of problems for the region. With market forces and private sector coming to play more decisive role in investment decisions, regions like the Northeast, backward in infrastructure and beset with locational disadvantages and security related concerns, found themselves handicapped as destinations of investment - both domestic and foreign. In order to counter the disadvantages, fiscal concessions in the form of tax exemptions and special subsidies were brought in. In addition, some special provisions have been made in the form of allocation of 10% of budget of each central government department for the region and keeping the portion of the allocation that remains unutilized during the year in a non-lapsable pool. Several Prime Ministers during this period announced special packages for the development of the region. Though there is a tendency in some quarters to interpret such concessions as doles to pacify the sense of alienation in the region, the Shukla Commission⁵ report adequately explained that the enhanced fund flows are warranted for helping the region to overcome its deficiencies in infrastructure and backlog in basic services. As a result of such initiatives and measures by the central government and the Planning Commission, there has been a significant enhancement in the allocation of development fund for the region in the last decade or so. The funds for building up the

necessary infrastructure to activate the inherent growth potentials of the region are, thus, no longer a constraint. Rather under-accessing and under-utilization of such funds has raised questions about the ability of the region to absorb such large dose of financial resource.

The statistics for the last decade suggest that there has been significant acceleration in growth in some of the states of the region indicating that the resource transfers have finally yielded some results. What is more encouraging that this time round the step-up in the growth rates is founded on more robust footings. In Tripura, and to some extent in Nagaland too, institutional reforms for enabling greater mass participation in development programmes might have contributed to this revival⁶. In Mizoram persistence of peaceful conditions has obviously helped consolidation of economic growth. After stagnating below 3% throughout the 1990s, the growth of real GSDP in Assam has accelerated to 4% in 2000-01 and further to 6% in the later years of the decade. Though no obvious explanation presents itself for the step up in Assam's growth rate, I have a theory that Assam has benefitted from its location in centre of the region.

While these are encouraging signs, a lot more need to be done to put the region firmly on a path of sustained robust growth. No doubt insurgency and ethnic conflicts have done their bit in restraining the region from embarking on such a growth process. But governance in the region has also not been generally sharp and effective enough to break the development obstacles.

In summing up I would like to emphasize that central policy response to the difficulties of the Northeast region in the post independence period was not only delayed but has also been responsible for, albeit unwittingly, creating some new problems. For instance, political administrative reorganization of the region to accommodate demands for separate territorial homelands by some groups encouraged other groups to mobilize themselves to demand similar separate territorial homelands. The process resulted in continual eruption of violent social conflicts in different parts of the region. Easy inflow of resources, warranted as they are, may too have resulted in some unintended consequences. These inflows of fiscal resources might have induced moral hazards of sort among some states as reflected in their weak tax efforts. Another argument doing the round in some circles is that liberal fiscal transfers have resulted in a dependency syndrome in the region in the form of states simply succumbing to development paradigms dictated from the centre rather than being able to formulate better contextualized development strategies endogenously.

For better economic health of the region, governments in the centre and states must shun appeasement and populism for hard and effective policy making. For illustration let me take up the following two points:

1. Communities going through social transition in the region have legitimate identity aspirations, fulfillment of which need to be facilitated. It will, however, be necessary to induce shedding of ambition for ethnic territorial homelands from the identity aspirations. Like managing inflation requires steps for dampening inflationary expectations, policy response to identity movements must strictly signal that ethnic territorial homeland cannot be conceded. In fact, separate (read exclusive) territorial homeland for each community is simply infeasible as communities here have lived for ages side by side rather than remaining localized in segregated geographical spaces of any viable size. Granting one group an exclusive homeland can, and in the past indeed has, rid others living in the territory of their age old homes (Baruah 2003). Further, as Mukhim (2006) points out, such movements for territorial homeland often degenerate into instruments for appropriation of political-economic dividends by the leaders of the movements while the communities at large experience little uplift of their conditions.

In the longer run, progress towards a modernized economic set up can be the best antidote to homeland centric identity assertions. As people of different ethnic, linguistic and religious groups get engaged in modern oriented economic activities they get to work and live side by side; intercommunity misgivings get diluted; and individual achievements in examinations, workplace and professions get prominence over ethnic or communitised aspirations. In the process, ethnicity dominated identity gradually give way to 'multiple affiliation' based identity where different affiliations assume importance depending on the context (Sen, 2006). In the process the desire for ethnic territorial homelands is likely to become less compulsive.

2. The states of the region should be encouraged to meet a larger proportion of their fiscal requirements locally - not by creating new tax barriers, but by raising tax efforts. A rule prevailing in the tribal areas is that a person from tribal community serving in tribal areas is exempted from paying income tax. Whatever might have been the rationale for this exemption, over the years this rule probably has resulted in some unintended and undesirable consequences. This rule is an obvious disincentive for any professional of tribal origin to move out from tribal areas even if other locations like the metropolis may provide better opportunities for greater professional attainments. Meanwhile in these tribal areas, a sizable middle class of tribal origin with fairly high

levels of income has emerged. The tribal states may bring in some alternatives to income tax to tap the taxable capacity of this class. Proceeds of this tax may go directly to the states other than to the central kitty. Besides filling the coffers of the states, the measure will also impart a sense of self reliance among the states over and above correcting the perverse disincentive caused by the exemption.

This, however, is unlikely to come in an easy way. Most of the states in the region are notoriously slow in introducing and implementing institutional reforms, be it reforming (not necessarily removing) the anachronistic 'inner line' regulations, or doing the cadastral surveys and defining land rights or instituting *Panchayati Raj* in the true spirit of the 73rd Constitutional Amendment. But sooner such hard measures are taken, easier it will be for the region to embark upon a robust socio-economic development trajectory for overcoming its development backlogs while accommodating the identity aspirations of the groups within. As for belling the cat, can we expect 'think tanks' and 'pressure groups' in the civil society to deliver the good?

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Footnotes

- ¹ The State of Sikkim is also now officially included in the Northeast Region after it has been inducted into the North Eastern Council in 2002. However the state is neither contiguous nor has shared history with the original 'seven sister' states.
- ² The worst affected part of the region was Tripura where there was a growth of population by 78% within just 10 years from 1951 to 1961.
- ³ Though British policy of administration of the hills and inner line restrictions effectively minimised the level of contact between the hill tribes and the plains people, there was a significant influence of modernity on some of the tribes through the works of Christian missionaries. Christianity brought western education, which in turn contributed to the growth of a middle class and the new political leadership in these communities. (Misra 1983)
- ⁴ However the council was kept under the administrative control of the Union Home Ministry for about three decades and only recently it was revamped as regional planning body and placed under the newly formed Ministry for Development of the North Eastern Region (DoNER).
- ⁵ 'Transforming the Northeast: Tackling Backlogs in Basic Minimum Services and Infrastructure Needs', High Level Commission Report to the Prime Minister, Government of India, Planning Commission, New Delhi, 1997.
- ⁶ Tripura is in the forefront among the States of Northeast India in implementing the Panchayati Raj Institutions as per the letter and spirit of the 73rd Constitutional Amendment Act. Though Nagaland is out of the purview of this act as also of the 6th Schedule of the Constitution, the state has devised its own institutions called Village Development Boards which are empowered and entrusted to implement development programmes. These Boards have a good record of effectively utilizing development funds in parts of the state.

Origins and Evolution of the Legal Notion of Rights

Come Carpentier de Gourdon

In ancient and medieval western societies rights were prerogatives enjoyed by the privileged minorities and by free men, as opposed to slaves and bonded labour. By definition rights were thus unequally distributed as males had more than women or children on whom within their respective families, they had nearly absolute authority, just as religious and land-owning (feudal) dignitaries held power over those below them in the social hierarchy. Britain's coat of arms carries the medieval motto: *Dieu et mon droit*, signifying "God and what I am entitled to" by feudal or customary law or by divine right.

The state by definition had rights that superseded those of its subjects, even though the Greek and Roman Republics and later the Roman Empire were among the polities which recognized free citizens (as opposed to menial and servile classes and outside "barbarians" or subjects) whose rights were to be respected though not in all circumstances. The Roman empire was a theocracy whose monarch was held to be a representative of the head God of the national pantheon and eventually was elevated to divine status in his own right. In that character, the emperor claimed and often effectively exercised absolute power in spite of the permanence of generally submissive and toothless legislative bodies.

Medieval societies, heirs to the late Roman empire but ordered according to the principles of feudalism codified the rights of various classes and collective bodies (such as cities, guilds and corporations)

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but held the rights of the Christian Church, as God's image on earth, above all others, although several sovereigns and states at various times challenged clerical supremacy and eventually got rid of it either by embracing the Reformation or by creating powerful centralized governments which asserted their authority over religious matters, in least those which had political implications. The rights of the effectively secular machiavelian state, affirmed in the Renaissance and enforced by the absolute monarchies of the seventeenth and eighteenth centuries thus prevailed over Church rights in most of Europe by the middle of the nineteenth if not earlier.

The "democratization" of power went hand in hand with the extension of rights to more and more individuals until the British, American and French revolutions led, in opposition to the divine right of kings to the recognition of the rights of man as a sovereign, independent being, no longer organically part of larger socio-cosmic whole but rather contractually bound by mutual consent to a political and economic association. Individuals' rights however were still held to be unequal since they were indeed proportional to socio-economic status and applied primarily to adult, freeholding, settled males born from legal (religious or civilian) wedlock, as against women, children, illegitimate offspring, "natives" and slaves in the colonies and generally all those deprived of property or economic means to make a decent living such as vagrants, beggars, indentured labourers, criminals etc...

Enlightenment ideology held the rights of the individuals to supplant or at least take precedence over many rights traditionally conceded to organizations such as guilds, unions, sodalities, church bodies, monastic and chilvarous orders. Significantly the first revolutionary regime in France banned all unions and guilds as part of the national constitution it edicted, in the name of freeing of the individual from the trammels of professional associations. Unsurprisingly the Constituent Assembly was at that time dominated by wealthy bourgeois and members of the liberal professions who wished to curb the power of workers and deregulate trade and wages.

Are Human Rights arbitrary and subject to self-serving interpretations?

From the beginning of its modern *avatar*, we notice that the theory of human rights is ambiguous insofar as it claims to satisfy the generally contradictory and essentially incompatible ideals of liberty and equality.

“Equal” means “identical” in all latin languages and mathematical similarity precludes diversity and hence freedom. Leninists and Maoists understood it logically when they sought to create a universal communist man sharing the same ideology, culture and behaviour all over the world. The standard liberal ideology also defines a global “homo economicus” with similar interests, goals and incentives everywhere and who should ideally consume the same products, share alike beliefs, enjoy the same cultural activities and be governed by the same political institutions irrespective of the country he lives in. Even the natural differences between sexes pose a serious or perhaps intractable problem to the egalitarian theory.

After being proclaimed by American revolutionaries to overthrow British colonial rule and used as a weapon to weaken the French crown by the Anglophile party in the eighteenth century, the doctrine of rights was employed by various national and ideological powers to further their own interests against their adversaries. The French Revolution ushered in a series of short lived regimes that have remained famous for strident nationalism, brutal arbitrariness and belligerence, culminating in Napoleon’s wave of conquests. Some historians like Pierre Gaxotte noted that while proclaiming the “rights of man and the citizen” the first French Republic effectively “declared peace” (i.e. war) on all other nations of Europe by inciting their subjects to rise against their governments and join in a new universal polity.

The democratic form of government, although it is intrinsically rooted in the recognition of equal rights is tantamount to majority rule, at least in theory, in contradistinction to aristocracy which upholds the preferential rights of a privileged minority. Majority rule however can easily lead to the oppression of minorities that allegedly democratic governments have repeatedly practiced as reflected in Saint Just’s famous words during the rule of the French Revolutionary Convention: “no freedom for the enemies of freedom”. In the United States the civil war illustrated the license that a democratic majority motivated by “higher moral imperatives” and national interests, such as the need to fight injustice (i.e. slavery) or the right to preserve national unity, gives itself to crush, even by military means, a dissenting minority (the Southern separatist states).

Colonialist states in the last two centuries saw no contradiction between their general adherence to democratic values (as in the case of Britain and France) and their resolve to conquer and keep other territories by all means available. It is only with Franklin D Roosevelt’s

proclamation of the “Four Freedoms” during the last World War that the equal rights of people in all parts of the world, and not only in the “superior” western nations, were grudgingly acknowledged in the ruling western circles. It was then in the interest of the United States to question and dispute the rights of European powers to retain their colonies and protectorates which did not generally provide unimpeded access to American goods and investments whereas on the other hand western nations needed to raise the banner of freedom in order to win the propaganda war against the totalitarian Fascist Powers and the Socialist USSR. The adoption of universal rights thus became an ideologically and strategically self-serving imperative for them, which is why non-western states (such as socialist and Islamic ones) were often reluctant or hesitant to accept it.

Coming to the present, it should not come as a surprise that the states which are the leading proponents of human rights, beginning with the United States, Britain and France are also the major colonial or neo-colonial powers seeking to protect and perpetuate their supremacy by acting as umpires, prosecutors and judge of the human rights records of other countries, often by claiming the right to intervene in internal conflicts (is it duty or right to protect?) in the name of saving citizens from their governments or taking the side of parties they regard as being “in the right” against those whom they don’t approve of or condemn.

In the area of human rights, we notice that their definition is being modified ever faster and more frequently according to the prevailing *zeitgeist* among influential sections in the same dominant western countries. What was held to be wrong a few years ago can be declared right and indisputable by what may appear the *fiat* decision of some unidentified opinion makers. In other domains, contradictory theories are in conflict such as between those who hold the individual to be supreme (libertarians) and those who put the state above everything (neo-conservatives) with “liberals” (who see society as the sum of all individuals in a nation or in the world) somewhere in between, insofar as they uphold the welfare state as a necessity but reject the claims of the neo-conservative statists to subordinate all human freedoms to a higher, rather arbitrary concept of national security invoked to protect the political and economic elites.

That ideological debate shapes the various attitudes to such controversial issues as public policy on drugs, tobacco and alcohol. To what extent can the state intrude in an individual’s private life in the

interest of public good or morality by preventing him or her from consuming psychotropic substances and by banning their production and sale? Does the right of society to allegedly protect itself imply the right to protect people from themselves? If so, should the repressive policies applied for drugs extend to alcohol (as they did during times of prohibition) and lead to a complete ban on the production, sale and consumption of tobacco and even on such arguably - environmentally, ethically and dietetically - objectionable products as meat for instance? Even if such policies were democratically supported (by the majority of the population), would they not deny individual rights? Clearly the doctrine of human rights is – and can only be - selectively and contradictorily applied to allow and even promote certain “immoral” actions and habits (such as alcoholic drinking and the production, sale and consumption of pornography) while forbidding others (including the consumption of hallucinogenic drugs).

The doctrine of rights was indeed invoked in the past in the defence of social practices or structures which now appear quite unacceptable. Colonisers all over the world invoked a right to take over, settle, rule and exploit lands and populations “discovered” by them under the then accepted theory of legal conquest. As late as the mid-twentieth century, the Crown of Belgium for example was juridically recognized as the owner of “Belgian” Congo with all the people and resources found on this immense territory. Only a century earlier, when slavery was abolished at long last, first by the United Kingdom in 1834, the government saw it as its bounden duty to generously compensate monetarily the slave owners at tax payers expenses whereas the freed slaves received nothing to make up for their ancestral thralldom. Many of the wealthy British families of today, including present Prime Minister David Cameron’s are still arguably living off the legacy of those vast payouts amounting to billions of pounds in today’s currency value (see *The Independent, UK* of 24 February 2013: “Britain’s colonial shame: slave owners given huge payments after abolition”).

Likewise Apartheid in South Africa and segregation in the Southern states of the USA were justified by alleging the rights of whites to live amongst themselves without mingling with their former human chattel which even Abraham Lincoln was in favour of shipping back to Africa. There is a long standing debate about the extent to which private property is a (civil or natural) right and can be limited or denied in the interest of the majority. Although it is not regarded as a fundamental human right there is room for argument about the extent to which it is legitimate

(especially when it is being extended to living organisms and to genes as a result of current scientific developments) but according to liberal political philosophy, lawful states are prescribed to guarantee and protect it, irrespective of the inequity it implies when it is disproportionate, and it is left to their discretion to compensate for that through taxation.

It is hence no accident if the same countries that claimed and enforced the right to rule and exploit much of the world became the proponents of human rights, selectively defined to uphold and protect their concepts of society, government and the economy.

The Insidious Creep of Human Rights

While there has been a concerted push since the end of the Second World War under the leadership of international organizations to redefine essential human needs or desirable achievements like food, shelter, security and education as basic or fundamental rights, in recent years certain human institutions or customs such as marriage have also been brought under the ever widening aegis of rights although it is logically faulty to qualify as a right something which by definition requires the consent of another person. Are we then to regard a suitor whose proposal is rejected by the object of his/her desire as a person whose right to marriage has been wrongfully denied? Is a person whose consort chooses to divorce the victim of a violation of his or her right to remain married as western law held in the past? Why should the right of one to divorce prevail over the right of the other spouse to remain married? Even further, under the banner of “marriage for all” – an equivocal term if there ever was one – several governments have now legalized unions between homosexuals even though in most languages and codes a marriage is by definition “between persons of opposite sex” so much so that the matter now involves the venerable French Academy whose own classical definition of marriage in the dictionary is incompatible with the nature of same-sex union. The Academy has stated that the government has no right to “modify the vocabulary or grammar” of the French language, of which the Academy is the custodian by law, and is hence illegally tampering with it.

Making marriage a “right for all” has raised the prospect of giving all people the right to have children, whether or not they can naturally reproduce, which has already led to the recognition of the right of adoption by homosexual couples in various countries. The issue of making procreation through proxies (“hire-a-womb”, third party gamete

donation conception, test-tube conception and so on) legal is now under consideration as well by several governments and is seen by its advocacy groups as the next step in the process of making gay couples equal to “normal” ones. As journalist Israel Shamir points out in an article published in his blog (*shamireaders*, April 19, 2013): “the wealthy gays will be entitled to buy children or to order them from surrogate mothers at state expense”.

In the light of that new juridical concept (anyone can marry anyone (why not anything?) he or she wishes), it seems quite illogical or even impossible to prevent formal polygamy or even couplings between humans and animals since a human right to have one or many sexual and socio-economic partners should not be limited by any moral or even biological norms. Hence marriage between siblings should also be made legal under that elastic doctrine which regards any restriction of individual freedom as a form of repression, bigotry or discrimination. Yet, while the issue of public and private morality is invoked for banning drugs in most societies, often by imposing extreme penalties on their sellers and users, the same issue is not held to be relevant to the new policies regarding homosexuality which western societies until recently all condemned as a vice and which is well known to expose its practitioners to a number of grave diseases including HIV-AIDS. Why is the question of morality or public health no longer politically correct in matters of sex, with the remaining exception for incest, while it remains paramount with regard to drug use?

If we deny the existence of natural law (*lex naturalis*) or universal human practices (*jus gentium*) as is now being done in many mostly “advanced country” legislatures, there is surely no boundary to what can be permitted if and when someone’s desire or interest makes it possible, however small may be the minority to which he or she belongs. It is ironic that formerly colonized countries in Africa and Asia which were forced, often under duress to adopt the then Christian moral and social codes of their western rulers are now under considerable and even violent pressure from those same western powers to drastically modify both their traditional ways and the institutions later foisted upon them from abroad in order to follow the new ideas now imposed by those who still claim to be their mentors and guides. Developing nations (with exceptions so far for those which have large oil and gas reserves and are important to western economies) are in fact being given notice that they must put their laws in conformity with the legal

concepts now fashionable in the West without which they will be politically and economically sanctioned.

Actually if things held desirable by most or some people are given the status of rights, (such as decently paid work, although few societies nowadays can provide it to all) should wealth, beauty, health, intelligence and other such universal goods –not to mention having children - be made universal rights under the law, if only to prevent obvious injustices? The American founding fathers shied away from making happiness one of the three fundamental rights of the Constitution and limited themselves to enshrining “the pursuit of happiness” in its preamble, conscious that no legal disposition could grant happiness to anyone in and as of itself. However is life a right as proclaimed in the same Constitution? If so then is the State not remiss in the legal obligation to provide immortality for all its citizens in order to protect this right? Instead the USA has one of the planet’s highest homicide rates “per capita”, is a leading practitioner of the death penalty, guarantees the rights of all its citizens to stockpile and bear weapons, including heavy military-grade ones and is one of the most bellicose nations, spending more than half of the entire world’s outlay for war expenditures though it only host 4% of the global population. A government so well equipped and prone to kill very large numbers of people at home and abroad can hardly be mindful of the “right to life”.

As for freedom, it must be similarly noted that the USA has the largest population in the world behind bars and the highest per capita percentage of people in legal detention which at the very least evinces the right to liberty to be highly conditional and often taken away, generally for poor and uneducated people rather than for wealthy law-breakers popularly known as “too big to jail”. The country deserves its well known but unflattering designation as a “prison state”, a strange consequence of its vaunted obsession with liberty.

Therefore should marriage, - like love, work, happiness, proper accommodation, education and so on - not be more accurately defined as a worthy choice, goal or achievement to be pursued within the laws defined by Nature and society according to the general interest whereas alternative choices are also made possible and respected? Such a conceptual legislative framework would be far more in keeping with human reality and would leave neither the individual nor the state solely responsible for the realization of, or inability to achieve such aims improperly made into rights.

The rights of private business corporations are equated by some Free Market legislators to those of people when the former are defined as sovereign persons under the law, as allowed by the US Constitution's 14th Amendment, a qualification which is bitterly opposed by much of the political Left in America in elsewhere (cf the judgment rendered in March 2013 in the Washington County Court of Common Pleas in Pennsylvania rejecting corporations's claims to be treated as human individuals and to enjoy the same protection including the right to privacy). However the theory of "corporate personhood" with all rights attached gained considerable traction in the wake of the neo-liberal revolution underway since the nineteen eighties, a revolution initiated and carried out in the name of individual economic freedom under the auspices of major imperial powers (the USA and Britain mainly) and intended to defeat the rival socialist bloc of states while smashing the might of trade unions and the labour force at home.

A legitimate question then has to be asked: are human rights a tool perfected by the predominant powers to maintain their leadership while continuing to claim moral and institutional superiority over the world?

In theory human rights are to benefit all, including specifically the weak but in practice their (economically) liberal or conservative application has been shown to ultimately privilege the strongest in society who can exercise them more effectively for themselves while managing to limit the rights of weaker sections. One good example is the matter of privacy, held to be a human right but now under relentless attack from both the information society and its "technology creep" and the national security state which claims unlimited authority to breach the privacy of citizens in the name of the struggle against terrorism. Clearly the rich and powerful are much better able to protect their privacy than the average population.

Conversely, the Marxist interpretation led to the creation of totalitarian states to which the average citizen had to surrender much of his freedom of choice and thought in exchange for parsimonious economic security.

One manifestation of the unfairness and dishonesty with which the theory of rights is interpreted in the contemporary world order is provided by recent and current events in various countries. According to the theory people suffering under an oppressive regime have a right to revolt and overthrow it by violent means. Western governments that claim to be democratic however only tolerate peaceful, non-violent protest within the framework provided by the law since they argue that

change can occur through elections, at least formally or in principle. On the other hand the same governments aid, abet and sometimes force violent regime change as in Afghanistan, Iraq, Cote d'Ivoire, Libya and now in Syria and treat the local people who oppose their armed interventions, whether or not mandated by the UN Security Council, as terrorists and unlawful combatants. Yet, when a government which does not enjoy their approval like Syria's takes similarly violent measures to crush an insurrection, it is held to grossly violate human rights and indulge in war crimes while the insurgents, however violent their actions may be, are supported and armed after being dubbed "Opposition activists" and – in the case of Libya and Syria – granted official recognition as the real government without having passed any democratic test. Finally when a government the rump "global community" approves of, such as the undemocratic, "family owned" Kingdom of Bahrain crushes domestic opposition, drawn mostly from the Shi'ite demographic majority, with the support of foreign armed forces, the West gives it tacit support and claims that said state is only protecting law and order. Such double-dealing, self-serving and hypocritical invocations of the principle of human rights are more often than not upheld and promoted by international Human Rights Organizations based in the western countries that benefit from their advocacy.

The Role of Human Right Organizations

One powerful argument in support of the view that the concept of human rights is being increasingly mustered in support of certain hegemonic agendas is provided by major organizations dedicated to their promotion and defence (HROs). Those organizations ceaselessly spread and accredit the notion that rich western countries uphold and protect the freedom of and equality between all their citizens which must be extended to the populations of poorer, often formerly colonized or socialist nations through the financial and political action of western states and civil societies. They tend to specifically target countries whose governments are regarded as inimical to western strategic goals and policies or reticent to open their economic and political spaces to "global" advertising, ideas and products while more submissive states (such as for example Saudi Arabia and other pro-western economically important governments) are shielded from excessive inquiry.

In an article entitled *The Hijacking of Human Rights* (www.nationofchange.org), dated April 13th, 2012, Chris Hedges comments on the appointment to head PEN of America of a US State Department official and “longtime government apparatchik” and documents “a campaign to turn US human rights organizations into propagandists for pre-emptive wars and apologists for empire”. There is substantial evidence that what he exposes as “...widespread hijacking of HROs to demonize those –especially Muslims – branded by the State as the enemy, in order to cloak pre-emptive war and empire with a fictional virtue and to effectively divert attention from (our) own mounting human rights abuses, including torture, warrantless wiretapping and monitoring, the denial of due process and extra-judicial assassinations” is indeed an essential feature of those major HROs that have often behaved as semi-private proxies for the US and other leading western governments or for major western churches. That strategy translates into “humanitarian interventionism”, codified in the UN as the “right to protect” which has always been applied selectively to those groups or movements that the West found useful to its own interests, whether in the Middle East, Africa, the former Soviet Union, China or Latin America. In the aforesaid article, Hedges points out that the official just “chosen” to head PEN (Suzanne Nossel) headed Amnesty International USA until January of this year even though “(she had worked) as a State Department official to discredit the Goldstone Report which charged Israel with war crimes against the Palestinians”.

It appears that both as an American government servant and an ethnic Jew, Nossel fought to protect Israel from blame, irrespective of the charges of human rights violations raised by an independent UN commission. She said on record when she was the US representative on the UN Human Rights Council: “the top of our list is our defense of Israel’s right to a fair treatment at the Human Rights Council”, the implication being that only Israel and the USA could be fair to Israel and not the world assembly.

Yet her partiality did not prevent her from running a supposedly non-partisan NGO dedicated to the protection of victims of injustice and human rights violations. The well known “revolving door” operating between the US Government and the private corporate sector also connects the US diplomatic and military administration with “human rights” bodies which can therefore be expected to remain under the political and financial control of the ruling apparatus. Nossel and other “human rights” interventionists have generally advocated or supported

American wars against Iraq and Libya, interventions in Syria and Iran and the invasion of Afghanistan as well as the patently illegal drone assassination campaigns being waged in Pakistan, Yemen, Somalia and other countries. Hedges aptly sums up their position in the observation: “there is no distinction between rights work and the furtherance of US imperial power”. It can be noted that this sleight of hand is achieved by invoking the old self-description of the United States as a benign hegemon which always defeats evil (as Nazi Germany, Fascist Japan and later the Godless Soviet Union) and protects Israel, the God-chosen nation reborn from the ashes of the holocaust. With such unquestionable moral credentials, who could ever doubt America’s role as the providential nation that can only do good even when it carries out illegal acts and massive human and ecological destruction in the pursuit of higher goals?

In that light, the “First World” international HROs, Amnesty International, Human Rights Watch, Physicians for Human Rights, the Peace Alliance, Citizens for Global Solutions, the French LICRA, Move On as well as some “minority specific” ones like Act Up, the LGBT *et al.* mostly funded from the Europe and North America are seen to be mainly designed to keep weaker countries in a subordinate condition and on the defensive while protecting their state and corporate sponsors from excessive criticism or condemnation even when they occasionally chide them to keep the appearance of impartiality. As the selfsame Nossel wrote in *Foreign Affairs* in a 2004 article revealingly entitled *Smart Power: Reclaiming Liberal Internationalism*: “US interests are furthered by enlisting others (i.e NGOs?) on behalf of US goals”. As other human rights warriors she is a vocal opponent of peaceful dialogue for the solution of foreign problems and famously concluded in a piece published in the *Washington Quarterly* (quoted by Hedges in the above article): “Democratic reinvention as a “peace party” is a political deadend”.

It comes as no surprise that as a consequence of the domestic and transatlantic elite consensus around the goal of extending and enforcing its global supremacy the USA has become a rogue state by its own definition as many eminent legal minds and statesmen have concluded. Hedges defines the situation eloquently: “the creed...means, for many, shedding tears over the “right victims”. Its supporters lobby for the victims in Darfur but ignore the violations in Iraq, Afghanistan, Pakistan, Yemen and Gaza. They denounce the savagery of the Taliban but ignore the savagery we apply in our offshore penal colonies and in our drone-

infested war zones. They decry the enslavement of girls in brothels in India and Thailand but not the slavery of workers in our produce fields or our prisons. They demand justice for persecuted dissidents in the Arab world but say nothing about Bradley Manning”.

Many HROs may serve the interests of the USA and its main (NATO) allies even when they champion apparently unrelated objectives. It has come to the attention of many observers all over the world that large amounts of funds and media promotion have been bestowed in recent years by those same western countries on hitherto miniscule or inexistent “gay and lesbian” lobbies which campaign for “gay marriage” and “equality of sexual orientations before the law” also in countries where persecution and oppression of atypical sexual mores does not usually take place. It may puzzle many to discover that the adoption of special laws to permit homosexual marriage and “ban discrimination” by allowing “gay pride” parades and other openly homosexual promotional and advocacy events and festivities at direct or indirect public expense, is part of the wider global agenda of powerful western governments and actors of civil society intent on recasting the world in their own desired image once again while humoring some of their own wealthy and influential supporters at home and abroad.

Many of the sponsors of those “niche” initiatives, which tend eventually to acquire a very high place in the public debate to the point of overshadowing issues more relevant to the vast majority of citizens, make no mystery about the reasons for their involvement. Beyond claiming their devotion to the freedom of minorities (at least those that find favour with them), they proclaim their resolve to eradicate moral values and religious cultures with the conviction that there is no divine or natural law and that spiritual traditions must be replaced by an essentially agnostic and nihilistic universal cult of human rights. Unsurprisingly a few of those apologists of unlimited permissiveness champion free access to pornography and may even indulge or promote deviant practices including incest and paedophilia as became apparent in various well publicized legal cases in Europe involving some prominent politicians and businessmen whose names are often hushed up. More broadly it can be seen that by exerting huge pressure to make homosexual marriage legal, these lobbies are putting the rights of a small minority of “gays” over the rights of the majority, that is children and their parents as Shamir argues in the article cited earlier.

One well known promoter and funder of “gay power” in France for instance is the left-wing tycoon Pierre Berge, owner of Sanofi

pharma Labs and of the global YSL fashion brand, who is himself a militant homosexual known for his hostility to religious morality because it does not condone his way of life. Another major voice in the media for the queer lobby and liberalization of “straight and gay” pornography, even with a blasphemous character, is the “bourgeois leftwing” newspaper *Liberation*, co-founded by Jean-Paul Sartre and now owned by the multi-millionaire investor Edouard de Rothschild. The links between high finance, big business, western strategic hegemony and the shaping of public opinion through covert psy-ops and media campaigns are multiple, complex and often camouflaged.

How not to throw the baby with the bath water

Theoricians of human rights know that the latter are not natural and can only be conceived and decreed by human institutions. They are thus inherently relative, subjective and arbitrary, as they express the cultural, political and economic stage of the society where they are promulgated and upheld. We have hitherto shown how they have been and can be misused and manipulated but many will object that abuse is no cause for abolition of what has been abused. What then is there is to save in the very notion of human rights?

The conclusion that has been reached by experts jurists, beginning with the Ulpian in the Roman Empire is that rights can only be logically and satisfactorily defined as counterparts to duties or obligations that people must assume if society is to function and provide a minimum of justice and stability to its members, so much so that “right” in Latin and Germanic languages (*droit, derecho, diritto, recht* etc...) is a synonym for the law while in Anglo-Saxon countries there are faculties of law and not of right.

Confucius advocates the rectification of names, i.e. a return to the original meanings to clarify concept and solve problems. Going by that procedure akin to Vedic *nirukta*, the right is what is right, that is what is fair and also what is straight (in Latin languages the same word is used to say both “right” and straight” as opposed to what is crooked, queer and devious and even in modern homosexual language “straights” are those who have normal sexual tendencies and activities). The Germanic *recht* (the ancestor of the English “right”) is related to the Samskrt *rita*: the rhythm and rule of the universe and also perhaps to *rasi* which can be defined as the mathematic sciences in Samskrt. Therefore “my right” cannot legitimately signify an arbitrary ego-driven demand but rather an equitable expectation according to the rules of the social

man-made game since nature, as pointed out earlier, does not give anyone any definable rights. On the other hand nature as a whole must be acknowledged to have rights since its preservation makes possible our healthy survival as a species along with that of the other lifeforms sharing the earth with us.

The Government of Bolivia, advised by an international panel of environmental scientists, including India's Vandana Shiva has adopted a charter of earth's rights inspired by the native American *Aymara* definition of the natural world as *Pachamama*, the living mother earth. Furthermore the fundamental object of the various theories of rights is to achieve and protect human individual and collective security to the greatest possible extent as denoted by the concepts behind rights to life, liberty, food etc...In this paper we have discussed implications of those notions even to the point of deliberate absurdity only to show that there is no indisputable and obvious rational basis for universally codifying these notions which are inevitably open to contradictory and fluctuating interpretations.

While our contentions imply the need to review the behaviour, motivations and driving forces behind human rights organizations and to deal with many of them as foreign interest groups acting on behalf and in collusion with certain outside political and financial powers, a more fundamental outcome of this summary reflection is the redefinition of human rights as conditions for human security and welfare. The late father of this author, Jean A Carpentier, dedicated much of his life to the study of the notion of duties in various civilizations, including India's *Dharma* and was instrumental in having India adopt ten fundamental duties as part of the 42nd amendment to its Constitution in 1976 according to the report prepared by the Swaran Singh Commission. However it is worth reflecting that those duties are by nature not justifiable as no legal sanction is provided for their violation, yet is it conversely possible or fair to try enforcing rights by law when we have shown them to be so patently arbitrary, relative, notional and subjective?

The concept of comprehensive human security, as laid out by Arthur Westing among other scholars, in its social, political, cultural, economic and environmental dimensions is suitable to redefine and ultimately replace the problematic notion of human rights hatched by the Western agnostic "Enlightenment" ideology. Comprehensive security embraces the individual within the wider framework of his local community, living medium, species and support system and restores a sensible and viable hierarchy for the analysis and cure of the ills that can affect his kind and the local universe in which it exists.

Re-looking the Universal Declaration of Human Rights (UDHR): A Religio-cultural Perspective

Shankar Sharan*

The time it was written the Universal Declaration of Human Rights (UDHR) was a very appropriate document. Prepared at the aftermath of the World War II it was a response to the unspeakable harm suffered by millions immediately before, at the hands of Nazism and Communism. Both these regimes, in the countries they ruled treated people inhumanly with tortures and killings at will. To the outside world their common refrain, if at all, was that it is their internal affair. The UDHR tried to reject this attitude of dictatorial and totalitarian regimes. Thus, human rights of everyone were formulated as independent of the work one does for living or the place one lives in. Human rights are the rights of everybody in the world because one is human being. All people, irrespective of the country or political system, are equally entitled to them. This way the UDHR was a standard narration of what human rights mean. Adopted by the United Nations in 1948, the thirty articles of this declaration is a basic text to understand and uphold human rights.

However, the importance of UDHR and the human rights movement, as we know today, was not in place until late 1970s. Before that it was seldom referred to in political studies or international discussions. The movement got a great boost after the Helsinki Accord in 1975. This agreement was reached at among the European countries, representing both the groups, the Soviet block and the US block. The chapter VII of this Accord read: "The participating States will respect human rights

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and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.” It is this accord which made the communist states formally accountable on this score. Soon after this Accord a voluntary organization named ‘Helsinki Watch’ came up in 1978 to monitor the compliance of the Soviet bloc countries with the human rights provisions of the Helsinki Accords. This was a pioneering development in human rights movement. It helped so many writers and dissidents of the communist regimes survive the wrath of their rulers. The Helsinki Accords made the regimes morally exposed on the issue of respecting human rights. They could not go on as they used to, on the ground of usual ‘internal affairs’ argument, because they committed themselves before the entire world to respect human rights of their citizens.

Now the UDHR is a well-known and greatly respected document. Scores of countries adopted legislations taking cue from one or other provisions of this charter. This shows its growing role in world politics. This is why it is all the more necessary also to note the biases and omissions in the document besides its strong points. For it affects adversely millions of people benefitting some unscrupulous and powerful groups.

Even initially the document was also criticised from various angles. A British writer A C Grayling categorised the critics of UDHR into three groups. They consist of the complacent, the inconvenienced and the disappointed. The complacent are those who were born and lived always in democratic easy comforts, having the unlimited luxury of criticism, argue that a right is an imaginary construct, and talking human rights is ‘an Eurocentric colonialist arrogance, or hot air, or pious claptrap, or all three.’ The inconvenienced are basically those brainwashed by one or another rigid ideologies. Some of them thought that the Human Right charter is a bourgeois stratagem designed to deny the ‘inevitable and permanent class struggle’ between the working class and the exploitative bourgeois. They believed that since human beings are divided into antagonistic classes, there cannot be a human right common for all of them. Some other believe that one man is worth two or more women, and all the correct directives for the humanity is already collected in *Sharia* and other Islamic books; therefore, any talk of other charters is either ignorance or a willful distortion of the one and only truth. The third category of critics are the disappointed ones who point to the continuing wars, genocides, use of torture and detentions without trial still going on in many places and say that talking about human rights has made no great difference.

In this article a somewhat different critical approach is being proposed. It can be named as criticism from an Indian cultural perspective. To be sure the cultural perspective is not entirely new. Voices from many countries have been heard on this score. For instance, Faisal Kutty wrote, “A strong argument can be made that the current formulation of international human rights constitutes a cultural structure in which western society finds itself easily at home ... It is important to acknowledge and appreciate that other societies may have equally valid alternative conceptions of human rights.”

The Indian society, too, has a case to present. Being a great and ancient civilization, Indian wisdom has a distinct place on issues of human affairs. One may agree or disagree with it, but there is reason it should be considered seriously.

In a general cultural context E W Harrop had underlined, “The question of whether the UDHR ignores the social differences of the 191 United Nations member states today and the 58 which existed when the UDHR was drafted is therefore a pertinent one.” She rightly argues that even though the declaration is not a legally binding document, it exerted significant influence in formulating legislations at domestic and international levels. Some other critics maintain that the Charter was based upon Western political philosophy providing only one particular interpretation of human rights.

According to Dr Laksiri Fernando, “What the Universal Declaration failed to grasp properly at that time was the non-Western community values pertaining to the ‘synergy between the rights and duties’ or responsibilities. He mentions the most remarkable expression of this synergy was by Mahatma Gandhi who commented during the drafting stage of the UDHR that “I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done.”

Dr Fernando once asked one of the drafters of the Declaration, John Humphrey, why they failed to take Gandhi’s opinion into consideration? He pointed out the Article 29 of the Declaration as covering the view to some extent but admitted that it was not a proper recognition of it. Section (1) of the Article 29 says, “Everyone has duties to the community in which alone the free and full development of his personality is possible.” But this is not exactly what Gandhi meant when he put primacy on duties, or at least full equivalency between rights and duties. Although today there is an increasing understanding worldwide that duties are equally important and ‘without duties the rights can easily go wild.’ It can be frequently seen in the works and demands many human rights activists and organisations who

champion various newer and newer rights without any reference to any corresponding duties of their clients. In ever increasing list of newer rights even the basic articles of the UDHR are also practically ignored. As if, some 'third (or fourth) generation' rights have replaced the 'first generation' rights, that is, the UDHR ones. Thus the duties part of the Article 29 of the charter has been quite forgotten for all human rights activists. It also shows that duties as a prime philosophical category has a negligible place in the document itself.

It was no chance aberration. Culturally it represented an individualist and hedonist philosophy, fundamentally different from what an enlightened Indian would always say. For instance, the great Indian sage and a scholar, SriAurobindo had said: "This was the weakness of European democracy and the source of its failure. It took its motive the rights of man and not the *dharma* of humanity; it appealed to the selfishness of the lower classes against the pride of the upper; it made hatred and internecine war the permanent allies of Christian ideals and wrought an inexplicable confusion which is the modern malady of Europe." ('Asiatic Democracy', in *Bande Mataram*, 16 March 1908)

Written more than a hundred years ago it effectively explains the one-sided and self-serving attitude of many human rights activists today. This is also but an example of how vastly different philosophical and cultural outlooks could be on human affairs. The formulations and applications of the UDHR should be closely analysed, if and where it rubs against the Indian views and interests too and similarly placed cultural plurality.

Articles 18 and 19 are one of the bedrocks of the Declaration. According to the Article 19 the freedom of expression is the extension of the 'freedom of conscience'. It presumes, then, that it should be exercised with certain moral obligations, because 'conscience' primarily is a moral category. But moral obligations, like the duties, are not mentioned in the Declaration. The result is the worldwide dubious industry of pornography, dirty writings, etc. All in the name of freedom of expression. This again is an expression of a particular individualist and hedonist ideology, not some universally accepted idea. Similar expressions can also be found in Article 25 and 27 as well. Article 27 mentions cultural rights, but just reducing it to individual rights in participating in the community. The most cardinal aspects of cultural rights are the rights of different linguistic and religious communities to protect and promote their language, culture and customs without inhibition and discrimination. This is nowhere in the charter.

The cultural difference - and discrimination - is more apparent in the Article 18. It reads: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." This is a distortion of the very concept of Human Rights whose central force is an individual and his rights and not that of a group and community.

The content of this significant article seem so natural that Dr Laksiri Fernando, while critically evaluating the entire UDHR, coolly wrote, "The above are *self-evident* formulations on freedom of thought and conscience without much need for interpretation." (Emphases added). It would seem so only till the meaning of religion is taken as Christianity or Islam. The moment one considers the concept of *Dharma* (a distinct philosophical category entirely different from 'religion') and the actual life and practice of billions of people going by it, not by 'religion' in the Western sense, a huge problem presents itself for serious consideration.

The freedom of religious belief as put in the UDHR does not recognise Hindu/Buddhist belief as such. Its terminology expressly mentions the right of a person to 'change religion or belief, and freedom, either alone or in community', but not to retain and defend one's belief. Thus it clearly favours proselytising religions, i.e., Christianity and Islam; and disregards Hindu-Buddhist beliefs which allow people to have multiple beliefs and have no concept of proselytising. Outwardly the formulation of freedom of religion in the UDHR may seem innocuous. But in view of the worldwide active religious conversion programmes of the Catholic church as well as Islamic organisations, even using all kind of methods including violence and coercion, it clearly gives them a license to convert. It becomes evident, as we see, that the non-proselytising faiths have no right so expressly mentioned in the declaration as to defend their faith 'either alone or in community' against the proselytisers. This makes the UDHR recognising only the Abrahmic faiths as religion, and not taking Hindu-Buddhist faiths into account.

The implication of this serious lapse would be quite clear if, hypothetically, this right to defend one's faith and prohibition of conversion by coercion and violence is included in the declaration. Such inclusion would put Christianity and Islam on par with Hindu-Buddhist faiths, where all beliefs would be treated equal. The right to change one's religion would be still there, but organised conversion

programmes of proselytisers with unscrupulous means would be precluded. Therefore, not expressly mentioning that all religious beliefs are equal gives the proselytisers a special, though invisible, handle to use against different believers. As a result the conversion programmes world-wide are going on with the financial and diplomatic help of many Western governments. If the UDHR had such express provisions for equality of all religions, forbidding fraudulent conversions, such programmes would have been impossible to be sanctioned or supported by the governments of Christian nations which is the case today. The person/people of Hindu-Buddhist and similar faiths would have also the opportunity to raise human rights violation in face of secret-coercive-fraudulent conversion threats from organised proselytisers.

The skewed presentation of the 'freedom of religion' with conversion rights has, in fact, made the violation of human right itself as human rights itself! It is a frequent occurrence in media that Christian missionary leaders accuse 'human rights violation' as and when Hindu groups oppose fraudulent conversions organised by such missionaries. Please note: the law on this regard in India clearly mentions coercive conversions as illegal. But never a Christian missionary even formally accepts or proclaims to accept such law. They silently disregard such laws, and engage in mass conversion using money-power, blackmailing the poor and needy Hindus in remote areas. That is why they never claim any conversion being voluntary or invite media or independent agencies to check if some controversial conversions were involuntary or not. They simply skip the issue and flatly proclaim the right to convert others by any means, and any hindrance to it as violation of human rights! Such a bizarre situation is witnessed frequently in non-Christian countries, India being one of the examples. Hence the peculiar situation: a person or community wanting to retain his faith is accused of human rights violation! While a person or group trying to steal, buy or push another's faith can proclaim 'violation of human rights' if stopped from doing so. This is the immoral implication of the Article 18 of the UDHR which silently, but clearly recognise only the Abrahamic faiths as religions.

The same distorted meaning of 'freedom of religion' with Christian bias can be found in the annual reports of the US State Department pertaining to the situation of freedom of religion the world over. First of all, the State Department of the USA thinks it necessary to prepare annual reports on religious freedom, which is itself a curious point. What is its locus? Is it a supra-religious position from which the US State Department observes the religious freedom in the world, or is

it from the angle of Christian interest? The question is inevitable because the US government, though quite secular in political administration of its country, unlike many democratic governments in the world is a believing government. 'God bless America!' is an official refrain of the US leaders. Therefore, it is a simple matter of fact that they judge the situation of religious freedom in other countries from the Christian point of view in which conversion of other-believers into the Christian faith is a part of the faith. (The point was also made in the Supreme Court of India in August 2003 by Christian representatives, in support of their claim of unhindered right to proselyte others). As a result the reports of the US State Department reflect the Christian missionary view in so far as it reports 'violation of human rights' in all such cases where missionaries find obstacles in their mass conversion programmes. Even the laws passed by democratic governments in various states in India are termed as 'violation of human rights'. In other words, the US Department, too, maintain the silent attitude as in the UDHR, that only the proselytising religions are religions. Therefore, it too rejects the right of Hindus or Buddhist or Jains to defend one's faith. Otherwise there is no reason why the Religious Freedom reports never mention any case of coercive conversion – news of which also frequently occur in media of different countries – as an instance of 'violation of human rights'. Such partiality stems from the prejudice of Christianity which is as evident in the UDHR as in the US State Department's annual reports on the situation of freedom of religion world over.

It should be noted in the context that the Vatican has a world-wide active hierarchy, including in India with special emphases, with the sole aim of 'harvesting the souls' and 'plant the cross in Asia', armed with cash rich projects. The Western governments and societies see nothing wrong in that, and many of them even support it. Why is it so? No Western government representative ever said that such projects are instance of religious intolerance or against the spirit of multi-culturalism. Mindfully or unmindfully they perceive the Christian religious faiths more worthy of respect than others. This unjust attitude has to be corrected.

It is unfortunate that even the Constitution of India is similarly skewed on this score. The Hindus in their own country, and the predominantly Hindu country in the world, do face the same discrimination as reflects the UDHR. The Constitution of India, too, has no provision of protection of indigenous faiths in face of aggressive proselytisers. Under the influence of mislaid Hindu generosity, and of the ignorance of entire structures of other faiths, the framers of Indian Constitution had unnecessarily added² the right of 'propagating' religion (no other country

has this express right as a *Fundamental* right) in the Constitution. As a result all proselytisers, foreign and local, in India claim it their right to convert others by whatever means. Even in the court of law they insist on it. In a case in the Supreme Court, in August 2003, the Orissa government argued that mass conversion of others should not be accepted as part of the ordinary religious freedom of someone. In response the Christians counter-argued that in Christianity proselytising others is a part of the religion. Therefore, by whatever means they organize conversions are their right under the section 25(1) of the Constitution. Thus undertaking conversion of other religionists is the Fundamental Right of every Christian. Any obstruction to it is an infringement of a Christian's Fundamental Right. Islamic organisations too are converting Hindus by means of 'money and marriage' and thus effecting 'demographic expansion'. It was recently said about the state of Kerala by the veteran communist leader V S Achchutanandan. The situation of many other states, particularly Jammu and Kashmir, Nagaland, Meghalaya, Arunachal and Assam has been long the same or even worse as the threat of violence was used for the object of converting Hindus into Islam or Christianity. There is no hue and cry in media over it does not mean this has not been happening or it is not worth mentioning in academic exercises. Seen in the whole context of human rights the hapless situation of Hindus is a case for serious pondering and documentation.

Various reports of judicial commissions (for instance Justice Niyogi Commission, 1956; Justice Wadhwa Commission, 1999) appointed by the governments also reflect that Hindus are unprotected in defending their faith before the aggressive stratagems of Christian missionaries. It is a sad comment on the situation of religious freedom in India, where the Constitutional provisions are used to coerce Hindus into converting. Not only the census data over the decades note the demographic changes happening in many states, but a new trend is to keep the religious demographic data from obvious purview. Even a little research would reveal the reason behind such care.

The same goes for the provisions for 'minorities' in the Indian Constitution. The Articles 26 to 30 are interpreted in practice in such a way that Hindus have no similar rights as to maintain their religious places and educational institutions as accorded to religious minorities. In fact, the 'majority' is not even mentioned, let alone defined in the Constitution! As a result the express benefits given to religious 'minorities' as regards maintaining their religious places and educational institutions are effectively denied to the Hindus simply because they are not deemed 'minorities'. Although what they are, and what is due

to them, are nowhere mentioned in the Constitution. equity demanded that all religions, majority and minority, ought to have the same rights and "privileges"

Such weird situation is unique in the world. No other country gives its minorities such rights which are not available to its majority population. But this is the very case in India. A matter of blatant cultural injustice institutionalized in Indian polity. As a result it is a no issue if practically in all inter-religious marriages the Hindu boy or girl has to necessarily convert into Islam. Being the other way is threatened by death by the personal laws of the minorities. These are also no issues in matters of human rights discourse. Everywhere, in every situation involving the Hindu religionists, their faith is not considered on par with Christianity or Islam.

How India could raise voice in the United Nations if in her own land the legal provisions do not have equality of religions in so far as defending one's faith is concerned?

The vocal intellectuals who raise issues of social justice, economic injustice, etc. should sometimes ponder on the issue of religious and cultural justice as well. It is no less important. Rather, as the US State Department's concern for religious freedom in the world also shows, many governments and majority of world population give much more importance to religion in their social and political matters than is recognized by the intellectuals tending to making religion no-issue in their concerns. Therefore, exploitation, coercion and injustice pertaining to religious beliefs should also get as much attention. Especially so as the programmes for demographic change in Europe and Asia is an open issue for all to see. Many times on world fora various organisations and spokesmen of powerful faith speak about it in so many terms. Therefore, it is a great mistake to talk about equality, justice and rights excluding the religious-cultural aspects of it. Kashmiri pundits are just a new example of the result of such neglect. The numbers of displaced and killed Kashmiri pundits since 1989 have been more than Bosnian Muslims. But the world has not witnessed any uproar about them. Why?

It is also because, like the Article 18 of the UDHR, the world community disregards people of non-Semitic/Abrahamic Faith in matters of equal rights on religious-cultural issues.

Therefore, it is high time the public opinion in the world as well as in India should be properly informed about the issue of religious-cultural justice with all its implications.

Note/reference:

¹. The entire debate on the issue in the Constituent Assembly is worth studying. It shows how the Hindu society repeats the same mistake again and again, not learning anything from the past. 'Propagating Religion' was accepted as a Fundamental Right at the insistence of just a couple of members despite the bitter experience of oppression, deceit and unrest in the name of religious propaganda by Christian missionaries in India of which the members of the Constituent Assembly were fully aware. Purushottamdas Tandon, Kanhaiya Lal M. Munshi, Tajamul Hussain, Hussain Imam and many more were opposed to giving such a right. Yet it was accepted only for showing 'consideration to Christian friends.'

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The Universal Declaration of Human Rights (UDHR : Dec 10, 1948)

by **The United Nations**

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common

standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

• All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

• Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

• Everyone has the right to life, liberty and security of person.

Article 4.

• No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

• No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

• Everyone has the right to recognition everywhere as a person before the law.

Article 7.

• All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

• Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

• No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

• Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

• (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

• (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

• No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18.

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief,

and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) 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.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Human Rights and the Judiciary

Justice (Retd.) Sujata Manohar*

1. Justice Louise Arbor, the former UN Commissioner for Human Rights in her address at the opening of 61st session of the Commission on Human Rights emphasized the role of the Judiciary in the enforcement of Human Rights. She said, "Courts the world over have been playing an increasingly vital role in enforcing social and economic rights, bringing them from the realms of charity to the reach of justice, linking them and developing a body of ever-growing jurisprudence by which we can be guided in bringing these vital rights to the reality of peoples' lives". In order to understand the impact of international law, and in particular, international human rights law on judicial decision-making, one needs to look at the ways in which public international law has affected decision-making in several jurisdictions around the world.

2. What are these human rights embodied in international treaties and how can they affect judicial decisions? Justice P.N. Bhagwati, one of the founders of human rights jurisprudence in our country has this to say about human rights. He says, "Human rights are as old as human society itself, for they derive from every person's need to realize his essential humanity. They are not ephemeral, not alterable with time, place and circumstances. They are not the product of philosophical whim or political fashion. They have their origin in the fact of the human condition, and because of this origin they are fundamental and inalienable."

3. International human rights law as we know it, began with the Universal Declaration of Human Rights (1948) framed in the aftermath of World War two. By its universal acceptance it has passed into customary international law. Twenty years after the declaration, two

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specific international covenants- the UN Covenant on Civil and Political Rights and the U.N. Covenant on Economic, Social & Cultural rights came into being. Some of the other important international human rights treaties are the Convention on Elimination of All Forms of Racial Discrimination, Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), Convention against Trans-border Organized Crime and its Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons-popularly known as Palermo Protocol and the allied Optional Protocol dealing with Smuggled Migrants. The CRC also has an Optional Protocol dealing with Sale of Children, Child Prostitution and Child Pornography. There are also ILO conventions. In addition there are regional treaties and instruments. The European Convention on Human Rights is one of the earliest conventions to give effect to the Universal Declaration of Human Rights. It can be enforced by the European Court of Human Rights. There is also the European Social Charter dealing with economic and social rights and the European Commission. The Inter-American Declaration of the Rights and Duties of Man 1948 and the American Convention on Human Rights, 1969 applies in the American Countries. The African Charter on Human and People's Rights is for Africa. There are some other regional treaties. These treaties have their own enforcement mechanisms.

4. The application of international human rights Treaties, Conventions, Declarations and other documents in domestic jurisdiction depends to a large extent on the Constitution of the country and the system of law that is operating in it. The basic question is: Can judges apply or make use of (1) international human rights treaties, (2) non-treaty instruments, or (3) non-treaty declarations by international organizations while adjudicating domestic disputes; and if so, to what extent and in which manner so that the application is jurisprudentially acceptable.

5. The task of the judiciary is easier when the Constitution of the country provides for justiceable human rights and laws have been framed in respect of some or all of the human rights that can be enforced by the domestic courts. Traditionally civil and political rights were considered enforceable by the courts. Social, economic or cultural rights were entirely in the domain of the executive and policies were required to be framed by the administration for their enforcement or realization. That is why we have in our Constitution enforceable Fundamental Rights and Directive Principles of State Policy which were not originally

justiceable but have been enforced by the courts on account of their inherent linkage with fundamental rights. This distinction is fast disappearing. Both sets of human rights have an inherent interconnection. Both need to be protected and promoted before the guarantee of a life with dignity can be fulfilled.

6. Nations whose institutions of governance are controlled by a written constitution, and even those without a written constitution are turning more and more to domestic courts for enforcement of human rights of their citizens. This has placed an obligation on the judiciary to cultivate a human rights-based approach to judicial decision-making. Judges do not normally talk about the processes which underlie decision-making, mainly because the judgment explains the reasons for the decision. Traditionally a judge applies the relevant domestic law to the facts as established in a court of law in order to arrive at his or her decision. This is a comfortable parameter within which judges are used to acting.

7. But this parameter is no longer sacrosanct. New concepts, new demands and new international standards of rights and obligations have imposed on all organs of governance a duty to create a fair and just socio-economic cultural and political order. This has placed a much greater responsibility on the judges to deliver Justice in its widest sense. The international community is looking increasingly towards judges in domestic courts to protect and promote the human rights of ordinary people.

8. The role of the judiciary in enforcement of human rights has also assumed importance because of the linking of development goals not just to economic advancement of a nation, but its ability to ensure human rights of its people.

9. How can this body of international treaties and conventions be considered by domestic courts? There are some countries where an international treaty when signed by the country, automatically becomes a part of the domestic law of the country. (Monist states). There are other countries, usually common law countries that make a distinction between international treaties signed by the country and its domestic law. The treaty must be specifically incorporated in domestic law for it to be treated as law (dualist states). The Monist states usually have a constitutional provision under which international law and domestic law form one body of law that can be enforced by domestic courts. Under the French Constitution for example, once signed, ratified and published, treaties take precedence over domestic statutes whether

enacted prior to or after the ratification of the treaty (Article 55). Similar approach is prescribed in Greece, Guatemala, Spain, Mexico and Maldives where duly ratified treaties take precedence over the domestic law. Several other constitutions give to International treaties the same status as domestic laws.

10. Even in countries where ratified treaties do not become a part of the national legal system unless and until these treaties have been enacted as legislation, the written constitution usually incorporates, as in India, some basic human rights in a Bill of Rights or Fundamental Freedoms. The courts have increasingly turned to the body of International Human Rights Law- whether customary or embodied in treaties, or laid down in decisions of adjudicatory bodies, in the process of adjudication of cases dealing with violation of this constitutional Bill of Rights. The Indian Supreme Court has made a spectacular use of these treaties and conventions in developing its Human Rights Jurisprudence. The courts have used international treaties and declarations for the interpretation of various rights which are embodied in the constitution. For example, the right to equality and non discrimination has been examined and explained by the courts in the light of CEDAW. This is, at times referred to as a "generous approach" to the interpretation of the constitution- a phrase which was used by the Privy Council in the case of *Ministry of Home Affairs v/s Fisher (1980 Appeal Cases 319)*, while dealing with the constitution of Bermuda. Most of the post-1945 constitutions have been drafted and a bill of rights incorporated in them in the context of existing international human rights treaties. It would be legitimate therefore, to look to the current international understanding of these rights while interpreting a constitution which is meant to serve the country over a long period through different stages of progress and development. The interpretation can thus keep pace with the international understanding of the rights incorporated in the constitution. For example, the right to a fair trial now includes the right to be assisted by a lawyer [*Madhav Hoskote v. State of Maharashtra AIR 1978 S.C.1548 ;Gideon v. Wainwright 372 US 335 (1963)*]. In the case of *Republic of Namibia , Director of Legal Aid and Mwilima-Caprivi Treason Trial (Supreme Court of Nigeria Judgment dt.7.6.2002, Case no. SA29/2001)* the Nigerian court upheld the right of the accused to legal aid, citing similar provisions in other jurisdictions. Torture or cruel and unusual punishments violate human rights in peacetime or in conflict situations. These and other factors that affect a just and fair trial were considered in *D.K.Basu v. State of*

West Bengal (1997 1 SCC 416). Indian courts have ordered compensation in cases of death in police custody (*Neelabati Behera v. State of Orissa A 1993 SC 1960*). The Right to Information is now considered an important part of the freedom of speech and expression.

11. Specific domestic laws are, at times reexamined or interpreted in the light of a country's treaty obligations. A striking case of International Human Rights Law giving rise to a new interpretation of an old domestic law is the Nepal Supreme Court decision in *Dhungana Vs. His Majesty's Government (Writ petition No. 55 of the year 2001-2002)* where the court interpreted the provisions of the Nepal Penal Code (identical with our penal law provision) defining rape in the light of current international perceptions. The question related to whether the act of having sexual intercourse with his wife by the husband without her consent would amount to rape or not. This was not expressly included in the definition of rape under the Nepal penal code. The Court, however, referred to article 1 of CEDAW which defines discrimination. It also referred to the Beijing plus five Review Report where marital rape has been taken as one of the forms of violence against women and a commitment has been made to ban it. The court held that women do not lose human rights because of marriage. To forcibly compel a woman to allow the use of her body against her will is a serious violation of her right to live with dignity, the right to self determination and is an abuse of her human rights. The Nepal constitution guarantees right to privacy. Therefore, in the light of these international instruments on human rights, it cannot be said that marital rape is permissible. This is in sharp contrast to the Indian government's stand on an identical provision.

12. In the well-known case of *State v/s Baloyi (CCT 29/99 decided on 3 December 1999)*, the Constitutional Court of South Africa dealt with domestic violence. It held that in seeking to remedy the injustices involved in domestic violence one has to bear in mind South Africa's international obligations. The court relied upon the Universal Declaration of Human Rights. It also referred to the Declaration on the Elimination of Violence against Women and it referred to CEDAW and the African Charter of Human and People's Rights. Dealing with the complex private/public character of domestic violence the court observed that despite high value set on the privacy of home and centrality attributed to intimate relations, all too often the privacy and intimacy end up providing both the opportunity for violence and the justification for non-interference.

13. Sometimes an unfair or discriminatory law is by-passed by the court by applying a supervening rights principle. e.g. in the exercise of its supervening jurisdiction as the guardian of children or underprivileged groups, the Indian courts have again and again decided disputes relating to custody of children on the touchstone of what is in the best interests of the child and not on the basis of who between the father and the mother has a better legal claim to custody.

14. At times the ordinary laws of a country are construed or applied in the light of international human rights treaties. In a recent ruling by the Supreme Court of Zimbabwe, for example, the Chief Justice dealt with a case where a Human Rights Activist Ms. Mukoko was charged with conspiring against the Mugabe regime. An application was made on her behalf for a permanent stay of prosecution on the ground that she had been abducted, detained and tortured by State Agents. The Court held that Zimbabwe's Security Agents had infringed Ms. Mukoko's constitutional rights to liberty, protection from torture and inhuman and degrading treatment and granted a stay of prosecution. In *Kharak Singh v. State of U.P. (AIR 1963 S.C. 1295)* the Indian Supreme Court read the word "life" in article 21 of the Constitution as entailing protection against torture.

15. In India, which is a common law country, the Supreme Court has held that the International Human Rights Law can be applied in domestic jurisdiction if there is a vacuum in the domestic law and there is no national law inconsistent with it. (*Vishakha Vs. the State of Rajasthan, 1997 6 SCC 241*). Thus international human rights norms can be used to expand the connotation of fundamental rights embodied in the constitution and to cover areas not covered by existing domestic legislation, provided international norms do not conflict with any existing domestic legislation.

16. The Supreme Court has also used Human Rights treaties and Instruments as criteria for judging domestic laws. Using these criteria, the court has pronounced on the need for new law or law reform in the context of the country's human rights obligations. (*Sarla Mudgal v. Union of India AIR 1995 SC 1531; Mohammad Ahmad Khan v. Shah Bano Begum (1985) 2 SCC 556*)

17. At times the domestic court is called upon to resolve the conflict between the human rights obligations of the State and the need to put constraints in public interest. For example, freedom of speech may have to be curtailed in public interest or for the security of the State. In resolving such conflicts the courts have examined whether the restrictions

are proportionate to the need for protection. For example, in *Union of India v. Motion Picture Producers Association (1999 6 SCC 150)* the respondents contended that freedom of speech and expression was curtailed when they were asked to exhibit a 10-minute educative film in cinema theatres before the main film. The directive was upheld.

18. At times, balancing of different concerns takes place in unexpected areas. For example, in the area of international trade the right to exploit the patent in a drug had to be curtailed by permitting developing countries to manufacture generic drugs which drugs are much cheaper than the patented drugs required for saving lives of poor persons in their countries. The TRIPS Agreement had to be modified for this purpose by WTO. In the recent Novartis judgment the provisions of Section 3(d) of the Patent (Amendment) Act 2005 which provide that mere discovery of new use or new property or new procedure in respect of a known substance is not patentable, were applied to prevent 'evergreening' of a patent on a life saving drug.

19. Often a question arises whether customary laws, customary rights, cultural rights of minorities or tribals override the equality and non-discrimination clauses of the constitution. For example, there may be customary laws or traditional laws based on religion or culture which violate human rights, especially of women or children. Do these customary rights override human rights? In many countries such as South Africa or Namibia, the constitution provides that all customary laws which are in conflict with human rights are unconstitutional and cannot be enforced; while some other constitutions give to such customary laws a status above the constitution. A typical case of such a law arose in 2003 before the Islamic Appeals Court in Northern Nigeria. When hearing an appeal by a single mother who had been convicted and sentenced to death by stoning for adultery, the Appeal Court set aside the conviction on the ground that the woman was not given an ample opportunity to defend herself. Laws and cultural practices are being increasingly struck down by courts around the world by using human rights criteria. For example, the courts have used CEDAW to deal with violence against women perpetrated through harmful customs. The Nigerian Court of Appeal considered a custom known as *nrachi* that permits a man without a male heir to initiate a daughter into promiscuity to beget a male heir. The Nigerian Court of Appeal held the custom as being against equity and good conscience. It relied on article 5 of CEDAW to strike down the custom. {*Emeka Muojekwu V/s Okechukwu Ejikeme 2000 (5) Nigerian WLR (Part 657) 402-423*}.

However constitutions of some other African countries like Zimbabwe, Sierra Leone, Kenya and Zambia have elevated customary law above the constitution, making it difficult to apply CEDAW principles to override customs.

20. In *Regina vs Evanchuck [1999 1 SCR page 330 (Canada)]* the Supreme Court of Canada observed that Canada was a party to CEDAW which requires an observance of respect for women. Violence against women is as much a matter of equality as it is an offence against human dignity and violation of human rights.

21. In India personal laws which are based on religion and customary laws cannot be struck down as unconstitutional under Articles 13 and 14. The equality provision in the Constitution cannot be used to override a tribal customary law which denies to women a right to inherit land (*Madhu Kishwar v. State of Bihar AIR 1996 SC 1864*). Similarly family laws which discriminate against women cannot be declared by the courts as violating the equality provision of the Constitution. These have been considered as remediable only through legislation (*State of Bombay Vs. 53 BLR 779. Narsu Appa Mali 1951*). In several cases the Supreme Court has emphasized the need for such remedial laws (*Sarla Mudgal Vs. Union of India AR 1995 SC 1531*).

22. In *Vishakha vs the State of Rajasthan (1997 6 SCC 241)* the Indian Supreme Court which was dealing with sexual harassment interpreted Article 15 of the Constitution of India which prohibits discrimination on the ground of sex in the light of international Human Rights declarations and treaties and in particular Article 11 of CEDAW which enjoins State parties to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the enjoyment of the same rights. The Supreme Court observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all facets of gender equality including freedom from sexual harassment or abuse. The international conventions and norms are to be read into them in the absence of enacted domestic law where there is no inconsistency between them.

23. In *X and Y vs Netherlands*, (the judgment of the European Court of Human Rights dated 26th March 1985) the European Court of Human Rights upheld a complaint that the existence of a gap in Dutch law which meant that the prosecution could not be brought against a man who had sexually assaulted a mentally retarded girl, constituted a

violation of the State's obligation to take steps to ensure respect of the girl's rights.

24. In *Carmichele Vs the Minister of Safety and Security and another*, (2001 10BCLR 1995 CC) the South African Constitutional Court referred to CEDAW's general recommendation 19 on violence against women with particular reference to the obligation of the State to take preventive, investigative or punitive steps in relation to private violations.

25. The right to equality and protection against discrimination does not have just civil or political content. It also has social, economic and cultural content. For example, the right to equality and non-discrimination is an essential part of women's human rights within the family and at the work place. Children's rights, rights of minorities and other cultural groups in a democratic and inclusive political framework also center around non-discrimination in an important way. Segregation of economic, social and cultural rights from civil and political rights or their differential treatment has become increasingly difficult, looking to the close nexus between different rights.

26. In India such rights have been held as entailed in civil & political rights which are justiciable. The right to a life with dignity, which is guaranteed under Article 21 of the Indian Constitution and is justiciable, is held to entail many of the economic, social and cultural rights. In the famous cases of *Bandhua Mukti Morcha Vs. Union of India and others* (1984 3 SCC 161 and cases of the same name thereafter) the court ordered release of bonded labour holding that the right to live with human dignity enshrined in Article 21 derives its life breath from social and economic rights. These must include protection of the health of workers, protection of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, education and facilities such as just and humane conditions of work and maternal relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity. In *Frances Coralie Mullin v/s Union Territory of Delhi* (AIR 1981 SC 746) life and personal liberty were held to include adequate nutrition, clothing and shelter over the head.

27. There are other rights spelt out from Article 21. The right to shelter was highlighted in *UP Awas Evam Vikas Parishad* (AIR 1996 SC 114). The right to receive medical help in police custody was upheld in the case of *Supreme Court Legal Aid Committee v/s State of Bihar*. (1991 3 SCC 482. Torture & death in police custody have been

condemned & compensation to the victim/heirs has been given by the Supreme Court. (*Nilabati Behera Vs. State of Orissa* 1993 2 SCC 746). General safeguards in police action have been reaffirmed in *D.K. Basu v. State of West Bengal*, (1997 1 SCC 416).

28. The right to a healthy environment including pollution free water and air have been dealt with in a series of cases bearing the title: *M. C. Mehta v/s Union of India* (AIR 1987 SC 1086 and subsequent cases). It also includes protection against hazardous waste. Protection of forests and ecology have also been the subject of a series of cases known by the name of *Godavarman v/s Union of India* (1997 2 SCC 267 onwards). In *CEHAT v. Union of India*(2003 8 SCC 398) the Supreme Court dealt with female foeticides and in *Javed v. State of Haryana*(AIR 2003 SC 3057) it dealt with the two-child norm.

29. A new methodology has been evolved by the Court to deal with such cases. The adversarial procedure used in other cases is not suited to such litigation which requires cooperation from the administration to provide adequate relief. The poor and the downtrodden are unable to access courts for relief because of poverty and ignorance of their rights. Sometimes the rights of the community at large are violated and there is no specific aggrieved person.

30. New Methodology:

- i. The Indian courts have made economic, social and cultural rights more effectively justiciable by developing the concept of public interest litigation (PIL), which gets over the hurdle of *locus standii*. It enables NGOs or other committed third parties to enforce public rights and rights of persons who are unable to approach the courts because of their economic or social condition or for other reasons such as ignorance of rights. Thus the courts, for example, have intervened in Public Interest Litigation to improve condition in protective homes for women or children.
- ii. The courts have appointed fact-finding committees or expert committees to examine the problem, visit the area or the institution concerned and to recommend remedial measures.
- iii. Instead of making one-time orders which can be enforced, the courts have created monitoring bodies to oversee implementation of its orders and directions over a period of time. e.g. the courts have regulated or appointed committees to oversee the functioning of mental homes. The courts have

intervened to improve the condition of persons in police or judicial custody and the conditions in prisons. The Courts have also evolved innovative mechanisms to monitor enforcement of its orders.

31. One of the main grounds on which formerly economic, social and cultural rights were relegated to legislation and executive policies, was the necessity for an outlay of finances necessary for securing these rights. This was considered as the function of the legislature or the executive and not the judiciary. Public interest litigation, which is not considered as adversarial litigation, has found an answer to these objections by involving the State or the public body concerned in formulating a proper programme for securing these rights which can then be monitored through the courts. The Court does not, in effect, lay down policies in the abstract, or without the concurrence of the executive. Unfortunately this does not always happen. Court intervention, however, removes some of the hurdles in the way of adopting proper policies by the Executive and the Legislature. After the promulgation of the Protection of Human Rights Act 1993 in India, the courts have, at times requested the National Human Rights Commission to monitor some of its directions. This has happened for example, in the case of child labour and bonded labour, monitoring the working of some of the mental homes or protective homes for women in the country, or supervising prison administration.

32. Some of the more difficult cases that have come before the courts relate to environmental issues which can, at times, be difficult to monitor. But appropriate orders in some cases can be very effective, as in the case of rehabilitation of persons dislodged by mega projects, or by natural calamities, or cases where environmental protection is possible by banning practices which lead to environmental pollution. Effective monitoring mechanisms are possible in these cases. Judicial intervention must be controlled by the need to issue such orders as are judicially manageable.

33. The other difficult area relates to housing and shelter since funding is a major issue here. In the South African case of Grootboom, the Constitutional Court of South Africa has directed proper programmes for this purpose, rejecting the state's plea of lack of finance. In India some of the cases dealing with slum dwellers have mandated alternative housing for these people. These are new areas of jurisprudence where new types of orders need to be in place in conformity with the principle of proportionality as also the principle of enforceability.

34. Thus Article 21 has generated a comprehensive Human Rights jurisprudence. Is this judicially manageable? Is this jurisdiction an exercise in judicial overreach? Does it impinge on the functions of the administration? There is no doubt that some of this litigation would not have come before the courts if the administration had functioned properly and with a sense of commitment to people's rights. But that does not mean that the judiciary cannot intervene if people's rights are violated. However this intervention needs to be within a systemic framework. 1) There must be clear norms as to who can bring a PIL before the Court. Busybodies and publicity seekers must be eliminated and so must those who seek private gain in the guise of public interest. Only organizations with a track record of public service or those with expertise in the given subject should have *locus standii*. 2) Administration must be heard and its cooperation sought. Where this is not forthcoming, expert committees may be appointed to examine the situation and report to court. 3) The same applies to a monitoring mechanism. The Court should also have its own administrative set up to check periodically whether the Court's instructions are being carried out. 4) Above all, the court should intervene only in those cases which are judicially manageable.

35. The ability of a court to function in this manner, to issue orders and directions against the State, and make it comply with its national and international obligations when it may be unwilling to do so, requires that the judiciary of the country is independent, that judges can function without the fear of losing their job if they give decisions that are not palatable to the executive. The judges must be well trained and well informed, and above all, must be men & women of integrity. As *Dame Sian Elias, Chief Justice of New Zealand* has put it, 'The vindication of human rights in actual cases is left to domestic courts because of the independence of the judiciary.'

36. The right to development is now coming to the center stage of human rights issues. Closely linked with the right to development is the right to social, economic and cultural development. It is being realized over the last few decades that civil & political rights cannot be enforced in a vacuum of social, economic and cultural rights. Eminent judges and jurists of the Commonwealth formulated the *Bangalore principles* in 1988. In Article 5, they laid down, "Both civil and political rights and economic, social and cultural rights are integral, indivisible and complementary parts of a coherent system of global human rights". For example, the equality doctrine has, as an essential element, the concept

of nondiscrimination on the ground of race, religion or sex. Economic, social and cultural rights of minorities, or of women, are closely linked with the right to equality. In the same way, the right to information or the right to education also has an inseverable nexus with an inclusive Democratic system where all have a right to be educated & informed and where human rights of minorities and of the disadvantaged are respected. The old dichotomy, therefore, between civil and political rights on one hand and economic, social and cultural rights on other, is disintegrating; and although the *UN Covenant on Economic, Social & Cultural Rights* talks about progressive realization of these rights, many courts and jurisdictions have carried these rights much further and made them justiciable in appropriate situations.

37. All over the world, as new States emerge from the dictatorial and authoritarian regimes-whether it is Asia, Africa or Eastern Europe, people insist that the Government and the State officials respect their basic human rights. At the *Commonwealth Judicial Colloquium* in 1998 at Bangalore, the statement issued says in clauses 3 & 4 as follows, admirably summing up the role of the judiciary in protecting human rights:

‘It is the vital duty of an independent, impartial and well-qualified judiciary, assisted by an independent, well-trained legal profession, to interpret and apply national constitutions and ordinary legislation in harmony with international human rights codes and customary international law, and to develop common law in the light of the values and principles enshrined in international human rights law.

Fundamental human rights form part of the public law of every nation, protecting individuals and minorities against the misuse of power by every public authority and any person discharging public functions. It is the special province of judges to see to it that the law’s undertakings are realized in the daily lives of the people.”

Human Rights and Juvenile Justice

Lakshmidhar Mishra*

A Child is born. Its birth represents the duplication of human species. It becomes a festive occasion of excitement and joy for the parents, family members and people in the neighborhood. They pray for the health, happiness and well-being of the new born in the words of Shuklayajurveda:

‘May you live for one hundred years

May you see one hundred autumns in their resplendent glory

May you listen to the whisper of the falling leaves of one hundred autumns

May you minstrel to humanity

In the language of one hundred autumns’

But the fervour and joy are short-lived. No sooner the baby is out of the protective warmth of the womb of the mother, it is subjected to a series of vicissitudes. To start with, there is the incidence of low birth weight (42.5 PC of children below 5 years in India are underweight while 69 PC of such children are anaemic) compounded by vulnerability to series of infections (diarrhoea, dysentery, whooping cough, tetanus, measles, diphtheria, TB, pleurisy, bronchitis, bronchial asthma and so on). As the child learns to begin with the first step in the long journey of life, it falters and falls. Every moment of its evolution and growth also becomes a moment of accidents which cause injury and, therefore, anxiety and concern. The pangs of death invade the scene as unpredictably as the joy of birth.

As the infant grows to childhood, it is subjected to an abominable culture of sex based discrimination incomparable in its severity in any other country. As the years roll by the discrimination gets deep-rooted

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and is extended to matters of education, food, dress, health, medical care including specialized treatment.

There was a time when the prevailing perception was that children did not have any rights as they were not in a position to exercise them. Children's rights were viewed with indifference and disdain. Our basic attitude and approach to children and their rights were guided and influenced by Victorian notions which emphasized irrational and unprincipled control over the children by the parents, school teachers, a warden in Observation Home/ Children's Home, a policeman, a brothelowner, an employer including a contractor. Such an abominable and unforgivable attitude and approach were to the total exclusion of the felt needs, preferences and interests of children on the one hand and no respect whatsoever for their views on the other.

Undoubtedly, there has been a sea change in this traditional perception of children's rights. It is now universally acknowledged that children are one of the most vulnerable segments of humanity. It is also recognized that since they are voiceless and unprotected they are in need of social defence. The concept of social defence emerged in shape of a scheme of rights for children such as the Convention on the Rights of Children (CRC) which was adopted by the General Assembly of the UN on 20.11.89. The human rights of children as guaranteed by the CRC can no longer be viewed as a matter of charity or welfare; they are matters of entitlement, sanctioned by international treaties and guaranteed by the Constitution and the law of the land.

What are the various dimensions of child rights?

Child Rights constitute a 'saptapadee' or seven steps illustrated as under:

- I. Child and the family.
- II. Child and Education.
- III. Child and juvenile justice.
- IV. Child and sexual abuse.
- V. Child and adoption.
- VI. Child and work/labour.
- VII. Children custodial /correctional institutions (juvenile Homes/ observation Homes).

Each category represents a victimized situation for the child but regardless of the situation in which the child is placed, the human rights of the child as below are inalienable and non-negotiable. These are:

- Right to food which should be wholesome and nutritive;
- Right to potable water;
- Right to shelter;
- Right to clothing;
- Right to health and medical care;
- Right to education;
- Right to leisure, recreation and other minimum needs for a frugal comfort.

The issues of juvenile delinquency vis-à-vis juvenile justice may be viewed in the above broad perspective. Juvenile delinquency is a logical outcome of the twin problems of poverty and unemployment, unplanned urbanization, unplanned and indiscriminate migration, recourse to violence and vulgarity in public life and emergence of unprecedented depravity and perversion on the part of one human being qua another. Delinquency basically implies children in conflict with the law and such children may be broadly divided under the following heads:

I

Delinquency is imbibed and conditioned by a crime prone environment. Such an environment is conducive to crimes which violate an individual's person, integrity, property and dignity.

II

There is a maladjustment primarily emerging from the home or the family. Some plausible explanation may be found to this process of maladjustment. Disintegration of joint family system, increasing atomization of the family structure, disappearance of marriage as a social institution, increase in unemployment, associated income insecurity, resultant stress and strain contributing to marital discord and prevalence of a repressive and inhospitable home environment are some of the factors driving children to desert their homes, getting into streets in the company of undesirable characters (like Oliver in Oliver Twist of Charles Dickens, the outstanding English novelist getting into the company of Fagin, the bad character) and being responsible for juvenile crimes.

III

The peer group constitutes the centre of life of adolescents who find a home away from home among these persons. There is a strange

and inexplicable identity of interests between these peer groups. The young people grow up in a world their parents did not know. Their immersion in the peer group and rebellious spirit towards adult authority contributes to a generation gap. Parents have no clue about what the adolescents say and what they do. This communication gap facilitates delinquency.

To sum up, problematic socialization, peer group pressure, separation from parents or abandonment by parents, absence of love & affection of biological parents, frustration and disillusionment, emotional insecurity and void, aggressive responses to dominant behaviour, feelings of inadequacy or inferiority complex are factors responsible for juvenile delinquency. While this is the broad spectrum of such delinquency, there is no accurate, authentic and up-to-date assessment of the magnitude of the problem in India.

Juvenile delinquency and Juvenile Justice Act, (care & protection of Children) 2000 as amended up-to-date.

We in India have a rich catena of executive and judicial decisions centering round the central theme of promotion, protection and preservation of the rights of children on the one hand and holistic development of children – physical, mental and emotional on the other. They flow from clause (3) of Art 15, clause (e) and (f) of Art 39, Art 45 and Art 47 of the Constitution.

The whole initiative started with the formulation of a National Policy for Children in 1974 followed by constitution of a high powered National Childrens' Board headed by the Prime Minister of India. To quote from the text of that policy:

'Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens'.

The new National Policy on Children, 2013 is reported to have been approved by the Union Cabinet but is yet to become public. It is presumed that it has retained the same progressive character as that of the old policy.

The Juvenile Justice Act, 1986 (Act 53 of 1986) was enacted by the Parliament with a view to providing for the care, protection, treatment and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent

juveniles. In the meanwhile, at the international level, there were two positive and refreshing developments namely (a) UN Standard Minimum Rules (Beijing Rules) for administration of juvenile justice, 1985 and (b) UN Convention on the Rights of the Child (CRC) adopted by the General Assembly on 20.11.89. This was followed in quick succession by the UN Rules for the protection of Juveniles deprived of their liberty in 1990. Having ratified the CRC on 11.12.92 Govt. of India found it necessary and expedient to re-enact the existing law relating to juveniles. The Juvenile Justice (Care and Protection of Children) Bill, 2000 having been passed by both Houses of Parliament received the assent of the President on 30.12.2000 and came on the Statute Book as the JJ (Care & Protection of Children) Act, 2000. This has subsequently undergone a number of changes by JJ (Care and Protection of Children) Act, 2006. A few other amendments have also followed subsequently.

Certain institutional mechanism have been provided for in the JJ (Care & Protection of Children) 2000 was amended up-to-date. These are.

- Juvenile Justice Board;
- Child welfare Committee;
- Child protection unit;
- Special Juvenile Police Unit;
- Central, State, District and City Advisory Boards;
- Observation Homes;
- Special Homes;
- Children's Homes;
- Shelter Homes.

As far as children in conflict with law or juvenile delinquents are concerned, the procedure as established by law envisages the following 10 steps such as:

Step I. Police apprehends the juvenile in conflict with law.

Step II. Police hands over the juvenile in conflict with law in question to the Special Juvenile Police Unit to be constituted in every district and city which will coordinate all matters pertaining to treatment of the juvenile in question.

Step III. The Special Juvenile Police Unit informs the Probation officer appointed under Rule 85 of Juvenile Justice (Care & Protection of Children) Rules, 2007.

Step IV. The juvenile is produced before the JJB.

Step V. Each Board is supposed to consist of a Metropolitan Magistrate or a Judicial Magistrate I Class and 2 Social workers of whom at least one shall be a woman.

The JJB is expected to conduct an inquiry (in accordance with the provisions of the Act) and complete the inquiry within a maximum period of 4 months unless in special cases the Board extends the period of inquiry (reasons for such extension being recorded in writing).

Step VI. Pending completion of the inquiry the JJB sends the Juvenile to an Observation Home set up u/s 8 of JJ (Care & Protection of Children) Act for temporary reception.

Step VII. Juveniles are kept in the reception unit of the Observation Home for preliminary inquiries and classification according to the age group such as 7-12 years, 12-16 years and 16-18 years with due consideration for their physical and mental status and degree of offence committed.

Step VIII. A bail application is moved and the juvenile is released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person as defined u/s 2(h) & s2(I) of JJ (Care & Protection of Children) Act, 2000 as amended up-to-date.

Step IX. The inquiry is completed and final orders are passed by JJB after hearing the prosecution and defence and by taking recourse to any of the 7 steps contemplated under S.15 of the JJ Act.

The 7 steps are enumerated as under:

- I. Allow the juvenile to go home after advice or admonition, after appropriate inquiry and counselling to the parent or the guardian and the juvenile.
- II. Direct the juvenile to participate in group counselling and similar activities.
- III. Order the juvenile to perform community services.
- IV. Order the parents of the juvenile or the juvenile himself/herself to pay a fine if he/she is over 14 years of age and earns money.
- V. Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for any period not exceeding 3 years and placed under the care of any parent, guardian or other fit person executing a bond with or without surety as the Board may require.
- VI. Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for any period not exceeding 3 years.
- VII. Make an order directing the juvenile to be sent to a Special Home in case the juvenile is over 17 years but less than 18

years of age for a period of not less than 2 years or until he/she ceases to be a juvenile.

No juvenile shall be sentenced to death, life imprisonment or committed to prison, in default of payment of fine or of furnishing surety.

The Board is expected to obtain the social investigation report regarding the juvenile either through the Probation Officer or a recognised Voluntary organisation or otherwise and take into consideration its findings before passing an order.

As far as the second category i.e. children in need of care and protection are concerned, the steps involved are as under:

Step I. All children who are in need of care and protection will be required to be produced before the Child Welfare Committee (CWC) constituted u/s 29 of the Act. There are 5 categories of persons (including the child) listed in section 32 who are statutorily authorised to produce a child before the CWC. Such production should take place within 24 hours from the moment the child is found excluding the time necessary for the journey. Production of the child before the CWC should be accompanied by filing/ a report indicating the circumstances in which the child was found.

Step II. The CWC initiates the inquiry u/s 33 of the JJ (Care & Protection of Children) Act.

Step III. Pending completion of the inquiry, the CWC may send the Child to the Children's Home established u/s 34 of the JJ Act.

Step IV. The inquiry is required to be completed within 4 months from the date of passing the order sending the child to the Children's Home.

Step V. After completion of the inquiry, if the CWC is of the opinion that the child has no family or ostensible support or is in continued need of care and protection. It may allow the child to remain in the Children's Home or Shelter Home till suitable rehabilitation is found for him or till he attains the age of 18 years.

Step VI. If the child hails from a place outside the jurisdiction of CWC, the latter shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child.

Step VII. The children's Home/ Shelter Home shall arrange for the restoration of and protection to a child deprived of his family environment. Such restoration may be to the parents, guardians, fit institution or person, as the case may be.

Three kinds of statutory institutions have been provided for children in conflict with law under the JJ Act, 2000 as amended up-to-date. These are:

- Observation Homes;
- Special Homes;
- After Care organisations

I. Observation Homes:

Juveniles in conflict with the law who are not released on bail are kept here during the trial period.

II. Specials Homes:

These homes are established for the reception and re-habilitation of juveniles in conflict with the law.

III. Aftercare organisations:

These organisations are set up to take care of juveniles after they leave the special home with the central objective of enabling them to lead an honest, industrious and productive life. The period of stay is for 3 years or till the juvenile attains the age of 20 years whichever is earlier.

For children who are in need of care and protection the Act speaks of the following statutory institutions namely:

I. Childrens' Homes:

These Homes are meant for the reception of children in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

II. Shelter Homes:

These Homes are meant for both juveniles in conflict with the law or children in need of care and protection. These homes shall function as drop-in-centres for the children in need of urgent support who may be brought to such Homes by

- any police officer;
- or

- special juvenile police unit;
- or
- designated police officer;
- or
- any public servant;
- or
- children;
- or
- any social worker;
- or
- a public spirited citizen.

There are a few inherent limitations emanating both from the provisions of the law as also from the manner of their implementation. The limitations emanating from the provisions of the law are:

- Four months constitute a fairly long period for a child to be kept in an Observation Home or Children's Home during the pendency of any inquiry. There is a possibility that this duration may have to be extended, if the inquiry does not get completed during the stipulated time limit.
- The nature of services to be provided in these Homes is to be specified in the Rules to be framed by the State Govts concerned. The Act, however, does not provide any insight or broad direction as to how this period during the pendency of the inquiry is to be utilised, measures for safety and security of the child to be ensured and how child friendly the stay of the child can be during this period.
- In the wake of completion of the inquiry and issue of orders by the JJB or CWC, as the case may be, children (both juvenile in conflict with the law as well as children in need of care and protection) are required to be sent to Special Homes established u/s 9 and Childrens' Homes/Shelter Homes established u/s 34 and u/s 37 of JJ Act respectively for rehabilitation. Rehabilitation has to be physical, psychological/emotional and economic; it must promote evolution and growth of human body, mind and spirit to new heights at a tender, formative and impressionable stage of human development. Except leaving the details of rehabilitation and re-integration of children to the mainstream family, society and State Govts through the State Rules to be framed under the Act, the Act does not provide any direction on insight into the nature of rehabilitation/

reintegration. Rehabilitation/reintegration has also not been defined in the law.

III. The JJB constituted u/s 4 of the JJ Act may pass an order u/s 15 of the Act directing the Juvenile to be sent to a Special Home for a period of 3 years. In case of children in need of care and protection the children as per the requirement u/s 33 (4) may be allowed by the CWC to remain in the Children's Home or Shelter Home till suitable rehabilitation in the right type of environment and institutional mechanism obtains in the Homes or till the child attains the age of eighteen years. There is, however, no direction in the body of the law in JJ Act as to how such long periods are to be utilised, the nature of services to be provided and measures for safety and security of the children to be ensured.

This is so as far as the framework of the law goes. Every law is the product of a particular period of time. It can anticipate a few trends and can respond to the social, economic and political compulsions of the time to some extent. No law, however, can be foolproof and there are, despite best of intentions and efforts, bound to be gaps, omissions and ambiguities in the framework of the law itself.

What is more intriguing is that operationally speaking, the picture is not far too bright as was brought out in WP (Civil) no 473 of 2005 in SampurnaBehura Vs. Union of India and others. To quote from the text of the WP itself:

- Large number of children have been lodged in jails even though the JJ Act explicitly stated that under no circumstances whatsoever was a child to be lodged in jail or a police lock up.
- Necessary institutional mechanisms i.e. Remand Homes, Observation Homes, Children's Homes etc. have not been setup in all the districts in most of the States despite clear direction of the Apex Court in SheelaBarseVs Union of India (1988, 4 SCC 2261);
- JJBs/CWCs have not been setup in all the districts in most of the States;
- Juvenile Home for boys at Hoshiarpur and Observation Home for boys at Faridkot in Punjab are analogous to a prison where uniformed and armed policemen guard the Home;
- In the Observation Home at Beed in Maharashtra the children are kept confined to a cell and are only allowed to relieve themselves in the cell for which they are provided with plastic bottles;

- In the Home at Muzaffarpur and Darbhanga in Bihar, the children cook their/own food and clean their utensils as no cook has been appointed; if they do not cook themselves they have no option but to starve.

More than 6 years have passed since the Apex Court disposed off the WP (Civil) No. 473 of 2005 with several directions regarding setting up of Juvenile Justice Boards/CWCs/Homes. As a matter of fact, the Apex Court apart from expressing its displeasure over the inordinate delay which had taken place in setting up statutory institutional mechanisms had fixed a deadline by which all the institutional mechanisms should be setup. The deadline i.e. Aug 2007 is long since over. Neither JJBs and CWCs have been setup in all the 624 districts as of now nor have Observation Homes, Special Homes and Children's Homes been setup in these districts for care, protection, treatment and rehabilitation of children in both categories.

Empirical studies conducted by the author as a Special Rapporteur of NHRC in June and July 2010 in respect of a few Homes in India's most populous State i.e. UP have revealed the following:

At the macro level:

At the top administrative level in charge of prison administration, there is no clarity of understanding of the provisions of the law (S.2(k) and s.2(I) of JJ Act, 2000 as amended up-to-date) that a juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

At the micro level

Visit to Jails at Varanasi and Meerut, examination of history sheets and interaction with inmates confirmed that the latter were invariably below 18 on the date of Commission of the Crime but the jail staff, labouring under a mistaken impression that it is the date of admission in the jail and not the date of commission of crime which is the date to be reckoned with. Such ignorance on the part of custodial officers even 10 years after enactment of a law is simply unpardonable.

The above example indicates and confirms the following:

- Ignorance of law at all levels;
- One mistake gets compounded by another;

- Failure of orientation and training which could have rectified the situation.
- Lack of a humane approach to human issues.

The additional observations which confirm a situation of footloose governance and lack of appreciation of the gravity of the situation which warrants a prompt intervention are:

I. The police escort party accompanies the juveniles in conflict with law to the court where the trial of the juvenile is being conducted and brings them back. The children leave in batches around 900 hrs and 1000 hr and return by 1700 hrs (this gets delayed sometimes). Since there is no court hawalat and waiting space inside the court is extremely limited/they remain in the escort van being exposed to grave risks of shootouts by rival gangs apart from the discomfort of being 'caged and cabined' in dark and narrow celllike police van for hours.

II. Even when juveniles are being transported from the Jail or Home to the Court, they as human beings are entitled to food, potable water and answering the call of nature etc. Empirical studies show that these are invariably denied to them.

III. The juveniles in conflict with law live in a climate of total social isolation. Even though an advocate has been engaged by the State under the scheme of legal aid he has seldom found time to come and interact with inmates about the offence, maximum punishment, bailable or nonbailable, present stage of the proceeding and future course of action depending on the outcome of the proceeding.

IV. District probation officers have not found time to meet and interact with juveniles in conflict with law; they have not taken pains to persuade and prevent them from the path of crime through psychological and spiritual counselling.

V. No serious efforts have been made to induct the juveniles in conflict with law who are totally unlettered into a literacy programme with the help of literate volunteers and that of the State Resource Centre (in this case: Literacy House, Lucknow) which can make available the teaching learning materials and also organise training of the volunteer instructors.

VI. In the absence of enclosures all inmates are forced to take bath in open platforms which affects their right of privacy and makes them vulnerable to attack from others.

VII. The food which is served to the inmates is neither wholesome nor nutritious. Per capita allocation is low and in a climate of high food inflation and spiralling of prices of all commodities including that of

food grains, nutritive value of food measured in kilo calories (it should not be less than 1600 to 1800 kilo calories in case of juveniles between 14 to 18 years of age) is not assured.

Besides, milk or non-vegetarian items do not form part of the diet. The same menu is repeated day after day without any variation which is monotonous.

VIII. Samples of water are never sent for testing in approved PH laboratories to confirm that water meant for drinking is free from excess of iron, sulphur, magnesium, sodium and fluoride, colour and alkalinity. Water storage tanks are not cleaned by applications of the State-of-the-art technology. Quite apart from the fact that this undermines the life of the storage tank, it leads to contamination of water and spread of number of water borne diseases (gastroenteritis, jaundice hepatitis, enteric fever etc.)

IX. There are juveniles who are literally being treated as untouchables, are not acceptable to the family, community and society at large and there is no possibility of social reintegration since the inmates have remained without any contact for years. Extremely difficult from the point of contact are the cases of juveniles who have been deserted/abandoned by their parents or who have left their hearth & hearth due to repressive and inhospitable home environment and who have been victims of mental illness (depression, Schizophrenia etc.) thereafter.

X. Observation Homes are neither aesthetically pleasing nor do they have safe and strong structures with sufficiently large living rooms, adequately lighted and ventilated with adequate storage capacity for water @ 130 liters per head for cooking, cleaning, sweeping, washing, bathing, flushing, gardening and dining, inadequate supply of soap, detergent powder and oil to the inmates for manual cleaning of their clothes and for better personal hygiene. Due to absence of a dining room (with tables & chairs) where food can be served in a homely manner, food in most of the Homes is served in the open buzzing with flies and causing exposure to dust as also causing serious problems of vulnerability to infection.

XI. Environmental sanitation is not in place due to disproportionate inmate toilet ratio, existence of dry latrines and lack of adequate water for flushing. The toilets are mostly Indian commodes whereas western commodes may be needed for those who are physically and orthopedically handicapped & who have been advised against squatting on Indian commodes.

XII. Vocational skill training has several pronounced advantages such as

- combining learning with earning;
- productive utilisation of time;
- promoting physical and mental well-being of inmates;
- developing respect for dignity of labour;
- promoting a spirit of fellowship, group adjustment and solidarity.
- promoting individual & collective self-reliance, Regretfully, vocational skill training by selection of market relevant skills and imparting on the job training has not been tried out in a meaningful and effective manner.

XIII. Health & medical care:

A study has revealed the following:

- mental health of children who joined institutions at a very young age was poorer than those who joined later;
- children in Homes who maintained regular contact with their families during the period of their stay were healthier than those who had infrequent family contact;
- facilities for conducting health examination of inmates within Homes by setting apart a proper examination room with the help of health professionals drawn from CHC/PHC/hospitals are conspicuous by their absence;
- individual health care needs of children are by and large ignored; timely medical care is seldom available due to administrative inadequacies and procedural bottlenecks;
- children suffer acutely if they face a situation of medical emergency especially at night and delays can have disastrous consequences;
- drug abuse and smoking in boy's Homes is yet another major problem;
- homosexuality(including acts of sodomy) and dermatological disorders (scabies, eruptions on the face & skin etc.) are prevalent in most of these institutions.

More than anything else what is most shocking and revolting to civilized human conscience is the presence of a set of callous and insensitive staff who do not show any involvement with the health, education, safety and well-being of the inmates, who remain mostly preoccupied with a eight hour office routine work schedule, are mostly concerned with the loaves and fishes of the office and observance of a tight schedule for inmates without any care or concern for their individual needs, feelings & grievances. To make matters worse, they

at times make the inmates objects of their sexual pleasure, indulge in sodomy and other unnatural offences. The fence starts eating the crop; the protector of human life and limb becomes the worst devourer.

Three and half years after the Apex Court had expressed its dissatisfaction with the slow pace of implementation of JJ Act, it came down heavily on 09-07-2010 on both the Union Govt. and the State Govts/ UTs on account of a tardy implementation of the law. A Division Bench comprising of Justice Sri. R.V. Raveendran and H.L. Gokhale had to observe with a lot of anguish:

'Implementation of the JJ Act is in a pathetic condition and the Centre says that it has nothing to do with it..... If citizens have a feeling that Govt enacts a law and forgets all about its implementation then they cannot be faulted..... The Act envisaged treating minors on the wrong side of the law with compassion and to put them through a reformatory programme to ensure that they do not slip into a bad world when they grow up. That was the precise reason why the Act contemplated proper remand homes, JJBs and CWCs but we have an extremely poor opinion about implementation of all these provisions of law.'

It is obvious from the above judgement of the Apex Court that the provisions of JJ Act have not been put to their full test. The gaps and omissions obtaining in the existing law in regard to the following need to be identified & they need to be bridged by suitable amendments as under:

S.8 (2) Various types of services to be provided by observation Homes for rehabilitation and social integration of juvenile should be broadly indicated in the framework of the law itself instead of leaving them entirely to the State Govt to be specified in the State Rules.

S.8 (4) How the period of stay in the Observation Homes for 4 months or till such time the inquiry is completed will be utilised should be indicated in the framework of the law itself instead of leaving them entirely to the discretion of State Govts.

S.15 (3) Various types of services to be provided by Special Homes which are necessary for resocialisation of juvenile should be broadly indicated in the framework of the law itself instead of leaving them entirely to the discretion of State Govts.

S.15 (9) How the stay of children in a Special Home for a period of 3 years or such reduced period as the JJB may deem fit will be put to optimal productive use in the best interests of the child should be broadly indicated.

S.34 (2) The nature of services to be provide by Children's Homes should be broadly indicated in the framework of the law itself instead of leaving them to the discretion of the State itself.

S.37 (4) The facilities to be provided in the Shelter Homes should be broadly indicated.

Simultaneously, it is necessary to think, reflect, critically analyse and introspect as to:

- What has gone wrong with the current young generation?;
- Why juvenile crimes are being committed?;
- Why such crimes are on the increase?;
- What is the way out?

The First:

There is a degeneration and deterioration in the value system which held individuals and society at one time in the past together. Altruism and catholicity are values of the past which have been consigned to the dustbins of time. These are being replaced by the lure of the Mammon characterised by aggressively selfish motives as also by permissiveness and licentiousness. The joint family system is fast getting disintegrated by an atomized family structure. The ties of the kindred which bound the family and society together are getting loosened and replaced by violent instincts of self-preservation and elimination.

The Second:

The present young generation is in a hurry. There is an obsession with making quick bucks with those who are literate and educated, who have climbed the ladder of their professional career in pursuit of ambition and wealth. They are impatient, restless and desirous of scaling new heights overnight. There is a subsection of this generation who are not so literate or educated, many of them are school and college dropouts they commit crimes in a ruthless pursuit of accumulation of wealth (for example, theft, burglary, mugging, drug peddling and prostitution). Many of them have entered the crime syndicate not entirely of their own volition but at the behest of crime or drug mafia.

The third & fourth:

Regretfully, the problems encountered by young offenders or young people who are at the risk of offending are not taken into account in

national economic development plans with a sense of urgency and seriousness of concern. Juvenile justice is too often simplistically perceived as administration of justice to minors who have broken the law, unconnected to the larger issues of social justice such as poverty, deprivation and discrimination. Marginalized groups are not in a position to influence reform at any level of Govt and society. When tensions rise between social groups it is the marginalized groups who are especially vulnerable to abuse of power by individuals – whether they are police officers, staff in custodial justice & welfare institutions, magistrates or elected representatives of the people (MPs, MLAs, Members of local self-governing bodies etc.).

We have to console ourselves that we have the law, the subordinate legislation and institutional mechanism in place. The direction of the Apex Court both in regard to juveniles in conflict with the law as well as in regard to children in need of care and protection has come like a breath of fresh air. National and International conferences have set the pace and tone of multiple initiatives. All these can be made use of to pre-empt juvenile crimes and pave the way for rehabilitation & reintegration of juveniles in conflict with law as well as children in need of care & protection. We have not so far made enough use of the same. While structures continue to be rickety, the pace of disposal of juvenile justice proceedings continues to be painfully slow & hamstrung by equally motheaten procedures which are evidently not child friendly.

The observation of Justice Sri. J.S. Verma Committee on amendments to Criminal Law (Jan 2013) appear to be quite pertinent in this regard. To quote:

‘We are completely dissatisfied with the operation of children’s institutes. It is only the Magistrate (as presiding officer of the JJB) who seems to be taking all interest in the situation. The sheer lack of counsellors and therapy has divided the younger society into ‘I’ and ‘them’.....

‘It is time that the State invested in reformation for juvenile offenders and destitute juveniles. There are numerous jurisdictions like the United Kingdom, Thailand and South Africa where children are corrected and rehabilitated; restorative Justice is done and abuse is prevented. We think this is possible in India but it requires determination of a high order.’

Human Rights and Police

S.V.M. Tripathi*

Dignity of the individual was dear to the makers of our Constitution as they had followed the torch lit by Mahatma Gandhi. All individuals, especially the downtrodden, were considered as the manifestation of Godhood by the Father of Nation. Consequently, in the very preamble of our constitution, it was resolved to secure to all the citizens "Fraternity assuring the dignity of the individual and the unity of the Nation." To carry out this intention fully a number of fundamental rights were given to individuals, some of them only bestowed on citizens of India. Barring a few exceptions the fundamental rights function as limitation on the State action. Sufficient provisions for protection against violation of Human Rights by non-state players are incorporated in the ordinary laws of the land. We have only to turn our eyes to some of our sub-continental neighbours to realize how important it is to protect the individual against an unfettered State.

Human dignity, enshrined and eulogised in our ancient scriptures, remained, by and large, a dead letter during mediaeval and pre-independence era of our history. The atrocities and cruel indignities heaped on the conquered masses and the debasing disregard for their religious and cultural way of life was almost a universal practice with a handful of exceptions. The British, with their much vaunted adherence to fair play and the principle of "rule of law" showed a strangely twisted attitude towards their "loyal Indian subjects". They gave us an administration which was essentially subservient to their imperial interests. Whenever these interests clashed with the higher values of human dignity the latter was largely ignored. A democratic nation, apparently wedded to the doctrines of separation of judiciary and

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executive and government of checks and balances still gave us colonial functionaries such as the "District Officer". There may have been significant changes in structures of governance in other fields but in the domain of criminal justice system no fundamental changes are visible even 65 years after independence. Witness the cussed reluctance to bring about reforms in the working of the police even in the face of directives of the Supreme Court and the urgings of the National Human Rights Commission.

For a country like ours the dignity of the citizen is a practical necessity. Only then can a milieu be created in which the plant of democracy will flower. It is generally accepted that democracy and dignity of individuals are complementary to each other. One cannot exist without the other. A vicious society, trampling on the dignity of its members produces many tin tyrants, who further demolish the self respect and dignity of citizens. Perhaps we have not yet imbibed this fundamental principle fully and we blissfully consider the dangers, all too visible in our continental neighbourhood, as distant.

Dignity of citizens is the focal point of Human Rights. It can be affected by some actions of various government departments. Keeping in view the frequency of contacts with the public and the circumstances in which these take place, it can be positively stated that all actions of the police affect the society in some manner. "It is hard to overstate the intimacy of the contact between the police and the community. Policemen deal with people when they are both most threatening and most vulnerable, when they are angry, when they are frightened, when they are desperate, when they are drunk, when they are violent, or when they are ashamed. Every police action can affect in some way someone's dignity, or self-respect or sense of privacy or constitutional rights." [*The challenges of crime in a free society. A report by the President's Commission on law enforcement and administration of Justice (USA)*, page 91].

Responsibility for the security of society has always been an attribute of a sovereign State. There are no alibis for failures. Some of us may be familiar with the story, probably apocryphal, of the Caliph who went out incognito in the remote rural area of his domain and found an old woman bitterly weeping in front of the dead body of a young man. On inquiry the old woman informed him that bandits had robbed and killed her son. The Caliph disclosed his identity and expressed sorrow. He regretted that he was not aware of the depredations of such a gang and promised that he would initiate immediate measures

now to counter their activities and get the robbers punished. The lady, expressing the classic perception of the citizenry, said, "If you are not aware of the disorder prevailing in a part of your country then what right do you have of being called the Caliph?" It is another truism to say that the practical responsibility for maintenance of peace and order is always laid at the doorsteps of the security forces of the nation.

Society grants the police a great deal of power so that they may fulfill their responsibilities. In order to carry out these tasks of maintaining peace and enforcing laws, the police officer must possess power. Operationally, power means the ability to make other people conform to the one's desire. The ability to arrest is one of the most obvious elements of the policemen's power. Arrest, however, does not represent their only means of social control. They have various other regulatory powers and a variety of laws have granted them concurrent jurisdiction in special fields such as Forests, Excise, Motor Vehicles, and Foreigners & Drugs etc.

Varying ideas exist within society as to how much power should be given to the police. Policemen may perceive the extent of their power on one level, while society certainly perceives it on another. In the context of USA ".....strong feeling exists among police that they might maintain better social control if legal restrictions do not hinder them as they do at their present level. They also feel that they need more legal powers. Police generally feel that neither judges nor prosecutors favour them by giving them additional power. The officers do not completely agree regarding their full use of legal powers, but they do feel that they could do a more effective job if given more powers" [*Perception of Police legal power*- by J.M.Moynahan & James R.Govanni, The Police Chief, January, 1977]. In the British context also a similar lament can be heard. "It can not be said that the criminal law today is even reasonably effective. Even worse, it actually appears to be unfair. The great majority of weak, simple or incompetent wrong doers obscure its inadequacy to deal with the professional criminal who enjoys too high a degree of immunity from it. I suggest that in those circumstances it is timely, proper and in the public interest to vary the system of investigation and trial so that burden of proof can be more easily discharged by prosecution" [Sir Robert Mark, Commissioner of Police, London, in 1966 Criminal Law Review as quoted at p.114 of *The Police Revolution* by Peter Evans]. The feeling that laws are unduly helpful to criminals and restrictive to police action is more acute amongst the policemen in India. At the same time a considerable majority of

citizens not only feels that the police have too many powers, but also that they are likely to misuse them with ulterior motives.

In these circumstances we have to consider some of the attributes of policemen which form part of the wish list of the common man. They feel that policemen should be service oriented, impartial and secular. They hope for a professional and competent police. The society has serious doubts about the accountability of policemen as they feel that police are not accountable to laws and the people but almost totally to those in authority. The people expect policemen to be disciplined (without which they are practically useless) and with a presence. Honesty in the police is something which people desperately wish for. They also expect that policemen should be courageous but, at the same time, helpful and compassionate.

Some of the qualities which are considered central to the police department, by persons whose opinion we should value can be noticed briefly, if only to illustrate how far we have fallen short of these ideals in the normal mental and physical make up of the common policeman.

"The police that I would maintain would be a body of reformers"- Mahatma Gandhi.

"Police is not only a force but, to my mind, it is much more a service"- Indira Gandhi.

".... In fact accountability of the police is primarily to the people and the people alone"- Dharm Vira, in his address to IPS Probationers.

The concept of Human Rights, which are now accepted as unalienable, non-derogable and inherent for all human beings, has been changing and expanding with times. In India various factors are responsible for this transition: self realisation in the society, efforts of national and international bodies working in this field and, certainly not the least, judicial dicta handed down from time to time. In modern times the crucial role of United Nations, commencing with the formulation of its Charter (1945) and Universal Declaration of Human Rights (1948), as a potent catalyst in this field is well known. It is obvious that the concept is not viewed in the same light and with the same emphasis by all countries in the world. The viewpoints keep shifting on various aspects of Human Rights in developed countries, countries in Asia or those known as 'developing countries' respectively. It remains a nation centric framework but there is unanimity in respect of certain acts being considered as violation of Human Rights by all countries, such as rape, torture, ethnic cleansing, politically motivated disappearance etc..

In India this concept, based in ancient times on the rights permitted by the king, according to his 'Dharma', to his subjects, has had a chequered content and life through ages. However, after independence, thanks to the strong beliefs of the founding fathers, it has been clearly and emphatically articulated in our Constitution and laws. This trend for strengthening the provisions for protecting Human Rights and the procedures for doing so through new laws and regulations has been consistent. The common definition of Human Rights is fairly well understood and the legal definition given in Section 2(1) (d) of Protection of Human Rights Act, 1993 has, with focus on human life, liberty, equality and dignity, for all practical purposes, settled the matter. The courts on record continue to clarify and, wherever necessary, amplify these provisions in a liberal manner. Thus it can be stated with confidence that the framework for protection of Human Rights is clear, strong and well established in our country. If it is still not effectively serving the common man we have to look at factors other than this structure. A sobering thought is that India comes at a poor 134th position out of 182 in Human Development Index in the report for 2009 prepared by United Nations. Also 2010 Environmental Performance Index places India at 123rd position out of 163 countries. Many of the constituents of these indices, such as life expectancy, access to education, actual income, and access to health services, social security and pollution control are common to the concept of Human Rights and have obviously been found deficient in our country.

The emerging philosophy in the field of Human Rights predicates that the State is not only responsible for their violation by its own functionaries but is also responsible if these violations are perpetrated by non-state players. This has been clearly articulated and reiterated by Late Justice J.S.Verma as Chairman of National Human Rights Commission. The State is, at the same time, totally responsible for creating and sustaining conditions of peace and security in the society. We have to acknowledge that for extraordinary situations special laws are required. It is not a good policy to continue with ineffective laws fearing that stronger laws could be misused. The correct remedy is to ensure that wrong and motivated application of any law is almost eliminated. The biggest challenge before India at the present juncture is to ensure a correct and humane balance between providing security to the society and protecting its Human Rights. Good governance is at the root of all efforts for achieving both these objectives. For this purpose it would be necessary to notice some of the specific areas

which need focused attention of the State and its administration as well as the society.

The role and responsibility of citizens, which we tend to largely overlook, are important in this context. Most of us fashion our outlook depending upon the circumstances. For example the author has come across many instances where victims of even petty crimes have complained that the suspects named by them have not been properly thrashed up by the police. In these very cases persons belonging to the other party have complained that the police have transgressed the limitations imposed by law or regulations for protecting human rights while dealing with these suspects. In areas severely affected by terrorism, militancy or insurgency it is possible to visualise certain actions of the security forces, violating human rights and falling outside the four corners of law, which may be initiated, at least partly, due to the pressure of the public to take 'some action' after a particularly heinous act. It is also known that persons in high positions in the executive apparatus of those states are sometimes complicit in these actions, even if they may not be the initiators.

If citizens are steadfast, impartial and vigilant the scale of human rights violations would certainly come down. The fundamental duties prescribed in Article 51A of our Constitution, such as respecting the ideals which inspired our struggle for freedom, promoting harmony and brotherhood transcending religious, linguistic and regional diversities, abjuring violence and actions derogatory to the dignity of women, protecting natural environment etc., if performed by the common man, would certainly contribute to this goal. It is unfortunate that the exhortations of political and religious leaders of the day do not carry enough widespread respect and credibility with the populace which may induce them to carry out their fundamental duties. That is why the homilies of these leaders do not have the universal acceptance by the masses as, for example, a gentle speech from Mahatma Gandhi would have had just over six decades ago.

The major burden in the field of maintenance of peace and protection of human rights falls on the criminal justice system. The police, in a generic sense, are one of the chief instruments for creating and maintaining an environment of peace and order within which legitimate individual and group ends may be pursued. The role of police does not, however, end there. They have two other vital roles to play: Firstly, they have a duty under the law to bring law-breakers and offenders to book. In other words, they have to use their initiative,

where so empowered by law, to stop or prevent human rights violations in society. Secondly, they have to examine their own methods and behaviour and to ensure that the protectors of human rights are not its violators, as the media keeps saying time and again, occasionally based on facts.

It is now necessary now to briefly identify some specific heads and domains where Human Rights protection initiatives have to be taken. The role of police in these initiatives may vary between the boundaries of vital to peripheral but their attitude will have significant impact in all of them.

1. Civil liberties: Discriminatory acts by the State against individuals and groups in exercising their civil rights in various fields are fairly common and a matter of concern. Regulatory powers are used with a bias or executed in an unduly harsh manner. These powers are mostly exercised by field level functionaries. They are now increasingly falling prey to various kinds of extraneous influences, including political pressure. This can lead to injustices which a common citizen would find difficult to counter. Under this head would also be included processing under criminal justice system such as illegal or motivated arrests, dishonest investigation, custodial care in various institutions etc. A very large number of complaints are received by the Human Rights Commissions regarding custodial violence. There are complaints of death in custody or even fake encounters by security forces. In D.K. Basu's case the Supreme Court gave very detailed guidelines to the States about actions to be taken to safeguard the rights of any person when he is taken into police custody. The court even asked the High Courts/State Human Rights Commissions to appoint a committee for specifically monitoring the situation in police custody. Another area where greater care and accountability needs to be ensured is the prison administration which functions largely away from public gaze. One of the specific functions of Human Rights Commissions according to section 12(c) of Protection of Human Rights Act, 1993, is to arrange visits to the custodial institutions for the study of the living conditions of the inmates thereof and to make appropriate recommendations. Transparency, rectitude and sensitivity in the working of these institutions would ameliorate these living conditions.

2. Equality: Considerable social discrimination is still seen in the society although there is a visible groundswell of public opinion against this practice. In rural areas this practice appears more common. Prejudices based on caste and community can still be seen and are

frequently manifested in communal disturbances and caste tensions. Nowhere are the actions of the state apparatus, particularly the police, more suspect in the eyes of the common man, than in the handling of communal incidents. This distrust is exacerbated by the feeling that the state police do not have the required professional competence, impartiality and freedom from stereotyped profiling of the minorities. Till date the sterling efforts of various National Commissions to bring about reforms in the police systems have not established professionally autonomous, competent, law abiding police who are fully accountable to the laws and the public.

3. Treatment of children: Here we have to take note of the United Nation's Convention on the Rights of the Child, adopted in 1989 and ratified by India in 1992. A number of laws and policies have been introduced to protect the rights of the children. An important law on our statute book is the Juvenile Justice (Care and Protection) Act 2000. The enforcement of this Act, which places limitations on police, Observation Homes and even judiciary and gives a role to non government organisations, needs sensitive handling. Free and compulsory education of children till the age of 14 years has now been mandated by our Constitution.

Another problem which needs much greater attention from police is child labour. Not enough public pressure is visible against it. Child labour is a denial of rights. India has the largest number of children doing prohibited labour. According to figures available for 1991, out of 20.33 crore children falling under the definition of Child Labour (Prohibition & Regulation) Act 1986 as many as 1.128 crores fell in the category of child labour besides others who could be termed as potential child workers. One can see them employed in establishments lining the highways and working in inhuman conditions. They are also frequently employed as domestic help. Articles 21, 23(1), 24, 39, 45 and 51(k) are attracted apart from many laws which protect the rights of children. Supreme Court has issued detailed guideline in their judgment MC Mehta vs. Tamil Nadu (1997). There is no doubt that many more children need the protection of the state than are getting it at present but the author found many observation homes housing very few deserving children.

4. Bonded labour: It is prevalent as a means of discharging debt, particularly in the rural areas and violates Articles 23, 39 and 42 of the Constitution. In a countrywide survey conducted more than a decade earlier 190 districts in 17 states were found prone to this malady and

poor persons belonging to Scheduled Caste and Scheduled Tribes were considered more vulnerable. Supreme Court has directed that in certain circumstances a presumption can be drawn that forced labour is being taken. The bonded labourers must be identified, released and rehabilitated. The Bonded Labour System (Abolition) Act 1976 regulates action in this field.

6. Gender Justice to women: Sexual crimes against women and girls have always aroused indignation in the society. Recent heinous sexual crimes in various parts of the country led to forceful articulation of the feelings of society and critically evaluated the attitude of the police in handling such crimes. Traditional crimes against women such as trafficking have to be tackled with a view to regulation as well as rehabilitation. Newer areas such as sexual harassment at the work place have become significant as more women join the workforce. Initiative by National Human Rights Commission has resulted in promulgation of amended Rule 3 C of the CCS (Conduct) Rule 1964. Supreme Court in the judgment, Vishakha vs. Rajasthan 1997, has given detailed directions and clarified many points. Female foeticide is another area which needs considerable attention. In Uttar Pradesh not many cases have been successfully brought to conclusion and pre-natal gender examination, although curbed, has not stopped.

7. Minorities: The rich heritage of pluralism is being assiduously nurtured by the state. However, social structure and mores are still in place which hinder trust and goodwill not only amongst communities but also amongst castes in certain areas. The actions and attitudes of police have been repeatedly questioned by society, courts and various enquiry commissions. Representation of minorities in various services, especially security services, has been a matter of debate and scrutiny.

8. Displaced Persons: This is a significant problem concerning Human Rights. The linkage between sustainable development and Human Rights is sometimes blurred in the eyes of the authorities. Widespread disorders, natural calamities and large development projects are producing massive displacements and very significant human sufferings, which cannot always be measured in terms of money. Persons belonging to the marginal income groups, including tribals, are patently more vulnerable. Very impartial but also sensitive handling is required for equitable help to the needy groups. It is not easy to achieve a fine balance without causing emotional trauma in a sizeable population.

9. Health Security: It is now accepted that violation of human rights can have serious health consequences. In the prevailing conditions

the rights of the poor can never compete against the money power of the rich in the open society. Witness the poor, insufficiently equipped and thinly staffed medical and health services generally available in the rural areas in the country as compared to the “state of the art” healthcare available to the rich in the costly private clinics. Article 47 of our Constitution clearly mentions that State shall regard the improvement of public health as one of its primary duties. While government hospitals in the cities, though bursting at the seam, are barely able to cope with the problem the author’s experience with the various levels of “health centres” in rural Uttar Pradesh does not inspire confidence that such an improvement is likely to be effected in the immediate, or even near, future. We have to consider the general nutritional deficiency as a potent factor against the health security of the society. Availability of genuine medicines and fully qualified doctors, especially in the rural areas is also a serious problem and needs very careful monitoring and management. Absence of doctors from the government health units leads to sub optimal utilization of scarce resources of these units.

10. Food Security: The scope and coverage of the Public Distribution System has been restricted so that only poorer sections get the benefit of subsidised essential commodities. The need for careful management so that the benefit reaches only the entitled group is obvious. Taking into account the dispersed nature of the fair price shops the only way to keep a track of distribution is through active involvement of the local population in the scheme. This has been assiduously attempted by the pioneering efforts of Madhya Pradesh and Gujarat. These states have harnessed the power of Information Technology for plugging leakages, bringing transparency and having periodic social audit. Complaints of starvation deaths keep coming in from time to time from certain areas but the attitude of the authorities is generally defensive.

11. Disabled Persons: Article 41 of our Constitution is attracted in case of persons suffering from disabilities. In the Disabilities (Equal Opportunity, Protection of Rights & Full Participation) Act 1995 disability has been defined. The criteria for determining disabilities are based on medical grounds. It is estimated that 5% Indians suffer from legally defined disability. The aim of the state is to promote equality and full participation of persons in public life and also protecting their economic and social rights.

These are only some of the areas which public servants need to study and understand so that their actions may be more focused and

effective. It can be safely stated that police have the largest role share in protecting Human Rights. Their training programmes contain sufficient emphasis on sensitizing them to their role in protecting rights of the citizens while dealing with them. The problem arises when a significant number of police officers in the field, of all ranks, almost force them to jettison regard for Human Rights to achieve effectiveness and 'success'. Over aggressive actions of subordinates are viewed with some indulgence, if not favour. Rather than monitoring the high handed actions of the police 'on line' senior police officers tend to conduct 'post mortems' after the damage due insensitive attitudes gets out of hand. The demand for professional autonomy to police, in which it is accountable only to the law and the people, would never be met unless the society is on their side. It is, therefore, in the interest of police that they deliberately go about winning the confidence of the society. The experience of the author during his association with Human Rights Commissions generated a definite impression that a significant number of public servants, particularly police officers, react defensively almost as a reflex action when they are directed to look into complaints of violation of Human Rights, against their juniors. They generally feel that such complaints, if found correct, reflect adversely on their own performance. The need for impartial look at the acts of policemen infringing the Human Rights is obvious and unavoidable. This task has to be performed by the police leadership. At present, at least in the perception of society, police leadership displays too much departmental bias in this duty. Human Rights Commission or judicial oversight can at best complement this effort but cannot physically fulfill this task.

Preservation of rights of its citizen is an attribute of a sovereign state. If the general public believes that the police is professionally competent, impartial and is honestly trying to protect their rights, many of the difficulties in performing their duties would vanish. It would also make for better governance. Thus good governance is both a means and an end of protecting human rights. If India is to fulfill its destiny as a leading member in the comity of nations each citizen should have the confidence that he will be allowed to live with dignity. Police has to change its mind set and convince itself that assiduously endeavouring to protect the Human Rights, even though it may not always succeed, is both in its own interest and that of the society.

Human Rights and the Armed Forces

Maj. Gen. (Retd.) Umong Sethi*

Introduction

India is an ancient civilisation. The concepts of 'human dignity' and 'tolerance' are intrinsic to the Indian thought. 'Dharma' is a distinctive concept which personifies recognition of dignified human interaction. Indian notions of 'Vasudev Kutumbakum' (universal brotherhood) and 'Sarvebhavantusukhinam' (may all be happy) exemplifies the cultural orientation of the society at large towards common wellbeing of the human race!

Indian military discourse from ancient times to the modern era is replete with examples of scrupulous adherence to 'soldiers' code of conduct'. Well established conventions were fussily followed in all battles fought during 'Mahabharata'. The Indian military thought of treating the vanquished with dignity has been passed down generations of soldiers. The oft repeated conversation of King Porus with Alexander the Great after defeat in the Battle of the Hydaspes River in 326 BC maintaining to be 'treated with dignity due to a King' illustrates the orientation of the military mind in ancient India. The same mind-set manifested post 1971 war for liberation of Bangladesh, when Indian Army treated over 90,000 vanquished Pakistani soldiers with dignity and repatriated them in good condition. Respect for dead soldiers in the midst of waging war even when their own disowned them, was again witnessed during the Kargil Operations. Indian Army accorded Pakistani soldiers killed in action the dignity of decent military funeral epitomizes the ethos of the Indian military. The compassion and yearning of Indian soldiers, sailors and airmen to provide succour to the marooned during calamities is legendary and acknowledged by a grateful nation.

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These are not put on acts but stem from ethos the Armed Forces of the Union nurture.

Concept of contemporary human rights

In the evolution of contemporary human rights, three generation of progression is often referred to. The first generation rights were 'liberty oriented' espousing civil and political liberties; second generation reforms were termed 'security oriented' promoting social, economic and cultural security and third generation comprises the 'environmental and developmental' rights.¹It is obvious that modern concept of human rights merely reiterates the age-old thought of upholding human rights and dignity. The Universal Declaration on Human Rights (UDHR) 1948 and the International Covenants 1966 are significant in getting international focus on a very important aspect of civilised human behaviour.

In the Indian context, enactment of the National Human rights Act 1993, as amended in October 2006 that covers all safeguards for Human Rights is very significant. The Indian Army took immediate cognizance of the Protection of Human Rights Act, 1993 and established its Human Rights Cell in March 1993, six months prior to the establishment of the National Human Rights Commission in India. Its (COAS') Ten Commandments laying down the Code of Conduct for all ranks operating against armed insurgents and terrorists i.e. Do's and Don'ts are recognized by the Indian judicial system, and by the United Nations.²The National & State Human Rights Commissions leveraging the Constitution and independent judiciary have reinforced India's unflinching commitment to the cause of securing human rights for all.

The character of the armed forces

The inscription on the commissioning parchment of the officers of the Armed Forces issued under the signature and seal of the President of India reads, "*I, reposing special Trust and Confidence in your Fidelity, Courage and Good conduct, do by these Presents, Constitute and Appoint you to be Lieutenant.....in the Indian Army.....*". These words are momentous and bear a testimony of the exclusivity, special status granted and expectations from everyone commissioned in the Armed Forces. The Armed Forces are a creation of the constitution of India unlike other services which are created by an act of Parliament. The nation places on its Armed Forces the onerous task of protecting its

sovereignty, integrity and beckons them to provide a safe environment in which it can prosper. It expects them to epitomise values and high standards of conduct and any failing causes hurt and a feeling of being let down.

The Armed Forces organisational structure sources its human resource pan India without any discrimination of caste, colour, religion or creed. Recruitment is carried out following a well-established formula based on 'recruitable male population' that specifies the numbers that can be recruited from an area to retain a pan India profile and at the same time giving adequate representation to all sections of the society. Once a soldier, sailor or an airman joins the service he/she transcends her/his own identity defined by his/her religion, caste and creed to assume a higher identity that subsumes his/her original identity and thus makes the person very different and unique. The idea of '*SarvDharmaSambhav*' (co-existence of all religions) becomes a way of life. It is not uncommon to see officers and their families practice the religion of their soldiers with devotion. It is usual to have the places of worship of all religions in close proximity of each other. A common celebration of festivals of all faiths is the done thing. It is perhaps this ethos that enables the Armed Forces to act without fear and favour when tackling a sensitive communal situation or when acting in a disaster circumstances. Nation has always praised their actions done in good faith without fear or favour.

Apolitical character which is very jealously guarded by the services has enabled them to be loyal to the nation, the President and no one else thus exemplifying true spirit of the Republic as enshrined in the Constitution. This makes India stand-alone very tall in the entire neighbourhood where military takeovers have been frequent. The Armed Forces of the Union have guaranteed uninterrupted continuation Indian way of democratic life by actively making its members participate in the franchise to elect representatives to govern the country and by owing complete allegiance to the elected government of the day.

The moral fibre is strengthened by maintaining strict discipline and following 'military way of life'. Notions of patriotism, sacrifice, team work, helping the needy are indeed practiced every day. It is not that aberrations or violations do not take place but if they do, they are taken care by swift corrective action. Just to emphasise the argument 'Violation of good order and military discipline' and 'Unbecoming conduct' are actually punishable offences under the Army Act.

Women have been a part of Armed Forces Medical Services for a long time as doctors and nurses. Over the past few years, there has been increase in intake of women as officers in all the three services. Though their entry is restricted to a few domains yet, they have established themselves very well through hard work, competence and dedication to duty in hither-to-fore a male bastion! With this new phase, gender sensitisation has acquired a new element. There have been a few cases where accepted norms of behaviour were violated but all cases were dealt expeditiously under the provisions of the law. In the military the ladies are treated with dignity and accorded special status defaulters are taken to task.

The military does place restrictions on some freedoms of their members for reasons of national security and maintaining discipline of forces designed to deliver under most adverse circumstances. These restrictions are willingly accepted by volunteers who join the service and accept them as way of life. The internal functioning ethos of the services are based on human dignity, camaraderie, respect for fellow beings and open-mindedness for different cultures and religions. These are the very values human rights espouse.

Indian armed forces and UN peace keeping

Over the last two decades or so, the involvement of the Armed Forces in peace keeping operations under the UN has increased manifold. India ranks among the top three countries contributing to UN efforts to maintain or enforce peace in different parts of the world. Indian troops have taken part in some of the most difficult operations, and have suffered casualties in the service of the UN. Professional excellence of the Indian troops has won universal admiration. India has taken part in the UN peacekeeping operations in four continents. Its most significant contribution has been to peace and stability in Africa and Asia. It has demonstrated its unique capacity of sustaining large troop commitments over prolonged periods. Presently, India is ranked among the largest and most reliable troop contributor nations to the UN. India has also offered one brigade of troops to the UN Stand- by Arrangements.³ The leaders and troops assigned for Peace keeping Operations are put through extensive training that is designed to orientate them for the tasks and prepares them to deal with people with different culture and orientation by being sensitive to their ethos. Centre for UN Peacekeeping (CUNPK) has been established at New Delhi to train contingent commanders and others not only from India but from many other friendly countries. It is

noteworthy that the Indian troops have excelled in upholding the human rights of the populations in foreign lands in very trying circumstances. Their actions have withstood international scrutiny and won accolades for their compassion and sensitive conduct.

Human rights training

Training is bedrock of professionalism. For the Armed Forces training is of added importance for it is believed that 'more you sweat in training the less you bleed in war'. The training is divided into Institutional, formation, unit and on job training. The focus is to succeed in war and war-like situations. Thus individual, team and collective skills are honed by a process that lasts a lifetime.

Upholding human dignity, personal values, and mitigation of collateral hardship to the public; these are corner stones of the professional ethos in the Indian armed forces. Such an ethos is systematically imbibed in all ranks through training, motivation, and enforcement of stringent discipline, and monitoring of operations.⁴

On several occasions military has been called out in aid to civil authorities for maintenance of law and order when the situation turned grim. Due to reluctance of Armed forces to get involved in law and order situations and propelled by their insistence to exhaust all resources at the disposal of civil authorities, before requisitioning them, this trend has seen a decline in the recent past. However, the Armed Forces train their leaders and men for such eventualities. Elaborate guidelines exist for commanders and men to follow. Principles of good faith, minimum force and necessity are scrupulously followed. Strict rules of engagement have been laid down. It is emphasised during training that all such actions are open to judicial scrutiny and to that end meticulous record of all events must be maintained. Each separate action must be justified from the point of view of necessity for taking action. All actions must only be taken in good faith which is defined under the Cr PC as, "Nothing is said to be done in good faith if it is done without due care and thought". The commander who orders use of force has to ensure that only minimum essential force is applied and that too for minimum duration it is necessary. It is indeed a tribute to the efficient training and orientation of both the leaders and men that there have not been grave violations reported over the last sixty years.

The training methodology for troops deployed in counter insurgency and counter terror operations has been refined by incorporating the lessons that have been learnt. To cater to the specific needs of a particular

geographical and sub-cultural zone, battle schools have been established. At these battle schools besides nuances of operations, the leaders and men are made aware of the cultural sensitivities of the local population, the accepted norms of behaviour in that society; courtesy to be extended to elders and womenfolk and the like. A lot of emphasis is laid on decency and conduct as laid down in COAS's instructions. These efforts have made appreciable difference in shaping the attitudes of both leaders and men.

Why then allegations of human rights violations?

It can well be argued if the Armed Forces imbibe such high ethos of conduct, are trained as well as orientated to uphold human dignity and rights of fellow being and are subject to scrutiny and monitoring then why there is a perception that they violate human rights? That is not so difficult to answer. The inter-action between the civil society and the military takes place during former's deployment for aid to civil authorities for maintenance of law and order, maintenance of essential services in an emergency or during disaster relief and mitigation. During all these contingencies the conduct of the Armed Forces has been above board and praised by all. The individual or a small groups' misdemeanour falls in the realm of crime and is dealt accordingly under the law.

The only other area of inter-action is when they are involved in conducting anti terror or counter insurgency operations. All most all such allegations come from such situations. It would be useful to examine the environment and conduct of Armed Forces operating in low intensity conflict (LIC) situations.

Conduct of armed forces in LIC and human rights

Historically, the military and the civil society have maintained their independent identities; the military lived in Cantonments and Military Station away from main centres of population. Their interaction is minimal except during emergencies when Armed Forces are called out in aid to civil authorities either to maintain law and order or for disaster relief or to fight insurgency. The armed forces and the civil society, though part of a common social system, best co-exist in mutually exclusive domains. They come together in adversity and work through it—often adopting unorthodox methods to succeed. Even as the success starts to become a reality, a sense of unease sets in among both in keeping with their behavioural ethos. Civil society seeks to reclaim its

natural freedom and space while the armed forces are still in the process of consolidating the gains.⁵

Non-state actors and terrorist organisations inimical to the state respect no laws and covenants and resort to brutality and ruthlessness in their actions while pursuing their nefarious goals. They kill and maim security forces personnel and innocent civilians with equal ferocity. No amount of intercession by the state can possibly influence these to mend their perverse ways.⁶ In such a situation two conditions that are necessary for the army to effectively operate in an insurgency or terrorist situation are: the requisite freedom of action and second, be safeguarded against motivated investigations and being prosecuted for the legitimate actions undertaken in good faith, while conducting operations. Freedom of action involves allowing it certain police powers such as search, seizure, arrest and the conduct of follow up operations. These powers available to the army under the Armed Forces Special Powers Act are still limited when compared to wider powers exercised by civil authorities that include preventive detention, summoning of witnesses, search, seizure and arrest.

There is a perception that while acting under Armed Forces Special Powers Act, the army is the 'perpetrator, the sole judge and the jury' and hence is free to violate human dignity and rights. This is far from the truth. The 'Dos and Don'ts' for conduct of operations have a legal status having been approved by the Supreme Court, thus intentionally violating them would amount to committing a crime. Since there is no provision under the Act to make rules, the army on its own has laid down self-imposed rules and restrictions for conduct of operations, such as: the quantum and quality of weaponry to be employed; rules of engagement; involvement of local police for carrying out joint operations in populated areas, where presence of police can be practically ensured; detain suspects jointly with police and if detained only by the army in some cases, the suspect is to be handed over to the nearest police station within 24 hours; women have to be searched either by the lady police or by ladies of the community—to name a few.

There is a clear distinction between crime and legitimate operations. An analysis of the safeguards envisages protection only for those persons who act in good faith while discharging their official duties. The recent observation by the Supreme Court that "there is no immunity for rape or murder" is actually the practiced philosophy of the army. The case of Major Rehman Husain is a good example of this. It was alleged that Major Rehman had raped some women and a pre-teen girl in Bader

Payeen village in district Handwara on the night of November 6-7, 2004. The army took immediate cognizance and after an inquiry, disciplinary action was initiated. Simultaneously, the J & K police got the alleged victims medically examined and sent their blood samples and vaginal swabs to Central Forensic Laboratory (CFL), Chandigarh for analysis. The results of the tests were presented to the chief judicial magistrate, Handwara on January 18, 2005. After taking over the case, a General Court Martial (GCM) was ordered. The media was given complete access to the proceedings of the Court to give them an insight into the military justice system that is transparent, free from prejudices and pressures. The DNA tests conducted by the CFL were negative and did not prove rape by the accused. The Court Martial continued and recorded evidence relating to other charges. Though Major Rehman was pronounced 'not guilty' of rape; he was found guilty of other charges including misconduct and the use of criminal force. Based on the findings the Court directed that he be dismissed from service. The same was confirmed and prompt action taken solely on merit and without prejudice.⁷

A case here in is being cited to corroborate the Army's professed stand of not shielding the guilty. First is the case of the 'fake encounter at Machil'. It was soon after the encounter it came to light that something was amiss. The army, of its own accord ordered an enquiry presided over by a brigadier to look into the matter. The enquiry was completed expeditiously and the findings confirmed that the encounter had indeed been stage-managed. Due cognizance of the case was taken and legal proceedings began under the Army Act. In the meanwhile, a local court also commenced hearing of the charges. There was a difference of opinion between the civil court and the army. The case was referred to higher judiciary for decision. An impression was created that the army was protecting the guilty. The reality was otherwise. The case has since been handed over to the Army and legal proceedings have begun.

There is a time-honoured methodology to investigate all allegations. Agencies such as the NHRC, the state government, other groups/organisations and individuals who refer cases relating to the alleged violation of human rights or highhandedness directly to the central government or to the army authorities. Each allegation is investigated. The inquiry examines not only the army's account of events but also takes due note of police reports and versions of headmen/respected citizens/civil authorities. After the findings are accepted by the competent authority, the case is processed with specific recommendations up the

chain to ministry of defence (MoD) in the form of a Detailed Investigation Report (DIR). The government examines the case and takes an independent decision to allow prosecution or deny the same. In a large number of cases the sanction is denied. This is primarily because most allegations fail the legal scrutiny when investigations are undertaken.

Out of human right violation cases that had come up for investigation, approximately 72 per cent of the cases were closed at the behest of the civil administration, police, courts and victims, complainants or their relatives. To help the reader draw conclusions as to why such large number of cases were asked to be closed a few points are made. Allegations against the military in an insurgency situation follow a pattern. As insurgency begins to escalate, the influence of the government wanes, the polity is marginalised along with the increase in influence of the insurgents. There is a tendency amongst the weakened leadership to encourage the masses, to highlight the perceived wrong doings of the security forces (SF) to show that it still has some degree of control. During the peak insurgency, pressure is exerted on the populace by the insurgents to project the security forces in a bad light by highlighting fabricated allegations. As the insurgency wanes, the tendency of highlighting the perceived excesses by security forces resurfaces among politicians, opinion makers and civil authorities to reclaim political space. The number of allegations and decibel levels increase exponentially with improvement of the situation without any reference to fact, to score points and exploit emotions.

Out of the other 28 per cent cases closed by the army, 15.6 per cent were more than 10-12 years old. Their details were either not available or if available, too sketchy. Even police investigations were inconclusive. The balance 12.5 percent cases of human rights allegations are those filed by the next of kin (NoK) of army personnel killed in action against terrorists as cases of violation of human rights of soldiers-an aspect that has conveniently been ignored by the human right activists. The Army investigates all such cases before closing them or getting the NoK compensation.

It is a well-known fact that the military justice system is more stringent and expeditious than the criminal justice processes. An assessment of the time taken to dispose of cases, where cognizance has been taken by the army is indeed revealing. Out of 104 cases for which data is available, in 46 per cent (48 cases) punishment was awarded within three months of the offence being committed; In 20 per cent (20

cases) within six months; In 28 per cent (29 cases) within one year. In a cumulative total of 94 per cent (97 cases) personnel were punished within one year. Only two cases took two years to settle. These 104 personnel included 39 officers, 9 Junior Commissioned Officers (JCOs) and 56 other ranks (ORs). The punishment varied from 14 years rigorous imprisonment to cashiering, dismissal from service and others as prescribed in the law.

The army has acknowledged that it made mistakes and it has learnt its lessons. There has been a marked decline even in allegations of human rights violations against the Army. There were as many as 1170 cases reported from 1990 to 99. The number declined to 226 during the period 2000-04 and further to 54 during the period 2005-09. Only 9 allegations were levelled in 2009, 6 in 2010, 4 in 2011 and none in 2012. The cases also included those filed by NoK of soldiers. However, the Army works on the premise that one case is one too many and cannot be left un-investigated. Hence to say that military misuses immunity provided by AFSPA to kill, rape, torture and humiliate is far from true.

Conclusion

It is said, "Never before and nowhere else so many diverse groups of people, speaking so many different languages, following so many different faiths, having different sub-cultures, customs, traditions have got together to make a nation state." India is indeed a land of diversity. Indian Armed Forces pride themselves being guardians of idea of India. They take pride that they embody the spirit and ethos of an ancient civilisation that held light to others. They are indeed conscious of the truth that India holds them in very high esteem but do realise that it is easy to fall from grace. The Armed Forces thus jealously guard their ethos and draw strength from them. No brutalised military has ever won a war or conquered the hearts and minds of people - for it requires strong character to win over them. Any deterioration in work culture, overlooking crimes or shielding the guilty weakens the moral fibre. Weak never become heir to victory and glory. The Indian Armed Forces as an institution are committed to upholding human dignity and rights. They have shown again and again that they are prepared to learn from their mistakes but intentional violation of human dignity is dealt with swiftly and surely in accordance with the provisions of the law of the land.

Endnotes

1. Ranvir Singh and BP Sharma, Human rights and the Indian Armed Forces (New Delhi: Sterling Publishers, 1998), p4.
2. General VP Malik (Retired), Human Rights in the Armed Forces www.orfonline.org/cms/export/orfonline/documents/analysis/A633.pdf
3. Peace keeping <http://indianarmy.nic.in> operations official website of IA <http://indianarmy.nic.in>
4. *ibid*
5. Umong Sethi, Armed forces special powers act —the way ahead (Institute for Defence Studies and Analysis monographs series 7, November 2012) p39
6. Brigadier Gurmeet Kanwal (Retd), Human Rights and the Armed Forces in LIC by KS Sheoran (New Delhi; CLAWS and KW Publishers Pvt Ltd) p vii
7. Umong Sethi, Armed forces special powers act—the way ahead (Institute for Defence Studies and Analysis monographs series 7, November 2012) p48

The Armed Forces Special Powers Act.

E.N. Rammohan*

On the 11th of July 2004, the personnel of the Assam Rifles picked up a young woman from her house in Thoubal district at about 2300 hours. Her house was searched but nothing was found. The Assam Rifles personnel then arrested her and left after leaving an arrest memo stating that they had not found anything incriminating. The next morning her body was found on a nearby hillock with several bullet injuries around her waist and abdomen. The local people who found her body naturally thought that she had been raped. This was followed by the extraordinary spectacle of a group of middle aged and elderly women leading a march to the gate of the Assam Rifles and disrobing themselves demanding that they should be raped. The valley then exploded in a violent agitation that lasted more than a month. Regrettably the reaction from the Centre was most unsympathetic. The statements made by some senior officials were particularly insensitive. One stated that the lady, Thangjom Manorama was a PLA cadre and she was an explosives expert and several security personnel had been hurt and killed by her explosive devices. This seemed to imply that her killing was justified.

Section 5 of the AFSPA states that when a person is arrested, he/she must be handed over to the nearest police station with the least possible delay. It need not be added that when a person dies in custody, the body must be produced to the police who will then arrange to have the inquest done by a magistrate. The crucial question here was why did not the Assam Rifles personnel hand over the body of Thangjom Manorama to the police? This omission leads an independent observer to the conclusion that there was some foul play.

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The most insensitive reaction to the incident and the subsequent agitation were the comments from several Central sources that the demonstration by the middle aged and elderly women was organised by a particular insurgent group and all the ladies were from a village dominated by that group. This was an insult to the *Meira Paibis* (torch bearers) an ancient organisation of the Meithei women. The agitation was not a flash in the pan. It was the result of a series of incidents in which persons were picked up and eliminated by the security forces. The killing of Thangjom Manorama was like a long burning fuse that finally detonated.

As expected, the Central Government referred the issue to a committee to discuss the issue with the people of Manipur and probably other states of the Northeast and recommend actions to the government to make the act more human.

What is the AFSPA and why this act was legislated in Nagaland, Mizoram, Manipur, Assam and Tripura and later in Punjab and Kashmir? The Act was legislated to help the armed forces of the Union that includes the Army, Navy, Air Force and all Paramilitary Forces of the Union operate in insurgency prone areas. Under the Criminal Procedure Code, it is only the police who can arrest a person suspected of committing a cognizable offence and search a house in which stolen property is suspected to be kept without a warrant. Insurgents operate in the hinterland where there are no police stations. When the armed forces operate in the interior areas, it is not possible to take policemen along with them always. This is why the clause in the act that the persons arrested by the armed forces should be produced in the nearest police station with the least possible delay. In all the insurgencies in India in the Northeast, Punjab and Kashmir, regrettably the police was sidelined from the beginning of the insurgency and the Army and the Paramilitary forces deployed never learned to trust the local police. The solid exception was in the Punjab when K.P.S.Gill was the Director General of Police and kept the police in the forefront of the counterinsurgency operations. The crux of the problem lies in the distrust of the local police by the Armed Forces. It is this that leads to excesses.

The second factor is what has been laid down in a famous pamphlet on guerilla warfare written by Carlos Marighella of an obscure guerilla group that operated in Uruguay called the Tupamaros. This pamphlet was called *Mini Manual of the Urban Guerilla*. The pamphlet details how the urban guerilla should operate. It suggested that in a crowded urban environment, a lone guerilla has to lob a grenade at a foot or

vehicle patrol from a by lane and run away. The grenade would cause casualties and grievous injuries to the personnel of the foot or vehicle patrol. The immediate reaction of the remaining security personnel would be to open fire in the direction from which the grenade was probably thrown. Innocent civilians would be in the line of fire and some would die and many would be injured as a result of the firing. The lone guerilla that had thrown the grenade from the safety of a bylane would long since have fled the scene and would be in a safe house. The civilians and the press would naturally blame the armed forces patrol for killing and injuring innocent civilians. The guerilla group would reap the harvest of their operation when the funeral of the innocent civilians killed took place. Young relatives of the injured and dead would sign up to join the insurgent group to avenge the atrocities of the armed forces. I have seen this happen repeatedly in Kashmir when I operated as the Inspector General Border Security Force there in 1993-95. The answer lies in good fire control and leadership. Regrettably there is a school among Armed forces who believe that reacting to such a situation and killing and injuring innocent civilians is the correct action in such a situation! Their logic is that the civilians should learn to respect the Armed forces and force the insurgents not to throw grenades or fire at them.

Nine out of ten times, the Armed Forces patrols or convoys get ambushed because of their own carelessness. Why should they take out their anger on innocent people because of their carelessness or lack of alertness resulting in their getting ambushed? The following are recorded instances of such incidents in Manipur.

Heirangoithing massacre. A volleyball match was being played between the BSF and the Manipur Rifles at Heirangoithing on the outskirts of Imphal on 14 March 1984. There were about 3000 spectators. A detachment of CRPF was on security duty for the match. They should have frisked the spectators and cordoned them before the match started. After that they should have remained with rifles in ready position looking outwards during the match. Obviously they took it easy and were watching the match. Some insurgents taking advantage of the carelessness of the security detachment mingled with the crowd, fired on the CRPF boys, killed one, injured five and snatched 3 SLRs and retreated. Seeing the injured and the dead, the remaining CRPF personnel fired on the crowd indiscriminately in anger and panic, killing 13 and injuring 36 civilians. The commission of inquiry held that the CRPF had fired in rage and frustration after the militants had retreated.

CRPF firing at RMC Hospital. On 2 January 1995, 2 sections of CRPF were guarding some of their colleagues admitted in the hospital. At 0700 hours some militants fired on a CRPF constable Yousef who was washing himself in the toilet injuring him grievously. The militants had struck when the CRPF guard was down. In the morning hours one sentry should have stood behind the sandbagged sentry post with his rifle in ready position. Well after the militants had retreated, the CRPF opened fire in sheer rage killing a medical student from Arunachal and 9 others. This was the conclusion of the inquiry commission.

The Tonsen Lamkhai massacre. On 3 October 1999 an insurgent group ambushed a CRPF convoy at Tonsen Lamkhai in Thoubal district killing 7 personnel. The force returned the fire and killed one militant. Minutes after the ambush, the CRPF stopped a bus carrying polling personnel, forced some of the polling staff to get down, lined up 7 of them and shot them. They later claimed that they were killed in the crossfire.

The Malom killings. On 2 November 2000, an Assam Rifles party was returning from Nambol, when a bomb buried in the berm was detonated as their vehicle crossed injuring some personnel. The site of the explosion was opposite the Imphal airport. A party of the Assam Rifles inside the airport rushed out on hearing the explosion. They saw a party of 10 civilians who were waiting for a bus in the bus-shelter nearby. They lined them up and shot them. The group included a woman and her two nephews. They claimed later that they were killed in the cross firing. There was only the bomb explosion. There was no firing by insurgents on the Assam Rifles vehicle. A young woman Irom Sharmila from Malom has been on a fast since then to have the AFSP act repealed. She has been force fed for the last twelve years.

In each of these cases, no one has been punished for the brutal excesses. The officer who was in charge of each of these detachments should have been punished for not controlling his men. In each of these cases the firing was done in rage and frustration at failure and lack of alertness of the detachment. The regrettable part is that there is a school in the Armed Forces who feel that such actions are justified! They explain that this kind of reaction will teach a lesson to the insurgents not to trifle with the Armed Forces. I was told this several times when I operated in the Northeast and in Kashmir. Each time I retorted that this kind of behaviour had exactly the reverse effect. They would hate the force that did this and would continue to hit that force again and again. And the members of the public would cooperate with the militants in taking revenge on a force that behaved in this indisciplined manner.

In this connection I give the example of an illustrious Army Officer-Lt. Gen. V.K.Nayyar. As Maj. General commanding the 8 Mountain Division in Nagaland, Manipur in 1979, he had deployed his troops in Manipur when the PLA, and PREPAK, two revolutionary insurgent groups were operating in the Imphal valley and in the hills of Manipur. Gen. Nayyar had passed strict instructions that any insurgent arrested by his troops should be brought to Kangla Fort in the heart of Imphal where he had his TAC. HQs. He had located a unit of the local Police Station there. On arrival the police unit located there had to inform the wife or the parents of the arrested insurgent. They were allowed to come and meet the arrested insurgent. If a weapon was recovered from him, this was shown to his relations and he was handed over in Police custody. If there was no evidence of his involvement, he was handed over to his relations by the Police.

Gen. Nayyar was held in the highest esteem by the people of Manipur. It was during his tenure that Bisheshar, the chief of the PLA was captured and the PLA and PREPAK were controlled. There were no complaints of the Army killing captured insurgents or shooting at random and killing civilians. Later, Gen. Nayyar was posted as the Governor of Manipur. The people of the Valley and the Hills held him in high regard. Gen. Nayyar resigned as Governor, well before his term because of political interference in his functioning.

In January 2000, as Director General of the Border Security Force, I was asked to deploy BSF in Manipur to retake 4 subdivisions that had been under the control of militant groups for more than 2 years. We deployed one battalion from Nambol to Churachandpur for road opening duties. In the previous year there had been 21 ambushes on this section of the road. I visited the location of each of the company posts from Nambol to Churachandpur and met the local people and briefed the officers and men. I warned them to be alert as they were in the midst of insurgent country. Hidden eyes were watching them all the time to see the moment when they would slacken. That was when they would strike. I had also warned them that if they were slack and they were ambushed, they should not take it out on innocent civilians. It is to the credit of the officers and men of the 5 companies that during the course of the year, they were caught off guard twice only but on both occasions they held their cool and refused to give vent to their anger by firing on innocent civilians. In one case where they lost a boy, the villagers from where the militants had fired came to the post the next day, consoled the death of the constable and told them that they were grateful to the

force for their restraint. They said that the force that was there before had suffered several firings by the militants and on each occasion they had descended on the village and beaten up the people indiscriminately. The village promised never to allow militants to enter their village. For the whole year after that there was not a single firing attack on the post.

The above two examples give the answer to this problem of torture, custodial deaths and wanton killing of innocent bystanders as in the examples of the Manorama incident, the Heirangoithing massacre, the Tonsen-Lamkhai massacre and the Malom killings. In each of these cases it was a failure of leadership. Each of the officers who were in charge should have been severely punished for their failure to control their troops.

The issue is very simple. In any insurgent situation, the police must operate with every detachment of the Armed Forces. Regrettably the Armed Forces rarely trust the local police in such insurgent conditions. It is for the Police leadership to liaise with the Armed Forces and operate together. There are the same safeguards in section 197 of the Criminal Procedure Code for Central Government personnel as in the AFSP Act. I am quite clear in my mind that the AFSP Act is quite unnecessary. A prolonged Commission was not required to discover this.

It will be clear from the above that removal of the AFSP Act is not going to lead to a cessation of the kind of attacks by the Para Military forces or the Army. In this connection I would like to comment about the British methodology in Counter Insurgency operations. In all the classic Counter Insurgency operations that the British Army was involved in Malaya, Kenya, Cyprus and above all in Northern Ireland, the army operated under the Police. When a platoon or a company moved out on an operation in the countryside or in an urban area, the Police was present along with the Army. If some excesses were committed by the Army the Police would bear witness to that. In India, regrettably, the Army or the Paramilitary Border Security Force operates independently. If they do something wrong, there are no witnesses to the misdemeanour. They do not like to operate with the Police mainly because the Police cannot be trusted. Also we have the detestable practice of committed bureaucracy, where the police will not do anything unless the political leadership approves it. For example if an insurgent has a political connection, the police will not arrest him unless the matter is cleared by the political leadership. The Army naturally will have none of this. There is also the problem of the sympathies of the Police with regional

insurgent groups. The Army will naturally not pander to this. If you want the Army to operate with the Police we must therefore disentangle the Police from the Politicians. If this is done it will also bring considerable professionalism into the Police.

There is also one more factor that holds back professional policing. This is the separation of the Judiciary from the Executive. You will see that in every insurgency particularly in the Northeast and in Kashmir, the judiciary folds up in an insurgent situation. The Government resorts to special detention laws like the National Security Act under which arrested militants are detained for two years. In Kashmir, the Army and BSF seized more than 10,000 weapons in each year of the Insurgency. Under the Terrorist and Disruptive Activities act (TADA) there should have been 10,000 convictions for illegal possession of a weapon in each year. The punishment for possession of a weapon illegally was life imprisonment under the TADA. Not a single case has been sent up for trial!

The professional answer to our problem is as follows:-

The Army and Police should operate together in an insurgency.

The Police should be detached from the clutches of the Political leadership.

The courts should normally function in an insurgent situation. To prevent the temptation of partisan functioning, the judiciary must be made an All India Service and local persons should not be posted in the insurgent affected districts. There should be special courts with day to day hearing to quickly dispose off cases.

Do or will our political leadership agree to this?

Human Rights and Terrorism

Chaman Lal*

The credit for bringing the Human Rights issue into public consciousness and making it a major concern of public interest in India goes ironically to terrorism. With the outbreak of terrorism in Punjab in 1980s necessitating large scale deployment of armed forces in aid of Police and the emergence of public spirited individuals and groups ready to take up cudgels on behalf of the victims of State excesses, the violations of citizens' rights and liberties became a regular feature of law enforcement. Before this, far greater atrocities committed by the police and administration in dealing with the problems of interstate dacoity and communal riots in various States and in fighting insurgency in the North-East had failed to generate any significant reaction among the general public. It is also worth noting that Pakistan could ultimately succeed in internationalizing the Kashmir issue not on the strength of its claims vis-à-vis ours but from the angle of the alleged human rights violations by Security forces. It is thus clear that terrorism plays a crucial role in determining the human rights discourse and shaping the human rights record of a nation State.

Terrorism and State Response

Terrorism is generally recognized as a special method of struggle to obtain specific political results by violence or threat of violence. A terrorist movement has its origin in an uncorrected justice, unmet demand or unaddressed grievance. Its roots can be traced to apathy and unresponsiveness of administration and misgovernance. Terrorism is a product of despair arising from frustration over failure of peaceful methods of agitation for genuine demands and grievances of the

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aggrieved people. Terrorism may also emerge as a product of despair resulting from the inability of its propagators to mobilize and sustain a mass movement for achieving their political objectives.

Terrorist violence has its own anatomy and character and its victims are, by and large, symbolic. Terrorists do not kill out of hatred or anger. The individual victim of terrorist violence, barring the specifically targeted enemies, is really not significant. The psychological impact of the terrorist incident is more important than the physical result of the killing. What really matters is the community at large which the terrorists try to stun and shock by sending a message that they have a cause that has remained neglected and they are prepared to take lives including their own to achieve it.

Terrorism has become a permanent feature of our National life. India, like any other liberal democracy, is more vulnerable to this menace than totalitarian regimes. Its geographical vastness, multiple diversity and the task of socio-economic transformation through democratic means make it a special target of terrorism increasingly viewed as a legitimate tool of social and political change. Emergence of terrorism as a tool of proxy war with Pakistan in J&K has added another significant dimension to the concept of terrorism in India.

Terrorism relates to human rights in two distinct ways. One concerns terrorism as a violator of human rights and the other lies in the State response to terrorism. Terrorist activity entails a series of criminal acts such as death, hurt, kidnapping, coercion, intimidation etc. Terrorism poses a threat to the stability and in extreme cases the very existence of the State. It will not be an exaggeration to say that terrorism is ultimately a threat to human civilization and must therefore be viewed as an enemy of mankind.

The standard government response to terrorism consists of increasing the size and strength of law enforcement machinery and tightening the laws relating to internal security. This, essentially military response, involving massive deployment of Central Security forces, enactment of special laws and general repression of liberal political elements results in large scale violation of people's human rights in the terrorist affected area.

The problems giving rise to terrorism will always be found to be civil in nature calling for fair and firm administrative or political action. Experience shows that seeking military solution to civil problems would only complicate matters and add to the misery of the affected population. It would be worthwhile to ask here whether State police can handle the problem of terrorism on its own without seeking aid from central forces. I would say 'yes' provided the State can ensure normal policing on 24X7

basis and take timely actions to nip every trouble in the bud. Terrorism does not develop instantaneously and without notice. Every militant movement has an incubation period specific to it. The full blown terrorism is preceded by a number of preparatory activities open to detection by a vigilant police. It is a measure of the ingenuity of the local police to read and heed the signs like snatching / theft of licensed arms, attacks on banks and post offices in rural areas, unexplained explosions at remote places, disappearance of school drop-outs and unemployed educated young boys which indicate a militant movement in the making. Experience shows that a terrorist movement gains momentum from the inaction of the establishment in the initial stages with the result that the Police soon finds it beyond competence to handle it on its own and the State Government is compelled to seek help of the Central Armed Forces. The security forces such as BSF, ITBP, CRPF etc brought from outside are recruited, trained and motivated for a different role specific to each. Their unfamiliarity with the background of the problem and sensibilities of the local population compounded by the military orientation of their training inevitably cause atrocities and excesses constituting serious violations of people's human rights.

Special Laws

For dealing effectively with serious threats to public order such as terrorism, insurgency and left wing extremism (LWE), the Police and Security forces need additional powers with extra legal protection. This is provided by enacting a number of special laws such as the National Security Act (NSA), 1985; the Terrorist and Disruptive Activities Act (TADA), 1984 (since repealed); the Armed Forces Special Powers Act (AFSPA), 1958 and Unlawful Activities (Prevention) Act 1992. These laws, enacted in permissible derogation of the International Human Rights Standards to serve the exigencies of an extraordinary situations are governed by the principles of NECESSITY and PROPORTIONALITY. They are meant to be temporary deviations from the norms of the normal criminal justice system. These laws define new offences, lay down a pro-state procedure and make stringent bail and trial provisions. The special powers provided by them carry enormous potential for their abuse despite the inbuilt checks and safeguards. All these laws are subject to periodic review and revision to ensure that they are serving the intended purpose, safeguards are workable and adequate and there is no abuse of special powers.

TADA enacted to deal with the organized violence in the wake of an almost total collapse of the criminal justice system in Punjab became

an instrument of intimidation and corruption in the hands of unscrupulous policemen although the Supreme Court had upheld its constitutional validity. This explains as to why the NHRC supported a campaign for its repeal and opposed its resurrection in the form of the Prevention of Terrorism Act (POTA). The Commission held that the aimed objectives of special laws, TADA or POTA can be achieved by ensuring efficient implementation of normal laws. The Commission sees the problem in implementation deficit instead of legislative inadequacy. The Commission has been consistent in its view that the special laws with their potential for abuse only contribute to state terrorism which lends legitimacy to terrorism and creates sympathy for the perpetrators of terrorist violence.

The Armed Forces Special Powers Act enacted first in 1958 for dealing with insurgency in the North East and later for Punjab and J & K in 1985 and 1991 had come in for strong criticism in Manipur in 2004, in the wake of rape and murder of Thonjum Manorama, allegedly by men of Assam Rifles and hunger strike of the nose-fed Sharmila since 2002. The Jeevana Reddy Committee appointed in pursuance of the PM's promise to replace the Act with a more humane law said in 2005 that 'the Act has become in the NE a symbol of oppression, an object of hatred and an instrument of discrimination and highhandedness'.

The AFSPA brought on the statute for enabling the Security Forces to deal effectively with terrorist and subversive elements gives them special powers of arrest, search, seizure and use of force to the extent of causing death even on suspicion in certain specified circumstances. However, the Act also provides safeguards by laying down that arrested person and seized material must be handed over at the nearest police station with "least delay". Section 6 of the Act offers protection against prosecution without previous sanction of the Central Government. As DGP Nagaland I had seen large scale misuse of Section 5 (requirement of handing over of arrested person to the local police) and Section 6 (requirement of previous sanction for prosecution of offending officials) to be the main causes of unpopularity and mass rejection of the Act. A good number of arrested persons, from among those taken into custody during operations are let off after questioning without bringing their arrest on record. Those who are finally arrested are detained and tortured in Army camps for days before they are handed over to police after fudging the period of their detention. Guwahati High Court has ordered release of many such victims on consideration of Habeas Corpus petitions filed on their behalf.

Reckless misuse of provisions of previous sanction for prosecution has given credence to the argument that AFSPA has an inbuilt impunity

scripted into it. The protection meant for bonafide acts performed in the line of duty which often result in collateral damage to the people trapped in the exchange of fire between Terrorists and Security Forces has, in actual practice, become a protective shield from trial of those accused of heinous offences like kidnapping or murder of unarmed civilians. Withholding of sanction for prosecution of cases like PATHRIBAL incident in J&K where the CBI investigation had established the killing of innocent civilians in cold blood can only mean conferment of a de facto immunity on all transgressions of the AFSPA.

Kohima Incident

In an incident of Panic Fire caused by a tyre burst, a unit of the Rashtriya Rifles (RR) had used short and medium-range weapons including 2 mortar shells & killed seven civilians including a two month old child and injured 24 others in the heart of Kohima town on March 5, 1995. As DGP Nagaland, I took an open stand against Army and convinced the visiting Minister of State for Home Mr. Rajesh Pilot that it was a major blunder caused by panic reaction of a body of professionally incompetent and poorly led men of RR passing through an area of perceived danger in an edgy state of mind. The findings of a Commission of Inquiry headed by Justice D. Sen, a retired Supreme Court Judge, went against the Army but remain unimplemented simply because the Army is determined not to shift from its rigidly held position that the incident was part of a legitimate counter insurgency action. The matter is pending in the Supreme Court since 1996.

It is worth noting that the Jeevana Reddy Commission has while recommending the withdrawal of AFSPA stated that the overwhelming desire of the people of NE is that the Army should stay but the AFSPA should go. The people of NE and also in varying degrees those in many other States consider deployment of armed forces in aid of Police essential for their safety and security. Special laws like the AFSPA made in relaxation of certain norms of the basic human rights to fair trial are increasingly viewed as an operational necessity. They are designed carefully to enhance powers of law enforcement agencies including armed forces in just proportion to the threat to public order they are required to combat. The abuse of these powers resulting in human rights violations can be prevented if the leadership of Police and security forces can ensure that the laws will be implemented fairly and efficiently with full regard for the provisions of safeguards which is unfortunately not the case at present.

As regards the situation in the North East, particularly Manipur, I have no hesitation in saying that the AFSPA has achieved hardly anything other than causing hardships and consequent alienation of vast majority of people. It would be wise on the part of the Government of India to accept the recommendations of the Jeevana Reddy Committee in the light of the widely reported abuses of the Act without achieving the intended objectives and order its withdrawal.

Fake Encounters

Fake encounters are a widely prevalent ugly reality of anti-terrorist operations in our country. It has unfortunately gained credence not only among large sections of Police and Security Forces but also the general Public. The practice is so rampant that people perceive even true encounters to be staged ones. Fake encounters are not a problem but symptom of a collapsing Criminal Justice System and Society's impatience for a quick solution to the problems of organized violence. The practice is considered an operational necessity and justified on the ground that what is legally wrong is morally right. Responsible people in politics, government and even academia have started believing that terrorists cannot be dealt with effectively under law in an environment of fear where everybody including complainant, witnesses, lawyers and judges have been terrorized into silence and the legal system is heavily tilted in favour of the accused. This has led to the emergence of a new cadre of encounter experts in police - Dayaram Naik in Mumbai, Vanzara in Ahmedabad and Rajbir Singh in Delhi.

While working in Punjab in the worst days of terrorism (1987-89), I had realized that fake encounters are not only legally impermissible and morally repugnant but also wrong from practical considerations of cost and benefit. Besides brutalizing the rank and file of Police who consider themselves armed with an open license to kill, it makes them casual and complacent in observing the tactical precautions in operational work with the result that a genuine encounter invariably ends in more casualties of police than the losses suffered by terrorists.

NHRC views complaints of fake encounters with utmost seriousness and had issued in 1996 specific directions regarding encounter deaths. Treating every death in police encounter as a case of homicide, the Commission directed that an FIR U/S 304 IPC should be registered at the Police Station concerned and investigated by an independent agency such as CBI or State CID. Around the same time the Andhra Pradesh High court had issued a similar order first by a single judge and then by a Division Bench. An appeal filed by a State Government is pending

for final decision of the Supreme Court of India. It is worth mentioning here that the Supreme Court has recently ruled in a PIL matter that Fake encounters by Police are nothing but cold blooded brutal murders which should be treated as belonging to the 'rarest of rare' category and police personnel responsible for it should be awarded death sentence.

Global war against terrorism

With the unequivocal condemnation of terrorism in all forms of manifestation and regardless of its motivations at the World Conference of Human Rights held at Vienna in 1993, the confusion arising from the lack of a universally accepted definition of terrorism has been dispelled. The days of considering one person's terrorist as another person's freedom fighter are practically over. Terrorism is now globally accepted as the enemy of peace and rule of law posing threat to human civilization and even to the very survival of mankind.

In the frenzy of war on terror triggered by the 9/11 terrorist attacks on the US, terrorism has become a vital issue of International Concern. More and more States are tightening their legislative and military measures to fight the menace. Although the Human Rights instruments allow nation States to undertake tough measures to protect their people from the threats of an exceptional nature such as terrorism, this is required to be achieved within the framework of respect for human rights, fundamental freedoms and rule of law. Any deviation by a democratic country from a strict adherence to human rights instruments to defeat the enemy would be a tactical victory for the terrorists. It would only mean their success in compelling us to become what they are - intolerant, suspicious, uncivilized and cruel. This is clearly borne out by the disproportionate and not very appropriate US response to the incidents of 9/11. Denial of benefit of 'Due Process' to the detainees at Guantanamo designated as 'enemy combatants', kidnapping and rendition of some detainee by CIA to places where they are bound to be tortured, dilution of prohibition of torture by redefining it suitably are sinister moves by the world's mightiest nation to defy the U.N. mandate that the war against terror has to be fought within the framework of democracy, rule of law and human rights.

Human Rights Violation by Police

Human Rights violations by Police in normal situations with no major threats to Public order relate to matters like free and fair registration of crime, purity of investigation, acceptance of limitations imposed by law on the Police functions and powers, respect for

safeguards provided in law for the protection of the right of the accused person to fair trial and use of proportionate and necessary force in maintenance of order. Although many police officers might be having reservations on this count, my experience tells that hundred percent compliance with law can and must be ensured in the area of normal policing without allowing any relaxation or compromise.

Policing in conflict situations such as terrorism, insurgency and LWE, is, however, a complex and complicated professional challenge. Anti-terrorist operations are a dirty business which cannot be transacted without soiling one's hands. I will not hesitate from saying that cent percent observance of the norms of human rights by law enforcing agencies is not possible in situations of terrorism. Inconvenience and hardship to general Public cannot be totally avoided in anti-terrorist actions like cordon search operations. It is impossible to ensure that the interrogation of a prime suspect believed to be in possession of valuable information of vital use in preventing further loss of innocent lives, like location of a planted Improvised Explosive Device (IED) is totally free of custodial violence.

Most of the violations of human rights reported from anti-terrorist operations are found to be either outright criminal acts like rape, molestation, extortion or legally impermissible acts of overzealous personnel who are keen to produce results by transgressing the limits of law. None of such cases deserves any leniency on the ground of operational compulsion. There is a third category of violation of human rights which are incidental and constitute what is called collateral damage. Death of an innocent person in cross fire between the militants and the Security Forces, accidental death of a person in retaliatory fire aimed in the direction from which the militants have attacked and injuries and losses caused with no malafide considerations would fall in this category. Every case of this nature will have to be decided on merit by a detailed examination of the circumstances. While the victim's right to compensation must be accepted, the personnel of Security Forces responsible for such violations should be held responsible only if they are found to have acted under a malafide error of judgement on their part.

National Security and Human Rights

A recurring doubt in the minds of Police Officers and Security Force personnel on the issue of the human rights concerns a perceived conflict between the security of State and the rights of individual. They consider the two as incompatible and assert that human rights must yield to reasons of State. Some of them can be found to have assumed

the habit of seeing threat to national security in every situation of breach of peace - big or small and justifying denial of human rights to the alleged offenders. They develop a peculiar behavior pattern shaped by the extra legal powers given by the special laws, and the psychological state of their minds while engaged in fighting militancy. Some of them transform their professional work into a personal crusade with a right to success at any cost. They constitute the building blocks of State terrorism which alienates the general public and furthers the militants' cause. Security of State achieved and sustained by suppression of individual rights is a defining feature of totalitarian States. It cannot be a facet of democracy which is essentially governed by the rule of law with human rights as its soul.

A simple reading of the preamble to our constitution would help in resolving the fashionable dilemma. Both the unity and integrity of the nation and the dignity of the individual have been clubbed and mentioned at the same place in the Preamble. By presenting them together as core values, the founding fathers of the Indian Constitution rejected, in advance, any argument which treats the two as incompatible or mutually exclusive. As the dignity of the individual has no meaning if the nation's security is in peril, the unity and integrity of the nation is also worthless if it has to be achieved by sacrificing the dignity of the individual. Since protection of human rights is the quintessence of the concept of human rights, the sanctity of human rights of citizens guaranteed by the Constitution cannot be compromised even in grave situations of Public order such as terrorism. The real test of the constitutional governance of the country lies not in its ability to keep the nation secure but also to enable the citizens to enjoy their rights and freedoms.

National Human Right's Commission (NHRC)

With the establishment of the NHRC the issue of human rights has acquired added significance. Beside its primary function of inquiring into complaints of violations and negligence in prevention of violations of human rights of the people by Public servants, the Commission is mandated to spread human rights literacy and promote awareness about safeguards provided in various laws for the protection of human rights. One of the specific functions of the Commission is to review all factors including acts of terrorism which inhibit enjoyment of human rights and recommend appropriate remedial measures. As most Police officers resent their human rights obligations which demand full conformity with law and no allowance for discrimination and arbitrariness, they

view the NHRC as an adversary that is sympathetic to terrorists and has little concern for the plight of their victim.

The Commission has been consistent in condemning terrorism as an enemy of rule of law and human rights and emphasizing the State obligation to fight and defeat it. However the commission makes it clear this has to be achieved in a manner that is consistent with the laws of the land and our international treaty of obligations.

The Commission is seized of the fact that India has borne the brunt of terrorism much longer than any other country by making countless sacrifices of police and security personnel. The human rights record of India's war of against terror, with no blemishes of the kind of GUANTANAMO & ABU GHRAIB is certainly better than that of the self-proclaimed world champions of human rights.

While looking into complaints of violation of human rights by members of Police and Security forces the commission examines each case on merits in order to ensure justice to all concerned. While it cannot accept any explanation or plea in defence of outright criminal acts such as rape, molestation, killings of non combatants, it carefully weighs the culpability of the man on the spot, in cases of incidental and collateral damage from the totality of circumstances. The Commission cannot be expected to condone extra-judicial killings or fake encounters and atrocities resulting from what is called 'Teach them a lesson' syndrome. While the commission appreciates that check points have to be maintained and search and cordon operations are legitimate security measures, it cannot understand why the Security personnel should be aggressive and rude in the performance of their duties. It sees no reason why children, women and elderly persons cannot be treated with due care and concern while carrying out above tasks. The Commission holds the violation of human rights would stop, if Police and Security forces operate within the limits of their powers, normal as well as additional, honoring the safeguards provided to check their abuses.

The role of media

The media has a vital role to play in any strategy of combating terrorism and upholding human rights particularly in conflict situations. Terrorism would be impotent without publicity which is universally recognized as its oxygen. Dramatic and sensational reporting of terrorist incidents enhances their psychological impact and blunts the sense of outrage of the people making them apathetic to violence and destruction. This provides the terrorists a tactical justification to raise the level of violence from individual killing to group killing to Bus massacre to match the heightened threshold of people's tolerance.

Instead of enlarging the spread and impact of the terrorist acts, glorifying violence and projecting the killers as heroes or Robinhoods, the media should alert the public about the multiple dangers of terrorism and the possibility of restoration of freedom, peace and governance only after terrorism is defeated. Media can be effectively used as part of counter terrorism strategy to expose the criminal character of terrorists carefully disguised under a Robinhood image and pretensions of social reform. This was achieved brilliantly by Mr. K.P.S. Gill in projecting before the Sikh masses the licentious ways and luxurious life styles of their 'Khalistani heroes'.

I am not suggesting that media should not report terrorist incidents. The reporting should be accurate, meticulous, unsensational and to the point. It should carry the essential information without giving terrorists any aid comfort and advantage. Journalists must act with responsibility and bear in mind that all freedoms, including perhaps first of all, freedom of press must be exercised with responsibility. The journalists should be able to draw distinction between the 'Right-to-know' and 'Need-to-know' and understand that the 'Right to know' and 'Public need to know' are not consonant with the right and need to know everything immediately.

Censorship or imposition of legal constraints offers no solution. What is needed is 'Self-censorship', 'Self-disciplining' and 'Editorial judgement' under the dictates of responsibility and a sustained effort to establish workable guidelines for the reporting of terrorist organizations and their activities.

Concluding remarks

Terrorist movements and employment of terrorism as a tactics by insurgent and left-wing extremists pose a grave threat to the future of human rights in India. Violation of human rights of both categories – civil and political rights and economic, social and cultural rights will continue to be caused by terrorist violence and State response to it. As a sovereign state committed to the U.N. mandate to respect and uphold the human rights of all citizens, India has a right as well as a duty to use all means-legislative, administrative, police, military, intelligence and diplomatic, to fight and defeat terrorism. However, the war against terror has to be fought within the frame work of democracy, rule of law and human rights. All agencies of the Government and their officials are required to ensure that every decision and action of their passes the test of being just, fair and reasonable. Respect of human rights must be accepted as an integral part of an effective counter-terror strategy.

The Maoist War on the Indian State and Human Rights Concerns

Vishwa Ranjan*

With the merger of three naxalite groups, the CPIML (People's War Group), MCC and CPIML (Party unity) into CPI (Maoist) in 2004, a highly sophisticated and militarized Maoist group was formed. Unlike its predecessors in the Naxalbari movement and its aftermath, the CPI (Maoist) in its first unity congress declared war on the Indian state. The Maoist documents are quite clear of this intention. Unfortunately, this fact has never been accepted as such by the Central or the State governments. While the Indian Prime Minister declared it as the "greatest challenge to our internal security", it was generally considered a law and order problem to be dealt by the states and the role of the central government was limited to small or large scale help in manpower and material. While off and on the Maoist war has been called 'insurgency' (internal war) in documents of the government, it has not been generally the case. An insufficient definition of a problem leads to inadequate response which has been the case on the Maoist issue leading to continuous expansion of Maoist area of influence in India.

The CPI (Maoist) during its first unity congress brought out a book, 'Strategies and Tactics of Indian Revolution', in which it declared that the central task of the revolution is seizure of political power through protracted peoples' war. It quoted Mao by stating that the seizure of power by armed force, the settlement of issues by war is the central task and highest form of revolution. The book further states that to accomplish this task, the Indian people will have to be organized in a people's army and will have to wipe out the armed forces of the counter revolutionary Indian State through war and will have¹ to establish, in its place, their own state.

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Addressing the Indian state as the enemy the CPI (Maoists) has plans to join the struggle of various sub-nominal movements (which it terms as nationalities) and by so doing expand their theatre of war against the state. It believes that as lakhs of enemy's (state's) armed forces have been deployed since long in Kashmir and North-East alone and as more and more sub-nationalities may come into armed confrontation with reactionary Indian State that is keeping them in a state of subjugation and denying them right to self-determination, it will be difficult for the Indian ruling classes to mobilize all their armed forces against the Maoist forces. "If our Party can lay down the correct basis to win over the nationalities and tribes through our policy of guaranteeing self-determination for the nationalities and political autonomy for the tribes and form a powerful united front against the common enemy with these forces we can spread the flames of armed struggle in almost all the strategic regions of the country."²

Sophistication in Maoist Theory and Praxis

Unlike their predecessors in Naxalbari, the CPI (Maoist) are much more sophisticated in their understanding of Maoist theory and praxis. Additionally their understanding of various stages of revolutionary war beginning from guerrilla stage to mobile stage to finally the conventional stage is much deeper. The art of war under modern conditions consists in mastering all forms of warfare and all the achievements of science in this sphere particularly comrade Mao's contribution in the military sphere.³ They have also developed a more elaborate organizational structure to achieve their objective. Their secret documents seized by security forces talk about an all powerful apex body – the Polit Bureau which has under it a more elaborate Central Committee, Central Military Commission and Central Technical Commission. While the central committee is overseeing political work of the party, which includes constituting "Janatana Sarkars" in base areas (areas which Maoists feel have come under their control), political, cultural, education, the Central Military Commission overseas and plans military training of its cadres (which is also of a reasonably high level). The Central Technical Commission overseas functioning of secret R & D facilities of Maoists to help fabrication of rockets and missiles, procurement of arms, ammunition and explosives. These three bodies are further sub-divided on State, regional and district levels.⁴

Sophistication of Maoist Support Structures

The sophistication of structure is also evident from the networking the CPI (Maoist) have established between their professional revolutionaries and part time members, their urban bases, fractional groups, pro-Maoists/pro-Left civil society groups, human right bodies like the PUDR and PUCL as well as with independent pro-Maoist people in the field of academics, media etc. Over and above these the CPI (Maoists) have learnt to capture the cyberspace. They have developed web-sites and web-magazines to project their point of view, deriminate disinformation and launch a cyber war on the state and all those who are opposed to their way of thinking. Through this network and web-sites the Maoists are able to hide their atrocities committed by the security forces. The network is kept in close contact with other Maoist fronts like All India Peoples Resistance Forum (AIPRF), All India Revolutionary Student Federation (AIRSF), Coordination Centre of Maoist Parties and Organizations of South Asia (CCOMPOSA), Dandkaranya Adivasi Kisan Mazdoor Sangh (DAKMS), People's Democratic Front of India (PDFI), CPI (Maoist) Sub Committee on Mass Organization (SUCOMO) etc.

Human Rights Concerns

Human rights are defined as rights inherent to all human beings, whatever our nationality, place, residence, sex, national or ethnic origin, colour, religion or status. They are the basic rights and freedom that all people are entitled to. Human Rights are based on international consensus. They include the right not be subjected to torture or inhuman degrading treatment or to arbitrary arrest, imprisonment or execution and fair, prompt and public trial. A state is considered to violate human right if it encourages genocide, murder or causing disappearance of individuals, torture or any other form of degrading punishment, prolonged arbitrary detention, racial discrimination etc. The Constitution of India also contains a "bill of rights" in the nature of fundamental rights of the citizens and also a set of Directive Principles of State Policy that are to act as guide to policy making of the state as well as to expand the rights of citizens in the future. "These are the most explicit incorporation of UDHR (Universal Declaration of Human Rights – 1948) in the Constitution and the Covenants in the Indian system."⁵ As India is also a signatory to most of the U.N. and international covenants and charters on human rights it has mandated itself to ensure

that breaches of human rights do not take place on its soil. Indian Parliament passed The Protection of Human Rights Act in 1993. The Act provides for constitution of a national Human Rights Commission. Subsequently the states constituted the State Human Rights Commissions.

Chhattisgarh State Police was aware that in a combat situation between Maoists and security forces human rights of the citizens can be put into jeopardy. It gave specific instructions to security forces operating in Maoist base areas not to open fire unless fired upon and to show great deal of restraint. The DGP Chhattisgarh in his periodic letters to Chhattisgarh Police highlighted the necessity of not breaking the law of the land. The other states affected by Maoist menace must have given similar instructions. While collateral damage cannot be ruled out in a combat situation, especially if encounters are taking place close to villages and possibilities of innocent life being lost cannot be entirely ruled out, such instances have been rare. The fact that in Chhattisgarh many more Maoists have been arrested than killed during encounters also proves that firing by the security forces has been as a last resort. This is not to say that a few cases of human rights violations have not been committed by security forces. The national Human Rights Commission went through more than 200 allegations and found that human rights violation may have taken place in 15 cases. Offences were registered in all the 15 cases. Even earlier Chhattisgarh police had registered offences against security personnel in 11 cases after enquiring into complaints of the villagers. There is always possibility of over reaction by police, especially if it has lost men in Maoist encounters, ambushes, encirclements. It is the responsibility of police leadership that this does not happen. From tactical point of view also torture or killing of villagers, even they belong to pro-Maoist villages, is counter-productive. This fact is understood by most police officers and men. The wide publicity given by the Maoist sympathisers, collaborators and unwilling liberals is part of the Maoist tactics to demoralise the security forces. It is essential to understand the context.

Gross Violation of Human Rights by the Maoists

Thus, while alleged human rights violation by the police gets a fair degree of media coverage, the near daily violation of Human Rights by the Maoist in areas of their domination is hardly reported in the media. Even the civil liberty bodies decide to look the other way on Maoist's holding of 'Jan Adalats' (People's Court) and torturing, lynching or

hanging those villagers who disagree with Maoists over some issues. Of course, the Maoists describe it punishment of police informers. The ambivalence to Maoist abuse of human rights is to such an extent that a few years ago a national level leader of a regional party reacted to cold blooded murder of an alleged police informer with a statement that Maoists have not killed an innocent person, they have only killed police informers.

In the history of independent India one of the greatest carnage was committed by the Maoists at Erabore relief camp (PS Erabore, district Dantewada, Chhattisgarh) on 17th July 2006. The Maoist killed 33 villagers living in relief camps and kidnapped 42 of them. They also torched around 300 houses in the relief camp and adjoining villages. The Maoists boy netted and killed a five year old child and threw a baby child into fire by snatching her from the mother's arms. Apart from the fact that no civil liberty bodies came up to outright condemn the human rights violation of such gigantic proportions, the national Human Rights Commission or the higher court did not think it fit for suo-moto cognition. More recently during the visit of National Human Rights Commission team to Dantewada, the team members were not prepared to hear complaints against human rights violation by the Maoists on the grounds that Maoists would not pay heed to them and that they are chartered to enquire into human rights abuses committed by government agencies. Such an attitude can only frustrate the people who have been subjected to Maoist violence as well as demoralise the security forces which are fighting a restrained battle against the Maoists.

Support of Civil Liberty Bodies to Maoists

Earlier it was emphasized how the Maoists and its front organizations have effectively established network with civil liberty bodies, pro-Maoists groups, academic and media. This network helps the Maoists to get issues they want raised at all India level. Even a factionalized or blatantly false issue can be get raised at various levels like cyber space, media, academic and judicial forums. Interestingly issues will be raised in districts which have such Superintendents of Police who are effective in their anti-Maoists operations. Multi-level denouncement of police excesses in that district, even approaching the Supreme Court sometimes, is intended to put the police on the back foot.

How the networking has been effectively used by the Maoists can be shown by just two examples. Salwa Judum movement started in

2005 in Bijapur and Dantewada areas when the Maoist reached by resorting to violence, large scale migration of villagers under influence of Salwa Judum for safer locations started. The Maoist Polit Bureau declared in 2005 that Salwa Judum would be physically exterminated.⁶ Despite incidents like Erabore perpetuated by the Maoists, when the movement failed to die down the Maoist Polit Bureau Declaration of April 2006 in details discusses the ways and means to isolate and crush "Salwa Judum". The decision pertaining to Salwa Judum can be summarize as under:-

1. decision to isolate and crush Salwa Judum at all India level, Chhattisgarh level and local level.
2. decision to create a sub-committee to contact Indian and International study teams through their open friends and friendly NGOs. The study teams will be allowed in Maoist areas only after they have been properly vetted by the sub-committee and international coordination committee of the party.
3. decision to activate friendly NGOs to step up propaganda against Salwa Judum.
4. decision to create a sub committee to create web-sites and produce propaganda material against Salwa Judum.⁷

What is interesting to note is that the first study team entered Bastar after the Polit Bureau decision followed by plethora of both national level and international level study teams. Here it is also pertinent to ask why no study teams, or civil liberty bodies entered Bastar area before this decision when the activities of Salwa Judum was at its peak. The Maoist network soon painted a movement which started as a reaction to Maoist oppression into a state sponsored vigilante movement launched clear jungle area of population so that it can be leased to multi-nationals for mining purposes. That the allegation was blatantly false could have been proved if even a modicum of counter-check was done by media. However, the influence of lies repeated again and again can have the most derilous effect on sane people.

The recent case pertains to operation Green Hunt. The fact of the matter is that there were two 'Operation Green Hunt'. The first was launched by Naga Battalion in early 2007 which was specific in nature. The second 'Operation Green Hunt' was launched in early 2009 which was more general in its ambit and included large scale removal of mines laid on roads by Maoists and dominate the area through long and short duration patrolling with a view also to identify ambush points to avoid police casualties. The operation also involved an attempt to win

the hearts and minds of tribals living in Maoist dominated areas. It was this attempt that angered the Maoist who in 2010 issued a SUCOMO (sub committee on Mass Organizations) circular with an appeal to oppose Operation Green Hunt. The Green Hunt was soon described at various fora and media as a war by Central Government on its own people.

There is no doubt that the security forces in its combat with the Maoist must avoid human rights violation. However, it is equally important for human rights bodies, especially the National Human Rights Commission, to take a critical view of human rights violation perpetrated on common people living in areas of Maoist domination. They must also take note of false cases of human rights violation against police raised only as a tactics to get the security forces bogged down to a defensive posture against the Maoists. While no civilised government will bill or should tolerate violation of the Human Rights of its citizens under any circumstances, at the same time there is need for the media, academics and human rights organisations to be careful and take a nuanced and balanced view of the incidents in an armed conflict zone lest they become part of psywar tactics of the Maoists or non-state militants and terrorist.

Footnotes

1. Strategies & Tactics of Indian Revolution. Publisher Central Committee (P) CPI (Maoist) Page 36.
2. Ibid page 44.
3. Ibid Page 83.
4. Seized Maoist documents.
5. Manish Priyam, Krishna Menon, Madhulika Banerjee. "Human Rights, Gender and the Environment.
6. Seized Maoist documents.
7. Seized Maoist documents.

Indian Muslims and Minority Rights

Seema Mustafa*

Post 9/11, the West descended on India seeking answers to the one question: why are Indian Muslims not terrorists? I attended any number of 'private' meetings organized by embassies of the Western countries in New Delhi with Muslims in India and their behavior patterns as the sole issue for discussion. In the process one ate a variety of cuisines, joining other carefully selected Muslims to help the missions and their governments understand the 'peculiar' character of the Indian Muslims that kept them away from the turbulence of Pakistan and the Middle East, and secular in their response. Paradoxically, the official Government of India position is that Indian Muslims are not terrorists, even though covertly more and more are being arrested and detained under various terror laws.

The West tried to grapple with the perplexing issue of the Indian Muslim and terrorism with a mixed result, but in the process many of us did find some answers to the questions that were being posed not very delicately at the time. For one, Indian Muslims are not terrorists because Muslims are not terrorists. This simplistic but real response apart, it is true that Muslims in India have never condoned terrorism, see it as cowardly and anti-Islam, and while sharing the anger against the United States for promoting violence in this part of the world do not see counter violence as a means to realizing any end.

There are some basic socio-political reasons for this. Not being a student of history, I am not even attempting to go back in time to understand from the different influences on India, the inter-religious marriages, the intermingling of cultures, and why this is so. But it is a fact that despite being at the receiving end of brutal communal violence,

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the Indian Muslims have never lost faith in the democratic spirit of India. A great deal of this has to do with their involvement in the freedom struggle, their participation in the movements against Imperialism, their support for the Constitution of India, that all said and done is a secular, progressive document, and their inherent faith that they can bring a change through the ballot and not the bullet. Democracy has allowed the Indian Muslims to breathe, with a participatory structure giving them a sense of belonging and a stake in the country's future. Even when the executive has been unjust, the other pillars of democracy like the legislature, the judiciary, and the media have been responsive in highlighting the minorities concerns and problems. Of course, the weakening of these institutions over the years has strained the relationship, but even so there are still sufficient checks and balances in Indian parliamentary democracy that let in the oxygen from time to time. Like the rest of India, the Muslims lungs are not in the pink of health but like the rest of India they too are adjusting to a gasping democracy.

A second reason is that imperialist powers were not able to get their claws into India after Independence where we had the leadership, and the foresight, to pursue our own path. Foreign policy was intertwined with domestic policy, as India decided to march to her own tune of non-alignment and secularism. India took strong positions in favour of the Palestinian movement, linked hands with the Arab world, supported the anti-apartheid movement in South Africa and convinced the minorities that it was in alignment with the developing world and not the global powers. Despite the trauma of Partition, the country rallied behind a Constitution that promised a new, equal, just, responsive India. Held elections while the neighbouring Pakistan got caught in its own web of anger, intrigue and violence, as instead of building the nation, its leadership spent the time in generating hatred against India based on a policy of 'get back Kashmir'. Pakistan became Islamic and not secular, and this gave a handle to the religious groups to spread their wings through new found legitimacy. Violence and terror became the weapons of the new nation, to first 'reclaim the legacy of Partition' namely Kashmir and then to retain its influence and control over Afghanistan. In both the cases, the West helped by looking the other way when the Kashmiri terror groups were hitting the Indian side of the state hard; and by actively arming and funding and nurturing 'mujahideen' drawn from Pakistan and the Arab world to fight the Soviet Union during its occupation of Afghanistan. So while in one country Muslims were living

according to the over arching tenets of Gandhi's non-violence doctrine, in the other, Muslims were being grouped around a doctrine of violence that justified terror and war.

A third reason is that Indian Muslims thrive on plurality. The unity in this diversity linked them with the same issues and concerns as the rest of the people of this country. They were not in border states where opposition often takes the form of secession and in this huge country of a billion people, even the conservative Muslims could, and can, find a non-Muslim platform to support them. For instance those concerned over the Indian government's support for Israel find themselves on the same page as any number of progressive organizations demonstrating and seminaring on the same issue. Those wanting to shackle their women under conservative interpretations of the Sharia, find considerable opposition from within the community and support from right wing groups of the other religions. The point is that it is impossible for the Indian Muslim to feel isolated in India on any issue, as he or she finds sufficient support, or opposition, from the millions of Indian citizens. So anger rarely turns into frustration of a kind where the Muslim youth is motivated to resort to terrorism.

A fourth reason is the secularizing impact of religious diversity. There is a live and let live attitude that works for Hindus and Muslims in this country, and except for the odd incidents where political parties with vested interests, work together for communal violence, the majority of Hindus and Muslims live with temple bells, kirtans, azaans from the mosques, and give way to each others' processions and religious beliefs. Bindis, anklets, mehndi, chadars, sufi chants blend into a harmonious whole, as both Hindus and Muslims flock to shrines such as the Ajmer Dargah. So while there is a level of possessiveness that is exploited from time to time by the communal forces, there is also this intermingling that creates a space of tolerance and goodwill. The result is that even while I feel there should be more information and less ignorance about each other's faith, beliefs and way of life, it is difficult for any right wing group to indoctrinate more than a handful of people with hatred and an urge to kill. The intermingling comes in the way of creating unadulterated hatred of the 'kafir' as the Indian Muslim sees his fellow citizen as a God fearing person as well, and of course vice versa.

Besides, the Indian Muslim does not believe in suicide, let alone suicide attacks. Not a single conservative Muslim I have spoken to over the years has even vaguely condoned suicide terror attacks, in fact

has condemned this in strong words. Suicide in Islam raises the connotations of Hell, and martyrdom by suicide is seen here in India as a devilish concept.

The Indian Muslims have, thus, not felt the need to take the law into their own hands. They have been trained in peace not in violence. They live in a country, where at least in the written Constitution, and the rule of law does not condone discrimination and injustice, and are part of a community that has denounced terrorism over and over again. Muslims are not an isolated monolith in India, but an interactive community that sense the air they breathe and are part of the political aspirations of India. They are not looking for a separate state as they are part of all states, they are not interested in 'liberating' Afghanistan as they do not identify with these causes, and while they remain concerned about the Zionist expansion of Israel and the marginalization of the Palestinians so are so many thousands of other Indians.

But in the process there have been problems and concerns such as the arrests of hundreds of innocent Muslims who have been jailed for years without trial for terror attacks they knew nothing of. The intelligence agencies have given birth to a term 'Indian Mujahideen' as justification for these arrests, but the group is totally without shape or substance. There is no leader, no structure, just a vague body that emerges to justify large scale arrests by the security forces in different parts of India. Nothing is known about this organization. So while one is not at this stage saying that the organization does not exist, I do wonder with the Muslims in India whether this organization does exist. Or is it just a creation of the shadowy agencies to keep themselves on the alert, and remain involved in offensive operations to ensure that Muslims do not give birth to terrorism in India? Perhaps, and again perhaps not. But the agencies and the security forces do need to compile more data to give a body to the presently nebulous Indian Mujahideen and their supposed 'sleeper cells' that are referred to every time the Indian authorities perceive the need for a 'crackdown'.

"Are Indian Muslims scared, is this why they are keeping away from terrorism?" was a question asked by visiting officials and diplomats of the Western world. Some might be prone to answering this with an affirmative 'yes.' But in doing so they will fall into the trap of projecting terrorist violence as a courageous, rather than the cowardly act it is. Terrorism emerges from indoctrinated fear. Fear of the unknown, fear of religion being 'swamped' by others, fear of poverty, fear of Allah, fear of isolation, fear of reprisal, fear of the 'other', the indoctrination is an intricate web preying on the insecurities of young minds.

Yes, the Indian Muslims are fearful of violence of the kind that killed thousands in Gujarat; they are scared of mindless arrests by the security forces that have destroyed lives and families; they are terrified of being pilloried and targeted. But strangely enough the Indian Muslims still retain faith in the institution of democracy, and believe that when it comes to the vote their ballot is as free as any other. It is this democracy that makes the Indian Muslims vocal, as we journalists have found in every single election, national or for the state Assemblies. They speak of their problems, their apprehensions, their anger, their resentments; they list their demands; they make their reservations about political parties and candidates clear. Also, despite the stereotyping and the communal violence, the Indian Muslims are not fearful of practicing their religion. They exhibit a strange confidence as they respond to the azaan on loudspeakers in mosques and line up on public roads to offer their Friday prayers despite Gujarat and all the rest of it.

But weak governments and increasingly aggressive communal forces are cutting into this confidence. It was perhaps a coincidence, but one that illustrates the points being made, that while writing this chapter the morning newspapers brought home the suffering of a Muslim youth, 32 years of age in 2012, who was arrested for serial blasts in and around Delhi in 1996-97. Like many other Muslims across the country, Mohammad Amir Khan has spent his entire young life in jail for a terror attacks he knew nothing of. Despite being in solitary confinement for long periods in jail in sub-human conditions, Amir recalled the principles of non-violence espoused by Gandhi, and made it clear that he was now going to try and pick up the pieces. There was an air of resignation in his words, helplessness but yet a realization that he had to make life work for him again. As he said he was beginning again from 'minus zero'.

It is not fear, but this resignation that is evident while interviewing the Muslim youth being released by the courts after long periods of incarceration, for terror attacks they knew nothing of. There is anger that is not pouring out as it has been replaced by silence. At the same time there are voluntary groups and individuals, cutting across religion, who manage to make some amends. They take up the individual cases, they take the matter to court, they approach the media, and they create a support system, however fragile it might be, to help the victims tide over the trauma. The state does little to help, however, with no apologies for the illegal detention, no relief or rehabilitation and violation of their rights as individuals. The youth are able to vent their anger in

voting against governments and political parties, but if this trend of hounding and persecuting innocent minorities continues it will create a situation at some point in time that becomes impossible to resolve.

These do raise serious questions regarding human rights violations of the minorities by way of indiscriminate arrests and detentions in the wake of terror related incidents, and to an extent based on general prejudice after each incident. After Malegaon (2006) Ajmer and Hyderabad (2007) blasts a number of Muslims were arrested and chargesheeted. After spending all these years in jail now it transpires that an extremist group belonging to the majority community was responsible for these. This under-scores the need for transparency in investigations of terror related cases and some kind of institutional attention to allay the apprehensions of the minority community in this respect.

Another problem is the continuing discrimination in the employment of Muslims in agencies such as the Research and Analysis wing (RAW), and the defence services. RAW has an unwritten policy that Muslims will not be recruited, while the defence services do employ the minorities but far under the required percentages. These constitute violation of their right to employment without discrimination.

The Indian state does not actively promote terrorism, like Pakistan, and the foreign powers that created havoc in Afghanistan for which the indigenous Afghans are still paying the price. But the Indian state creates conditions that have been organized into protest and violence, such as the Maoists in large tracts of states like West Bengal, Andhra Pradesh, Chhatisgarh, Jharkhand, Orissa. Acute poverty, terrible neglect, and the complete absence of government has helped Left wing extremists gather support for their ideology in these backward areas in return for some levels of sustenance and security.

The Indian Muslim has chosen to side with the democratic political forces, shunning attempts by some of the more conservative and fanatical Muslim groups to organize their insecurity into levels of protest. Interestingly, even the Indian version of the Jamaat-e-Islami, that is far more virulent in Pakistan, has adopted a democratic hue. It seeks support through elections by supporting the odd candidate in the hope that this will bring them the Muslim support. So far, they have ceased to make a dent. In fact so desperate did the Jamaat become that it set up a forum of secular individuals from all communities, most of them well known in their respective fields, that held meetings and conventions across the country. Muslims were attracted to these meetings because of the secular

reputation of the individuals and not the Jamaat, but since the Muslim masses refused to switch loyalties from the secular to the more fundamentalist path, the Jamaat-e-Islami dropped this initiative altogether as a failed venture.

The Jamaat again sought to cash in on the popular anger amongst Muslims against the United States for unleashing a wave of terror in the Muslim world by allying itself with the Left forces. It became a participant in the nationwide campaign against the India-US civil nuclear energy agreement, joining in demonstrations and protests, often uninvited. I myself was invited several times by key Jamaat leaders to address meetings on the issue along with nuclear scientists and Left leaders as well. After the initial hesitancy we realised that the Jamaat was taking exceptional care to keep the platform secular, and while the audience consisted of its cadres there was little said or projected that countered out secular beliefs. But this was a relationship based on mutual convenience, with both sides hostile about the others intent, and the relationship was of a short duration breaking with the elections in Kerala and West Bengal in 2011. Since then, the Jamaat floated what it calls the Welfare Party that started appearing at progressive demonstrations to gain some levels of credibility. It did field a few candidates in Uttar Pradesh during the Assembly elections in 2012, seeking an alliance with the secular parties, but was not seen as viable and was rejected by the political parties as well as the Muslim masses.

The Muslims in India do not like religious outfits adopting political hues. The two are seen as separate here, even though the conservatives claim that in Islam religion and politics are inseparable. But the Indian Muslim has decided to keep the two separate, and does not take kindly to attempts to influence the political vote with a purely religious argument. I remember my first visit to Deoband, the school of Islamic thought, as a cub reporter. I was surprised to find scores of young, intelligent young boys receiving an education that did not prepare them for the modern world, only for seminaries. Some with a little more ambition told me they would look for jobs as interpreters for Arabic, and perhaps a handful did succeed. I spoke to the head of the institution at the time, this was in the early 1980's, and found him to be far removed from the times although, of course, he was clearly a good, decent gentleman. He got irritated with my line of questioning that was basically about how religious education today could answer the problem of unemployment for the Muslim youth. And why Deoband insisted on giving fatwas that served to establish Islam as a regressive and not a

progressive religion. Is there not need to re-interpret the rather open ended verses of the Quran, I asked. I did not get any answers just a sermon about my ignorance.

Interestingly, the Muslims despite their respect for Deoband and its scholars have chosen to ignore the various fatwas that have a political flavour. Muslim women, for instance, have given short shrift to a fatwa questioning their right to contest elections with a group of young women shrugging off my questions on this with a, "Well we don't think these are binding". Similarly, the Imam of Delhi's Jama Masjid, both father and now the son, have lost credibility because of their political fatwas directing the Muslims to vote for one or the other party. The Muslims living in and around Jama Masjid make it clear that the Imam is there to lead the prayers, and not to tell them who to vote for. To the last person, from the shopkeeper to the rickshaw puller, to the small time politician the response was the same, "We will vote who we want to vote for, this is not the Imam's business". The politicians have finally realised this, and the Imam is not as actively sought after as he was say 15 years ago by the political parties seeking a fatwa in their favour. It is a similar case with most clerics in the states now, with the Muslim voters openly ridiculing the 'mullahs for sale' and the politicians who line up to purchase them. In Uttar Pradesh where the Muslim vote is at its most influential they have repeatedly rejected local and so called 'national' fatwas and voted for the political party they feel most suited to fulfil their demands and needs.

The religious influence thus, is weak on the Indian Muslims when they exercise their political rights. They do not vote for the protection of their religion, as that is already guaranteed under the Constitution of India. And in their long experience the law works better than the clerics in this aspect. Terrorism is not in their blood, as they are part of India where this has not taken hold, and violence as a means to any end.

Just for the record, it is interesting to note that at the end of the long weeks of discussions with Muslims, the United States Ambassador to India David Mulford sent a few cables to the US State Department in 2005 that were released by Wikileaks more recently in 2010. The following cable according to Wikileaks had been sent by David Mulford to the US State Department in December 2005, "India's over 150 million Muslim population is largely unattracted to extremism. Separatism and religious extremism have little appeal to Indian Muslims, and the overwhelming majority espouse moderate doctrine.

With Indian Muslim youth increasingly comfortable in the mainstream, the pool of potential recruits is shrinking, while Muslim families and communities provide little sanction or support to extremist appeals.

Islamic extremism is not popular in India and most adults are not interested. This forces extremists to pitch to young and naïve audiences who may be more amenable."

The cable by Ambassador Mulford went on to say And again in another cable, "India's Muslim population is estimated to be as large as 150 million (the second largest in the world after Indonesia), and suffers from higher rates of poverty than most other groups in India, and can be the victims of discrimination and prejudice. Despite this, the vast majority remain committed to the Indian state and seek to participate in mainstream political and economic life."(TwoCircles.net)

There was widespread anger and demonstrations in Delhi over the sudden arrest of a well known Urdu journalist Syed Mohammed Ahmad Kazmi for alleged involvement in an attack on an Israeli diplomat in February 2012. After denying Israeli claims that the attack in which the diplomat was mildly hurt, was planned and executed by Iran, the UPA government in Delhi in an about turn arrested Kazmi who was working with the Iranian news agency. Such was the level of disbelief that journalists and activists immediately came out on to the streets in protest, maintaining that the government was buckling under the combined pressure of the US and Israel. Journalists who held several meetings on the issue pointed out that Kazmi was a regular visitor to West Asia and his reports had contradicted much of the propaganda of the US and Israel on the situation in Iran and other countries in the region. There was some disquiet amongst the secular ranks when the Jama Masjid Imam Syed Ahmed Bukhari joined Kazmi's family in support, and organized his followers into a fairly vociferous protest against his arrest. However, many took it in their stride pointing out that there was sufficient room for everyone on this issue. And as a senior journalist pointed out that it was good to see a Sunni cleric protesting against the arrest of a Shia journalist.

Human Rights and Media

Ram Bahadur Rai*

The role of human rights in the modern world has expanded. This is in response to the need of the times. The human rights issues are becoming crucial to human society. Numerous international treaties and conventions have been formulated and signed to preserve and secure these rights. Many important conferences have helped in defining the contours of these rights. These have led many countries to adopt them through legislative and constitutional measures. India has also set up a Human Rights Commission, which is an active and vibrant entity.

The human rights concept is every expanding one and has come to encompass subjects like right to education, health, life, justice, freedom of speech, forming associations, to information and even to right to resist injustice. Eternal vigilance to protect these rights is essential and media has a meaningful role in this endeavour. It has to lead a movement to prevent suppression of human rights. We know that those who are powerful often try to suppress these rights, and they include not only the states and the governments. Even the Jihadis and terrorists violate human rights. It includes even those who seek to impose their arbitrary values on society. These ranks extend to institutions, individuals and even the NGO's. Even those who protect, sustain and encourage exploitation of the weak in various forms are guilty of violation of human rights.

An independent media in a democratic society can become a powerful tool and medium for the protection and promotion of human rights. It can arouse the people against the misuse of power to violate the rights. In this regard the Nobel Laureate Amartya Sen has made an interesting comparison between China and India. Both countries gained independence at the same time. China achieved rapid growth in many

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social and economic sectors. But India left China behind in one field. Independent India conquered the curse of drought. It became possible because of existence of multi-party system and an independent media. The independent media persistently highlighted the misery of drought affected regions, compelling the govt. to adopt measures to deal with the situation.

Right to food is part of Human Rights and starvation constitutes its violation. An independent media can play a role in mitigating such rights. For instance, the issue of gang-rape of a girl in a moving bus last December (2012), was seriously taken up by the media leading to a popular movement and upsurge and the society stood as one against this inhuman act. The govt. took notice and came up with a legislation to prevent such incidents. Media can and must come to the rescue of citizens on such issues. But those inhuman acts of rape and molestation are not abating with such acts being reported almost daily. Reportedly at times even the police tries to suppress such incidents, which adds to the responsibilities of the media. Media can not remain satisfied by reporting these as mere incidents. It should also make efforts to go into the root causes of such incidents with sensitivity eschewing sensationalism.

There are indications that the role of media in India in protecting human rights is increasing and is likely to expand considerably in future. This is being helped by the expansion of the media and its consequent reach and influence in society. A study by the World Association of Newspapers has revealed that in the West the popularity of the newspapers is declining and that of the electronic media is expanding. But this is not the trend in India where media is expanding in all its dimensions. These include, newspapers, television, radio and internet. There is potential in the country and this expansion is expected to last several decades. The very spread and presence of media in various forms can provide wide coverage to the issues concerning human rights. However, unidimensional coverage of human rights issues detracts from its effectiveness and leads to neglect. Media traditionally reflects society and intensification of the human rights movement will not only arouse media's interest but will also help media's understanding of the Human Rights issues and participation.

The internal structure of media-owning families itself is a major impediment in the coverage of human rights concerns. To understand its implications one will have to analyse the beats being allotted to the correspondents. Are the beats being allotted these days which are connected with the problems of Human Rights. e.g. workers' and the

labour sector? This beat has now disappeared from the media. Instead now correspondents have beats covering industry and business as business correspondents. Such correspondents necessarily revolve around the leaders of the corporate families and thus look at the labour issues also from the prism of corporate leaders. Many such examples can be quoted. In the eighties of the last century the Indian Express carried out an experiment in Chandigarh. The paper created a new beat to cover agriculture and appointed an expert in agriculture as the correspondent. The correspondent was none other than Devendra Sharma who is today reckoned as an expert in agriculture. Today if one scans the hindi and english newspapers, their bureaux have no correspondent covering agriculture, the heart-beat of India. Even where such a column exists there is no coverage of issues concerning farmers. In this era of globalization it constitutes an attack by corporate families on agriculture sector. Thus the internal structure of media cannot be expected to be concerned with the elements of human rights if the issue is neglected in public discourse. Unless the incidents are covered on the spot it is not possible to understand the attitude and approach of administration and the police etc. in thus regard.

As instance, suppose a farmer commits suicide and media reaches the spot to cover it. Now the suicide itself is not a mere incident. The media must familiarize, the readers with the background and context of the incident. The Indian farmer is the most patient person. He is in direct communion with nature and an innate ability to wait patiently. If a farmer is compelled to commit suicide, then one has to accept that the circumstances have changed so much that the basic nature of the farmer has also changed. Then it becomes imperative for a journalist to inform as to how this has happened? And its is possible only when there are no restrictions on media. Restrictions on media are not imposed only by the governments. The dimensions of these impediments and restrictions are also determined by the attitude and interests of the media-owning families. It is these interests which determine the approach of media on Human Rights issues. To remain silent itself is a conspiracy. If media ignores or maintains silence in respect of such vital issues, then its implicit that it has fallen prey to conspiracy.

In many cases the class character of media itself influences its work ethics. If the media is pro-capital it reflects all those attributes in its coverage. For example when dengue epidemic hits Delhi – the language papers provide coverage from all aspects, but english media is not as deeply involved as they ought to be. Infact, in respect of

human rights the real touchstone of media's commitment to it could be its willingness to become the voice of the voiceless and overcome various obstacles to preserve the values of these rights. The violation of Human Rights is not a mere incident but is linked to the very social, economic and political processes. An alive and active citizenry can induce media on right path in this regard. Inclusion of human rights in educational curriculum can be another enabler.

The issue of Human Rights in India is fairly complicated due to the realities of its vastness, multiplicity and large number of languages and social groups. In the midst of this cultural diversity the elements and proponents of unity are not many. Another reason is prolonged colonization of the country and its continuing shadow and influence in various fields. Although we are now a free democratic country, yet, the colonial power wrote, and propagated our history in a manner suited to its interests. Thus if the historical vision is twisted the human rights issues are likely to get more complicated than getting resolved. The historical vision influences both the society and governance. As a consequence, although we have an active citizenry, independent judiciary and free press, yet the old false conventions and traditions persist. The governance lacks transparency, corruption reigns and the process of establishing accountability is time consuming. All these contribute to the incidents of violation of human rights.

In such a social milieu media can play the role of familiarising people about Human Rights issues. In this the role of NGO's is also important; particularly those NGO's which exclusively deal with Human Rights concerns. Such NGO's are active both at the international and national level. Often they are focussed more on recounting and propagating, the excesses of the state and its agencies. They ignore the other side of the issue or context. This raises a legitimate concern of their being used at the international level by the imperialist powers. This can be illustrated by an example. When militancy and terrorism started in Kashmir in the late eighties of the last century, these organisations framed their Human Rights concerns in a manner which helped Pakistan defame India in international foras. Incidents of alleged Human Rights violations in Kashmir as published in media were documented by Pakistan and raised in various forums accusing India of Human Rights violations in Kashmir. India was put on the defensive and in the event demanded that there was a need to clearly define the contours' of Human Rights and if the victims of terror and militancy also had rights. Thus the issue of human rights became controversial as various human rights organisations focused only on govt. agencies.

The issues of Human Rights violations becomes complex in the context of violence by non-state actors; terror actions at the behest of and with the help of foreign powers and where organised efforts are made to change society/govt. by using politically inspired violent means. All these elements are present and relevant in India in this context. Different regions of the country are affected by Maoists, terrorists and separatist violence and activities. In such areas the issue of Human Rights become difficult and contentious. In such situations if the role of media is not balanced and well informed the results can be serious. What can media do in such a situation? Should it accept and publish only the press releases of spokespersons of these organisations or investigate it on its own. Here the role of media management owners becomes critical. If the media owners/establishments does not accord facilities and freedom of investigation to its journalists, by implication if itself becomes guilty of human rights violations.

An effective journalist should be in position to convey to the people that the incidents connected with human rights are not mere incidents but are connected part of the overall obtaining cultural, economic and political realities. Explaining these contexts and processes is the duty of media. Only then can one understand the importance and consequences of such incidents. Trans-border inspired movements and incidents are part of the geopolitics and the secret games the countries play. At times its difficult to identify the real motives and behind the scene players. A common man only understands that his life is becoming insecure because of these terror related incidents. But the psychological impact of fear of terror is permanent and constitutes human rights violation. However, no active NGO ever raises these issues at the international level. It is observed that such NGO's mainly concentrate on highlighting the human rights violations by the government agencies. Human rights is a bridge which connects the common man with media. If media only highlights the violation by the government agencies it will be guilty of giving only partial picture. It must balance it by also investigating and reporting the incidents which jeopardise the rights of the common man by the non-state groups and actors.

All those who resort to violence, and violate human rights, whether the state or the non-state actors; take care to conceal their role. They also endeavour to put out versions of the incidents/events projecting their view points and interests. In such situations only investigative journalism can bring out the truth in public domain. For effective investigative journalism, besides the ability of the journalist himself, the institution where he works should also be equally sensitive and

supportive. Unfortunately, currently such a situation in media is on the decline. There was a feeling that the advent of on-line media will play an incremental role in propagating the human rights issues. But it does not seem to be happening. What has actually transpired is that the online journalism has created a new kind of middle class and is catering news etc keeping in mind its interests. Similarly, the urdu media has a different approach to terrorism. Its news coverage encourages communalism and terrorism on occasions even the main line newspapers get influenced by them. Its pertinent example is the hanging of Afzal Guru. The way the Urdu press and some english newspapers projected it could be treated as objectionable. Similarly the incident of attack on an Israeli Diplomat was highlighted in a partisan manner. Therefore, it becomes equally important for media to consider what should not be done to protect the human rights, besides what should be done in this direction. The Human Rights Commission should look into this aspect and give appropriate advice to the media.

WHAT CAN MEDIA DO?

Media can arouse popular consciousness on the issue of human rights, by highlighting the rights of the citizens and how he/she cannot be discriminated against. It can by giving examples of discriminations on the basis of caste, language, gender and religion etc. help in building up popular will as the influence and impact of media is beyond suspicion. It is capable of setting up country's social, political, economic and cultural agenda.

Earlier the media consisted only of newspapers and the journals. In India the radio and television were under the government control. Now the situation has changed. Now it includes free television, radio, newspapers/journals and on-line, endowing the media unprecedented reach and influence at various levels. Now media is in position to play an ethical and normative role in public discourse. Thus media can also play a major role in preservation and promotion of human rights. It can make the people conscious of factors and values which help in protecting human rights. These include, peace, non-violence, disarmament, environment, pollution and ending discrimination based on caste, colour and religion.

Media can achieve these ends in various ways. It can educate people about their rights and expose those who violate these rights by starting a movement to achieve these goals. Another approach could be by propagating constructive actions of those individuals and institutions

who are engaged in fighting for human rights. Such actions will not only boost the morale of concerned individuals and institutions but will inspire others also. Thus media can be the mediator for educating people about their rights as well as how to fight for and achieve those rights.

Media also has a role in facilitating a dialogue between the governance and the people. This dialogue also helps the functionaries of the state understand their duties with regard to people's rights.

On April 30, 2013, while replying to a question in Lok Sabha, the Minister of State for Home, Shri R.P.N. Singh informed that according to the state-wise data collected by the Human Rights Commission between 2010-2013, 417 cases of deaths in police custody had been reported. In 2010-2011 number of such cases were, 146; 2011-2012 these were 128 and in 2012-2013 numbered 143. In these three years the largest number of cases were registered in Maharashtra (71), Uttar Pradesh (42), Gujarat (36), West Bengal (19), Tamilnadu (23) and Bihar (16). This statistics merely indicates the symptoms of a larger and more serious disease. One cannot vouchsafe for either the accuracy or completeness of the statistics, as many complaints are never recorded. It is here that the responsibility of media in rights abuse cases becomes significant. Ideally the media should go to the bottom of each incident and expose it.

WHAT CAN A CORRESPONDENT DO?

The job of a correspondent is to report an incident, analyse it and make appropriate comments on his/her conclusions. There is a danger of misuse of the process by a journalist, which can, however, be minimised by self-restraint. A journalist can draw his own Lakshman Rekha (restraint line). His job is to give facts and should avoid sensationalism. Similarly his reporting should not arouse sentiments or passions. The language of reporting should be informed by restraint and modesty. It should be open to further investigations and it should not unjustifiably blame or run down an investigating agency.

A journalist should not do anything which would inflame the situation. Such statements or photographs should be avoided. Similarly a journalist should not also get influenced by any state functionary in his reports. While giving facts, he should also analyse the reasons behind an incident, and what are possible solutions of the problem.

-The article appearing in Pratham Pravakta translated by J.N. Roy.

How Criminalisation of Politics Destroys Citizens' Rights

Shailaja Chandra*

Most of the corruption in developing countries is inherently political... What is labeled as corruption in developing countries mirrors the distribution of power within societies. Few anti-corruption campaigns dare to attack the roots of corruption in such societies as these roots lie in the distribution of power itself.”¹

This paper examines discourses on the nature and extent of corruption in India and two factors most responsible for it. The main argument is that unaccounted wealth and the criminalisation of politics are responsible for important decisions being influenced by extraneous considerations. When criminal elements hold the reins of government they show scant concern for citizens' rights; among these the violation of human rights not only dispossesses those in greatest need but also brings irreversible consequences that affect generations of citizens.

Distinction between Generic Corruption and Political Corruption

Corruption can take many forms ranging from the most basic to the most complex. But what is significant in framing a working definition is that every sector that delivers service to the public is vulnerable to

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corrupt practices and this applies both to rich and poor countries. Corruption however means different things in different countries. In their recent study on corruption, Graycar and Smith state that the generic ingredients of “normal” corruption include buying things, procurement processes, issuing contracts etc; appointing personnel; delivering programmes or services; in construction projects, and in control activities (licensing/regulations/issuing permits etc). The last called “Administrative justice” by the authors provides particularly fertile ground for corruption especially in areas like health and environmental services etc.²

Corruption not only leads to public funds getting siphoned off for private gain but it affects public safety irrevocably. By overlooking the decimation of environmental laws and pollution limits, by abetting absenteeism among health and education staff, disregarding recurring shortages of essential food items, safe drinking water and life-saving drugs (to name just a few examples,) citizens get short-changed on a daily basis. Far from receiving protection they get exposed to countless hazards resulting in the spread of disease, preventable illnesses, and even loss of life. Accidents and injuries caused by the construction and neglect of sub-standard roads, bridges and buildings is an assault on the lives and well-being of hapless citizens who trust leaders to take care of their safety. Neglect of essential services for planned parenthood, immunization and nutrition are often ascribed to official apathy but within the system it is well-known that it is largely the outcome of corrupt procurement practices. Far from safeguarding the interests of its citizens, compromised leaders expose the populace to countless hazards through their corrupt decisions. These are not isolated cases. These are violation of citizen's rights that no civilized nation would ever endure.

Black money

Unaccounted wealth (commonly called black money), is not just income concealed from the tax authorities but ironically this unexplained affluence can be flaunted in public, with impunity. This phenomenon does not invite any social sanctions. Disproportionately low taxes are paid by a vast majority of businessmen for a substantial part of their monetary transactions a practice which cuts across all sectors of the economy.³ A part of the production in the manufacturing sector is kept outside the production and account books so enabling products to enter the market without deducting income tax, sales tax and excise duty.

Such income results in windfall gains to manufacturers and cannot happen without the active connivance of the tax authorities. The bigger question then is what happens to the unaccounted wealth?

A substantial part of it goes into real estate, ostentatious living and paying bribes. But a significant part goes directly or indirectly to fund illegal activities or to support political parties at election time and later to influence sympathetic policy decisions.

Large amounts of liquid cash are also transferred to safe havens abroad. Referred to as Havala (Money Laundering) this informal credit market is completely outside the Central Bank policies and escapes scrutiny of the enforcement authorities. Such unaccounted wealth is also used for criminal activity which includes illicit trade of drugs, narcotics, human trafficking, and extortion. This too is used directly or indirectly to influence elections and political outcomes.

The existence of black money and easy access to it are two unique features of the Indian economy and unless their proliferation is reined in the public would continue to be recipients of a corrupt form of governance. Fair play, justice and the rule of law are incompatible with the thinking of those who come to occupy positions of power and influence indebted on financial support which comes from undeclared and illegally collected funds.

Criminalisation of Politics

Apart from financial support, another requirement for entering and staying rooted to the political arena is to garner the support of people who wield local influence and authority and can prop up political candidates through the use of muscle and money power extended by intermediaries working on behalf of criminals. Of late the situation has changed so much that criminals themselves have begun standing for election and winning. The second Administrative Reforms Commission of India (ARC) (2009)⁴ highlighted the scale on which politics had been criminalized. The participation of criminals in the electoral process was described as the “the soft underbelly of the Indian political system” leading to “flagrant violation of laws, poor quality of services, protection from lawbreakers on political, group, class, communal or caste grounds, partisan interference in the investigation of crimes, poor prosecution of cases, inordinate delays lasting over years, the high costs of the judicial process, mass withdrawal of cases, indiscriminate grant of parole.” These were listed as being the most important causes of corruption. Referring to political parties the Commission drew attention to votes

being secured through the use of money and muscle power and pointed to the large, illegal and illegitimate expenditure on elections being the root cause of corruption.

The ADR⁵ Annual Report: extent of criminalisation of politics in India

The Association for Democratic Reforms (ADR)⁵ filed a Public Interest Litigation (PIL) in the Delhi High Court asking for the disclosure of criminal, financial and educational backgrounds of candidates contesting elections. The Supreme Court of India in 2002 and 2003 responding to the PIL made it mandatory for all candidates contesting elections to disclose their criminal, financial and educational backgrounds prior to the polls by filling an affidavit with the Election Commission. The first Election Watch was conducted in 2002 and since then Election Watches have been conducted for all Parliament-Assembly elections.

In the 2004 general elections there were 215 parties contesting for Parliament. In the 2009 election 153 more parties joined the contest which shows how easy it is to form a party and also the popularity of joining politics. But what is also a growing cause for worry is the attendant criminalization of politics which can be summarized in the following picture:

- 15% of the candidates (1158) in all had declared that criminal cases were pending against them. The affidavits of 7810 candidates out of 8070 candidates who contested were analyzed and it was found that 608 candidates had serious pending criminal cases like murder, attempt to murder, kidnapping, extortion, etc. pending against them.
- Among elected members of Parliament it was found that out of 543 new MPs, 162 (30%) had criminal cases pending. The percentage of such MPs with pending criminal cases was 24% 5 years earlier.
- Out of 556 women candidates, only 59 managed to win. Hence only 11% of MPs in the current lower to use (Lok Sabha) are women.

Large, illegal and illegitimate expenditure in elections has been termed to be the root cause of corruption and hence cleansing elections has been ranked the most important step towards improving ethical standards in politics. But surprisingly though ADR publishes reports in

close conjunction with every election based upon the candidate's own declaration in writing, the admission about the pendency of criminal cases has not led to any adverse publicity leave alone social ostracism. If anything it is shrugged off as an occupational hazard and often condoned as being "politically motivated." No one feels safe enough to take up cudgels against such criminal elements resulting in a situation where silence is believed to be a sign of acceptance.

Recently in the context of the Delhi rape case the Commission headed by late Justice Verma had observed that reforms are needed to deal with criminalisation of politics. The panel has suggested that in the event cognizance has been taken by a magistrate of a criminal offence, the candidate ought to be disqualified from participating in the electoral process. Any candidate who fails to disclose a charge should be disqualified subsequently. It suggested lawmakers facing criminal charges, who have already been elected to Parliament and state legislatures, should voluntarily vacate their seats. This recommendation was totally ignored when the Government first promulgated an ordinance in February 2013 and later enacted a law on the subject of sexual assaults in early April 2013. The suggestion about a voluntary code for legislators was not even mentioned. Later on 5th April it was rebutted as being an unworkable proposition when the then Law Minister Mr Ashwini Kumar addressed a public seminar organised by the Public Interest Foundation at the India International Centre. The thrust of the Law Minister's was the fact that every man is innocent till proved guilty and foisting criminal cases is a simple ploy that is increasingly being used to tarnish the reputation of political persona.

"The writing is on the wall" was the observation of a select audience of jurists, members of parliament and former civil servants where no less than the Chief Election Commissioner of India Shri V S Sampath also attended. Follow up on Justice Verma Commission's recommendations relating to debarring those charged with criminal offences was clearly not going to happen through any legislative process, far from expecting voluntary relinquishment of parliamentary or legislative assembly seats. That can only happen if public opinion forces political parties to bring a law debarring criminals from becoming or continuing as law makers.

The Scope of Reported Corruption

The degree of imperviousness to corruption in India can be gauged from its dimension and scale which has permeated a host of programmes implemented by the Ministries and organizations of the Central

Government as well as the State Governments. These have been reported from 1948 (year after Indian Independence) until 2011. proffered by dubious sponsors.

At stake are the health, safety and progress of society. Corrupt public policy, ineffective enforcement of laws, and the existence of a criminal nexus protects and encourages the wrong doer at the cost of the honest citizen, It dispossesses citizens of their basic human rights often times irretrievably. Anna Hazare's movement missed a massive opportunity to confront the very fountain-head of corruption- the criminalization of politics.

Despite the growing number of corruption cases (Annexure I), it was not until 2010 that a section of the Indian public began to react. Once the 2G and the Commonwealth Games scams (highlighted in the table both occurring in 2010) became widely known, the issue of corruption took centre-stage. The fact that the National Human Rights Commission organised a conference on "Effects of Corruption on Good Governance and Human Rights" in 2006 was indicative of the gravity of human rights violations resulting from corrupt practices. The question that was posed was: how can the NHRC operationalise the right to corruption-free governance with a view to protecting and promoting human rights in general?

Indian Corruption Watchers

The Comptroller and Auditor General is completely independent of the Government. The reports of the CAG which have been tabled from 2010-2012 have led to the arrest and prosecution of Ministers, officers at the level of Secretary to the Government and influential company executives. The CAG's reports are behind much of high visibility that has been conferred on the subject of corruption.

During the last two years, the CAG of India has tabled 74 Audit Reports (32 in 2010 and 42 in 2011) in respect of the Central Government in the Parliament. The CAG reports created an understanding that corruption impedes economic development, undermines stability and erodes trust in public institutions. The enormity of the findings coupled with TV coverage and social media revelations have raised public consciousness about the need to get Governments to curb corruption. A public realization has come that financial scams not only result in denying the citizen his rightful due but are often founded on a nexus between politicians, the bureaucracy and businessmen which gives windfall gains to a chosen few but also results in the arbitrary

allocation of natural resources or watering down of public safety standards through deliberate neglect of laws and their enforcement. This affects the very life and safety of citizens and of future generations from whom finite resources are borrowed.

The Central Vigilance Commission (CVC) was set up by the Government in 1964 and the institution has been given statutory status relatively recently. The CVC's Annual Report (2010) admits that anticorruption measures were not proving effective enough to quell public anger and called "for stronger mechanisms to fight graft". "Ineffectiveness of current anti-corruption efforts in containing corruption affecting the common man has resulted in citizens losing faith in the system and the institutional mechanisms available."

The comparison of the CAG and the CVC shows the difference between the effectiveness of constitutional body which works independent of the Government and an organization like the CVC which only occupies an advisory role, albeit vested with statutory authority. But it also points to a larger concern which is more fundamental. If the findings of the CAG which point to flagrant violation of financial and administrative norms evoke no sense of responsibility and accountability in the executive, what can be done to instill accountability? If the highest vigilance authority the CVC which has the power to order and oversee investigation into official misconduct also admits to its helplessness what recourse is left?

A Significant Turning Point

The year 2011 signifies a turning point when public exasperation – even intolerance of corruption reached unprecedented heights. But by mixing high level corruption and everyday corruption encountered by citizens a demand for a Jan Lokpal – (People's Ombudsman) gathered momentum. Anna Hazare a 74 year old anti-corruption activist demanded action against corruption, systemic or localized by setting up a body armed with enough investigating and prosecuting authority to ensure punishment. His uprising got unprecedented support from middle-class citizens in the metros and cities.

The Lokpal idea had its roots in the first Administrative Reforms Commission (1967), but never before did it become an issue over the last 45 years. The bill was reintroduced in the winter session of Parliament and has been passed by the Lok Sabha. It has to be passed by the Rajya Sabha in the ongoing session of Parliament or in the monsoon session of 2013. Currently, 112 Bills are pending in Parliament.

With just two and a half sessions left it is to be seen which bills would be given priority. But even if it is passed it signifies an effort to curb corruption but does not even touch the issue of criminalization of the political fabric – a subject of much greater import.

Responses to the importance of the Indian Middle Class

A 2011 report by National Council for Applied Economic Research's (NCAER)⁶ has found that by 2015-16, India will be a country of 53.3 million middle class households, translating into 267 million people falling in this cohort. Further ahead, by 2025-26 the number of middle class households in India is likely to be more than to 113.8 million households or 547 million individuals. The outreach of private TV channels does not cover a large part of rural India. But in the metros, cities and towns the reaction of the middle class to the anti-corruption movement was strident and voluble. The middle class and particularly the younger age group used the power of social media which has become powerful tool in the hands of a technology savvy middle-class and particularly the young. Seeing the growing influence of the middle-class whose voice will increasingly matter in the general elections in all urban areas, the Government responded by showing its seriousness about containing corruption- at least on paper. This response was unprecedented looking at the forgoing six decades (1950-2010) when efforts to legislate on anti-corruption were few and far between. All political parties have understood the growing size and significance of the middle class in urban areas and the sudden support for legislating on anticorruption, grievance redress and whistle-blowing stems from a realization that the issue will become important in the 2014 elections. Not less than 10 Bills related to corruption and delivery of public services now awaits passage in Parliament. Annexure II.

In an effort to tackle corruption, India has finally ratified the United Nations Convention against Corruption (UNCAC) in 2011. This signifies an effort to tackle corruption and stem the flow of illicit capital flight which has been estimated at US dollars 104.1 billion during 2000-2008.

State governments too have been active in enacting their own anti-corruption bills considered by many to be a positive deterrent against corruption. The State Bills relate to the acquisition of assets which are unaccounted for. Orissa, Rajasthan, Jharkhand and Bihar have enacted their own Special Courts Act. These Acts provide that the state government may authorize the public prosecutor to attach the property of the alleged corrupt official even during the stage of investigation.

But notably all these Bills aim at reining in an apathetic and corrupt bureaucracy as though the problem of corruption will end thereby. These efforts cleverly diffuse dissension while leaving the root cause of the malaise untouched. Nothing has been done to promote political reform which will contain and curb corruption more than anything else which has been attempted.

Regulating Political parties

Traditionally, political parties collect funds in cash (generally it is unaccounted income) and either park the money outside the country in secret bank accounts or make investments managed by intermediaries. This gave enormous power to the top leadership which alone controls the deployment of funds. The choice of candidates is largely made based on the money-power or win-ability of the aspirant candidate which depends on his influence and control over the electorate.

It is therefore very necessary to have laws that require transparency in the collection and deployment of political party funding coupled with rules that democratize the inner working of all parties. No one can doubt that every party should debar candidates charged by a court of law for criminal offences from contesting elections or holding office under the party banner. But elections need money and the only way that dependence on corrupt fund raising can abate is if there was comprehensive state funding of elections complemented by limits on expenditure. But there is no seriousness about adopting either of these strategies and strong arguments have been voiced by almost all political parties negating any such move.

A Bill called Registration and Regulation of Affairs 2011 has been drafted by a committee chaired by Justice M.N. Venkatachaliah, former Chief Justice of India which addresses the need for inner party democracy. The Bill includes a democratic process for electing or selecting party office bearers, as well as candidates who are given tickets for contesting elections. The related issue is transparency in the funding of political parties and elections; limits on donations by individuals and corporations; penalties for non compliance; whether funding can be accepted by political parties from banned organizations; and the vexed question of how to deal with support groups that spend money but are officially not part of the candidate's election expenses. No civil society movement and much less the Anna Hazare movement has taken up these issues which will have the biggest impact on who gets elected and can hold public office.

The chances that any of these suggestions would be taken seriously in the foreseeable future are dim. It is abundantly clear that rooting out criminal elements from politics is not going to come on the radar screen of any government much less most parliamentarians. But the issues are too serious to be abandoned for want of a strategy to bring them to fruition.

Conclusion

This paper has tried to show that corruption is a major issue but tackling it goes beyond unidirectional solutions like setting up a Lokpal. When there is criminalisation of a substantial part of the political process in a country like India in the absence of measures that address the criminalization of politics and dependence on ill-gotten or unaccounted wealth, there can be no perceptible impact on corruption. Cleaning up day-to-day corruption will make only a peripheral difference. As a first step this needs to be confronted by making election funding accountable with making transparency in the acceptance of donations mandatory.

Second the need for state funding of elections with limits on expenditure has several precedents in other countries. It needs to be discussed and a public demand put forward for introducing it.

Third there is a need for a public demand to be voiced through the media to debar people with a criminal background from entering or continuing as law makers once charged by a court of law.

Fourth there is a need for regulating the functioning of political parties as well as audit of their accounts by introducing rules for holding party offices and acceptance of donations.

In a country like India the positive feature is that an educated and growing middle class will not tolerate overt corruption any longer. But this may not necessarily translate into voting behaviour when elections are held. Rural voters and the poor who constitute the largest voting segments are usually influenced by a completely different set of local factors—a phenomenon which is well-recognized by all political parties. Probity in public life and ethical conduct are presently non issues for these segments that form the bulk of the electorate.

An analysis of the extent of criminalisation of politics and the steps taken to expose the criminal profile of candidates has helped quantify the extent of the problem, but these revelations by themselves will not deter political parties from giving tickets to undesirable and even criminal elements. For that to happen inner party democratization becomes fundamental for promoting the entry of new aspirants who would eschew

the use of tainted money or criminalized muscle power. But for that to happen, clean candidates would need financial props and state sponsored election funding to reduce the present enslavement on funding proffered by dubious sponsors.

At stake are the health, safety and progress of society. Corrupt public policy, ineffective enforcement of laws, and the existence of a criminal nexus protects and encourages the wrong doer at the cost of the honest citizen, It dispossesses citizens of their basic human rights oftentimes irretrievably. Anna Hazare's movement missed a massive opportunity to confront the very fountainhead of corruption- the criminalization of politics. Finally, it underscores that the Human Rights are not only about violence in conflict zones but equally important and fatal in normal life in normal zones by misgovernance and malfeasance.

Annexure I

List of Major Scams Reported in Media and Values

Scam	Year	Reported Value in Current Prices (Rs Crores)
Jeep Purchase -K Menon	1948	0.80
Cycle Purchase Bribery	1951	-
BHU Funds	1956	0.50
Haridas Mundhra	1957	1.24
Teja Loans	1960	22.00
Nagarwala	1971	0.64
Kuo Oil Deal	1976	2.20
Antulay and Cement	1982	30.00
HDW Submarine	1987	32.55
Bofors	1989	64.00
Airbus Deal	1990	120.00
Harshad Mehta	1992	4,100.00
Indian Bank	1992	762.92
Palmolein oil imports in Kerala	1992	2.32
Sugar Import	1994	650.00
SNC Lavalin in Kerala	1995	374.50
Housing	1996	65.00
Urea	1996	133.00
Sukhram and Telecom	1996	1,200.00
Fodder in Bihar	1996	950.00

Chain Roop Bhansali CRB	1997	1,031.00		Bill, 2011	Referred to Rajya Sabha Select Committee on 21 May 2012	Lokayuktas in states to investigate and prosecute cases of corruption.
Jain Hawala	1997	5,000.00				
UTI	2001	9,500.00				
Ketan Parekh	2001	3,218.00				
The Barak Missile	2001	400.00		The Whistle Blowers Protection Bill, 2011	26 Aug 2010	Passed by LS on 27 Dec 2011; Pending in RS
Home Trade Cooperative Banks	2002	1,200.00				The Bill seeks to protect whistleblowers, i.e. persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant.
Kargil Coffins	2002	6.50				
The Taj corridor	2003	175.00				
The PDS Scam in Arunachal	2004	1,000.00				
Natwar Singh Oil for Food Scam	2005	8.00				
Scorpene Submarine Deal	2006	16,000.00				
Dalmia DSQ	2006	595.00				
Telgi Stamp Papers	2006	30,000.00				
cash for votes	2008	50.00				
Satyam	2008	14,000.00		The Benami *** Transactions (Prohibition) Bill, 2011	18 Aug 2011	Pending with Standing Committee on Finance
Madhu Koda and Mining	2009	4,000.00				The Bill prohibits all persons from entering into benami transactions.” Benami refers to transactions in fictitious names.)
2-G	2010	176,379.00				
Commonwealth Games	2010	36,000.00				
Adarsh Housing Society	2010	200.00				
Ambati Andhra Land Scam	2010	10,000.00		The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011	25 Mar 2011	Standing Committee Report on 29 Mar 2012
Fake Housing Loans	2010	1,000.00				The Bill makes it an offence to accept or offer a bribe to foreign public officials and officials of public international organizations in order to obtain or retain international business.
Belekiri Port in Karnataka	2010	60,000.00				
Foodgrains in Uttar Pradesh	2010	200,000.00				
Bellary Mines	2011	16,085.00				
ISRO Spectrum Allocation	2011	not valued				

Source: Debroy, Bibek and Bhandari, Laveesh, **Corruption in India: The DNA and the RNA**, Konark Publishers Pvt. Ltd.: New Delhi, November, 2011.

Annexure II

Some Key Pending Bills related to Corruption and Delivery of Public Services (as of June 2012)

Bill	Date of Introduction	Status Lok Sabha ⁷	Bill description
The Lokpal* and Lokayuktas**	22 Dec 2011	Passed by Lok Sabha on 27 Dec 2011,	The Bill seeks to establish the office of the Lok Pal at the centre and

The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011	20 Dec 2011	Standing Committee granted time upto 30 Jun	The Bill seeks to confer on every citizen the right to time bound delivery of specified goods and services and provides a mechanism for grievance redressal.
The Electronic Delivery of Services Bill,	27 Dec 2011	Standing Committee granted time	The Bill provides that the central government, the state government

2011		upto last week of Monsoon Session 2012	and public authorities shall deliver all public services through electronic modes, except those that cannot be delivered electronically.		Lok Sabha on 29 Mar 2012; Pending in Rajya Sabha	removal of judges of the Supreme Court and High Courts.	
The Prevention of Money-Laundering (Amendment) Bill, 2011	27 Dec 2011	Standing Committee Report on 9 May 2012	The Bill seeks to amend the Prevention of Money Laundering Act, 2002. It links the provisions of Indian law with the laws of foreign countries. It widens the definition of money laundering; provides for attachment of proceeds; and presumes (unless proven otherwise) that proceeds crime under the Act were related to money laundering.	The Public Procurement Bill, 2012	14 May 2012	Standing Committee to report within 3 months w.e.f. 28 May 2012	The Bill regulates award of government contracts of above stated financial limit with the object of ensuring "transparency, accountability and probity".
The National Identification Authority of India Bill, 2010	3 Dec 2010	Standing Committee Report on 13 Dec 2011	The Bill seeks to establish the National Identification Authority of India (NIAI) to issue unique identification numbers (called 'Aadhaar') to residents of India. (The aim is to identify the correct beneficiary of government programmes to prevent corruption in delivery of Good and services.				
The Judicial Standards and Accountability Bill, 2010	1 Dec 2010	Standing Committee Report on 30 Aug 2011, Passed by	The Bill requires judges to declare their assets, lays down judicial standards, and establishes processes for				

Sources: Respective Bills, PRS Legislative Research Centre for Policy Research⁸

Footnotes

- ¹ Adina Mungiu Pippidi, "Corruption : Diagnosis and Treatment" in Journal of Democracy, 17: 3 (July 2006), 86.
- ² Adam Graycar and Russell G. Smith, Hand Book of Global Research and Practice in Corruption (Cheltenham : Edward Elgar Publishing, 2011).
- ³ Arun Kumar The Black Economy in India (New Delhi: Penguin Books, 2002).
- ⁴ Report of the Administrative Reforms Commission ETHICS IN GOVERNANCE, May, 2009
- ⁵ ADR is a research organization which has been involved in collecting data on the political candidates and filing public interest litigation before various courts with the aim of improving governance and transparency. It was established in 1999 by a group of Professors from the Indian Institute of Management (IIM), Ahmedabad
- ⁶ How India Earns, Spends and Saves: Unmasking the Real India by Rajesh Shukla (Special Report, 2010) (SAGE Publications), Publication Division, National Council of Applied Economic Research (NCAER).
- ⁷ Lok Sabha refers to the House of the People equivalent to House of Commons
* Lokpal refers to the equivalent of an ombudsman
**Lokayukta refers to the equivalent of an ombudsman at the state level
*** Benami refers to transactions in fictitious names
- ⁸ PRS Legislative Research Centre for Policy Research

Human Rights in 21st Century

Sankar Sen*

Human rights have been described as those minimal rights that every individual must have by virtue of his being a member of human family irrespective of any other consideration. They are based upon mankind's demand for a life in which the inherent dignity of a human being will receive respect and consideration. These rights are essential liberties taken for granted as the basis for a just and civilized society and are not subjected to political bargaining or calculation of social interest.

The concept of human rights is old and rooted in history. From ancient times to modern day human rights in various forms have been the cultural heritage of all mankind. In 1968 as a part of the contribution to International Human Rights Year, the UNESCO published a collection of texts entitled "*The Birth Right of Man*" which illustrated the concept of human rights from different cultural traditions and periods of history. Ideology of human rights is thus not the exclusive product of Western Europe.

International Instruments

The first documentary use of the expression human rights as a basic goal is seen in the Charter of the United Nations. The harrowing experience of the Second World War gave rise to the conviction that effective international protection of human rights is one of the essential conditions of international peace and progress. The United Nations, which arose like a phoenix out of the ashes of the Second World War

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put utmost stress on promotion and fostering of human rights and basic freedoms. The concern of the United Nations with the promotion and protection of human rights stems directly from the realization by the international community that recognition of the inherent dignity and equal and inalienable rights of all member's of the human family is the "*foundation of freedom, justice and peace in the world.*" The preamble of the UN Charter re-affirmed "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. Article 55 of the Charter provides "*with a view to creation of the condition of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:.....universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.*"

The Charter of the United Nations does not further define the contents of human rights. The framers of the Charter left the task to the organization itself and it was decided for this purpose that an international Bill of Human Rights should be drawn up. The International Bill of Human Rights comprises (a) Universal Declaration of Human Rights, 1948 (UDHR)

- (b) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESC)
- (c) International Covenant on Civil and Political Rights, 1966 (ICCPR)
- (d) Optional Protocol to the International Covenant on Civil and Political Rights, 1966 providing for the right of the individuals to petition to the International Agencies.

Universal Declaration

The Universal Declaration of Human Rights was adopted by the General Assembly of United Nation at Paris on December 10, 1948. It is now regarded as the milestone in the legal and judicial history of mankind. International community now accepted the obligation that promotion and protection of human rights becomes one of its permanent obligations and abiding concerns. Many member states have incorporated in their constitutions many of the provisions of the Universal Declaration of Human Rights. The Universal Declaration of Human Rights no doubt influenced the views and thinking of the framers of the Indian Constitution. Part III of the Constitution comprehensively deals with

fundamental rights which are no different from human rights. Article 32 of the Constitution provides remedies for enforcement of fundamental rights. The Universal Declaration of Human Rights was adopted at the UN General Assembly while debates in the Indian Constituent Assembly were going on. Hence, it must be assumed, as the Supreme Court has said, in the case of *Menaka Gandhi vs. Union of India* that the makers of the Indian Constitution in framing Part III on the fundamental rights were influenced by provisions of the Universal Declaration.

The Universal Declaration was not presented to the General Assembly as the treaty for ratification which will be binding on signatory nations but as a statement of goals and aspirations. A UN commission on Human Rights was set up. The commission's mandate was confined to the drafting of new treaties and other legal instruments.

After the end of the cold war there has been advancement of democracy and ascendancy of human rights. "Democracy and human rights", as Prof. Amartya Sen has said, "is mutually supportive". By providing greater public participation, democracy enhances the likelihood that national developmental goals will reflect broad societal aspirations and priorities. By establishing political legitimacy of governments democracy strengthens their capacity to function efficiently and effectively.

Universality of Human Rights

The World Conference on Human Rights in Vienna in June, 1993, emphasized the Universality of human rights. But many Asian countries in the conference expressed their view that western countries are using human rights as an instrument for their political and ideological hegemony. The nub of the Asian criticism of the western concept of human rights is that there are no universal human rights because there is no single human nature and no universal moral law to which appeals across cultures can be made. However, even in the midst of controversies and clash of western and Asian perceptions there is an acknowledgement of the fact that there are some fundamental human rights whose violations will be condemned unequivocally by all the major cultures of the world. Abuses of torture, rape, racism, arbitrary detention, ethnic cleansing are not tolerated by any faith or culture that respects humanity, nor can they be justified by demands of economic development and political expediency.

Before 20th Century came to an end there were some remarkable and important developments in the domain of human rights. The view

that human rights questions were essentially matters of the concerned states, now receives very little credence from the international community. States cannot take cover under Article 2(7) of the Charter that human rights are strictly internal matters of the states concerned. It no longer protects a state that was involved in gross violation of human rights, genocide or crimes against humanity. So while the international system was still marked by double standards, selectivity and the mighty powers escaping the reach of law, the trend is clear – there will be growing demands for answerability and accountability at the global level for all.

However, advancement of human rights in 21st century faces some formidable challenges.

Globalization

Globalization has posed new challenges before the human society. "The benefits of globalization in the past decades have been so unevenly distributed that the very word has come to acquire a pejorative tinge in certain quarters". (*UN Human Development Report, 1999*). Carefully drawn boundaries and jealously constructed national identities have broken down due to the tremendous onslaught of technology. The whole world now has turned into a neighbourhood and the competition for that market can come from any country, any city or even any unit. Unfortunately, the contrast between effortlessness with which capital can move while labour cannot, makes globalization a contentious subject and imparted to it a somewhat undesirable pro-rich flavour. Along with globalization and the emergence of multinational agencies, the role of government is diminishing and it is relinquishing the responsibilities of serving the needs of those citizens who are not able to protect themselves.

Poverty

Poverty is the biggest violator of human rights and threat to peace. If hunger persists, peace cannot prevail. Poverty destroys human dignity and without human dignity there can be no human rights or the capacity to fight against the denial of human rights. Unfortunately, in today's world nearly three quarters of humanity living in the developing countries of Asia, Africa and Latin America are weighed down by poverty and underdevelopment. Widespread poverty among the masses in the developing countries is a great denial of human rights. Thus, in

developing societies human rights have a transformative potential. They constitute challenges to vested interests in societies with enormous disparity of wealth and power with tradition of authoritarianism and helplessness of the disadvantaged communities. Time has come therefore to return to the values and principles reflected in the Universal Declaration of Human Rights (UDHR).

Terrorism

Terrorism constitutes another challenge. It affects human rights of innocent people the world over. Specter of terrorism continues to haunt us globally. Cult of terrorism strikes at the very root of human rights of innocent people. Terrorism and human rights are natural enemies with no possibilities of their coexistence. The menace of terrorism has to be curbed and the battle against terrorism has to be fought relentlessly but in doing so no democratic society can permit to chill the civil liberties of its citizens. The critical task of striking a fair balance between security concerns and human rights has to be achieved and the need of proportionality should not be ignored. Counter terrorism measures should therefore not undermine democratic values and subvert the rule of law.

Fundamentalism in all its forms and manifestations is another subtle form of terrorism. While the faithful believe in harmony and brotherhood in religion, it is misguided fanatics who do not value human rights, and in the name of religion contribute to a climate of religious bigotry which leads to discrimination, harassment and attacks on all those who do not follow their dictates.

Rights of Child

In the evolution of human rights the child is a relatively late entrant. The Convention on the Rights of the Child was signed only in 1989. This belated action on child rights is a sad reflection of uncaring attitude towards the rights of this weak segment of the society, which borders on neglect. According to National Family Health Survey 1998-99, as many as 47 per cent of children under the age of five years in India are malnourished. Under-nutrition is much higher in rural areas than in urban areas, and is particularly high among children from disadvantaged socio-economic groups. Nearly three quarters (74 per cent) of children between the ages of 6-35 months are anaemic. A child is perhaps the weakest link in the global community dominated by the adults.

Child labour in India is a historical fact and exploitation of children for extracting labour is a grim reality. Child labour constitutes an egregious violation of human rights. Strong political and societal will is needed for eliminating this scourge in a phased manner. For achieving this goal governmental efforts have to be supplemented by a wide range of initiatives from non-governmental organizations and a powerful people's movement has to be built up against this outrageous system.

Gender Equality

Women continue to be discriminated all over the world and are subjected to many forms of violence and discrimination. Practices and customs followed in many states perpetuate discrimination. Crimes against women are increasing exponentially. In India sharp rise in crimes against women is generating public anger against the government and the law enforcement machinery. Not only in India but in South Asian countries women share in a big way the burden of deprivation. In the report on human development in South Asia 2000 it is stated that though women continue to be discriminated all over the world, but we are also hearing quiet steps of rising revolution for gender equality. *“Progress in technology is already overcoming the handicaps women suffer in holding jobs in the market, since jobs in the future industrial societies will be based not on muscular strength but on skills and discipline. And the democratic transition that is sweeping the globe will make sure that women exercise more political power as they begin to realize the real value of the majority votes that they control. It is quite clear that the 21st century will be a century of much greater gender equality than the world has ever seen before.”*

HIV/AIDS

HIV/AIDS poses another serious threat. The danger is most in the developing countries. Its fast spread must be checked by strategies on a war footing. Here too, the most vulnerable are females and the youth. Global cooperation is needed to control the hazard. Access to critical drugs at affordable cost to every infected person must be ensured. International trade and patent regime must be controlled by global cooperation to achieve this result. Resolve to this effect is included in the recent UN Millennium Summit Declaration. That resolution must

be honoured. Commercial and political interests must not influence human considerations.

Role of NGOs

Another important development in the field of human rights is the emergence of different NGO groups and national institutions as effective instruments of protection and promotion of human rights. NGOs have encouraged the growth of human rights culture that cuts across national, political boundaries. Civil society organizations have a key role to play in ensuring that governments live up to the commitments made by them. One of the important items in the human rights agenda of the 21st century is to strengthen national institutions and set up such institutions in states where they do not exist.

At the beginning of the 21st century no country can look back on its record of human rights of the last century with any sense of pride. The 20th century was the bloodiest century in the annals of humanity and nearly 100 million people were killed in armed conflicts and 120 million more died in politically related violence. Such was the savagery of destruction that the word genocide has to be coined to describe the Holocaust and the subsequent carnage that ensued in Cambodia, Rwanda and other places.

The emphasis on human dignity laid in the UN Charter, Universal Declaration of Human Rights and several international covenants and also in the national constitutions is the core value of the human rights. It is now universally accepted belief that respect for human rights is the only sure way of human development which in the final analysis is the true index of progress and advancement.

Human rights are foreign to no culture and native to all nations. They are universal, indivisible and interdependent. The blood-soaked history of the last century has driven home the lesson that the absence of human rights is far more than denial of human dignity; it is also the root of poverty and the political violence that plague the world.

Recent Election Trends and Human Rights

Reena Laitonjam*

The universalization of human rights is a political fact. Being a human being one is entitled to have basic rights. Human rights being eternal part of the nature of human beings are essential for individuals to develop their personality, their human qualities, their intelligence, talent and conscience and to enable them to satisfy their spiritual and other higher needs. All human rights derive from the dignity and worth inherent in the human person and that the human person is the central subject of Human Rights and fundamental freedom. The concept of human rights is a crystallization of values that are the common heritage of mankind.

Political rights form an essential part of the concept of human rights. The right to vote and to be elected shows the interdependence of states' obligations to respect, to promote and to protect. The duty of ensuring the voting rights includes the obligation to provide, by means of positive state action, for free, fair and secret elections on the basis of equal and universal suffrage. It should be observed that each and every person entitled to vote, including the sick, disabled, elderly persons, etc. are given the opportunity to exercise their political rights.

In societies, where the citizens can take part in the political process and also express their opposition to their government freely, and are generally free from poverty, human rights may not be a chief concern. But, unfortunately, such cases are rare and only describes the situation of a minority of the world's population. Without economic security, freedom of conscience- the liberty to grow as an individual is impossible. Political rights can be enjoyed only when basic human needs have been satisfied. Democracy must become the central value of the refashioned

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human rights movement, for only the vigilance of self-governance can ensure against abuse.

The sovereignty of the people is the basis and the watchword of democracy. Elections remain a cornerstone of democracy, an institution that can take many forms, but without which it is all but impossible to imagine a functioning democratic political system. Although elections and democracy are not synonymous concepts, the existence of free, competitive elections, is invariably considered one of the critical features that define a nation as democratic.

At the beginning of the 19th century, a wide variety of practices limited the equality of citizens in participating in elections. In most countries the franchise was restricted by property qualifications and by religious, sex or age requirements, among others. Even for those eligible to vote, the equality of influence of the vote was limited by variations in the ratio of population to representatives in different constituencies. Other inequalities stemmed from traditional pattern of representation that gave some persons more than one vote.

The trend since the 19th century was toward broadening the suffrage, removing religious, property, gender and other restrictions, eliminating multiple voting, and equalizing populations-representation ratios. Concurrently, there has also been a trend toward lowering the voting age. The extension of the suffrage to the working class in 19th century Europe was anticipated by the formation of workingmen's associations and parties. In the United States, suffrage was limited to white males who could meet certain property qualifications. The move toward suffrage for virtually all white males came during the first third of the 19th century. But the struggle to ensure that blacks had full access to the vote continued into the last third of the 20th century.

Although female suffrage existed in three or four countries before World War I, it was the new role of women during that war that provided the major impetus for their enfranchisement. The exclusion of women from the suffrage originated when the electorate was restricted to those who bore arms and was further perpetuated by the general economic and legal dependence of women. Resistance to the demand of the suffragettes crumbled as women, in the course of wartime manpower shortages, entered into a previously male dominated social and economic domain. During the 1918-20 period alone, women achieved the vote in Belgium, the Netherlands, Germany, Poland, Canada and United States and many other countries. In Great Britain women over 30 years of age were granted the vote in 1918, but not until 1928 was the age

requirement equalized at 21 for both men and women. Where women were excluded from voting in the interwar years, as in France, Italy and Japan, it was their role in World War II that finally led to their inclusion in the electorate. The late 1940s also witnessed the extension of the vote to women in most South American countries. In the communist regimes, male and female suffrage has been universal from their inception. Democracies that became independent in the postwar period usually provided for universal suffrage, male and female. In modern democracies voting is generally considered the right of all adult citizens and universal. Since democracy is, however, usually functioning by means of representative participation, the most important political rights are the right to vote, the right to be elected and the right of equal access to public services.

In all forms of government, from the most democratic to the most totalitarian alike, elections have a ritualistic aspect. Candidates and parties, from right to left, in addition to propagating their policy objective through rhetoric and slogans, invoke the symbols of nationalism or patriotism, reform or revolution, past glory or future promise. The voters' intention to vote is a dynamic changing and even fluid mental situation which is subject to influence and manipulation by factors which can be internal as well as external. The entire electoral activity takes place in a social milieu, and, therefore invites a host of diverse factors to influence any voting decision. These factors exercise a restrained influence on the political participation and involvement of the citizen. The voting booth is the only consistently available outlet for political expression.

The framers of the Indian Constitution thought in terms of having fair and free elections in the country and thus they provided for an autonomous machinery – the Election Commission, for conducting elections to the Parliament and State Legislatures and to the offices of President and Vice-President. India is a pluralistic society and despite all the differences and discriminations, India keeps its democracy alive and vibrant. But it cannot be said that democracy in India is working satisfactorily. Everywhere discontent is increasing, polity becomes criminalized, people have to pay even to get their entitlements and basic services, politicians are in the corrupt net and nexus and hence they want to thrive paying directly to the voters, administration is corrupt to the core, confusion and adhocism prevail everywhere, which is being exploited by the market forces for their advancement. The government has not been able to provide their minimum wherewithal

of living to the common people such as pure drinking water, good roads and transport and electricity, health services, universal education and housing. We should work with unison and with the sense of dedication and challenges facing our nation are of such gargantuan proportions. However, the lead has to be provided by our elected representatives.

We are woefully aware that the quality of those elected as our representatives are very poor. Ever since Independence, India is found to be going through the most critical times as its democratic structures and constitutional bodies erected and nourished with great care for the past many decades stand the threat of being marginalized more precisely by politicians and political parties as never before. Over years money and muscle power have become a big factor in determining the outcome of elections. To a people suffering under economic disadvantage, voting acquires hardly any serious meaning and money to the voters, in exchange for votes prevails. Vote bribing has become an open secret. The party in power, ministers, opposition parties and candidates resort to gross unfair practices to ensure their victory at the polls. In a poverty stricken country like India money can have a corrupting influence on the people. So, a rich candidate or party has always better chances of winning the elections. No wonder the number of *crorepatis* contesting elections has gone up exponentially as money talks. Thus, politicians become masters of the people they are supposed to serve.

The problem of reckless use of unaccounted money received by political parties and individual candidates from big industrial houses, businessmen, corruption and other sources from time to time for furtherance of electoral prospects has already acquired menacing dimensions in our system. Big industrialists have their interest when they pay 'good will money' to the different parties and candidates. Various other interest groups also enter into the bargaining counter with a dominant party to throw their weight in favour of it. Candidates, affluent ones or belonging to an affluent party, have always been alleged for using money power to influence the voter. At the same times, the voters also expect money from the candidates. Black money circulation has directly affected and influenced the voters. There is grave concern at bogus voting and the role of money power. Black money is a powerful weapon in the armoury of political parties. This is the root cause of the widespread corruption which has eaten into our democratic values. The political parties as well as their candidates have spent money far in excess of limit imposed by the Representation of

the People Act, 1951. The efforts to run in election expenses, the root evil is yet to acquire a bite be effective and helpful.

The various political parties put up candidates, which are not selected on the merit basis, competence or character but by the ability to mobilize money and muscle power. Many persons belonging to the criminal world have joined politics and entered into the electoral arena, even managing to get the electoral berth. Communal politics is also playing a dirty game. In such circumstances, an earnest voter is at a loss to know as to whom to vote for, as there is very little choice between the candidates.

Even now, rigging takes place not by impersonation but by a few persons stamping the ballot papers in full view of the polling authorities at some places. This generally takes place at the end of the day or at the beginning when the voters are yet to exercise their franchise. The voters feel frustrated but they find themselves helpless. The best way of resolving this problem is to organize people's resistance. Polling officers may not be able to detect impersonation, but they would definitely be able to notice bogus stamping and must report it. If the polling officers do not complain but aggrieved parties do and the complaint is later proved to be valid on examination of the counterfoils, then these officers must be brought to book for conniving with the fraud and concealing the facts.

On the other hand, the political parties who are the major players on the political scene must be held responsible for the degradation of the electoral system. Parties say one thing while in power and just the opposite while being out of power. Expediency gets the better of principles. There is the opposition for the sake of opposition and personal bitterness among political leaders. Things have become worse with local toughs, the polling machinery and policemen participating in increasing bogus voting. We now urgently need a political party which can give a new direction to politics. For this we need disciplined and committed party workers.

The political parties and candidates in elections should scrupulously follow the model code of conduct issued by the Election Commission, from time to time. Election related crimes should be very strictly dealt with and every effort should be made to minimize human rights violations. Political parties and candidates should not indulge in any propaganda that could affect the religious and caste sentiments of the people. Political parties should refrain from identifying themselves with any particular religion. The assumption on the part of political parties

that elections have to be won by hook or by crook has polluted the atmosphere making the task of fair and free elections difficult.

On the other hand, to curb the use of muscle power in elections, the local police and administration which generally connive in such acts must be shuffled. It is thus, the responsibility on the part of the Election Commission, political parties, candidates and of course, on the people to make the polls fair the results clear and the whole electoral exercise healthy leading to a better tomorrow.

In a democracy elections are means to express the will of the people for good and effective governance and realization of their pursuit in life on equal footing. Tainted electoral process depraves the citizens of their guaranteed fundamental and Human Rights in Constitution and covenants by favouring few and damaging other.

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Xinjiang: Curse of the "New Frontier"

Rajen Singh Laishram*

The disquiet in Xinjiang province of the People's Republic of China (PRC) is becoming acute. A series of events in the recent past attest to the gravity of the situation and are suggestive of the tenuous Chinese control in this 'new' frontier province of China. The trajectories of contest in Xinjiang or Sinkiang appear to be inherent in the frontier areas of any vast country wherein race, religion, culture and historical memories impinge. The frontier area, Xinjiang, is a zone "in which all possible boundaries of geography, race and culture cross and overlap to form a broad transitional area of great complexity".¹ Xinjiang has been continually remote from the power centre, with visible patterns of 'incomplete authority' or 'legitimacy crisis' from the central authority. In addition, the depiction that inhabitants of the frontier areas are "ethnically different from each empire's ruling elite or majority and that there was little identification with the central regimes"² has relevance in the case of Xinjiang. An avid writer notes, the history of Xinjiang is a story of many interactions "people, cultures and politics" not of a single nation but of many overlapping political and social groupings before the racial or the national categorisation of 'Turkic,' 'Uyghur' and 'Chinese', which became evident in the twentieth century.³

Located at 73° 41'2" – 96° 18'2" East longitude and 34° 25'2" – 49° North latitude, various tribes and dynasties from north China—the Mongols, Inner Asian elites and Islamic sheikhs—were in command of the Xinjiang area at various phases.⁴ Yet, Xinjiang used to be the domain of the non-nomadic Turkic people *Taranchis*, who by the twentieth century branded as Uyghurs. The Uyghurs ruled Xinjiang with a mix of Kazakh, Kirghiz, Chinese Muslims (*Hui*) and Buddhist

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population, until the Manchu Qing subjugation in 1759, which lasted until 1864. During this period, the Uyghurs claimed to have revolted 42 times to forsake the Manchu rule and regain independence.⁵ The Treaty of St Petersburg made possible the return of Ili region of Xinjiang, occupied by Russia in 1871, to Chinese sovereignty in 1881. Consequently, this treaty effected the division of the Uyghur territory between China and Russia and subsequent Russian control of more than 500,000 square kilometres, including the fertile Ferghana Valley, today shared between Uzbekistan, Kirghizstan and Tajikistan, which Beijing still considers as “Chinese territory”.⁶

The PRC claims that Xinjiang has been a part of China since the start of the rule of the Han dynasty (206 BCE–220 BCE). The Han Dynasty established the Western Regions Frontier Command at Xinjiang in 60 BCE and since then the Chinese central governments of all historical periods exercised military and administrative jurisdiction over Xinjiang,⁷ albeit with fluctuating hold over the territory. Nevertheless, annals of China are replete with instances of resistance, albeit “discontinuous,” in Xinjiang to “rule from Beijing, characterized by a variety of ideologies, Islam being one among them”.⁸ In modern times, episodes of anti-state stance from Xinjiang are traceable since 1759 and it paved the way for an era of “Han Chinese colonization of Xinjiang”.⁹ Notable among such resistance was that of Sufi Muslim leader Jahangira in 1817, which lasted for seven years, and major crises in 1847, 1852 and 1864.

It used to be categorized as *Xiyu* (Western region) during the reign of the Tang and the Han dynasties, but only after its conquest by the Qing dynasty, this vast tract of land became Xinjiang. The word *xin* in Chinese means new and *jiang* means frontier, territory, or dominion. The Chinese character *jiang* has in it glyphs the bow, the earth and fields, signifying the idea of a new land to be protected.¹⁰ Since becoming a new province in 1884, the Qing government renamed the area as Xinjiang. Ironically, according to an official Chinese version, the meaning of Xinjiang is “old territory returned to the motherland”.¹¹

There is an assumption that the greatest Chinese influence in Xinjiang happened during the Tang dynasty as the Han Chinese claimed much of Central Asia during the rule of this dynasty. Some opinions indicate that the assertion of Chinese suzerainty was often more a fiction perpetrated by the tribute system than an indication of the actual control.¹² Even under the Republican regime (1912-1949), the central control over Xinjiang province was loose and weak and often at the mercy of the Han and Muslim warlords. Plans during the Republican

era include tapping the natural endowments of Xinjiang to accommodate the teeming demographic explosion through exploitation of its vast land and magnificent resources for the enrichment and betterment of the Chinese nation. Subsequently, land colonization, agricultural development, migration of Han Chinese peasants, irrigation and mineral exploitation were the new vision of the Republic.

During the Republican regime, Xinjiang province witnessed attempts to establish the Republic of East Turkistan in 1933, 1944 and 1949. The establishment of the East Turkistan Republic (November 1933 till February 1934) in Kashgar continued to be the rallying point of the Uyghur nationalist. In many aspects, Xinjiang region has many similarities with the remote frontier provinces of North East India in terms of rich natural resources, geo-strategic location, racial, cultural and religious differences and lack of shared history from mainstream India, with visible persistence of insurgency. Such erratic interaction of races, cultures, politics and idea qualifies Xinjiang as “Chinese India”.¹³ The crisis in Xinjiang, consequently, is the curse of the “new frontier”.

Geo-strategically situated in the hinterland of the Eurasian Continent, straddling along the legendary Silk Road in northwest China, Xinjiang Uyghur Autonomous Region occupies an area of 1.66 million square kilometers, one-sixth of China’s total geographical area. It is one of the five autonomous provinces and designated after ethnic Uyghurs who constitute about half of the population. Xinjiang today has a total population of 21.308 million and is home to 55 ethnic groups, including the Han, Hui, Kazak, Kirgiz, Manchu, Mongolian, Tajik, Xibe, Uyghurs, Uzbek, Russian and Dongxiang. Ethnic Uyghurs accounts for 40 percent of the total population and people of other ethnicities and nationalities, including the Han, represent the remaining 60 percent.¹⁴

Historically, Xinjiang used to be a ‘pivot’ as long as the bulk of Chinese foreign trade was through the land frontier.¹⁵ This is not surprising as Xinjiang shares 5,600-kilometre-long border with Mongolia, Pakistan, India, Afghanistan, Russia and the new republics of Islamic Kazakhstan, Kyrgyzstan and Tajikistan. Since then, Xinjiang continues to serve as the Chinese corridor to Eurasia and the Islamic world. Flanking this strategic geographical space is also the projection of Xinjiang for its rich hydrocarbon reserves, abundance of cotton and many other minerals. According to an estimate, Xinjiang region has one-third of China’s oil reserves as well as most of the country’s uranium and significant coal deposits. Coal reserves in Xinjiang account for 40 percent of China’s total reserves, besides it is also the largest production

base of cotton, hops and tomatoes, and is the main base of livestock husbandry and sugar beet plantations.¹⁶ The estimate of petroleum and natural gas reserves in Xinjiang is 30 billion tons, accounting for more than 25 percent of the national total.¹⁷ The Tarim Basin has an estimate of about 16 billion tons of oil and gas reserves, and it has supplied around 60 billion cubic meters of gas and with a projection to produce 50 million tons of oil and gas, including 50 billion cubic meters of natural gas.¹⁸ More than 130 mineral deposits have so far been explored in Xinjiang, with verified reserves of 83 types of those minerals. Oil and natural gas reserves in Xinjiang account for 30 percent and 34 percent of the country's land reserves, respectively. The strategic salience of Xinjiang region is also because central Xinjiang, about 265 kilometers southeast of the provincial city Urumqi, continues to be a missile-testing site. Between 1964 and 1996, 44 nuclear tests, 22 of them atmospheric, have been conducted in this region.¹⁹

The PRC continues to cope with the challenges from its 'new' frontier province though the intensity of such unrest is more visible as China opens up. Though one assumes that the problem of legitimacy deficit in China will be over after the establishment of a socialist polity, yet this is not happening and many frontier provinces in China encounters crisis of governance. An internal source refers to 19 revolts and 194 cases of "counter revolutionary" separatist activities during 1951 to 1981.²⁰ In the course of the Cultural Revolution (1966-1976), the attack against the 'Four Olds'—customs, cultures, habits and ideas—curtailment of religious freedom and practices affected the entire ethnic and religious minorities, settled mostly in the periphery of China. Many followers of the Islamic faith, including the majority Uyghurs, who had pinned hope to benefit from the Communist reforms in the 1950s, felt alienated by a mix of discriminatory policies and ultra-leftist violence such as the closure of mosques, banning of the use of Arabic language and separate classes for Muslims.²¹ Perhaps, the rise of the East Turkistan People's Revolutionary Party (Shärqiy Turkistan Khälq Inqilawi Partiyisi) at Xinjiang in February 1968 or maybe earlier²² was a response to Han-Chinese infringement in matters concerning religion. Such measures on the part of Beijing is perceived as a systematic design to chronically thwart exercise of self-rule among communities whose identities are constructed around religion and language such as Muslims and Tibetans.²³ Compounding the matter is the imposition of Mandarin in minority institutions and preference given to those who understand the language of the majority Han is a factor for estrangement of national minorities in China.

Some other religious minority in China did respond in a similar manner as the Uyghurs and we have the case of the Tibetan people. Among the Tibetans as in Uyghurs, assertion and sustenance of distinctive identity, racial and religious, has an intractable link to religion and politics. In addition, the unchecked flow and policy such as the "Go West" encourages ethnic Han migration, which led to reduction of the Uyghur population from 75 percent in 1949 to 40 percent at present, is a sure cause for anxiety. Besides, the visibly disproportionate representation of ethnic Uyghurs in the administrative apparatus of Xinjiang Uyghur autonomous region can be perceived as a systematic means for subjugation and discrimination of the sons of the soil. Nevertheless, to put the blame squarely on the Han-dominated Chinese regime for such disequilibrium ignores one basic handicap of the frontier areas.

The imperatives to combat the persistence of incapability engendered by educational and knowledge disadvantages in the frontier areas continue. In the case of Xinjiang, traditional, Islamic-inspired learning may be antagonistic to new China's stress on modernity, thereby juxtaposing ethnic Uyghurs or any other religious groups or ethnic minorities in a disadvantageous position. Taking into consideration the educational records of Xinjiang, participation of Uyghurs or any other religious groups in the knowledge and skill-driven modern administrative, industrial apparatus and nation-building process of socialist China should be expectedly low. For instance, in 1949, Xinjiang had 1 college, 9 secondary schools and 1,355 primary schools. Only 19.8 percent of school-aged children attended primary school and the overall illiteracy rate was 90 percent.²⁴ If we look further, people who reached university level in Xinjiang region is 1.5 percent as compared to China's national average of 3.6 percent.²⁵ The interconnectedness between knowledge disadvantage and dismal economic growth has been arguably manifested in the per capita GDP difference between Xinjiang which is US\$2, 917 as compared to China's average GDP of US\$3, 679.²⁶ In the absence of a proper mechanism that ensures participation of the sons of the soil, accusations and criticisms regarding the "expropriation" of natural resources and demand for genuine equality and the protection of *minzu* human rights are bound to come. As benefits of modern education and administration make a foray into the erstwhile closed social system, claims and demands for participation has revolutionized. The more a hitherto closed society opens up to the forces of modernity, the weakness of the community is constantly exposed. Tensions engendered by such uneasy interfaces may find a

release through ethnic bashing: ethnic bashing may appeal to the sentiments of the receiving communities, alarmingly creating a bogey of exclusivist policies and resort to pitting one community against another. Given the lack of specialized skill for effective participation in the socio-economic process, along with racial, linguistic, culture and religious differences, frustrations and antagonisms of the Uyghurs are against the 'outsider'. On quite a few occasions, slogans such as "Hans out of Xinjiang", end to the Communist control and "Independence, Freedom, and Sovereignty for Xinjiang" have become vociferous. Yet, there is little information about systematic coordination in defiance against the rule from Beijing among the Islamic believers cutting across ethnic groups in Xinjiang other than the Uyghurs.

Anti-state attacks through religious rhetoric, even through armed methods, began in April 1990. Such episodes continued from the spring of 1996 until February 1997, coinciding with the inauguration of Shanghai Five, later changed to Shanghai Cooperation Organization and "Strike Hard" policy of the PRC. In the widely publicized Ghulja (Yining) demonstrations in early February 1997, over 1,000 protestors pledged to expel Hans from Xinjiang asserting that they wanted nothing to do with the Chinese government.²⁷ Attacks against the ethnic Han-dominated establishment appear to be unabated. The Prefecture of the Uyghur Autonomous Region Internal party documents claimed 380 fatalities from serious incidents in 1998 alone and 100 victims from twenty-seven incidents in the first months of 1999.²⁸

Following the September 11, 2001 World Trade Centre bombings by the Al-Qaeda, the PRC has, for the first time, issued a list of terrorist organizations. Beijing declared the Eastern Turkistan Islamic Movement, the Eastern Turkistan Liberation Organization, the World Uyghurs Youth Congress and the East Turkistan Information Centre as terrorist organizations and branded these organizations as having links with the Al-Qaeda.²⁹ Substantiating the links, *China Daily* reported that Osama bin Laden's Al-Qaeda network and the Taliban regime of Afghanistan are the main sponsors for support, training and funding of these outfits. The PRC alleged that in some pockets of Afghanistan, the Taliban provides training to many new recruits from Xinjiang.³⁰ On the other hand, the Uyghurs' defiance to Beijing administration and majority Han Chinese population shows little sign of ease. As a stratagem to attract the global media attention, the Uyghurs resistance groups or 'anti-nationals', according to Chinese categorization, launched an attack on an armed police station, four days before the start of the Beijing

Olympics, killing 16 police officers and injuring another 16 in Kashgar.³¹ The apprehension of those involved in the attack was on the spot, just outside the gate of the Kashi border police division.³² Yet, the most serious ethnic clash, in the history of Communist China, took place on July 5, 2009 between ethnic Uyghurs and ethnic Han Chinese that left 197 people dead and nearly 2,000 injured in the capital city of Urumqi.

The problem of the Xinjiang has many similarities to the festering issues of the frontier provinces of North East India. Many aspects such as the surging desire for participation and incapacity both in terms of capital knowledge and material required for an effective competition in the rapidly complex society. Moreover, the perception of discrimination, marginalization and alienation, both in the real and attitudinal sense appears to have heightened. The estrangement of Xinjiang, like in North East India, is due to "long lines of communications from China, properly combined with strong ethnic group identification, distinct languages and religion".³³ In the case of the disparate Northeast communities, embedded, close-knit clan network overlooks and condone misuse and abuse of position and power, paradoxically tolerating even abuse of power and positions as well taking of bribes within the community or clan. In the case of the Xinjiang, Islamic precept of *Umma* may overlook intra-community social and class antagonisms. Still in both cases, tendency to attack the 'other' may be the trend and attacks on the 'other' may be the alibi to release the steam of the internal contradiction within the community or among the co-religionist. At the same time, it is also possible that the contours of anti-establishment posture in the frontiers is being determined by a conscious design to attract attention and more allocation in the state-building project and rectification of the denial of historical entitlements in a context of intense regional competition within a country.

There may be difference of opinions on how can we resolve the issues in a complex frontier province like Xinjiang. Allocation of grants perfunctorily, only when the crisis looms large, talks of more autonomy and allocation of huge funds without appropriate mechanisms to ensure participation of the sons of the soil in the political and economic process may not augur well. The regime in Beijing must respond to the religious, cultural susceptibilities and avoid strict regulation and monitoring of matters pertaining to religion. The iron hand in dealing with religious affairs needs review. Racial, religious and cultural differences of people in Xinjiang, in relation to the Han Chinese, who are professedly atheist, are a reality. However, the tension between ethnic Han Chinese and

majority Uyghurs can aggravate by the virtual representation of the Han majority in all institutional spheres. What is required is to take into consideration the knowledge and gender disparity and incapacity of the frontier people like the Islamic believers, which until recently discouraged western liberal education and the clash between materialistic orientations of the atheist and the communistic ideology. Any policies without taking into consideration the susceptibilities of the Islamic believers are bound to have a negative impact, notwithstanding the development programmes set aside for the development of Xinjiang. A question arises, had the Han Chinese inhabited Xinjiang, the crisis as experienced today in the frontier of Xinjiang may have as well be a cry for regional disparity? Alternatively, is there an inherent tension between people or communities of different racial stock or ethnic groups? However, since the occupants of this part of the frontier happen to be linguistically, religiously, racially the “other”, hence all these attendant problems. Thus, it is the curse of the frontiers.

The massive economic and development package for Xinjiang, first of its kind announced in the Central Work Conference during May 17-19, 2010, to “achieve leapfrog-like development” for a moderately prosperous Xinjiang society by the year 2020 is not likely to achieve immediate results. This is so, going by the wide income difference and with the level of dismal educational records and technical skills, which is required for most of the trade, technical, scientific and development-related works.³⁴ Consequently, the combination of the three sources of support—central government support, assistance from economically developed regions and Xinjiang self-development— may not augur well in dispelling the trust deficit between the majority Han and the Islamic believers.

Footnotes

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