MoU to boost human rights partnership

Apratim Mukarji
New Delhi, November 10

INTERNATIONAL COOPERATION in human rights will get a fillip when the United Nations High Commissioner for Human Rights (UNHCHR) and the city-based Asian-African Legal Consultative Organisation (AALCO) enter into a partnership on Monday.

UNHCHR Mary Robinson will sign a MoU with AALCO Secretary- General Ambassador Dr Wafik L Kamil "with a view to developing a programme of concrete cooperation". The MoU aims at cooperation in the areas of common interest to both organisations within the scope of their respective constitutions, mandates and activities.

The areas of cooperation include commitment of both organisations to the promotion and protection of human rights and fundamental freedoms set out in the international and regional instruments of human rights and encouraging a wider adherence to and ratification of various human rights instruments.

"Human rights is an issue that permeates almost every action that the international community takes nowadays," Kamil said.

The global war against terrorism is a prime example of how international cooperation in this particular sphere is wedded to the upholding of human rights. "If we combat terrorism, it is related to the right of every human being to be alive and secure."

As international law looks at it, "what happened in New York on September 11 was essentially a crime against humanity", Kamil said. "And whoever perpetrated the crime can be brought under the jurisdiction of the International Criminal Court (ICC) for committing a crime against humanity or within the core crimes under the jurisdiction of the ICC."

The ICC, which is yet to come into force with the ratification of its statute by the required number of UN member-countries left in uncertainty, has jurisdiction over four categories of crimes, genocide, crimes against humanity, war crimes and aggression.

It is a universally acceptable definition of the last-named crime, the absence of which in fact prevents the ICC from launching an operation.

THE HINDUSTAN TIMES

Rights Watch decries civilian deaths

QUETTA (PAKISTAN), OCT. 31. Nearly 35 Afghan civilians died when U.S. bombs and gunfire hit their village, Chowkar-Karez, on the night of Oct. 22, Human Rights Watch said on Tuesday.

None of the witnesses interviewed by Human Rights Watch knew of Taliban or Al-Qaeda positions in the area of the attack.

Human Rights Watch reiterated its call to the U.S.-led alliance to ensure that it is taking adequate precaution to avoid civilian casualties, and called for an immediate investigation into the bombing raid that hit Chowkar-Karez, located some 40 km north of the Taliban stronghold of Kandahar. "If there were military targets in the area, we'd like to know that they were," said Sidney Jones, Asia Director of Human Rights Watch. "This is the second instance in less than a week in which we've documented substantial civilian casualties from U.S. bombing raids. The Pentagon has got to do more to avoid these deaths."

Human Rights Watch researchers located six wounded survivors of the October 22 bombing raid that hit Chowkar-Karez. The six are currently recovering in Quetta hospitals. Human Rights Watch also interviewed several additional persons who witnessed the attack but were not hurt.

Among those wounded by the bombing are Mrs. Sardar Bibi (40), who lost her husband and six children in the attack; five-year-old Shabir Ahmed, who received severe shrapnel wounds to his head and remains unconscious; Shabir Ahmed's seven-year-old brother, who was also wounded; and three adult sisters.

One family interviewed by Human Rights Watch provided the names of 18 relatives killed in the incident, and another unrelated woman said her husband and six children were killed, and that she had been told that as many as 35 people died in the raids.

All of the witnesses interviewed by Human Rights Watch said there were no Taliban or Al-Qaeda positions in the area of the attack, which is in a remote rural area of Afghanistan. In almost all other cases of civilian casualties caused by the U.S.-led bombing campaign investigated by Human Rights Watch, survivors and witnesses have been forthcoming in identifying Taliban or Al-Qaeda military positions located nearby which could have been the target of the attack. It is impossible for Human Rights Watch to verify independently whether Taliban or Al-Qaeda military targets existed in the area of Chowkar-Karez village, but the consistent statements of all witnesses and survivors that there were none is notable.

THE HINDU
1 NOV 2001

Minorities suffer harassment in Pakistan, says U.S. report

WASHINGTON: The U.S. state department in its annual report on religious freedom has said that minorities in Pakistan suffer harassment, discrimination and even violence.

Some Sunni Muslim groups, says the report, publish literature calling for violence against Ahmadis and Shia Muslims and some newspapers frequently publish articles with derogatory references to religious minorities, especially Ahmadis and Hindus. There is believed to be widespread discrimination in employment. Christians have difficulty finding jobs other than those involving menial labour, although Christian activists say that the situation has improved in the private sector in recent years. Christians and Hindus are also disproportionately represented in most oppressed social group-bonded labourers. "Illegal bonded labour," says the report, "is widespread."

Agriculture, brick-kiln, and domestic workers often are kept "virtually as slaves." Minority groups believe they are under-represented in government census counts, says the report. A 1974 constitutional amendment declared Ahmadis to be a non-Muslim minority. Ahmadis are prohibited from "directly or indirectly" posing as Muslims. This provision has been used extensively by the government and anti-Ahmadi religious groups to target and harass Ahmadis. They are also prohibited from holding any conferences or gatherings.

Religious minorities are given fewer legal protections than Muslim citizens. Under the Hadood ordinances in effect, a non-Muslim may testify only if the victim is also a non-Muslim. Likewise, the testimony of women, Muslim or non-Muslim, is not admissible in cases involving hard punishments. Therefore, if a Muslim man rapes a Muslim woman in the presence of women or non-Muslim men, he cannot be convicted under the Hadood ordinances.

The ministry of religious affairs, which is entrusted with safeguarding religious freedom, has on its masthead a Koranic verse, "Islam is the only religion acceptable to God." The government designates religion on citizens' passports. In order to obtain a passport, citizens must declare whether they are Muslim or non- Muslim. Muslims also must affirm that they accept the unqualified finality of the prophethood of Mohammed, declare that Ahmadis are non-Muslims, and especially denounce the founder of the Ahmadi movement. *(PTI)*

THE TIMES OF INDIA

29 OCT 2001

Human rights groups oppose POTO

By J. Venkatesan

NEW DELHI, OCT. 27. Several human rights groups have voiced concern over the promulgation of the Prevention of Terrorism Ordinance (POTO) 2001, as they feel that some provisions are harsher than the provisions of the defunct TADA.

They argue if the TADA could not counter terrorism, how could the present legislation succeed in putting an end to it. Human rights of the citizens would be in great peril if the ordinance is enforced.

The groups say the police in India is notorious for its third degree and illegal methods of investigation. As such clothing them with more arbitrary powers would result in harassment of innocent persons, besides being unable to achieve its objective.

Referring to the Government's contention that similar legislation have been enacted in the U.S. and the U.K., the human right groups say the standards of behaviour of the police in those countries are far more civilised and consistent with the norms of law.

They feel that introducing similar enactments here would not be appropriate, inasmuch as the social and political standards and the level of consciousness of the citizens are not the same as that of the U.S. or the U.K.

They say sweeping powers to the police to detain a person without trial, stringent bail provision more or less similar to the TADA, to conduct search of premises without warrant, intercept any vehicle, etc., are liable to be misused.

They cite the recent ruling of the TADA court in Mysore acquitting over 100 accused in the "Veerappan associates case" after languishing in prison for nearly eight years. It is an eye opener as to how the law had been misused to harass innocents.

They have drawn the attention of the Government to the fact that terrorism is a consequence of socio-economic injustice and it is really a political problem and not a "law and order" problem.

Stringent law justified

On the other hand, representatives of the armed forces have called for a more stringent law than the present ordinance. They submitted that some of the provisions to provide protection to the accused are unworkable and impractical.

They point out the serious situation in which India is placed at present with terrorism threatening its security from all sides, not only with external terrorism but also with internal terrorism.

They say one must realise the extraordinary, alarming and dangerous situation in which the country is placed today because of the activities of the hostile neighbour and fundamentalist Islamic terrorism which have made India their prime target.

They argue the Indian Penal Code was not meant for fighting organised crime; it was designed only to check individual crimes and occasional riots. Organised crimes perpetrated by highly-trained, financed, armed and supported by hostile foreign countries and agencies had to be fought at a different level than as an ordinary law and order problem.

They point out that anti-terrorism laws of the U.S. and the U.K. are far more stringent than the provisions of the POTO. On the possibility of misuse, they argue that there was no Act on the statute book either in India or anywhere else which was not open to abuse or misuse. The present enactment is one of the means of fighting terrorism and hence could not be validly opposed, they say.

Fund-raising, an offence

By Our Special Correspondent

NEW DELHI, OCT. 27. The Prevention of Terrorism Ordinance (POTO), promulgated three days ago, has made holding of proceeds of terrorism illegal and fund-raising for a terrorist outfit an offence.

"Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this ordinance, shall be liable to be forfeited to the Central Government or the State Government," the ordinance says in Chapter II which dwells upon measures for dealing with terrorist activities.

Conferring the police with more powers, it states if the investigating officer has reason to believe that any property in relation to which a probe is being conducted, represents the proceeds of terrorism, he shall, with the prior approval of the Director-General of the Police of the State, make an order seizing such property or make an order of attachment.

The investigating officer shall inform the designated authority or the special court within 48 hours of the seizure or attachment of such property. It shall be open to the designated authority or the special court either to confirm or revoke the order of attachment.

It bestows the investigating officer with powers to seize and detain any cash if he finds that it was intended to be used for the purposes of terrorism or it formed part of the resources of an organisation declared as terrorist under this ordinance. The cash would mean notes or coins in any currency, postal orders, travellers' cheques, banker's drafts or other monetary instruments notified by the Central or the State Government.

Making fund-raising for a terrorist organisation an offence, the ordinance says a person commits an offence if he invites another to provide money or other property and intends that it should be used for the purposes of terrorism. Receiving or giving money or other property even after suspecting that it would be used for the purposes of terrorism has also been notified as an offence.

THE HINDU

Poverty a rights abuse: Commonwealth report

STATESMAN NEWS SERVICE

BRISBANE, Oct 4. — A Commonwealth study on human rights reveals that member countries do not maintain proper standards. The study has called for the matter to be given top priority.

The study was conducted by the Delhi-based Commonwealth Human Rights Initiative after the 1991 Commonwealth Heads of Government Meeting where the Harare Declaration committed the countries to maintain standards in democracy, rule of law and human rights.

"Sadly, in the 10-year period, the Commonwealth has failed to maintain these standards," CHRI advisory committee chairman, Ms Margaret Reynolds, said. The report "Human Rights and Poverty Eradication: A Talisman for the Commonwealth", was launched at the Commonwealth People's Festival yesterday.

The report highlights the appalling scale and depth of poverty in many Commonwealth nations and calls for poverty to be recognised as an abuse of human rights. It urges the member states to renew their commitment to the Harare Principles.

The report has recommended a restructuring of the Commonwealth's organisational framework to prioritise human rights, implementation of a structured rights-based plan for poverty eradication and a systematic monitoring procedure to implement pledges made by the Commonwealth Heads towards realisation of human rights and poverty eradication.

The week-long festival is preparatory to the Commonwealth Heads of Government Meeting scheduled to be held next week. The rural development minister, Mr M Venkaiah Naidu, attended the festival.

Addressing the Commonwealth Local Government Forum, he presented details of the evolution of India's local government initiatives from 1952 till date and focussed on the emerging scenario.

He elaborated on efforts to strengthen the Gram Sabha, devolution of power and functions, strengthening of the finances of panchayats and setting up of District Planning Committees. He spoke about the vision behind these initiatives.

THE STATESMAN

5 OCT 2002

DOCUMENT

Standing in defence of human life

Extracts from the the annual report of the National Human Rights Commission, 1998-99, on custodial death, rape and torture

A systematic effort to curb custodial violence has been a major priority of the commission over the past five years. As early as December 1993, the commission issued instructions to all states asking them to direct all district magistrates and superintendents of police to report directly to the commission any instance of death or rape in police custody within 24 hours of its occurrence, failing which there would be a presumption that efforts were being made to suppress the facts. Subsequent instructions extended this directive to cover deaths in judicial custody as well... In the year 1998-99, the figures reported to the commission were 183 deaths in police custody and 1,114 deaths in judicial custody, compared with the 193 deaths in police custody and 819 deaths in judicial custody reported in 1997-98... It will be observed that there has been a decrease in the deaths reported to the commission in police custody and an increase in deaths in judicial custody, the latter providing an unfortunate commentary on health conditions prevailing in the prisons of the country.

The commission notes that there has not been a marked increase in the overall number of custodial deaths reported to it in 1998-99 when compared to the previous year. It further notes that the number of deaths in police custody as reported to it has shown a decline in a number of states, with Gujarat, Kerala, Meghalaya, Rajasthan, West Bengal and Delhi being exceptions and a marginal increase also being reported in Andhra Pradesh, Arunachal Pradesh, Assam, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu and Pondicherry. The commission is of the view that the increase in the reports of deaths in judicial custody is the result of a more rigorous and better response to its repeated instructions that information regarding such tragic occurrences must not be suppressed, but must be reported promptly, and investigated and acted upon thereafter.

The commission would like to recapitulate and reiterate certain recommendations made in its earlier reports on the issue of custodial violence as these are still relevant and are yet to be implemented:

Early action needs be taken on the suggestion of the Indian law commission to the effect that a Section 114(B) be inserted in the Indian Evidence Act 1872 to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer.

Safekeeping

Section 197 of the code of criminal procedure needs to be amended, on the basis of ILC's recommendation, to obviate the necessity for governmental sanction for the prosecution of a police officer, where a *prima facie* case has been established, in an inquiry conducted by a sessions judge of the commission of a custodial offence.

As suggested by the national police commission, there should be a mandatory inquiry by a sessions judge in each case of custodial death, rape or grievous hurt.

The memorandum of action taken, submitted by the Central government on the 1996-97 annual report, indicated that these recommendations were still being processed. In the absence of any further indication of progress, the commission strongly urges the government to give priority to the implementation of these recommendations.

In earlier reports, the commission has drawn attention to the detailed instructions of the Supreme Court in the cases of ***Joginder Singh vs the State of Uttar Pradesh*** and ***D.K. Basu vs the State of West Bengal***. Meticulous attention needs to be paid both by the Central as well as the state governments to the directions of the Supreme Court in both the cases...

The commission has the powers, under section 12(c) of the Protection of Human Rights Act, 1993, to visit any jail or institution where persons are detained. In exercise of its powers, the commission directed the secretary general to inform all the states of its decision to undertake surprise visits to police lock-ups in various states through officers designated by it. The secretary general's letter of August 1, 1997 on this matter requested the states to issue suitable directions to the competent police authorities to facilitate such surprise visits. So far, 29 states/Union Territories have acted on this proposal. Jammu and Kashmir, Manipur and Daman and Diu are yet to respond and it is recommended that they do so at an early date. During the past year, officers of the commission have visited a number of lock-ups in Andhra Pradesh and Bihar and made a series of observations which are being attended to in consultation with the competent state authorities.

THE TELEGRAPH

The chains remain despite Govt. directive

By Ramya Kannan

CHENNAI, SEPT. 13. The tragic death of 28 mentally-ill patients at a private asylum in Erwadi in Tamil Nadu's Ramanathapuram district on August 7 provided a golden opportunity to review the entire state of treatment and care for them. The concern now seems to be that this focus should not be diluted.

Though the Chief Minister, Ms. Jayalalithaa, announced within three days that all the mentally-ill patients at the private 'homes' or temples must be unchained immediately, the Government's directive is being violated without fear of penal action.

Hardly 50 km from Chennai, at the Agora Veerabhadraswamy Temple in Hanumanthapuram, mentally-ill patients are still chained to the pillars in the temple courtyard.

The usual explanations that seek to excuse such gross violation of human rights are offered: "Only the violent people are chained. We cannot handle them otherwise." The relatives point out that not all the 50 or so patients are chained but "only those who must be". The others have a free run of the place, though the telltale signs — matted hair, wild eyes and unkempt looks — indicate they are there for a cure too.

People have been visiting the temple in Kancheepuram district for centuries now, bringing their mentally-ill relatives in tow, when "medicine and science has failed".

Legend has it that the presiding deity of the temple, Agora Veerabhadraswamy, was created by Lord Shiva to destroy King Dakshan. The chief priest of the temple, Sri Gnanasambanda Gurukkal, says Dakshan and his army were vanquished at the betel leaf groves in Kancheepuram, where the temple came up later. As it was a 'mayana bhoomi' (burial ground) the area has the "power to chase away evil spirits".

Apparently, a lot of people are convinced by this. At one point of time there were close to 500 mentally-ill persons living in and around the cloisters of the temple. The priests claim that most of them have gone back cured. Patients have come from various States, including Maharashtra, Gujarat, Bihar and Orissa.

"We will not take care of the patients. They can stay only if there is a relative to take care of them," the temple authorities claim. Though the patients live within the precincts of the temple, the only 'real contact' is during the three pujas that are conducted every day. At the 11 a.m. puja, a few patients were seen gyrating and swaying and were supposed to have been 'possessed by spirits'. However, fetters and chains are available for a nominal charge, to be returned when the patient is 'cured'.

Today the number of patients has come down drastically, according to Mr. J.R. Ayankaran, social worker with the Schizophrenia Research Foundation, who has been working for nearly 10 years in the area. But some of the patients have been there for a number of years. Like Asha (name changed), a schizophrenic whose mother claims that 'medicine worsens things'. She has been there for the past five years and says, "last month a girl was brought in kicking and screaming. In a short while, she was fine and could go home walking. So, why can't I believe that my daughter too will walk home with me one day," she asks.

A Government psychiatrist says, "You cannot wish away faith. People will keep coming back to these holy places. Faith is also an important key to treatment and cure and no psychiatrist can ignore this."

Dr. R. Tara of the SCARF brings into focus a larger perspective, "It is not just Erwadi or Hanumanthapuram. One must look at the issue of mental health comprehensively." A few issues she raises need to be addressed by any Government serious about the welfare of its citizens: what are the budgetary allocations? Are the facilities provided sufficient? Implementation of the Mental Health Act and taking mental health care to the people. Though the State's reaction to Erwadi was swift and the follow-up thorough, psychiatrists suggest that the future approach to the mental health issue be more comprehensive and not 'reactionary'.

A chained mentally-ill patient at the Agora Veerabhadraswamy Temple in Hanumanthapuram. — Photo: R. Ragu

THE HINDU

14 SEP 2001

Rights body levels massacre charge at Macedonia

Skopje, September 6

A HUMAN rights group accused Macedonian forces yesterday of torturing and killing ethnic Albanian civilians in a village near the capital, Skopje, during an offensive last month that left 10 people dead.

US-based Human Rights Watch claimed in a report that Macedonian police shot and killed six civilians and burned homes and stores during a house-to-house sweep of the ethnic Albanian village of Ljuboten on August 12.

Indiscriminate shelling killed another three civilians and one more was fatally shot by government forces as he tried to flee, the report said.

Interior minister Ljube Boskovski denied there had been a massacre and said ethnic Albanian "terrorists" had been killed in fighting. The government said the offensive was in response to a landmine explosion that killed eight soldiers two days before.

Boskovski, who was singled out in the report, accused the group of insulting "my personal reputation, the reputation of the interior ministry and the police officers with the interior ministry".

A statement from Macedonian police unions accused Human Rights Watch of "remaining deaf and mute" to claims of attacks against Macedonian authorities and civilians.

But the head of the rebel ethnic Albanian 113th brigade, known as Commander Sokoli, or Falcon, said there were no guerrillas there at the time of the attack.

"This was only a fabricated excuse to get into the village... the truth is that people were massacred in the most barbaric way," he said.

Human Rights Watch said its investigators also found no evidence of guerrillas in the village at the time of the offensive, and said Boskovski was in Ljuboten during the Government sweep.

"It is deeply disturbing that the minister of the interior appears to have been so intimately involved in one of the worst abuses of the war," said Elizabeth Andersen of Human Rights Watch.

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THE HINDUSTAN TIMES

- 7 SEP 2001

Nations must respect U.N. norms: NHRC

HD-11 6/9 By M. S. Prabhakara Human Rights

DURBAN, SEPT. 5. Speaking on behalf of the National Human Rights Commission of India at the World Conference against Racism today, Dr. Justice K. Ramaswamy, Member of the NHRC, said that it was essential that all member-states of the United Nations, 'including India', respect the international human rights regime established under the auspices of the U.N. and observe the discipline of the treaties to which they are signatories.

Explaining the stand of the NHRC on the issues before the Conference that are "particularly germane to my country", Dr. Justice Ramaswamy said that there can be no doubt that Indian history and society had been scarred by discrimination and inequality. He referred to the justiciable constitutional provisions prohibiting all forms of discrimination, "including notably those forms which are based on race, caste or descent" and to the programme of affirmative action.

The issue of discrimination based on descent, prohibited in the Constitution, has been the focal point of the mobilisation by the various Dalit organisations who are here seeking the inclusion of caste and untouchability in the WCAR's final declaration. The official Indian position seems to be that even though the Indian Constitution prohibits such discrimination, there has till now been no international agreement on the question and descent-based discrimination has not been part of any international covenant. The leader of the Indian delegation, Mr. Omar Abdullah, categorically rejected such calls in his speech.

Thus, the observation by the NHRC representative, indirectly criticising the official Indian stand: "The Commission believes deeply in the value of engaging Governments, non-governmental organisations, national institutions and all concerned elements of civil society in the process of fighting discrimination, and urges that the process be conducted at all levels in a spirit that is genuinely interested in the furtherance of human rights and not vitiated by self-righteousness or by political and other extraneous considerations."

THE HINDU

- 6 SEP 2001

Chief Justice of India AS Anand delivered this lecture, invaluable in public interest, at Jodhpur on 25 August

Public interest litigation as aid to protection of human rights

We have a written Constitution. It has a Preamble which encapsulates the basic objective of the Constitution-makers to build a new socio-economic order where there will be social, economic and political justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the State, Executive, Legislature and the Judiciary, working harmoniously to strive to realise the objectives concretised in the Fundamental Rights and the Directive Principles of State Policy.

There is an increasing realisation that Fundamental Rights can have no meaning for a large number of people in India, unless a new socio-economic order is raised on the foundation of Directive Principles. Since the last few years, the Supreme Court of India is increasingly invoking the Directive Principles in interpreting the Fundamental Rights and as a matter of fact the Directive Principles, which are dynamic, are fertilising the static provisions of the Fundamental Rights.

The task of enforcing Fundamental Rights has been assigned by the Constitution to the Supreme Court and the High Courts and the right to move the Supreme Court for enforcement of Fundamental Rights has itself been elevated to the status of a fundamental right under Article 32 of the Constitution. Access to justice to protect their Fundamental Rights was almost illusory for weaker sections of Indian humanity due to their poverty, ignorance and illiteracy. To them, rights and benefits conferred by the Constitution meant nothing. Thus, majority of the people of this country were subjected to denial of justice. The Constitution had indeed shown a great concern for the underprivileged, conferred on them many rights and entitlements and laid obligations on the State to take measures for improving the conditions of their life. Towards that end laws were enacted and administrative programmes formulated by the State for bringing about social and economic change and ensuring distributive justice to the people.

But these constitutional edicts, legal enactments and administrative measures needed to be implemented and enforced with vigour and dynamism, creatively and imaginatively and the under-privileged assisted to reap their benefits and assert their rights. Someone had to act. The judiciary regarded it as its duty to come to the rescue of the underprivileged to help them to reap the benefits of economic and social entitlements. The Supreme Court realised that one of the drawbacks of the justice delivery system has been the denial to the common man, access to justice. This truism was recognised by the judiciary and the concern of the courts in that behalf was reflected in Bihar Legal Support Society vs. Chief Justice of India, when the Court said: ".....that the weaker sections of Indian Humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law. On account of their socially and economically disadvantaged position they lack the capacity to assert their rights and they do not have the material resources with which to enforce their social and economic entitlements and combat exploitation and injustice".

To reach out, the Supreme Court, therefore made innovative use of judicial power by developing a variety of techniques to make access to justice a reality. The Supreme Court realised that it was necessary to depart from the traditional rule of *locus standi* and to broaden access to justice by providing that where a legal wrong or a legal injury is caused to a person or to a class of persons, who by reason of their poverty or disability or socially or economically disadvantaged position, cannot approach the court for relief, any member of the public or social action group or interest group or a concerned citizen, acting *bona fide* can maintain an application in the High Court or the Supreme Court, seeking judicial redress for the legal wrong or injury caused to such person or class of persons.

This was in a way an extension of the principle under which *habeas corpus* petition is allowed to be filed by anyone for release of a person held under illegal detention since the person detained is, on account of his detention, not free to have access to justice. Thus, through judicial creativity, representative standing was expanded to the disadvantaged groups of persons who were not "free" to approach the courts due to economic and social factors rather than physical restraint.

It was liberalisation of the rule of *locus standi*, which gave birth to public interest litigation or PIL for short. A most powerful thrust to public interest litigation was given by a seven-Judge Special Bench in SP Gupta vs. Union of India. The judgment recognised the *locus standi* of lawyers to file writ petition by way of public interest litigation. The case concerned the transfer of a Chief Justice of a High Court and non-extension of the term of an additional Judge. What was at stake was also the issue of independence of the judiciary.

Explaining the liberalisation of the concept of *locus standi*, it was said: ".... It must be regarded as well settled law, where a person who has suffered a legal wrong or a legal injury or whose legal right or legally protected interest is violated, is unable to approach the court on account of some disability or it is not practicable for him to move the court for some other sufficient reasons, such as his socially or economically disadvantaged position, some other person can invoke the assistance of the court for the purpose of providing judicial redress to the person wronged or injured so that the legal wrong or injury caused to such person does not go unredressed and justice is done to him".

The history of public interest litigation is in a way the history of development of human rights jurisprudence in India during the last two decades. It represents a sustained effort on the part of the judiciary to provide access to justice for the deprived sections of Indian humanity with a view to protect their human rights. During the last two decades or so, a new dimension of justicing process has, thus, been opened which has given new hope to the justice-starved millions of India through the mode of public interest litigation.

Chief Justice of India AS Anand: 'Let us preserve sanctity of judicial process'

The concept of public interest litigation as evolved in the United States immediately comes to our mind. But our model of public interest litigation is different from the model in vogue in the United States. Our model is a judiciary fashioned tool which deals with issues like consumer protection, prevention of environmental pollution and ecological destruction as in the United States and perhaps in other jurisdictions, but it does much more.

Its primary focus is on exploitation of disadvantaged groups, denial of their human rights and entitlements and repression by agencies of the State. The public interest litigation model, which we have evolved, is directed towards finding social and political space for the disadvantaged and other vulnerable groups. It is concerned with immediate as well as long-term resolution of the problems of the disadvantaged. It also seeks to ensure that the authorities of the State fulfil the obligations of law under which they exist and function. A survey of public interest petitions in this country shows that people have gone to courts when they found that there was no other means of redressal. Unfortunately, the executive in a vast number of cases was found to be no longer responsive to protests expressed by the people.

The political leadership was expected to be sensitive to the urges and aspirations of the people. It was found not to be so. Matters, which have gone to courts under PIL, were essentially of concern to numerically small and powerless minorities. Where a group of people is small and is not likely to have any organised strength to make itself felt politically, judicial process is preferred through PIL which has by now come to be accepted as a new method by which, to some extent, public injuries can be redressed or the government, its agents or instrumentalities compelled to do their own duty in the interest of the citizen. This exercise by the courts is aimed to serve the cause of justice and wean the people away from the lawless street and bring them to the court of law – to maintain Rule of Law.

Perhaps one of the first PIL cases considered by the Supreme Court was Hussainara Khatoon's case. A series of articles were published in the *Indian Express* exposing the plight of Bihar undertrial prisoners languishing in Bihar jails. Most of them had served long pre-trial detentions. A writ petition was filed by an advocate of the Supreme Court drawing attention of the court to the plight of the undertrial prisoners.

The Supreme Court accepted the *locus standi* of an advocate to maintain the writ petition and in a series of cases Hussainara Khatoon (I) to Hussainara Khatoon (VI) vs. State of Bihar issued many meaningful directions and *inter alia* held that speedy trial was an integral and essential part of right to "life and liberty" contained in Article 21 of the Constitution. Close on the heals of Hussainara Khatoon, two law professors in 1980 filed a writ petition in the Supreme Court, highlighting the inhuman conditions prevailing in protective homes, long pendency of trials, trafficking in women, importation of children for homosexual purpose, non-payment of wages to bonded labourers and inhuman condition of prisoners in jails.

It was asserted that all these inhuman conditions were a gross violation of Article 21 of the Constitution. The Supreme Court accepted their *locus standi* to agitate on behalf of the "sufferers" and passed orders giving certain guidelines in each of these matters. PIL took a leap forward.

In Sheela Barse vs. State of Maharashtra, the Supreme Court entertained a writ petition based on a letter addressed by a journalist complaining of custodial violence to women prisoners while confined in the police lock-up in Bombay.

The court directed the director of college of social work, Nirmala Niketan, Bombay to visit Bombay Central Jail and interview women prisoners and ascertain whether they had been subjected to any torture or ill-treatment and to submit a report. Based on the findings of the report, the Supreme Court issued a number of directions which include the direction to lock up female prisoners only in female lock-ups guarded by female constables and to interrogate female accused only in the presence of female police officials.

A further forward step was, now, taken to protect and preserve human rights of female prisoners. In Sunil Batra vs. Delhi Administration, a prisoner lodged in the jail wrote a letter to a Supreme Court judge complaining of an assault by a head warder on another prisoner, Premchand. That letter was treated as a writ petition, forsaking the prescribed forms because what was at stake was the right to "Life and Liberty" ensured by Article 21 of the Constitution.

A three-judge Bench heard the matter and while issuing various directions, it was opined that "technicalities and legal niceties are no impediment to the court entertaining even an informal communication as a proceeding for *habeas corpus* if the basic facts are found". The Supreme Court rose to the occasion and public interest litigation acquired a new dimension and legitimacy.

Public interest litigation was further consolidated in Municipal Council, Ratlam vs. Vardhi Chand when a Division Bench of the court recognised the standing of the citizens to seek directions against the municipality for removal of stench caused by open drains under Section 133 of the Code of Criminal Procedure. The concept of "access to justice" was elaborately considered and discussed. It was emphasised that if the "Centre of gravity of justice is to shift as indeed the Preamble to the Constitution mandates, from the traditional individualism of *locus standi* to the community orientation of public interest litigation, the court must consider the issue as there is need to focus on the ordinary men" so that procedures which are conducive to the pursuit and protection of human rights are discovered and advanced. In MC Mehta vs. Union of India, the petitioner prayed for directions for giving wide publicity to the messages and directions issued by the court from time to time to protect environment and ecology on environmental protection, through the government controlled television, radio and other modes of mass media, and also to make environment, as a compulsory subject in schools and colleges.

The Supreme Court accepted the prayers, on principle and issued directions to that effect. Decisions on such matters as the right to protection against solitary confinement as in Sunil Batra case, the right not to be held in fetters as in Charles Sobraj vs. Superintendent Central Jail, the right against handcuffing as in TVS Vatheeswaran vs State of Tamil Nadu, the right against custodial violence as in Nilabati Behera vs. State of Orissa, the rights of the arrestee as in DK Basu vs. State of West Bengal, the right of the female employees not to be sexually harassed at the place of work as in the case of Vishaka vs. State of Rajasthan, and Apparel Export Promotion Council vs. AK Chopra, were rendered in public interest litigation, by expanding the ambit and scope of Article 21 so as to include within its fold the right to live with human dignity because the "dignity of man supersedes all other considerations".

Realising that while human rights are necessary to promote the personality development of human beings, healthy environment is necessary to safeguard conditions conducive to such a personality development, there being a natural link between environment development and human rights, this court ruled in Subhash Kumar vs. State of Bihar that the right to pollution-free water and air is also a facet of Article 21. In Doon Valley's case, the court held that Article 21 includes in its sweep clean environment and that the permanent assets of mankind cannot be allowed to be exhausted.

Again, with a view to minimise, if not altogether, prevent the violation of fundamental rights, award of compensation consequential upon the deprivation of Fundamental Right to Life and Liberty of a citizen, as a "palliative" for the unlawful acts of the instrumentalities of the State as in Rudul Sah vs. State of Bihar and the line of cases following it like Sebastian M Hongray vs. Union of India and Bhim Singh vs. State of J&K, culminated in Nilabati Behera vs. State of Orissa, where this court crystallised judicial right to compensation and held: "The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen.

"The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system, which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. "The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen".

This view was reiterated in DK Basu vs. State of West Bengal. Here the court went to the extent of saying that since compensation was being directed by the courts to be paid by the State held vicariously liable for the illegal acts of its officials the reservation to clause 9(5) of ICCPR by the Government of India had lost its relevance. In fact, the sentencing policy of the judiciary in torture-related cases, against erring officials in India, has become very strict.

For an established breach of fundamental rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts, in addition to private law remedy for tortuous action and punishment to wrongdoer under criminal law. An enforceable right to compensation in cases of "torture" including "mental torture" inflicted by the State or its agencies is now a part of the public law regime in India.

The right to health of the citizens is not an enumerated fundamental right in part III of our Constitution. There is a reference to this right only in the Directive Principles of State Policy, which are not justiciable *per se*. Similarly, the right to medical treatment, in case of emergency is not a fundamental right or for that matter, not even a legal right. Through cases filed as public interest litigation, the Supreme Court has succeeded in making people aware of these rights and also reminding the State of its obligation to protect and enforce the same.

In Vincent vs. Union of India, the Supreme Court treated a letter from an advocate as public interest litigation, seeking directions in public interest banning the import, manufacture, sale and distribution of such drugs, which have been recommended for banning by the Drugs Consultative Committee. The court considered the question to be of national importance, and dealt with the requirement of health care of citizens and issued directions to the Central government to set-up regional Drug Laboratories in addition to the Central Laboratory to keep a check on sale and use of banned or harmful drugs.

In Paramanand Katara vs. Union of India, a Division Bench of the Supreme Court admitted an application filed under Article 32 by a practising advocate along with a news item entitled "Law helps the injured to die" as a public interest litigation. The petitioner, through this public interest litigation, had highlighted the difficulties faced by the injured persons in getting medical treatment urgently required to save their lives, in view of the refusal by many doctors and hospitals on the ground that such cases are medico-legal cases.

The petitioner narrated the unfortunate incident of a person dying due to the non-availability of immediate medical treatment. The court extensively dealt with professional ethics of the medical profession and issued a number of directions to ensure that an injured person is instantaneously given medical aid, notwithstanding the formalities to be followed under the procedural criminal law.

The court declared that the right to medical treatment is a fundamental right to the people under Article 21 of the Constitution.

The court issued directions to the Union of India, Medical Council of India, and Indian Medical Association etc., to give wide publicity to the court's directions in this regard.

With the passage of time PIL jurisdiction has been ballooning so as to encompass within its ambit subjects such as probity in public life, granting of largess in the form of licences, protecting environment and the like. The cases, I have referred to, are only illustrative, in nature. There are numerous other cases where PIL has been used to protect and preserve human rights of the under-privileged citizens. I have refrained from giving their list for paucity of time....

No amnesty for 'criminal' policemen: NHRC chief

By Faraz Ahmed

New Delhi, Aug. 31: The National Human Rights Commission chairman, Justice J.S. Verma, discounted the possibility of a general amnesty being granted to the police personnel facing charges of excesses and criminal misconduct while fighting terrorists.

Union home minister L.K. Advani had recently said that the Vajpayee government is mulling a general amnesty for the police personnel involved in the case of human rights violations.

In an interview to *The Asian Age*, Justice Verma said, "So far as the government is concerned, it cannot interfere with the trial. It is the court which decides how the trial will proceed. Once a case goes to the court then it is the court which has to deal with it and decide, after a fair trial whether the accused has to be acquitted or convicted and the logical consequences flow depending on the evidence."

The NHRC chief conceded that the CrPC permits the state to withdraw a case, but added: "The code of criminal procedure permits the withdrawal of the case but only with the leave of the court. When leave is granted and what grounds are made out by the court are all precedented by the decisions of the Supreme Court. But that can't be in general for all cases. That is according to each case."

Justice Verma said, "So if the Government of India or some other government decides not to proceed with the prosecution, that will not click." He said, "After a person is acquitted, there is no question of amnesty, because there is no need. After conviction the executive power to grant remission or to commute the sentence is also in accordance with law. But that comes only later, and the prosecution has to end in a conviction. So I really don't understand what is meant by a blanket order for all cases. It has to be according to each case." Justice Verma added that, "the investigation into cases is a statutory function to be conducted by an investigating agency where no minister can interfere. That is the law of the land. If there are any doubts, it has been reiterated again in the hawala case in my own judgement where we said no minister can interfere when an offence has been committed and the offence is cognizable."

Justice Verma said, "The existing law takes care of all situations by providing, for example in the IPC what acts do not amount to offences. Chapter 4, general exceptions, says which acts would normally be offences. However, these offences are not punishable under the IPC if certain circumstances exist. One part talks of the right to private defence which mentions and permits the use of force up to causing death in certain situations." Giving an example Justice Verma said, "Supposing a policeman sees a person trying to rape a woman or kill another person, the law permits him to prevent that from being done even by using force, upto causing death. But the caveat is that not more force than what is necessary should be used to prevent the law from being broken." "So if while combating terrorists, you find that there is a terrorist armed with an AK-47 and committing an act of terrorism, if circumstances are such that they can be proved in court, to prevent him from committing murder, one has the power to shoot him down."

About Mr Advani's offer for amnesty to security forces fighting terrorism, Justice Verma said, "I only know what the media says about the home minister's report. But going by media reports which have not been contradicted, apart from using the word amnesty which I am not sure Mr Advani used, the home minister said action will be taken in accordance with the Constitution and the laws. So if there is any action by the Government of India or any other government or any other public servant which is in accordance with the Constitution and laws which are constitutional then no one can have any objection because then the action is constitutionally valid."

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