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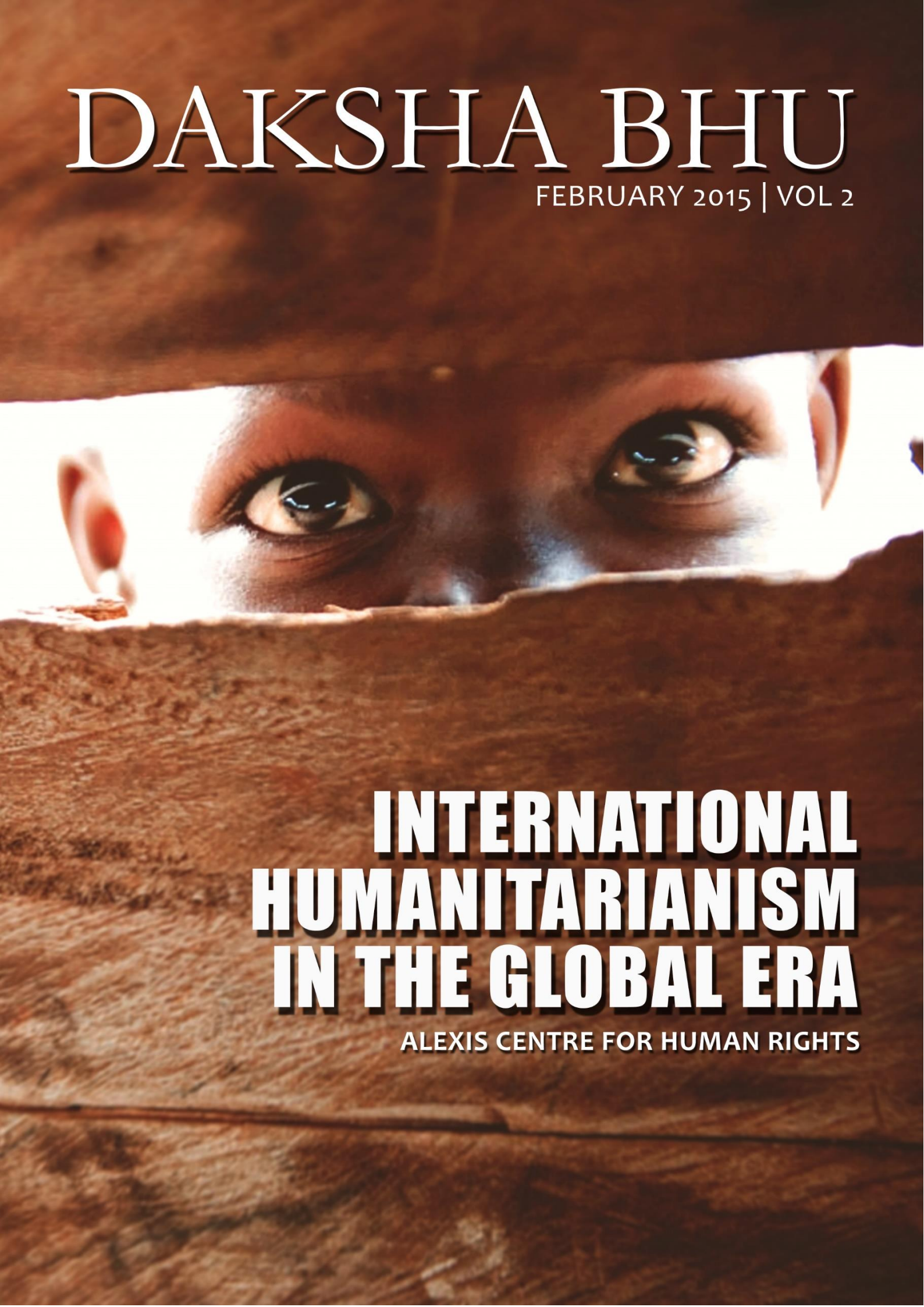

INTERNATIONAL HUMANITARIANISM IN THE GLOBAL ERA

ALEXIS CENTRE FOR HUMAN RIGHTS

FOREWORD

Human rights are the foundation of human existence and coexistence. They are universal, indivisible and interdependent. Since the adoption of the Universal Declaration of Human Rights in 1948, Governments have discussed, negotiated and agreed upon many hundreds of fundamental principles and legal provisions designed to protect cultural, economic, political and social rights.

This publication brings together some of valuable insights into burning issues. It seeks to spread a word about human rights. The more people know their own rights, and the more they respect those of others and will live together in peace.

Indeed, though Governments have the primary responsibility to uphold human rights and fundamental freedoms, everyone has a role to play in this endeavour. The world has made significant progress in raising global awareness of human rights, setting out the legal framework, and establishing institutions and mechanisms for protection, redress and justice. But our work is far from done. We must improve upon the record of the last century, and make respect for human rights a reality for every man, woman and child. This compilation on International human rights issues is meant as a contribution to that effort, and I recommend it to the widest possible global audience.

- *Nitika Nagar*

Chairperson, Alexis Centre for Human Rights

ABOUT ACHR

The Alexis Centre for Human Rights (ACHR), a constituent of Alexis Society is a collective of young agents of change furthering the cause of advancement of human rights in India. Founded on June 27, 2014, the Centre has grown to be the backbone to a number of social causes, under the able leadership of Ms. Nitika Nagar.

The Centre largely consists of highly motivated students and young activists from across the nation pursuing a variety of disciplines. ACHR covers both aspects of social change – policy making as well as field work, giving both equal priority as is believed necessary for effective execution of meticulously planned courses of action. The Centre boasts of offering assiduously structured research programmes dedicated towards the contribution of sound and practical plans which would work at the grass root levels of the concerned project.

Working under the careful scrutiny and able guidance of Mr. Aditya Singh, Founder and Chairman of the Alexis Society – a registered not-for-profit organisation, the Centre has developed three initiatives.

Preshti, the pioneering project of the Centre works extensively on prisoners' welfare. The initiative, a novelty amongst youth-run organizations, is dedicated towards the alleviation of the most condemned section of the society including raising awareness about gross human rights violations in prisons, the cause of under-trial prisoners and the interest of the minor inmates in juvenile homes. The initiative works hands on to help rehabilitate prisoners, set up legal aid camps and educate the children of the incarcerated.

Abhigya, the second initiative of ACHR, started by Mr. Anilesh Tiwari is dedicated towards creating awareness towards the rights of women and children. The project focuses on the legal issues and implications of actions pertinent to women empowerment and child rights and suggests reforms regarding the same, in addition to utilizing innovative measures to increase sensitivity to the subjects in the most relatable and effective ways.

Saaya, the third initiative of the Centre, focuses on mental health and crimes against the mentally challenged community. Led by Ms. Manasa Tantravahi, this initiative is not only for inspecting every existing mental health care centre, institute and rganization in this country but for establishing newer areas of treatment and comfort. Presently allocating its resources in the manner of a think tank, this initiative seeks to gather views on how to theoretically improve the present situation and posts it for public view on all forums.

Further, ACHR is proud to publish the second edition of its own newsletter, "Daksha Bhu". The newsletter encompasses the activities of the organisation, and compiles contributions from its research associates spread across the globe, on various topics of human rights. Accommodating various perspectives on diverse human rights issues plaguing the world, the newsletter boats of having amongst its contributors, research scholars, advocates and students from various nations.

The Alexis Centre for Human Rights is a vibrant organization and an honest attempt at bringing about meaningful change that raises the standard of accountability in ensuring economic, social, cultural, environmental, civil and political rights.

FROM THE EDITOR'S DESK

"The rights of every man are diminished when the rights of one man are threatened."

– John F. Kennedy

Writing this welcome note to the second issue of Daksha-Bhu is as humbling as it is thrilling. What began as a modest, and honest attempt at raising awareness and invoking sensitivity to the cause of furthering human rights has grown to be an intergral part of the proud organisation that is the Alexis Centre for Human Rights.

The objective behind the newsletter was to encourage research, particularly of a legal nature into the burgeoning sphere of human rights, by the future driving forces of the nation – the youth. The last year witnessed an overwhelming response from students across the nation, far exceeding expectations with regard to the quality and quantity of contributions. The authors included advocates and students transcending disciplines, bringing in various perspectives to the highly accommodative term that is "Human Rights".

This year, at Alexis it was decided to render stronger structure to the research programmes and therein was created the posts of research associates for the newsletter. The selection of articles for this issue was confined to the contributions of the chosen research associates. As editor, it was my privilege to appoint the said associates and it wouldn't be an exaggeration to say that I was spoilt for choice. The success of the previous issue created an interest in international students, and the newsletter is proud of its research scholars abroad, as well as its brilliant and hardworking contributors in India. It was most gratifying to work with the associates who interpreted the given themes of the articles in unique ways and went on to undertake research in-depth for very diverse topics.

Given an opportunity, I would be more than happy to oblige the reader with details of the experience of putting together this newsletter, the modus operandi of instructions and editing, but I believe it would be best to show a little restraint at this point and allow the body of work to speak for itself. I cannot however, conclude without thanking Mr Mradul Yadav, Chief Administrative Officer, Alexis Group and Ms. Nitika Nagar, Chairperson of Alexis Centre for Human Rights for this opportunity, and for all the help and involvement while giving me the freedom of moulding the newsletter as I would please.

-Sharanya Sukumar

Editor-in-Chief, Daksha Bhu

GHOST PRISONERS: DUE PROCESS FOR PRISONERS IN THE WAR ON TERROR?

Introduction

After the horror of the 9/11 attacks on the United States of America (US) the Central Intelligence Agency (CIA) was given the authority to transport individuals, who they suspected were terrorists, to foreign governments for interrogation without the prior approval of the U.S. Department of Justice.

Since 2006 reports have circulated that detainees, captured in the Global War on Terror (GWOT), were being held at Guantanamo Bay, Abu Ghraib prison in Iraq, Bagram Air Force base in Afghanistan and that some were even being held at sea. It has also been reported that 70%-90% of the detainees at the Abu Ghraib facility in Iraq were arrested in error.

Also in 2006 the UN Human Rights Committee issued a report in which the U.S. was ordered to cease its practice of secret detentions. And in 2007 *Rapporteur* Dick Marty (appointed by the Commission on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe) concluded in his report that CIA secret detention facilities also existed in Europe and that unlawful transfers had taken place in Europe. Upon this discovery he reminded European countries that they had a responsibility not to host secret detention facilities within their territories, and not to allow individuals to be transferred to facilities where they could be subjected to torture. He cautioned further, in this regard, that secret detention of individuals enhanced their risk of subjection to ill treatment.

In 2007 the International Committee of Red Cross (ICRC) reported that it had finally been granted access to detainees. This was a concession the ICRC had been requesting since 2003. Fourteen high value detainees were arrested in 4 different countries by police or security forces employed by the countries concerned. They were kept in the countries where they had been arrested, for periods ranging from a few days to one month before being moved to facilities in other countries for the third and sometimes even more times. According to the ICRC Report some detainees claimed that they had been interrogated by U.S. agents or agents employed by the countries where they were held, but regardless of where the facility was, it seemed to be under U.S. control. Some detainees said they were held in Guantanamo Bay between 2002-2003. However the ICRC, which was in attendance at the time, maintained that the story it was fed that it had access to detainees was untrue. Incarceration of the detainees at issue lasted from 16 months to four years in solitary confinement with no access to the outside world, or even to anyone except the guards, the interrogators and other detainees held for interrogation. They had no idea where they were. They had no access to legal representation or their families, and were even denied access to the ICRC. Most Guantanamo Bay prisoners are set to be held indefinitely, and some are to be tried for war crimes due to their involvement in the 9/11 attacks.

Detention without trial in GWOT

The U.S. practices three forms of detention as part of the GWOT: Criminal detention, preventive detention, and interrogative detention for national security purposes. Detainees who have already

committed hostile acts of a criminal nature must stand trial for their actions and are accordingly subjected to criminal detention. The goal of preventive detention is to treat the detainee as a prisoner of war, thus rendering him *hors de combat* in order to thwart further terrorist activities or hostile acts from that quarter. The U.S. used interrogative detention as a tool to gain information from high-value detainees after the 9/11 attacks. Guantanamo Bay was designated an interrogation facility for high-value detainees and the military was informed not to send low-level detainees to Guantanamo Bay for interrogation.

The statistics

780 detainees were held at Guantanamo Bay since 2002 under both the Bush and Obama administrations. By February 2013 the military commission had only dealt with 16 detainees at Guantanamo Bay. Of these 7 were convicted, 6 were charged and 3 were sentenced. Orders for the release of 21 detainees were issued in December 2013, and as of the latter date the military commission dealt with 49 detainees of the above-mentioned total population of 780.The latest statistics show that the military commission has only convicted 8 detainees. As of 20 December 2014, 132 of the 780 detainees at Guantanamo still remain. 639 were transferred, of which 220 were sent to Afghanistan.Periodic review boards have also come into being that assess the continued incarceration of detainees on putative grounds of national security and legality issues.

Issues flowing from detention without trial in the GWOT

(a) Denial of jurisdiction

The executive branch of the U.S. government denied federal jurisdiction for civilian and military detainees and denied that they could file a writ of *habeas corpus*. Grounds offered for this position were that military tribunals had been established for such purposes. However, in *Boumediene v Bush* the court held that the detainees at Guantanamo Bay had a constitutional and statutory right to file a writ of *habeas corpus*. In *Rasul v Bush* the court also held that federal courts had the jurisdiction to hear *habeas corpus* applications from detainees held at Guantanamo Bay. The Bush administration responded by creating the least law alternative, which was achieved by establishing military commissions and tribunals (that replaced federal courts) which could authorise indefinite detention without trial and manipulate detainees' right to file a writ of *habeas corpus*.

(b) Closing Guantánamo Bay?

When President Obama took office his administration called for the closure of Guantánamo Bay, but the Department of Justice offered the same justification that was severely castigated when offered by the Bush administration, namely the state-secrecy defence to avoid litigation and to establish grounds to continue incarceration of the detainees held in that facility after they had been found innocent of terrorist activities. When the Republicans resumed control of the House of Representatives in 2010 they further interfered with the plan to close Guantánamo Bay by denying federal courts jurisdiction over that precinct and determining that detainees would be incarcerated indefinitely under the supervision of military commissions and tribunals.

(c) Lack of transparency and due process

The U.S. government's refusal to admit publicly to its activities around the handling of detainees held in virtue of the GWOT is attended by the intractable difficulty that it impairs transparency and gives government officials a basis for refusing to answer certain question or to only give limited disclosure. This is proven by the military commission's court proceedings at Guantanamo Bay. Detainees at that centre are tried before a Military Commission at "Camp Justice" instead of a normal criminal court. Camp Justice has a floor-to-ceiling soundproof glass partition between the court proceedings and the public gallery. The public can hear the proceedings through an audio

feed which is managed by a security official seated next to the judge, tasked with transmitting a white noise through the feed if the content of the proceedings are perceived to contain classified information. The audio feed can be delayed for up to 40 seconds. Therefore, no testimony regarding the treatment of detainees can be heard by the public. Some of these prisoners were held in black sites and subjected to torture, but observers could not listen to their testimony as a result of a court order that prevented it.

Conclusion

Secret detention facilities are still operated across the globe, despite an order given by the UN Human Rights Committee in 2006 that enjoined the U.S. to cease its practice of secret detentions. Most Guantanamo Bay prisoners are set to be held indefinitely and others are to be tried for war crimes due to their involvement in the 9/11 attacks.

No further information has been released regarding the fate of the thousands of detainees remaining at Abu Ghraib, except that the U.S. would have the final say on their release.The Obama administration declared that all secret detention facilities should be closed but refused to reveal particulars of their exact locations. Whether closure has duly ensued, therefore, and whether the detainees have been released or tried, remains a matter of speculation which ultimately still begs the question: Is there due process of these prisoners?

- *Jeanne-Mari Retief*
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UNWED MOTHERS : THE SECOND WIFE DEBATE

Defining Unwed Mothers

An unwed mother can be defined as an unmarried person who has a dependent child or children. The term 'unwed mother' is used in the definition of surrendered children under The Juvenile Justice (Care and Protection of Children) Act 2000; which is given as follows:

A surrendered child shall be any of the following: "Section 2(ii) born of an unwed mother or out of wedlock."

The definition of surrendered children has specifically stated different instances of a mother to avoid any ambiguity. Furthermore, in the deed of surrender, the term "being single" is used to reflect unwed mother.

The term 'woman' denotes female human being of any age and is inclusive of a mother. In defining whether the 'wife' or 'daughter in law' would come under the definition of 'respondent' under The Protection of Woman from Domestic Violence Act 2005; Justice V.K. Mohanan stated, "*Thus, it can be safely concluded that the law making authority never intended to make a further classification among the women …"* The term woman denoted in any legislation is supposed to encompass all legal entities comprised under it. Justice V.K. Mohanan further stated, '*I am of the firm view that, it is unreasonable to restrict the protection and privilege to a woman, considering her marital status alone or till she become a mother-in-law.*" It is stated by the apex court that a beneficial interpretation is required to be given where the act is intended to achieve the object of doing social justice to woman. The court understands that the same meaning cannot be given to each classification constructing the term woman. Hence a need to define the term "unwed mother" arises for the evaluation of the legal status.

A relationship of a man with women in legal parlance is illegitimate if not as per relevant marriage laws. Hinduism took the indissolubility of marriage to another extreme by stating that marriage is an eternal union. A 'live in relationship' is equivalent to marriage where unmarried couple of heterogenous sex are "living together as husband and wife"and consent to cohabitate,even though perceived as immoral.The courts excluded those who enter into a live-in relationship without intending to be married. If a woman who is living in a live in relationship conceives by this man, she becomes an unwed mother.

Another instance of an unwed mother can be captured in The Hindu Adoptions and Maintenance Act, under the statute a major female Hindu who is of a sound mind can adopt a child, hence becoming an unwed mother. Woman conceiving with the help of Assisted Insemination Technique shall also come under the definition of unwed mother. CONSEQUENTLY, an unwed mother is a second wife to a man; conceiving in a void marriage.

Therefore, the term woman shall include unwed mother. An unwed mother shall further accommodate a female living in a relationship in the nature of a marriage, a woman who conceived due to a non consensual relationship, an unmarried

woman who has conceived/adopted a child consensually and a second wife whose marriage is void.

The Second Wife Debate

The court gave a progressive view in defining a relationship in the nature of marriage but deterred its view by discernment between a live-in relationship and the nature of relationship with a concubine. A concubine cannot maintain an exclusive and monogamous character in the nature of marriage. The Apex court further stated that the continuous cohabitation as husband and wife may raise the presumption of marriage, but if weakened and destroyed, the court cannot ignore them. Whether a second wife of avoid marriage will be protected under the presumption of a "relationship in the nature of marriage" is not debated by the courts. The law presumes in favour of marriage rather than concubinage. This second wife, who is an unwed mother, has no compact legal status.

Bigamy is made an offence where a valid second marriage is entered. Bigamy is also an offence of moral turpitude. It is difficult to prove that all valid customs for a marriage were entered into, denying maintenance to such a second wife. The courts in India provide relief to the first wives of bigamist husbands. Also, a de-facto wife cannot claim maintenance under section 125 of Cr.P.C., absolving the husband from his liability. The provisions of cruelty only protect a wife. The court has observed that a strict interpretation is taken where the marriage is illegal; whereas the claims for civil rights, right to property etc., may follow a liberal approach.

With the violation of section 5(iii) or section 7 or section 15 of the Hindu Marriage Act 1955, the marriage is neither void nor voidable and as such is not covered by section 11 or 12 of the Hindu Marriage Act, 1955. The rule of "*fictio juris*", stating that children, though illegitimate, shall, nevertheless, be treated as legitimate notwithstanding the marriage is void or voidable. It was further stated that the relationship with the mother of an illegitimate child is of a legitimate child by virtue of the proviso to section 3(1)(j). The Supreme Court reiterated its point in *Vidhyadhari v. Sukhrana Bai*,holding that children from the void second marriage would still be legitimate. Thence the children of a second wife of a void marriage are considered legitimate and in relation to their father would only be illegitimate; if it is proved that it is out of an illicit sexual relationship or from a concubine.

In a recent case, Protection against Domestic Violence couldn't be taken by a woman who entered a live in relationship with a married man.. The court decided that the status of this woman is lower to that of a 'wife'; protecting such a woman would amount to injustice to the legally wedded wife. The amicus curiae stated that the Act is intended to achieve the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the Constitution of India. The court rejected this view while adopting the sanctity of marriage. Considering another decision, the court interpreted the term 'second wife' as a 'relative of the husband' under section 498A of IPC. The court held that the facts have to be whereby a woman's treatment by friends, relatives, husband or society as a 'wife' or as a mere "mistress" shall be examined and strict proof as to the validity of marriage shall not be taken into account. While in other instances, the court demands strict proof when the claim of maintenance is made by a second wife and states that such a marriage is void and not voidable. In another varying judgment, a second wife was forced to consume poison on account of not giving sufficient dowry, it was difficult to prove if the first marriage had been legally dissolved. The court held that a person, entering into marital relationship and under the guise of such feigned relationship, subjects the woman to cruelty or coerces her in any manner or for any of the purposes enumerated in the relevant provisions, shall be liable to be included within the definition of a husband. The court has also stated that the second wife of a void marriage, who has conceived the illegitimate children, would not get a share in the pension or property.

The status of this second wife keeps changing with the facts of each case and application of mind by each court. The second wife will not necessarily get a feigned status of a wife if proved to be a mistress. The provision as to proof of this marriage keeps varying. The court has not debated on the issue whether the void marriage entered by a second wife is a relationship in the nature of marriage as this relationship is entered by two unmarried people. The court has taken a restricted view in guaranteeing this second wife civil rights against her proclaimed husband upon the legal nuances of validity of marriage.

Conclusion and Suggestions

Precedent keeps the law predictable. , which relating to second wife are unsettled. The honourable judge in *Darshana* v. *State stated,*'*The facts of the instant case are a classic illustration of the oft repeated statement by sociologist that the society creates the crime and the individuals give effect to the crime.*' In this casea woman who was impregnated was killed by her own mother and sister with 35 deadly wounds due to prevalent social stigma. The only panacea to liberate women from the clutches of harassment and exploitation is empowering them so as to create a congenial atmosphere to develop and progress.

Law should not be insensitive to the suffering of a second wife. The Malimath Committee suggested that the definition of the word 'wife' in Section 125 should be amended to include a woman who was living with the man as his wife for a reasonably long period, while the first marriage subsisted.

Rehabilitation/Counselling centres for such a woman should be created. This will help tackle the problem of surrendered children. Education and acceptance by the society towards an unwed mother will facilitate the process of sensitization.

The court has taken a limited view while defining the term live in relationship. Whether a second wife is protected under the provisions of law within the purview of live-in relationship after her marriage is void, needs introspection by the legislature. A suitable provision should be added stating where a couple lived as husband and wife for a long period shall be deemed to have married, thereto no rebuttable presumption shall be binding in civil proceedings. The Malimath Committee report submitted that where a man marries during the subsistence of the first wife, should not escape his liability to maintain his second wife. Maintenance of a respectable quantum should be paid to the second wife, ensuring the healthy development of the child with active participation by the father. The issue regarding the knowledge of an existing marriage should be ignored and 'the husband' should not be allowed to escape his liability, making the husband responsible towards his act. This will help deter such void marriages.

The judiciary should refrain from resorting to terms such as "concubine" or "keeps" while defining a relationship of a woman with a man, as such terms are chauvinistic and derogatory.

The development and rehabilitation of children under National Policy of children 2013 needs emphasis, which cannot be attained if the unwed mother surrenders her children due to the social stigma attached. The court has stated, '*So, what could be the nature of the relationship between such a second wife and husband? Firstly, a second wife who is accepted as 'wife' by the husband and relatives gets recognised as such by friends and society also. She then, as a 'wife' starts exploring under the shade of matrimonial shelter, the warmth of consortium. She experiences from her husband, the intensity of emotional security. She shares his bed, bears his child. As she becomes the mother of his child, she treasures an over lasting bond which is inbred through the blood of their child. She handles also the strength of her husband's financial support. She thus enjoys everything that his former legally-wedded wife once possessed and enjoyed in her status as a wife at the matrimonial home. Is not such a woman anybody to him?*' Dignity and acceptance by way of ensured legal status will uplift the status of unwed mothers.

A second wife in the existing law is the natural guardian of the illegitimate child whereas the father is only the natural guardian of a legitimate boy child who is above 5 years of age. New custody laws with joint guardianship should be introduced. Furthermore, the social divide of a child on the basis of legitimate and illegitimate should be discouraged. The legislature gives no sensible rationale under the guardianship rights. It is suggested that where the father of the child is known, his participation should be definite.

There is a vast spreading problem of conversion to Islam to commit bigamy, nonetheless the second wife suffering due to her feigned status. There are judicial pronouncements restricting such a marriage after conversion, while no law restricts the same. The man should not be allowed to take advantage of his own illegal acts.

Certification and documentation process should have a consideration towards the status of such a second wife. The name of the father should be made optional. In May, the Maharashtra government issued a circular to schools to accept middle and last name of a single mother. Such rule should be made universal in application.

The Constitution of India, through ensured gender equality under article 14, by way of article 15 enacted to treat woman as a special category so as to create opportunities and avenues for women to utilize their abilities. This should not be curtailed due to feigned status of a second wife.

- Kritika Angrish

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ALIVE AND HUMAN

International Human rights law (HRL) and International humanitarian law (IHL) came to light primarily after the Second World War, and aimed at protecting human beings. It has been reiterated many times that both these bodies work in situations of armed conflict, and complement each other in discussions of policies. More often than not, it is the people who are forgotten in situations of conflict, and absurdly enough this takes place even though they form the basic fragments of societies and communities. The issue of human rights in post conflict is associated with the international, regional and finally national structures of functions. International armed conflicts have been lesser in number when compared to conflicts within the nation itself, but it is vital to say that the international, regional and national bodies all play a role in alleviating conflict and securing human rights. The International court of Justice states that 'the protection of the international covenant on civil and political rights does not cease in times of war'. The Human rights council has stated that 'military operations must comply with both the HRL and IHL', which reinstates the fact that human rights prevail at all times- whether in or post conflict.

The human rights include economical, social and cultural rights of all individuals and must be transitioned more swiftly into the lives of the affected people. Transitional Justice and reconstruction is vital for the survival of the people and the state. The high commissioner for human rights has strongly stated that "the inclusion of abuses of economic and social rights within post conflict criminal prosecutions and truth and reconciliation processes is an important element of achieving social justice". This attempt at social Justice is imperative because it brings about the differences in human rights, and therefore the continued strive towards justice allows for reconciliation and awareness of human rights of the people in post conflict affected areas. It is essential to deliver and foster a framework to cater to the social economical and cultural rights of these people with the help of national and international laws so that justice, stability, human security can be achieved. Basic amenities, needs and rights of food, shelter, health and security must be guaranteed in order for the affected people to come and voice out atrocities, because otherwise criminal proceedings could be seen as luxury for people who do not have basic necessities met. International law mandates states that "appropriate and effective legislative and administrative procedures for fair, effective, and prompt access to justice". Justice needs to be strengthened in order to end violence and highlight all atrocities right from gender based, torture, sexual violence, genocides etc.

Economic, social and cultural rights must take a heavier role in the issue of human rights. After a nation experiences conflict, it usually begins its process to create a framework to consolidate and protect the political and governmental stability of the nation before it pays any concern to its people; the tasks of demilitarizing, demobilizing, and normalizing of structures take bigger turns. This is not to say that Humanitarian efforts, aid and contributions towards human rights are meaningless or not seen, but simply that the economical, social and cultural aspects to human right is often lost in the middle of things because its importance is not as burdensome as the need to provide basic shelter and food for the people. It is obviously logical to provide shelter and food for the people first, but the other aspects of human rights, and dignity associated with human lives must be reinforced and implemented soon after- which more often than is not.

It is important to get a combined, volunteer participation by the civilians in order begin the process of restructuring swiftly, by facilitating needs and allowing justice which would in turn bring in greater participation and cooperation between the people and the state by the people and actually work towards a more democratic,

organized setting. It is important to retain citizens and prevent a situation where people leave the nation as immigrants and refugees to other nations because basic rights are not being met. The social, economic and cultural rights stem from the problem of vulnerability and exploitation of people which are not met in context and often forgotten which leads to disinterest and dissimilation of people internally and externally.

After the conflict, the state prepares and directs its focus completely on demilitarizing, clearing bombs and mines, disarming, clearing fields, setting up institutions and providing for the immediate humanitarian needs of the people affected. These are usually the immediate concerns and goals of not just the respective state but also the regional community and international community so that stability can be brought into the region. Aid, help, humanitarian efforts are then requested or sent in by the United Nations, peacekeeping forces, neighbouring nations, and the international community. Similarly, economy is sustained and looked after by the world community and financial institutions so that the economy of the nation does not cripple.

There are several obstacles in ensuring social, economic and cultural rights of all. The human rights of people in post conflict regions is vital and while efforts are placed on humanitarian help, people's social, economic and cultural rights must be recognized and equitably met. These rights are often associated with development rather than being viewed as important to establish stability in security and politics and are often considered subsidiary to more state-based, political and security-based issues that need immediate focus. This holistic approach towards granting each individual his right not only in the sense of aid, shelter and rescue but also respect of his/her rights in context to the individuals social and cultural context. Human right provisions have been included in human rights provisions where a lot of importance and space is given to civil and political rights of a person. This is important to grant the very basis of identity, stability and recognition of a person in every sense, but it is often seen the holistic approach towards ensuring rights of individuals is rare and forgotten, or not mentioned. Many national, international, institutions and legislatives mention this holistic approach but the implementation of it is more than dismal as social, economical and cultural rights are seen as luxuries unnecessary for survival by most people. There is a mix of international, regional and national leaders who are responsible for this implementation but immediate implementation is impossible considering the judicial system would be handicapped after a conflict in the nation. And often the huge number of actors and players from the international and local stage only create more chaos and loss of accountability, responsibility and progress.

The people in conflict inflicted regions are most vulnerable. While social, economic and cultural aspects to rights are viewed, several vulnerabilities specific to them can be seen usually in a post-conflict region. Vulnerabilities range and differ on basis of these social, economic and cultural aspects of individuals. Ethnic, religious and minority, racial based issues, refugees, women(including pregnant), children, non nationals, elderly persons, slum dwellers, sick wounded people, migrants, and trafficked people are some of the most vulnerable people. Most of these categories have some economic, cultural or social aspects to them and the proper accommodation of all must be met; differences based on language, caste, race, sex, culture, religion etc. Atrocities against women are also high in most conflict inflicted regions which include gender discrimination to sexual violence. The committee on the elimination of discrimination against women (CEDAW) looks into issue concerning women. It looks into the economic and social rights including security, heath, and shelter for women.

Often along with vulnerabilities faced by individuals, there are also factors that prevent people from coming forward to testify against perpetrators of the conflict. These may include

problems such as poverty, lack of food, shelter, uncertain about legal status, health, education and of course security. Certain groups within the larger group may be afraid of being evicted or deported in the case of non nationals or refugees. There are often gender based issues that haunt women after conflict such as Gender specific discrimination and sexual violence. Apart from the emotional, psychological, and physical trauma of rape and sexual violence, on many occasions, laws that prevent women from accessing credit or loans without a male, or the simply restraining women and girls from going outside to keep them 'safe' is also discriminatory. These are just some of the reasons for the continued discrimination of women, intentionally or otherwise, as sometimes even the laws can be discriminatory in their nature where lawyers are sometimes not trained with dealing with gender discrimination. Women continue to struggle economically, and often the single mothers and lone living women suffer the most in patriarchal societies. The system is continued even though it may not be supported but poverty will continue providing insecurities of all sorts.

Every person no matter what is equal, and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) guarantees the social and economical rights of people and disallows discrimination of any kind. The *International Covenant on Civil and Political Rights* (ICCPR) disallows gender based discrimination and the *Committee on the Elimination of Discrimination against Women* (CEDAW) works towards the total cause for women and any discrimination against them. The economic, social rights are not guaranteed under any of the UN conventions and certain very specific derogations are allowed when in conflict with other international laws etc. Under ICESCR, states must do everything in their ability to achieve these rights. Apart from other things, there are some minimum non derogatory goals and rights that have to be given such as shelter, food, water, medicines and health facilities. These rights have to be adequate, accessible, real, and affordable for the people themselves. Health and social services must be temporal and physically accessible at all times including pregnant women. Also military officials, international and national agencies and institution must be respectful of the health facilities and observe professionalism in these areas by being culturally and ethically sensitive. Any kind of legal adjustments and legal provisions must be made accessible for all and by providing necessary services such as transport and lawyers etc for individuals. CESCR understands the importance of accessing national courts to seek justice. The international court of Justice also supports the economic and social rights.

Human beings are nothing without rights and might as well be categorized as animals otherwise. As a community it becomes important to support each other when conflicts strike. Conflicts are unpredictable and cannot be foreseen under much circumstance, so it is important to for nations to be prepared to provide the basic rights and dispense them to every individual. Absolute basic rights of food, shelter, water, health etc must be met, and also greater understanding of economic and social rights have to be met in terms of all people vulnerable, and inflicted upon- all based categories and groups of race, caste, language, religion, gender etc must be accounted for. There needs to be greater jurisprudence in this aspect of social and economical human rights, but will hopefully be inculcated into the practice of reaching out to conflict stricken areas. There also needs to be a greater understanding of the needs of these people so that all provision is made with perceived understanding and plan. Each individual is promised these rights by their state under the UN, and it is not a crime to demand them. After all, these people who happen to be conflict stricken also happen to be alive and human, therefore human rights is as relevant as the air they breathe.

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SOVEREIGNTY VS. HUMAN RIGHTS: ARE STATES LOSING THEIR HUMANITY?

Lampedusa, Malta, Farmakonisiisland, Chios, Evros. These are not exotic destinations but human shipwrecks of refugees and migrants attempting to cross Europe's borders. During the last years, the migration routes may constantly change but the struggle to reach Europe - "the promised land" for many people - is constant. Every day, hundreds of people are fleeing from violence, civil wars and persecutions in their countries of origin in search of a better life. Hundreds of them will lose their lives in the Mediterranean trying to cross the borders of Greece, Italy or Spain.

According to UNHCR figures, only in 2014, more than 3,400 people have lost their lives in the Mediterranean. UNHCR, IOM and other organizations are urging the European states to respond collectively to this great humanitarian crisis. After looking at the figures - behind of which are human lives - it is only natural to wonder about Europe's response to this unprecedented crisis.

After years of consultation, EU introduced the Common European Asylum System which consisted of Directives on reception conditions, asylum procedures and the Dublin Regulation. It was welcomed as a positive step towards a joint cooperation and establishment of a common Immigration and Asylum policy among the European States. Unfortunately,the deficiencies and the system imbalances between the States resulted in numerous convictions by the EctHr (see MSS vs Belgium and Greece) and in overburdened countries of first entry. It was the MSS vs Belgium and Greece –a milestone decision - which underlined the fact that not all European States should be considered safe countries and that any return to those countries means automatically return to a country where human rights abuses take place.The Dublin Regulation (even the revised one) failed to meet its purpose enshrined in its Preamble.Instead of sharing responsibility, States are shifting their responsibility to the already overburdened border states, leaving no option to asylum seekers to choose in which country they wish to apply for asylum.

In mid November, 300 Syrian refugees launched a hunger strike opposite the Greek Parliament demanding full asylum rights. Since Greece could not protect them, they demandeda travel permit to travel to another european country where theycan apply for political asylum.They asked for their basic right to choose the country they will file their application instead of being trapped in a country –unable to go forth or back- .

Because of its geographical position, Greece has been the main entry point for refugees and immigrants to the fortress Europe for the last decade. In 2009, the Greek government built a huge fence, 12.5km long, rolled with barbwire (the infamous Evros wall) in order to halt the refugee flows. Although the Greek government did not have the funds or the interest to establish a proper immigration policy, it prioritized building a wall and establishing "concentration camps" throughout Greece in order to discourage people from attempting to cross the borders. In addition, Frontex with the operation "Poseidon"- with Europe's blessings and funding - has not managed to stop refugee flows or to secure Europe's first frontier. On the contrary, the traffickers chose to follow different, more dangerous routes by crossing the sea in small boats.

All these years, the anti-immigration public speeches are truly alarming and indicative of the hostility of the European states towards refugees and immigrants. The former Greek Minister of Health, Mr Adonis Georgiadis, stated that among the goals of the whole program [the police operations] was that they [immigrants] would understand that they were unwanted in Greece and thus must leave the country..

In the sovereign United Kingdom, the Foreign Office ministers announced the state's refusal to participate in any future rescue operations to prevent refugees from drowning in the Mediterranean quoting that those operations "simply encourage more people to attempt the dangerous sea crossing".

Sovereignty is one of the primordial principles of the state system. Every country has the right to sovereignty and control of its borders. But all the rights come with obligations as well. A core principle that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened is the principle of non-refoulement. All States are bound by this principle whether they are parties to the Geneva Convention or not as it is part of customary international law. Furthermore, according to the Universal Declaration of Human Rights "everyone has the right to seek and to enjoy in other countries asylum from persecution". In reality, European states are violating human rights law by letting people die at the sea, by sending people back to countries where their human rights will be violated and by shifting responsibility instead of sharing responsibility.

It is unimaginable that in 2014 irregular migration is considered a threat to sovereignty and is treated as such, disregarding the human losses and human rights abuses in the process. European States need to work towards a common European policy compatible with human rights and stop the push-backs at the Border States. An early warning mechanism and a collective response is essential. More importantly, Europe needs to consider the refugees' right to freely choose the country that they want to file their application. That would really promote their social and cultural inclusion in the European society.

Walls divide and demonize immigrants and refugees, portraying them as a threat to the "good" and "civilized" European citizens. But the States and the Europeans need to reflect on this question "Is this the Europe we want to live in?" Because if we decide to let people die on our doorsteps then we need to live with the consequences.

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Without reflection, without mercy, without shame,
They built strong walls and high, and compassed me about.
But never a sound of building, never an echo came.
Out of the world, insensibly, they shut me out.

RIGHT TO PROCREATE: A MATTER TO REJOICE OR OF DISMAL CONSTERNATION?

The epochal decision taken at the Punjab and Haryana High Court on 6th January, 2015, recognizing prisoners' right to procreate while incarcerated or by artificial insemination in alternative has far reaching effects in apropos of prison reforms and is making spasmodic reverberations on the legal world. Justice Surya Kant, the presiding judge, has ruled that this right survives incarceration and is to be interpreted as *right to life and personal liberty* under Article 21 of the Indian Constitution.

Before either of us knew it, we were in the same room and in each other's arms. I kissed and held my wife for the first time in all these many years. It was a moment i had dreamed about a thousand times. It was as if i were still dreaming. I held her to me for what seemed like an eternity. We were still and silent except for the sound of our hearts. I did not want to let go of her at all, but i broke free and embraced my daughter and then took her child into my lap. It had been twenty-one years since i had even touched my wife's hand.

NELSON MANDELA

The decision mandates establishment of a Jail Reforms Committee to be headed by a former High Court judge and shall include a social scientist, an expert in jail reformation and prison management among others as members.

The Committee shall formulate schemes for creation of a conducive environment for conjugal visits, and recommend the desired amendments in the rules/policies to ensure the grant of parole, furlough for conjugal visits and the eligibility conditions for the grant of such relief. It shall also classify the convicts who would not be entitled to conjugal visits and evaluate options of expanding the scope and reach of 'open prisons' where certain categories of convicts and their families can stay together for long periods and required infrastructure for the same. It is required to make recommendations within one year after visiting the major jail premises.

The exercise of these rights are to be regulated by procedure established by law, and are the sole prerogative of the State. It is not an absolute right and is subject to the penological interests of the State. It would be subject to reasonable restrictions, social order and security concerns. These directions shall apply *mutatis mutandis* to the State of Haryana and Union Territory of Chandigarh.

Despite having taken a favourable view of the petition, the prayer for conjugal rights and to procreate within Patiala central jail premises made by petitioner-husband Jasvir Singh and petitioner-wife Sonia Singh was declined because the circumstances that led to their incarceration were "far grave in nature". The husband has been sentenced to death while the wife's death sentence was commuted to life imprisonment by the Supreme Court. They were convicted for kidnapping and murdering the 16-year-old son of a Hoshiarpur jeweller, Abhi Verma, in 2005.

The Judiciary as the principal executor and promoter of the rule of law has to have major stakes in respect of the conditions prevailing in the prisons. The duty of the Courts towards jail reforms has become heavier than before after the enforcement of our Constitution as Article 21 guarantees dignified life to one and all including the prison-inmates.

It is imperative to posit that there are two landmark Supreme Court cases which applied Article 21 for the re-humanisation of prisoners - *D. Bhuvan Mohan Patnaik & Ors. vs. State of*

*Andhra Pradesh & Ors.*and *Sunil Batra vs. Delhi Administration & Ors.*

Further, the case of *Francis Coralie Mulin vs. The Administrator, Union Territory of Delhi*, expanded the expression *"personal liberty"* embedded in Article 21 of the Constitution in the context of the rights of a detenue and it held that the prisoner has all the fundamental rights and other legal rights available to a free person set out in the Universal Declaration of Human Rights, save those which are incapable of enjoyment by reason of incarceration.

The hon'ble judge, with the help of the learned amicus curie has placed reliance on a slew of foreign judgments and academic research papers in order to assimilate the broad consensus that has emerged on judicial platforms. It may be seen that from **U.S. to Europe**, the rights to conjugal visits, procreation or even artificial insemination facilities have been recognized only partially, being integrally embedded in Articles 8 & 12 of European Convention on Human Rights or as the rights that are fundamental to the liberty and human dignity emanating from the Eighth Amendment, and further subject to the justifiable and proportionate restrictions.

The Fourteenth Amendment of the Unites States Constitution similar to Article 21 of the Indian Constitution found recognition in the case *Roe v. Wade*.The landmark Supreme Court decision acknowledging prisoners' interest in procreation is *Skinner v. Oklahoma* which held that prisoner's right to procreate is a right fundamental to the very existence and survival of the race.

If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusions into matters so fundamentally affecting a person as the decision whether to bear or beget a child. The decision whether or not to beget or bear a child is at the very heart of the cluster of constitutionally protected choices.

Brazil has implemented a "conjugal visit," which allows prisoners to visit with family and friends without physical restriction, and an "intimate visit," which allows prisoners to receive visits from their partners or spouses in individual prison cells. In the **Czech Republic**, the Director of prison may allow married couples to visit in rooms specifically designated for intimate contact. It also allows prisoners to receive visits from four close relatives at a time. In **Spain**, inmates who cannot leave the institution may receive conjugal/intimate visits once a month for one to three hours. Finally, **Denmark** has implemented a "prison leave" system for prisoners with sentences greater than five months. The leave can last from one day to an entire weekend.

Conjugal visitation is a helpful tool in maintaining a stable atmosphere and keeping a check on sodomy in prison. Furthermore, it is believed that by keeping contact with relatives outside, fewer prisoners try to escape. The court calls for modernization of jail infrastructure and denounces malaise in prison administration. This decision is a sterling effort towards humanization of prisoners and deserves accolades. However, being bastions of fundamental rights, courts must consider the matter with all condor and fairness.

Undoubtedly, prisoners' right to procreate is a polemical issue which pushes the envelope for radical jail reforms and is infused with paramount public and penological interest. This decision may be considered revolutionary with respect to prison reforms but can spell havoc for the wife and the child. We cannot turn a Nelson's eye to the "best interest" of the child and well-being of the wife. Every legislation governing child rights upholds "best interest" of the child.

The child born out of this arrangement would always bear the indelible stain of being the progeny of a felon. It would face stigmatization and would be ostracized. As a result, the child would develop bitter resentment towards the society. This would in turn raise propensity of juvenile delinquency. There is only a downward spiral from here. Absence of a father figure can have adverse effects on the malleable psyche of the child. He may lash out in fury to avenge for the loss of his childhood. Deep cleavages and almost irreparable estrangement of wives and children towards the husband and father is caused if he is away in prison.

Shaw and McKay's*social disorganization theory* states that a person's physical and social environments are primarily responsible for the behavioral choices that person makes. The Italian criminologist Cesare Lombroso promoted the theory of *'anthropological determinism'* which essentially stated that criminality is inherited.

Raising a child is a mutual responsibility of both the parents. It is the duty of the court to ensure that a child is provided a propitious environment to foster and bolster his optimum growth and overall development. The court cannot consciously allow a child take birth in a broken family.

The ruling does not extend the right to procreate to women prisoners. This contravenes *right to equality* and gender justice guaranteed under Article 14 of the Constitution. A pregnant woman poses challenges to the penal system like medical needs, safety risks, and physical limitations than a man who, on one occasion, donates sperm. Surely there are biological differences between a man and a woman but denial of motherhood to a woman prisoner is a greater punishment to her than to a man.

This ruling is equally detrimental to the wives of prisoners as it shackles women in the stereotypical role for child rearing and managing of household. India being a patriarchal society, opinion of the woman whether she wants to bear her imprisoned husband's child would be smothered. Also, the wife may be under duress or threat to procreate by her imprisoned husband or in-laws.

In the modern times of today, women are taking successful strides in their careers and are becoming economically independent even then they are complacently ensconced in antiquated gender roles. Women must be encouraged to carve their own identity distinguished from their fathers, brothers and husbands. A woman can be more than a wife or mother. This ruling heaps incredible responsibilities on the wife. She would carry out religious duties, maintain social relations, handle domestic and career obligations and also raise a child. Meanwhile, the husband would languish in jail greedily waiting for the next conjugal visit.

The ruling is entangles in a veritable state of perplexity regarding whether eligible convicts should have the facility of conjugal visits within the jail precincts or a provision like Section 3(1)(d) of the Prison Act, 1962 can be enlarged enough to serve as a regular measure for their temporary release on parole for such exclusive visits. The other unresolved question is whether these facilities are to be extended within or outside the precincts of jail to hardened criminals. Many pertinent questions are shrouded in darkness. Also, the Court does not direct the actual implementation of its directions or observation in a time-bound manner.

The new Jail Reform Committee has a Herculean task before it. Wrenching decisions have to be made and a thicket of policies need to be implemented. This is only the threshold of the long journey of reforms ahead.

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INTERNATIONAL TERRORISM: TERRORISM VIS-A-VIS INTERNATIONAL HUMANITARIAN LAW

Introduction

International humanitarian law (IHL) is the body of international law applicable when armed violence reaches the level of armed conflict, whether international or non-international. The best known IHL treaties are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, but there are a range of other IHL treaties aimed at reducing human suffering in times of war, such as the 1997 Ottawa Convention on landmines. IHL - sometimes also called the Law of Armed Conflict or the Law of War - does not provide a definition of terrorism, but prohibits most acts committed in armed conflict that would commonly be considered "terrorist" if they were committed in peacetime.

It is a basic principle of IHL that persons fighting in armed conflict must, at all times, distinguish between civilians and combatants and between civilian objects and military objectives. The " principle of distinction ", as this rule is known, is the cornerstone of IHL. Derived from it are many specific IHL rules aimed at protecting civilians, such as the prohibition of deliberate or direct attacks against civilians and civilian objects, the prohibition of indiscriminate attacks or the use of " human shields. "IHL also prohibits hostage taking.

In situations of armed conflict, there is no legal significance in describing deliberate acts of violence against civilians or civilian objects as "terrorist". Because such acts would already constitute war crimes. Under the principle of universal jurisdiction, war crimes suspects may be criminally prosecuted not only by the state in which the crime occurred, but also by all states.

What is Terrorism?

Terrorism has been described variously as both a tactic and strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination. Obviously, a lot depends on whose point of view is being represented. Terrorism has often been an effective tactic for the weaker side in a conflict. As an asymmetric form of conflict, it confers coercive power with many of the advantages of military force at a fraction of the cost. Due to the secretive nature and small size of terrorist organizations, they often offer opponents no clear organization to defend against or to deter.

> Terrorists may exploit vulnerabilities and grievances to breed extremism at the local level, but they can quickly connect with others at the international level. Similarly, the struggle against terrorism requires us to share experiences and best practices at the global level.
>
> The UN system has a vital contribution to make in all the relevant areas—from promoting the rule of law and effective criminal justice systems to ensuring countries have the means to counter the financing of terrorism; from strengthening capacity to prevent nuclear, biological, chemical, or radiological materials from falling into the hands of terrorists, to improving the ability of countries to provide assistance and support for victims and their families.
>
> BAN KI-MOON

That is why pre-emption is being considered to be so important. In some cases, terrorism has been a means to carry on a conflict without the adversary realizing the nature of the threat, mistaking terrorism for criminal activity and has become increasingly common among those pursuing extreme goals throughout the world. But despite

its popularity, terrorism can be a nebulous concept.

The United Nations produced the following definition of terrorism in 1992; *"An anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination - the direct targets of violence are not the main targets."* The most commonly accepted academic definition starts with the U.N. definition quoted above, and adds two sentences totaling another 77 words on the end; containing such verbose concepts as "message generators" and "violence based communication processes". Less specific and considerably less verbose, the British Government definition of terrorism from 1974 *is "...the use of violence for political ends, and includes any use of violence for the purpose of putting the public, or any section of the public, in fear."*

The problem of the definition of terrorism is related to the following facts:

(i) The notion of terrorism is complicated and terrorist acts may be part of insurgency and subversion,

(ii) The mass media have contributed to the confusion about the meaning of terrorism by often using the term terrorism in a rather superficial manner, by shifting the political discourse from 'issues' to 'episodes', transforming politics into entertainment and moving from opinion-making to stimulation through pictures,

(iii) Terrorism is a phenomenon, which appears under different guises,

(iv) States can use the term 'terrorism' arbitrarily in order to be in agreement with their national propaganda and foreign policy goal.

International treaty law

There is at present no universal treaty, which comprehensively prohibits terrorism and applies in all circumstances. The only attempt to elaborate such a treaty, the Convention for the Prevention and Punishment of Terrorism drafted in 1937 by the League of Nations, never entered into force.

In recent years, an ad hoc committee established by the United Nations General Assembly has been working on the text of a Comprehensive Convention on International Terrorism. At the time of writing, negotiations are still under way.

Initiatives to combat terrorism by adopting international instruments have also been taken at a regional level: the European Convention on the Suppression of Terrorism, of 1977, deals with aspects of the fight against terrorism in Europe, and in June 2002, States party to the Organization of American States (OAS) adopted an Inter-American Convention against Terrorism.

The main treaties of international humanitarian law which have a bearing on the issue are the four Geneva Conventions of 12 August 1949 for the protection of war victims, supplemented by their two 1977 Additional Protocols.6 Many other treaties deal with aspects of armed conflict and thereby indirectly with terrorism, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954).

International humanitarian law deploys its effect in armed conflict. Thus the 1949 Geneva Conventions deal with acts of terrorism only insofar as they occur in the context of an armed conflict or, in plain language, of a war.

Violence against persons and destruction of property are inherent in warfare. The use of deadly force against persons and objects is contrary to international humanitarian law only if such acts transgress the limits established by the international rules. Violence is also one of the salient features of terrorism. International law must therefore draw a line to distinguish the violence, which is legitimate in war from acts of terrorism, i.e. illicit recourse to violence. How is this distinction achieved?

International humanitarian law approaches the problem from two angles. First, the right to use force and commit acts of violence is restricted to the armed forces of each party to an armed

conflict. Only members of such armed forces have the "privilege" to use force against other armed forces, but their right to choose methods or means of warfare is not unlimited. On the other hand, only members of armed forces and military objectives may be the targets of acts of violence. Second, other categories of persons, in particular the civilian population, or of objects, primarily the civilian infrastructure, are not legitimate targets for military attacks — they are, in the words of the Geneva Conventions, "protected" and must in all circumstances be spared.

International humanitarian law does not grant unfettered license to use any conceivable form of violence against the other party to an armed conflict. Since time immemorial international rules have drawn a line between methods and means of warfare, which are legitimate, and those, which are not, such as the use of chemical weapons or the assassination of civilians not taking part in the hostilities. To resort to illegal methods and means violates the legal order and, in aggravated circumstances, can be prosecuted as a crime under domestic law or as a war crime. Consequently, members of armed forces, though entitled to commit acts of violence, may be held responsible for violations of rules protecting persons or civilian property. In other words, officers and ordinary soldiers may (or must) be prosecuted at the domestic or international level and punished for terrorist acts they are found to have committed.

Rules applicable to international armed conflict

The 1949 Geneva Conventions and their 1977 Additional Protocols refer only twice in a specific manner to acts of terrorism: in Article 33 of the Fourth Geneva Convention and Article 51, para. 2, of Protocol I.

Under the heading "Protection of the civilian population", Article 51 of Protocol I codifies the basic rules to be respected in military operations. Article 52 adds precise rules banning the destruction of civilian objects, in particular those which are part of the civilian infrastructure.8 After a reminder of the obligation to protect the civilian population against dangers arising from military operations, an obligation firmly anchored in customary law, paragraph 2 of Article 51 reads:

"The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

Paragraph 4 of the same provision prohibits indiscriminate attacks9 in warfare. This provision covers military operations (or any acts of violence) which

•Are not directed at a specific military objective,

•Employ a method or means of combat which cannot be directed at a specific military objective, or

•Employ a method or means of combat the effects of which cannot be limited as required by the law, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction. In other words, attacks or acts of violence which, though intended to hit a military target, in fact kill or wound civilians or destroy civilian objects, including the civilian infrastructure, in disproportionate manner are prohibited.

International rules applicable to non-international armed conflict

International humanitarian law applicable in non-international armed conflict is the result of a compromise between the concept of sovereignty and humanitarian concerns. In an internal armed conflict at least one party is not a State; it is usually an insurgent group determined to overthrow the government, or a rebel movement fighting for autonomy or secession. It is generally accepted today that internal conflicts with a high intensity of violence cannot remain beyond the reach of international law protecting persons from the effects of hostilities, whether those persons are actively involved in acts of violence or not.

Indeed, civil wars often have the same devastating effects as armed conflict between States. Since 1949 and 1977 respectively, Article 3 common to the four Geneva Conventions and Additional Protocol II have set the basic standards intended to limit violence and suffering in non-international armed conflict. Customary law confirms and supplements the fundamental Article 3 and the fifteen articles of Protocol II.

It is not our intention to blur the dissimilarities between the two types of armed conflict. And yet it can be seen that the norms prohibiting acts of terrorism in non-international armed conflict are basically identical with those applicable in international armed conflict. Article 3 common to the four Geneva Conventions prohibits acts of terrorism with the following words, though without actually using the word "terrorism":

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;(…)"

What distinguishes non-international armed conflict from armed conflict between States is the fact that on one side there is a State and on the other one or more groups of individuals who oppose the government's authority. While it is no surprise to learn that State contenders are under an obligation to comply with the international obligations binding for that State (pacta sunt servanda), Article 3 and Protocol II also impose obligations on dissident forces and their members, which are non-State contenders. Thus members of those forces must heed the ban on terrorist acts, and commanders of dissident forces are under an obligation to enforce compliance with the international rules. In other words, they must take all necessary steps to enforce the prohibition of terrorist acts, including appropriate measures if that prohibition is violated.

To sum up, it can safely be said that the prohibition of recourse to terrorist acts is as firmly anchored in the law applicable innon-international armed conflict as it is in the rules governing international armed conflict. Acts of terrorism are banned, without exception. This conclusion is important, as non-international armed conflicts are particularly prone to wanton violence.

International humanitarian law and 'war on terror'

Every act of terrorism is incompatible with international humanitarian law applicable in armed conflict. Like any other violation of the 1949 Geneva Conventions, of another humanitarian law treaty or of international customary law, such acts call for action by States party to those treaties to redress the situation. They not only have a legitimate interest in stopping criminal behavior and thereby protecting their own citizens, they are also legally obliged to monitor compliance with the law, to prosecute and punish offenders and to prevent any further act contrary to humanitarian law.

The Geneva Conventions and their Additional Protocols of 1977 have laid down a number of measures and procedures to ensure compliance with their provisions. In particular, serious violations of the more important pro- visions are international crimes — "grave breaches" in the words of the Geneva Conventions — and all States parties have jurisdiction to prosecute offenders (universal jurisdiction). As has been abundantly shown in this paper, acts of terrorism

are grave breaches of international humanitarian law. Moreover, the Geneva Conventions do not exclude action by third States with a view to responding to grave breaches or preventing further violations, especially if the State concerned does not take appropriate action itself. Whether such third-party involvement includes the right to use force is not a question for international humanitarian law but for the law of the UN Charter.

In Chraidi v. Germany, the European Court of Human Rights found no violation of human rights resulting from a sequential prosecution resulting in lengthy periods of detention. In August 1984 a Berlin court issued an arrest warrant against Mr. Chraidi on the ground that he was strongly suspected of murdering victim "E". In 1990 the same court issued a further warrant accusing Chraidi and others of having prepared a bomb attack in 1986 on the "La Belle" discotheque to kill members of the American armed forces. The suspect was arrested in Lebanon in 1992 and detained with a view to extradition. In 1994 he was acquitted by a Lebanese court of the murder of victim "E", but was convicted of document forgery.

In 1996 Chraidi was extradited to Germany, and detained for trial on the 1990 murder charges. In November 2001 he was convicted and sentenced to 14 years, with credit for time served in the various stages of detention. The period of detention from 1996 to conviction was found to be proportionate to the complexity and circumstances of the case.

Is international humanitarian law adequate to combat terrorism?

The 1949 Geneva Conventions, there 1977 Additional Protocols, other international treaties and customary law prohibit without any exception terrorist acts committed in the course of an international or non-inter-national armed conflict. Treaty law has established procedures, which enjoin States to take measures to prevent and repress violations, and allows the international community to react under the United Nations Charter. In particular, serious violations of international humanitarian law are international crimes, which entail the obligation of States to bring the alleged offender to justice before their own courts, the courts of another State party or an international criminal court.

Measures to combat terrorism and to bring alleged terrorists to justice must comply with international humanitarian law whenever such acts are committed in the course of an armed conflict. In view of the increased danger of even fundamental humanitarian obligations being disregarded in "wars on terrorism", there appears to be a special need to emphasize that all those who, in some way or other, are involved in the fight against terrorism have a duty to respect international humanitarian law. Scrupulous respect for IHL in military campaigns to eradicate terrorism helps to strengthen determination to abide by the law in all circumstances.

The purpose of international humanitarian law is to protect and assist victims of armed conflict. The 1949 Geneva Conventions and the other IHL treaties do not provide essential or indispensable tools for the fight against terrorism. International humanitarian law cannot eradicate terrorism, among other things because terrorism has multiple and complex causes. Only civil society can attain that goal by concerted effort and patient action at home and abroad. Conflicts of a political nature must be settled by political means, in such a way as to open the door to more justice for all. It must become clear to every player on the domestic and international scene that recourse to indiscriminate violence is illegal and reprehensible – and ultimately useless. Full respect for international humanitarian law in counter- terrorist operations is a positive contribution to the eradication of terrorism.

Conclusions

International approval of a common definition of terrorism could substantially facilitate the anti-terrorist struggle. Terrorism should de differentiated from war crimes or crimes against humanity and from common murder. The essence

of war crimes is numbers afflicted, whereas, with the exception of relatively few incidents, the numbers of people killed in terrorist activities are often small. Also, terrorist activities differ from common murder in their psychological impact since terrorists aim at creating a climate of fear in which they expect to realise their goals.

A functional definition of terrorism should include the following elements:

- The existence of non-combatant casualties or the indiscriminate use of violence,
- The purpose is to create a public danger or a state of terror,
- The ultimate goal is to influence an audience and serve ideological, social, and philosophical or other ends, those actively committing the criminal offences are non-state or state-sponsored groups or agents.

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FOREIGN DIRECT INVESTMENT & HUMAN RIGHTS

Foreign Direct Investment (FDI) is among the most important form of capital flows for a nation. FDI is the investment made by a company based in one country into another country, which provides cheap labor, production facilities and other benefits in return for the money invested in the Economy. Development of new technologies for global transportation as well as communication has made FDI easier than ever. With huge sums (read Billions) of money being invested in this fashion in developing economies by Multinational Corporations, the importance of FDI for Developing economies cannot be overlooked. Corporations bringing in such proportions of money have power to influence the policies of the host country. This paper weighs arguments from both critics as well as supporters of FDI to reflect on the true impact of it on human rights conditions of the host country.Various ways of investing in a country include direct acquisition of a firm, construction of a facility or forming a Joint Venture with a local firm.On part of the Host countries, policy like liberalization, tax rebates & favorable labor laws play a significant role in increasing FDI flow.

According to UNCTAD, yearly foreign direct investment flows have increased from an average of less than $10 billion in the 1970's to a yearly average of $179 billion in 1998 and $208 billion in 1999. In the year 2013, inflows rose to $1.45 trillion.
Official development flows, on the other hand in the year 1996 was just $40.8 billion for the developing world.

Most writers from earlier times have argued that FDI and human rights are inversely related and that fund flow through these sources lead to deterioration in human rights standards in developing nations. On the other hand, new authors argue that MNCs might actually have a positive impact on the host countries for variety of reasons discussed in the later part of the paper.

In the earlier decades, when FDI was criticized for having a detrimental effect on Human Rights of the host country, the nature of FDI was very different from what it is today. In those times, FDI was focused on primary sector i.e. extractive industries, which were dependent on natural resources that a country possessed. Generally, these natural resources were in control of the ruler of host country because of which the Multinational firm had to work in collusion with the government of the host state. Evidence seems to support the contention that US multinationals at least colluded with foreign governments and supported the repression of local populations. United Fruit helped mastermind a governmental overthrow in Guatemala; ITT played a role in overthrowing the popularly elected Allende government in Chile; & US mining regimes across Africa.

But increasingly FDI's focus has shifted to Secondary and Tertiary sectors. Multinational firms are more consumer products and services oriented and therefore more foreign investment is made in these fields. As early as 1984, for example, 33% of foreign investment by firms based in the UK was in primary sector industries; by 1991, that figure had fallen to 18%, while

tertiary sector investment had grown from 35 to 46 percent of the total.
As per the 2014 World Investment Report, over the past decade, the share of the extractive industry in the value of greenfield projects are rapidly decreasing; manufacturing and services now make up about 90 per cent of the value of announced projects both in Africa and in LDCs (least developed countries).

As the focus of FDI is shifting, so are the reasons for investing in a foreign market is also shifting. Earlier writers referred to FDI as anti-human rights because of its nature. Since Lenin's work on imperialism, FDI is generally seen as a source of abuse of the poor population of the developing countries.Lenin emphasized on the exploitation of foreign markets in the development of advanced capitalism. With flattening profits in home markets, foreign markets would become important to maintain their rates of growth. In the process, the increased concentration of capital and resources in corporate hands would relentlessly widen the bifurcation between the capitalists and the exploited classes, between the controllers and the controlled.

In 1971, Stephen Hymer argued that in Multinational Corporation capitalism a pattern of dual development is present that inhibits the progress of human rights in the host developing countries. To maintain their system of financial dominance, multinationals must keep the poorest segments of the world's population under control, unable to rise up to the inequities of this system. For this control, Multinationals turn to and support repressive mechanisms of host countries, leading to an unholy alliance among these powers. In the process, human rights are held at bay, as the masses of the developing world become a source of cheap labor for multinational factories.

In a 1994 article, it was argued, "The free trade philosophy for creating a prosperous global economy is in practice denying workers their share of the fruits of wealth creation. First world components are assembled by third world workers who often have no choice but to work under any conditions offered them. Multinational companies have turned back the clock, transferring production to countries with labor conditions that resemble those in the early period of America's own industrialization"

But with the shift in the nature of FDI, Multinational firms look at FDI as a way of increasing the consumer group they cater to by entering foreign markets. As observed in the US government's Survey of Current Business, Multinational firms are choosing foreign investment more to gain access to markets than to gain access to law wage labor or natural resources.Now, the MNCs investing in foreign markets no longer look for only cheap labor but also a consumer base and a stable environment. According to OECD, Labor costs now comprise only 5 - 10 % of production costs, down to 25% in the 1970s.

As Multinational firms carry their brand name and reputation to the foreign location, and labor cost not forming a significant part of the cost, it is highly improbable that they would risk their consumer base for cheap labor. This change is a result of changing nature of FDI i.e. increase in FDI in consumer products and service sector. Also, Several studies support the view that multinationals prefer disciplined and productive labor as well as for high skill levels over low wages.
Contrary to the critics of FDI, developing countries that received the largest amounts of foreign direct investment between 1981 and 1992 were also those that, in general, scored well on two of the most commonly cited measurements of human rights: United Nations Human Development Index & Purdue University's Political terror scale.

There are two reasons as to why the Multinational firms are more vulnerable if they exploit the population of the host country. Firstly, because of modern forms of communication, it has become easier for Human rights groups to pressurize the

firms in case of violation. In this, the importance of Internet cannot be emphasized enough. As global communication has become cheaper and easily accessible, every act of multinational firms is under scrutiny.Secondly, as the Multinational firms that are in direct touch with the end consumer, it is more important than ever to maintain their reputation and brand name in every regard. As consumer awareness campaigns become more prominent, it's only better for the firms to disassociate themselves with such practices. If Western multinational firms engage in abuse of workers or discriminatory practices abroad or even if they purchase goods from abusive suppliers, theirs actions are likely to gain front-page attention in the developed world. For instance, Nike has been repeatedly hounded for purchasing goods made under abusive conditions. So have Reebok, Liz Claiborne, the Walt Disney Company, the Gap, and many others brand names&multinationals.Royal Dutch-Shell has been branded for environmental negligence with regard to its Brent Spar oil platform and for complicity in human rights offenses committed by the Nigerian government.British Petroleum has been smeared by accusations of abuse in its Columbian operations

It is nearly impossible to have an empirical study, which encompasses all the aspects of FDI on human rights as both these fields are very vast and have many direct and indirect effects, data for which might or might not be available. As far as theoretical arguments are concerned, it can be assumed that with increased Corporate Social Responsibility legislations and active Human Rights groups as well as consumers, it would be difficult for the Multinational firms to promote practices that are violative of human rights.

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A COLD WAR: FINDING A SOLUTION TO HOMOPHOBIC PROPAGANDA

Introduction

There has been an increase in sensitisation and awareness of the implications of homophobia in the last two decades, but countries are still reluctant to overcome their prejudices and acknowledge the degree of injustice meted out to lesbians, gay, bisexual, transgender and intersex individuals. The latter is evident in Navi Pillay's (the UN High Commissioner for Human Rights) speech in the International Forum on the International Day against Homophobia and Transphobia where he correctly spots three consequential issues requiring dire attention - hate crimes, criminalization of homosexuality and denial of rights and rampant discriminatory practices against the LGBTI community. The interference of religious assertions and anxiety over the erosion of traditional values and understanding of institutions like marriage and sexuality have resulted in more than 78 countries declaring consensual same-sex relations to be illegal and punishable with fine, imprisonment or death penalty.

Though simultaneously there are some states that are taking a pre-emptive stance by incorporating "sexual orientation" as a ground for non-discrimination in their constitution or in their penal code; or their judiciary is playing a proactive role in decriminalizing homosexuality. This paper will unpack the futility of such changes without a transformation in public attitude or the functioning of an efficient enforcement agency.

To demonstrate support and combat the perpetration of violence and human rights violations against LGBTI individuals, UN Human Rights Council in 2011 adopted the first ever resolution whereby a study documenting *discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity* has been commissioned. South Africa, being a progressive state was purposely induced to introduce this resolution as an indication of non-imposition of western values. But the politics and disagreement behind this resolution is a perfect depiction of the extent to which the world is divided on this issue as it was passed with a narrow margin of 23-19 (with three abstentions). South Africa being the only African country to vote in favour of it, incurred severe criticism from numerous African and Middle Eastern nations. Unfortunately the lack of an international enforcement mechanism possibly encourages countries like Pakistan to believe that these"*notions have no legal foundation*".

The Homophobic Propaganda

Homophobic Propaganda is observed in two scenarios, where the states fail to legally protect them from hate crimes, criminalization and discriminatory practices or the states themselves are guilty of perpetrating such crimes.

State Sponsored Propaganda

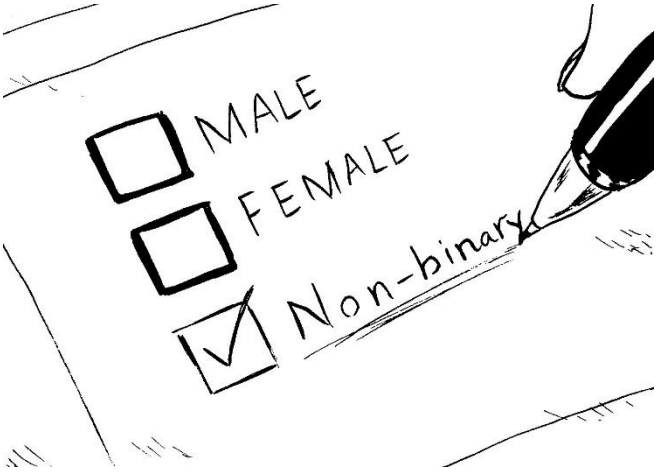
The recent instance of state sponsored propaganda against homosexuals is in Russia, in the guise of new, unanimously passed laws banning the "propaganda of non-traditional sexual relations to minors" and banning adoption of Russian children by foreign same-sex married couples, (where same-sex marriages are legitimate). They have

become a cause of much concern for the LGBTI group in Russia and the international community. Despite there being no definition for "non-traditional", the general interpretation is LGBTI relationships, inferring from the previous draft that stated, "*Against propaganda promoting homosexuality*". The irony of Russia's state sponsored propaganda against homosexuality is that same-sex relations have been legal since 1993. The motive is to ensure that minors are not exposed to LGBTI setups from infancy as they may confuse such relations to be *socially equivalent* to heterosexual relations. A parallel reason claimed is the steady decline in the Russian population since the nineties. However I am more inclined to believe the former reason as strict laws against couples who decide not to have children or who cannot have children have not been introduced. Thus the state has failed to protect human dignity, a non-derogable right. Additionally the increase in physical attacks and verbal aggression against LGBT individuals during the enactment of the law is a clear violation of Article 21(2) of the Russian constitution whereby "*no one shall be subject to torture, violence or other severe or humiliating treatment or punishment.*" Similarly the ban on distribution of information on gay rights by the law and a hundred year ban on conducting gay prides have infringed the fundamental rights to free speech and expression and the right to assemble respectively. Before the district court ruling in Moscow of the hundred year ban, Russia was fined by the ECHR for similar bans. However that didn't have an impact on their ideology or intentions. In fact now, the non-compliance of the abovementioned laws can lead to punishments varying from fines, imprisonments to deportation for foreigners.The aforesaid multiple violations by the state instigates us to question the legitimacy of the law. While article 19 doesn't mention "sexual orientation" as a basis for equality, the state can argue that the propaganda for homosexuality will incite social or religious hatred and discord among the citizens and against themselves and so as a protective measure it should not be permitted. The state can also argue that the LGBTI community cannot advocate for protection of their rights and freedom as it is prohibited by the recent laws.

An ideal counter to that would be Article 55 where the interpretation of the constitutional rights and freedoms should not be in rejection or derogation of universally recognized human rights and freedoms. But because the jury is yet to be out on whether the rights of LGBTI individuals are universally recognized or not, this would not be a compelling argument. The murder of Eric Lembembe, a prominent LGBT rights activist in Cameroon proves that, acts of violence against homosexuals is not limited to Russia. Comparatively Ukraine maintains a similar position to that of Russia, as discriminatory treatment is meted out by members of the public, religious leaders and officials. Effectively no pride march has ever taken place in Ukraine and the last one organized was cancelled due to fear of violence against the participants and the police's failure to manage adequate security. In the past the LGBTI activists have been prosecuted for exercising their freedom of peaceful assembly and similar public events have been banned in apprehension of provoking negative reactions from the public. In this instance though arguments of free speech and assembly cannot be backed by the constitution of Ukraine as it vastly differs from that of Russia. Firstly it qualifies the right to assemble peacefully with prior notification to the government and certain restrictions for the purpose of prevention of disturbances or crimes, etc. Likewise the freedom of thought, speech, and expression of views and beliefs is subject to public order and other restrictions. Therefore unlike Russia, Ukraine has been deriving its legitimacy for her homophobic policies from her constitution.

I HAVE NO PATIENCE FOR COUNTRIES THAT TRY TO TREAT GAYS OR LESBIANS OR TRANSGENDER PERSONS IN WAYS THAT INTIMIDATE THEM OR ARE HARMFUL TO THEM.

Conversely there are certain countries like Jamaica where homophobic violence is consciously perpetrated by the state. Recently more than 1500 people rallied against the constitutional challenge of the anti-sodomy law in the Offences against the Person Act, indicating strong intersection between the religious beliefs and the state laws. Furthermore there have been reports of police and anti-gay mob violence against the LGBTI community. Meanwhile in Egypt neither the Egypt constitution nor any other enacted statute specifically discriminates against the LGBTI community. However gay men are arbitrarily imprisoned based on provisions in Law 10/1961 intended to combat prostitution and in the penal code on contempt for religion or shameless public acts. While Jamaica exposes the influence of religion in the creation of protective or non-discriminatory rights for the LGBTI, Egypt is an apt description of how laws are manipulated by the government to sponsor their propaganda against the LGBTI.



States Failing To Protect Their Citizens

But acts of violence and hatred are not restricted to countries that have an explicit propaganda against homosexuals, even countries like South Africa, first country to incorporate "sexual orientation" as a ground for non-discrimination suffers from hate crimes that target individuals because of their real or perceived sexual orientation or gender identity. A clear disconnect exists between the country's progressive laws on LGBTI issues and public opinion. A common complaint levied against the police is their failure in conducting efficient and adequate police investigation and their lackadaisical attitude towards cases of violence against LGBTI individuals. Thus an enduring dread of lack of access to justice in smaller towns and rural areas pervades the LGBTI community.

Decriminalization And Beyond

While Part I of this paper paints a bleak future of advocacy for LGBTI rights, there have been countries that have taken various steps to entitle them with their deserved rights. The Ecuadorian constitution obligates the citizens to *respect and recognize gender differences and sexual orientation and identity* and it compels the state to identify it as a ground for non-discrimination. Moreover it guarantees citizens the *right to freely take informed, voluntary, and responsible decisions on one's sexuality and one's sexual life and orientation* in safe conditions. But in the 2003 annual report of Amnesty International it was revealed that often public authorities refuse to take cognizance of the complaints received on violations of aforementioned rights, and that LGBTI detainees are continuously punished and humiliated by means of torture, ill-treatment and sexual harassment. Undoubtedly this is indicative of the poor implementation of protective rights for the LGBTI community by the public officials.

In another instance, South Africa the first to declare that direct or indirect discrimination by the state on the grounds of sexual orientation is unconstitutional has also imposed a similar responsibility on private citizens, therefore addressing concerns of both vertical and horizontal discrimination. Even though acts of violence haven't completely ceased, the South African Constitutional Court has proactively given some landmark decisions founded on the aforesaid clause, thus compelling the state to rectify certain discriminatory practices. This can be contrasted with the Supreme Court ruling in Canada where the Court stated that discrimination on the basis of sexual orientation contravenes with the constitutional guarantee of equal protection and benefit of the law under Section 15(1) of the

Canadian Charter of Rights and Freedoms. However owing to the judiciary's deference to the legislature, the substantive claim of securing social security benefits that is usually provided to heterosexual couples was denied to homosexual couples. Therefore the role of the judiciary is extremely pertinent in ensuring that rights of the LGBTI community are protected. With respect to LGBTI rights if the judiciary takes a deferential stance towards a biased homophobic government then a lot of rights enshrined in the constitution will remain unrealized.

Concurrently this is changing as judiciaries in different countries that had originally criminalized homosexuality in their penal codes or separate enacted laws, are now taking an initiative to legalize it. The latest landmark cases proof of that are: *United States* v. *Windsor* (the invalidation of the Defence of Marriage Act by the Federal court that denies federal benefits like immigration rights, Social Security survivor benefits and family leave to same-sex couples who are legally married in their states), *Pant v. Nepal* (LGBTI individuals should benefit from the same legal rights as other citizens of Nepal and that the state should be a regional and international model in the promotion of their fundamental rights) and *Naz Foundation* v. *Govt. of NCT of Delhi* (striking down Section 377 that denies dignity, criminalises their identity and violates their right to privacy which is protected within the ambit of Article 21 of the Constitution).

Conclusion

The recent trend in constitution drafting is that countries in the process of drafting their constitution are contemplating the inclusion of "sexual orientation" as a criterion for non-discrimination or protection. In actuality the implementation of such provisions is dependent on public opinion and political will. For instance countries can start considering affirmative action for sexual minorities or the creation of separate investigative public agencies that will be responsible for impartial fact finding and investigation on complaints of discrimination. Similar public agencies exist in Netherlands, Sweden and Ireland that initiate legal action for remedies that would benefit the victim.

Furthermore, popular morality is often stated as an excuse for the limitation imposed by the state on the fundamental rights of individuals belonging to the LGBTI community. However "*mere public disapproval or popular morality is not a sufficient basis for placing such restrictions on the enjoyment of fundamental rights*" and the focus should be on Constitutional morality that reflects common rights and freedom of individuals from every community.

I also propose that an amendment be made to the International Covenant on Civil and Political Rights (1966) that would incorporate "sexual orientation" under Article 2 (non-discrimination) and Article 26 (equality before the law). With Australia repealing the law criminalizing sexual acts between males in its state of Tasmania after *Toonen v. Australia*, the Human Rights Committee generated a precedent regarding discrimination against lesbian, gays and bisexual within the UN human rights framework. *Alternatively* an amendment maybe brought in the Convention against Torture or some other convention should be created solely for the purpose of protection of rights and freedom of the LGBTI community. The intention behind my making such an assertion is the top-down or vertical approach, where the international community will generate sufficient criticism against the state violating human rights, or will compel or shame the state to guarantee certain basic rights and freedom to LGBTI individuals.

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RIGHT TO ENVIRONMENT AS A HUMAN RIGHT: CONTRIBUTION OF THE SUPREME COURT

Human beings have been dependent on nature for livelihood and sustenance since the beginning of human race. Not only have they been dependent, but they have also worshipped nature. Historically, environment has always been a part of religious and cultural ethos of societies. While in the pre-historic era, man was completely dependent on the environment, the equations between human beings and environment have undergone massive change through the years of human evolution. With the advent of industrialization, Human beings started moving away from the environment while adopting a more individualistic and technocratic way of life. Further, the neoliberal ideas of development often put us at a direct conflict with the environment. Very often, rights of people living in close consonance with the environment (Forest dwellers, tribal communities etc.) get affected by development which is in conflict with the environment. Not only the vulnerable marginalized tribal communities, but also the urban population gets affected, although in a much different manner. It has been observed that human rights have had a close connection with the protection of environment. In some cases, destruction of the environment leads to violation of human rights. An example of this could be the large scale eviction of people for the Narmada Dam Project. In some cases, human rights violation disturbs the environment. For instance, in times of wars, when life itself is not guaranteed, protection of environment and sustainable management of common property might be a very ambitious aim to have. Due to this relation between the environment and human rights, where human rights are affected by destruction of environment and vice versa, right to environment has often been read as a human right. This article will focus on the subject of right to environment as a human right as advocated by various International Documents and its adoption in Indian judicial discourse on human rights.

Environment as envisioned by the human rights discourse

Environmental Rights do not fit into any one generation of human rights. The Stockholm Declaration laid down the framework for linking human rights and environmental protection, declaring that all persons have a right to secure, healthy and ecologically sound environment' and to 'an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.' Almost two decades later, the Principle 1 of the Stockholm Declaration was reiterated in resolution 45/94 the UN General Assembly which stated that all individuals are entitled to live in an environment adequate for their health and well-being.

Among human rights treaties, the 1981 African Charter on Human and Peoples' Rights alone proclaims environmental rights in broadly qualitative terms. Most human rights treaties either make no explicit reference to the environment at all – such as the European Convention on Human Rights – or they do so only in relatively narrow terms focused on human health. There is one notable exception: the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

According to some scholars, The Stockholm declaration which could have had massive impact on the status of Right to Environment, has only had a very modest effect in reality. However, it is noteworthy that many nations have started introducing environmental provisions in some form since 1972, when the declaration was passed. The Indian court has Article 48A which states that "The state shall endeavour to protect and improve

the environment and to safeguard the forests and wild life of the country" as a Directive Principle of State Policy (DPSP). This article does not create enforceable rights. However, this article definitely has motivated the Courts in India to give other Fundamental Rights, including the Right to Life under Article 21, a 'very rigorous environmental interpretation'. I will now examine how the Courts in India, especially the Supreme Court of India, have attempted to mainstream a 'Right to environment' as a Human Right through its judicial pronouncements.

The supreme court's vision of the right to environment

The Supreme Court has read Right to Environment under one of the Fundamental Rights. The difficulty in defining an independent Right to Environment lies in defining its contours; as it can be different for different classes and groups of people: for egg. For an urban dweller, right to environment can be a right against protraction whereas for a forest dweller facing eviction, it could mean a right to livelihood i.e. a right not to be evicted. It is due to this reason that reading right to environment as a fundamental right which is warranted to human beings is a very convenient and creative interpretation which can be altered and suited to everyone's needs The court has continuously developed innovative strategies aimed at ensuring fundamental rights of the citizens while treating protection of the environment as a constitutional mandate.

The Supreme Court has entertained petitions on behalf of the affected parties and inanimate objects, thus moving away the adversarial tradition of our legal system. It has at times taken Sue-Motu action against the polluter and has also expanded the meaning of Constitutional Provisions. It has also interpreted the international environmental law principles to domestic environmental issues, appointed expert committees to monitor and supervise judicial decisions. Other steps with a vision to protect the environment have been appointment of amicus curiae to represent the environment and field visits to probe the condition of the environment.

The court's steps in adopting a rights based approach to environment by interpreting it as a part of right to life has been an ideal example of how creative courts can become if there is a genuine willpower to protect the environment. I will now elaborate on a few cases which interpreted right to Environment as a Human Right.

In the Ratlam Municipalty Case, The Supreme Court tackled an impending public health disaster arising out of water pollution. Krishna Iyer J. interlinked seemingly disconnected factors like the environment, public health and harm caused to relatively poor people due to water pollution caused by industries. The Ratlam Muncipalty case is often called the starting point of Supreme Court's Right to Environment jurisprudence. Even though the judgement issues of destruction of environment, it is interesting to note that the overarching concern in this case was a right to health, a human right. In this case, the court linked the Right to live with dignity to the right to environment.

In the RLEK case, the court commented on the continuing and growing debate of economic growth and destruction as seen against protection of environment and habitats. In this judgement, the Supreme Court made it amply clear that economic growth cannot be prioritised over the people's right to the environment.

In the Doon valley case, the court interpreted Article 21 to include the right to live in healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to cattle, house and agricultural land and undue affection of air, water and environment. In this case, a healthy environment was seen as a pre-requisite to a person's well-being.

The Supreme Court has also brought in principles of International Environmental law while interpreting the right to environment as a Human Right. In the Ganga Water pollution case, the

Supreme Court recalled the principle of intergenerational equity while extending the right to life to include the right to defend human environment for present and future generations.

The Supreme Court expanded the concept of the right to life under the Indian Constitution in *Francis Coralie Mullin v. Union Territory of Delhi* where it set out an inventory of positive obligations on the State, as part of its duty under to the right to life. The link between environmental quality and the right to life was further covered by a constitution bench of the Supreme Court in the case of Charan Lal Sahu. Similarly, in the case of *Subash Kumar*, the Court observed that 'right to life guaranteed by article 21 is exhaustive of the right of enjoyment of pollution-free water and air for full enjoyment of life. It was in this case that the Court recognised the right to a wholesome environment as part of the fundamental right to life. This case also ruled that the municipalities and a large number of other concerned governmental agencies were to be held accountable for unimplemented measures for the abatement and prevention of pollution. . In *Shantistar Builders vs. Narayan Khimalal Totame* the Supreme Court said: "Basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in."Therefore, it may be inferred that the SC placed the right to a decent environment at the same pedestal as other rights basic to human life: food, clothing and housing.

In the Oleum Gas Leak Case, the court took one further creative step while linking the right to health to Right to the environment. This case considered the Supreme Court to be a guardian of the lives of people, also with respect to industrial pollution which is harmful for health.

Conclusion

In this essay, I have attempted to highlight the attempts of the Supreme Court to conceptualize the Right to Environment as a Human Right. The Supreme Court indeed has been a guardian of the environment as well as the peoples dependent on it. However, the court has deviated from this in the recent times and as a scholar has recently observed that in cases where environment comes in conflict with corporate interests which the court reads as 'Development', the environmental well-being gets side-lined. Therefore, the author is of the belief that the court should follow the environment friendly precedents set by it and continue its tradition of a rights-based environmental jurisprudence.

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