ASIAN HUMAN RIGHTS COMMISSION

AHRC-SPR-005-2012

INDIA: 12 months of underperformance, neglect and denial[1]

Introduction:

This year, there has been no remarkable improvement in the human rights scenario in India. On the contrary, the year continued to witness widespread human rights abuses in the country, peppered with scandals of corruption of catastrophic proportions. This included justice and regulatory institutions, and takes in its sweep political parties of all shades and shapes.[2] India failed to bring about any commendable administrative or legislative change that could deter the corrupt.

Governments, state and central, failed to address the immediate and important reforms required within the law-enforcement mainframe in the country, rendering the agencies to be one of the most corrupt, inept, and feared organs of the state, once again underlining the fact that the concept of the rule of law is replaced by a rule by fear in India. The Asian Human Rights Commission (AHRC) has documented more than four dozen cases of custodial violence from India this year, of which the state police have been, in almost all cases documented, found to be responsible for violating fundamental human rights of the people, and shameful brutality in the form of custodial torture and extrajudicial executions.[3]

Despite numerous debates and discussions about a law against torture since 2009, and despite the passing of a law in the Lok Sabha, the country is yet to finalise the legislation, or to review the proposed law, as recommended by the Parliamentary Select Committee that has studied the law and reviewed it.[4] Nor has been there any keen and sincere effort to put into place the directives issued by the Supreme Court of India in the Prakash Singh case, concerning the drastic administrative reforms that need to be brought into the state of policing in India.[5]

When the seminal cord that links the administration, its policies and legislations to the people ruptures, and the justice apparatus fails, and further becomes one of the prominent impediments in fulfilling fundamental human rights guarantees and freedom, the concept of rights take a severe dent. In practical terms, this renders the concept of redress to human rights violation a difficult task, damaging within its sweep the very notion of justice.

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1 Dr. Nidhi Mitra, Mr. Sachin Jain, and Mr. Avinash Pandey have liberally contributed to the content of this report.
2 Officials evaded stamp duty in sugar mills auction: Comptroller and Auditor General, Times of India, 30 April 2012.
3 For further information kindly see www.humanrights.asia/ua
4 Report of the Parliamentary Select Committee on the Prevention of Torture Bill, 2010; as presented to the Rajya Sabha on 6 December 2010
5 Prakash Singh and Others (Petitioner) against Union of India and others (Respondents), Supreme Court of India, Writ Petition 310/1996 decided on 22 September 2006.

The failure of justice in India is manifest in various other forms, including but not limited to, the denial of the fundamental right to food and in the continuation of entrenched practices of discrimination, most importantly caste based discrimination. Though there is an attempt to redraft the law against caste-based discrimination, even if this law is legislated, its implementation would depend entirely upon the state police, which, as mentioned above, undertakes its legal mandate with the least amount of professionalism.[6] Hence this law too is destined to fail in fulfilling the constitutional premise of non-discrimination. In a state where the justice apparatus has fallen, the notion of equality and fair trail has no place.

Concerning the question of right to food, an equally appalling condition persists in India. Various reasons, *inter alia* corruption within the Public Food Distribution System (PDS), caste and other forms of discrimination, national as well as state policies that deprive systematically the livelihood options of the rural communities - most importantly of the scheduled tribes - and the overall national policy of blind development, ignoring rural livelihood capacities, options and alternatives, renders India one of the most impoverished nations of the world in terms of the millions of children and adults suffering from acute malnutrition.[7] Malnutrition is more common in India than in Sub-Saharan Africa. One in every three malnourished children in the world lives in India; and nearly every second Indian child under 5 is stunted.

India is not a poor and impoverished country that lacks financial and intellectual resources to address these issues. Yet, when millions of Indians face immense levels of human rights abuses, while at the same time the country is exploding with the expansion of the upper and affluent middle-class population, it has to be concluded that within the country's policy intellect there is an intentionally maintained air of utter neglect and lack of care and concern for the plight of millions of people, estimated to be close to sixty percent of the country's population as of 2012, to be left to fend for themselves by their government.

Yet, those who critique the government and its policies on various aspects of human rights concern have faced immediate adverse reactions from the government. Despite being a proclaimed democracy, India ranks very low in democracy indices, most importantly those concerning media freedom. Analysts from Reporters Without Borders rank India 131st in the world in terms in their Press Freedom Index, falling from 80 just 11 years earlier.[8] Over the past five years, in particular, stifling the whistleblower has become a norm in India.[9]

It is in this larger picture that this year's annual report places its topics of focus, which are: (i) Torture, (ii) Caste based discrimination, and (iii) the right to food.

6 INDIA: Caste-based discrimination against 'untouchable' Ahirwar in Madhya Pradesh; AHRC-UAC-091-2012
7 UNICEF India report, 2012
8 Press Freedom Index 2011/2012, Reporters Without Borders, 26 March 2012
9 INDIA: Stifle not the whistleblower, AHRC-STM-211-2010

Custodial torture and institutional bliss:

This year too, on 26 June, the world celebrated the International Day in Support of Victims of Torture. Ironically, it was also on the same day the Government of Kerala reinstated nine police officers to office following their suspension for suspected involvement in an infamous case of custodial torture and murder. The case is still under investigation by the Central Bureau of Investigation (CBI). The case of Sampath's murder[10] is well known also because of the death of an investigating CBI officer, Mr P. G. Haridath, who was reported to have committed suicide on 15 March 2012. His suicide note accused state police and a magistrate of illegally attempting to influence the investigation. These allegations have yet to be properly investigated.

Sampath died in police custody. An autopsy revealed 64 ante-mortem injuries (wounds inflicted prior to death). The state government suspended police officers accused of torturing Sampath in custody and killing him. The reinstatement of these same officers yesterday, which permits those implicated in, and not fully exonerated of, the murder back into active service, is highly distressing.

Deaths in police custody resulting from the practice of torture are not new or rare occurrences in India. The Supreme Court of India has on several occasions denounced this physical and psychological abuse, ordering the government to take concrete action to prevent such barbarous and criminal acts in its own law enforcement agencies. In the landmark judgement in favour of Raghubir Singh (petitioner) against the State of Haryana (respondents), the Court held that "[w]e are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scar in the minds of common citizens, that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torturesome poignancy when violent violation is perpetrated by the police ... whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police lock-up, if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order. ... [t]he State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate ..."[11]

In a similar case, Kishore Singh (petitioner) against State of Rajasthan (respondent), the Court said "...[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights".[12]

10 Sampath murder case: Court returns CBI charge sheet again, Indian Express, 20 October 2012
11 All India Reporter, 1980, Supreme Court 1087
12 All India Reporter, 1981, Supreme Court 625

Three decades since, the conditions of custody, most particularly the practice of torture, have not improved, and continue to alarm many across India and the world. The proposed Prevention of Torture Bill of 2010 has been shown to be grossly inadequate, yet is still being considered by the parliament. The Parliamentary Select Committee that reviewed the proposed law has suggested comprehensive revisions to the Bill; these recommendations have yet to be taken up. In the meanwhile, the practice of torture, as yet not criminalised, continues unabated.

The AHRC has documented many cases from India in the past eight years that collectively show consistent and widespread use of torture to intimidate and extract information or confession. All police stations in the country practice this crude and unscientific method of interrogation and punishment. Most police officers believe that torturing suspects is a legal and morally acceptable means with which to investigate crime. The police training provided to new recruits does not categorically instruct cadets to abstain from use of violence as a means to investigation; rather, the training endorses and promotes the practice of torture. The government of India does not have data concerning the number of officers who routinely resort to torture and under what circumstances such abuse occurs. Because torture is not recognised as a crime, measures toward eliminating such horrifying practices have not been discussed or prioritised.

The yawning chasm between the vast numbers of cases registered against perpetrators and the extremely low actual number of investigations, prosecutions and convictions indicates how politicians and other power holders in India have managed to trivialise and side-line the entire issue. According to the information made available to the AHRC, in only 18 cases nationwide were police officers guilty of cruel, inhuman and degrading treatment acted against. Even in these cases, action was limited mostly to temporary suspension from service. Subsequent reinstatement negated whatever punitive effect the sentence or disciplinary action was supposed to serve – this pattern has repeated itself in the Sampath murder case.

It is against this desperately hopeless backdrop that International Day in Support of Victims of Torture was observed. Mr Salman Khurshid, the Union Minister for Law and Justice, who attended a conference in New Delhi on 26 June, 2012 to mark the day, stated that he had no information concerning the status of the proposed law against torture.[13] This year's theme spoke of the right of survivors to rehabilitation, yet nowhere in India, where torture is endemic, has there been an improvement in the services or facilities dedicated to the recovery and rehabilitation of torture victims, most of whom suffer psychologically, emotionally, physically and financially from the traumatic experience.

But for the reporting of a few select activities by some human rights and social activist organisations, India's media also neglected the international event altogether. This apathy or self-censorship on part of the media bodes ill for the future of human rights work and for the countless communities and individuals who have fallen prey to mindless, arbitrary and crippling violence. India has yet a long way to go towards acknowledging torture as a crime that cannot and must not be condoned, tolerated or justified by any

13 India is committed against criminalising torture, Indian Express, 26 June 2012

civilised society. India must recognise that torture is tyranny. India must realise that torture occurs in the dark places sans constitution, culture, civilisation, law and every moral principle. India must realise torture is a practice sans humanity.

With the practice of torture rampant within the overall culture of impunity in India, justice against torture has become a near impossibility. This is reflected in the conduct of law enforcement agencies in their shocking disregard to law of how brutal and inhumane the institution has become in India. The case of Sanjit Mondal is an example.[14]

On 15 April 2011, Sanjit had been watering the field for kharif cultivation in preparation for sowing jute. Six uniformed Border Security Force (BSF) jawans from the Harudanga Mini Camp suddenly set upon him and began beating him with the butts of their rifles. All six had been carrying firearms at the time of the incident. Sanjit fell to the ground due to the force of the sudden attack and bashing. The BSF personnel turned to kicking his chest with boot-clad feet. When Sanjit's family heard about the savage beating Sanjit was enduring at the hands of the BSF personnel, his uncle, Mr Bisnupada Mondal, Mr Bikash Mondal (son of Mr Binay Mondal), Mr Madhu Mondal and other residents of Char Durgapur Village, Harudanga Post Office, rushed to the spot and found Sanjit writhing in pain as the BSF jawans continued their vicious attack. The witnesses protested the abuse and requested that the BSF personnel leave off the beating, upon which the personnel hurled humiliating verbal abuse at them. The BSF personnel then made as if to leave the victim and moved a few yards off, but then turned and fired upon Sanjit. Family members and eyewitnesses believe this was intended to kill Sanjit.

This case, however, did not result in any further investigation or prosecution of the accused officers. This is not only due to the lack of any further action by the local police against the BSF, but also due to the law on BSF that prevents any such civilian action.

The BSF Act and its Rules[15] was intended to regulate the conduct of the BSF. Section 41 (f) of the Act mandates that a BSF officer who commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving, to be punished with seven years of imprisonment. The Indian Penal Code of 1860 also provides punishment for voluntarily causing hurt or injuries to a person. Section 326 of the Code prescribes punishment by way of imprisonment for a term of ten years to a person who voluntarily causes hurt by dangerous weapons or means. In addition, Article 21 of the Constitution guarantees protection of life and personal liberty of every citizen. There is, however, an obvious lack of discipline and commitment to duty, as well as a culture of violence and impunity, within the BSF. This case once again illustrates how the BSF operates, and is permitted to operate, with impunity and in utter defiance of these three legal documents.

The AHRC has documented substantial number of BSF atrocities in India over the years. AHRC has reported in detail over 800 cases of custodial violence committed by the BSF over the past eight years and

14 INDIA: INDIA: BSF bludgeoned a boy, then shot him, AHRC-UAC-089-2012
15 Border Security Act, 1968 and its Rules 1969

have called for action on the part of the Indian authorities. The AHRC has noted the absolute impunity with which the BSF acts, a fact evident by the lack of disciplinary action taken against their criminal offences by the relevant BSF superiors and police personnel. Critically, many of these cases reveal a troubling unresponsiveness, and sometimes complicity, in parts of the legal system to patent injustices committed against individuals by the BSF. Not only is the legitimacy and integrity of the Indian justice system threatened, but so is its border and national security.

Sanjit has, as a human being, a right to life, liberty and personal security (Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights, Article 6 (1), 7, 9 and 10). He had additional rights as a vulnerable minor to extra protection by the state (India ratified the Convention on the Rights of the Child in 1992). Sanjit further had a right to move freely within the borders of his own country (UDHR Article 13(1)). The BSF jawans who had so cruelly beaten Sanjit and his siblings obviously did not perceive the boys as born free and equal to them in dignity and rights (UDHR Article 1). The BSF jawans were also obviously lacking in reason and conscience and had not acted towards the minors in a spirit of brotherhood.

Instead, the BSF violate Article 21 of the Indian Constitution, which demands that no person be denied of his life except according to procedure established by law, a transgression that should be swiftly met with by the centre through punitive action against these rogue actors. In states like Manipur other para-military units like the Assam Rifles outrage the conscience of mankind with their blithely committed atrocities and cower like criminals behind the patently unjust and draconian Armed Forces (Special Powers) Act, 1958, passed 11 September, 1958, by both houses of parliament in India, which accords Armed Forces in "disturbed areas" the ability to act with complete unaccountability. The forces are permitted to use force "as [the officer] may consider necessary", to destroy any fortified position or shelter likely to be used for training armed volunteers / gangs and to arrest and search without warrant. These terms violate the letter and spirit of international law, which demands the unconditional protection of every human being's fundamental rights.

Even then the Act attempts, if weakly, to institute some safeguards – the armed forces are compelled to work in cooperation with the district administration and not as an independent body, for instance. The Forces are required give "due warning" before firing (which they rarely, if ever, give). Arrested persons are to be handed over to the Officer-in-Charge of the nearest police station without delay. Yet problems arise when the intent was never to arrest but to assault and kill, when BSF personnel act irresponsibly and refuse to coordinate with provincial authorities and behave, in essence, as an "independent body" and law unto itself.

The BSF promise border security, self-restraint in the use of lethal weapons, fewer unnecessary deaths – which are empty promises. The organisation brings instead the gradual corruption of already weak policing systems, increased lawlessness, and an environment of palpable fear that reeks of oppression, past feudalism, and neo-colonial structures in contemporary Indian society. The BSF beast is injustice manifest that has firmly embedded itself in institutions originally construed as bulwarks against such. It is a beast that ought to be quickly rehabilitated – or permanently put down.

The Kotteguda shooting incident of Bijapur district in Chhattisgarh state is another example to the brute force used by the Indian police while engaged in active duty.[16] Ninety-six hours after the Central Reserve Police Force (CRPF) firing in Kotteguda panchayat of Bijapur district in Chhattisgarh state, the union government, and the state government of Chhattisgarh defending the incident, found excuses to justify the police action that killed twenty villagers, of which at least five are children.

The firing occurred on 30 June, when the CRPF, allegedly acting upon intelligence inputs from the state police, fired upon a gathering of villagers in Kotteguda. It is reported that unknown gunmen first fired upon the CRPF, which perhaps explains injuries sustained by six policemen who participated in the action. It is also alleged that the injuries the policemen suffered are from friendly fires. It is reported that the policemen camped in the village after the incident, molested women and children, and pillaged the village.

An inquiry was ordered into the incident. However, there is no guarantee that it would be independent. Given the numerous experiences from the past, it could hardly be an independent inquiry, and more likely to be the government's whitewashing of the event. To start with, the CRPF, the Union Home Minister and the Chief Minister of the state claimed that of the 20 persons dead, at least four are Maoists and that the Maoists have been holding villagers as human shields for their gathering.

The incident raises several questions. Assuming the claim that out of the 20 persons killed, it is true that four are Maoists, how would it justify the murder of 16 innocent persons, including children? What law allows the extrajudicial execution of suspected criminals, some of whom were minors, without trial? The banality with which the incident is explained-off by the CRPF and the government is such that one feels sick at the blatant negation of basic norms of justice during police actions, let alone police appropriating the roles of the complainant, investigator, prosecutor and adjudicator. What proof exists as to the persons murdered, as alleged, are Maoists? If the criminal charges against those alleged to be the Maoists is what is considered as proof warranting punishment, wouldn't that negate constitutional guarantees as to presumption of innocence, silence and the right to fair trial?

If the allegations by the CRPF and the government were true, that the Maoists are using villagers as human shields, wouldn't that call for the state's armed forces to take extraordinary precautions during operations that they would not hurt civilians while combating armed militants? The statement reportedly made by a CRPF officer who failed to identify his name but has spoken to the media immediately after the incident, that "the CRPF could have razed the village down with grenades and mortars" and that they did not do so to prevent casualties of innocent villagers in fact suggests the lack of appreciation of responsibilities during combat by the armed units of the state - that such an event could be considered as crimes against humanity - and further, the shocking sense of triviality among officers to loss of human lives during field operations. It shows the absence of direction and commitment to protect people and property, and, in essence, the loss of legitimate purpose in field operations.

16 Villagers bury their dead as Maoists & forces trade charges, The Hindu, 1 July 2012

Similar absence of responsibility, most importantly concerning accountability for the lives lost is visible from the statements made by the Union Home Minister and the chief of the CRPF, Mr. K. Vijay Kumar. Both the Minister and Kumar have stated that of the persons killed, four were definitely Maoists. Without any verification how could they so conclude? What proof do they have to make such a statement? Was there a DNA or other medical examination conducted to verify the identities of these persons? Even basic legal requirements like undertaking an autopsy examination of the deceased has not been reportedly complied with.

Is there any proof to show that those killed were in fact shot dead in an armed combat or was it the execution of a dreadful policy to shoot to kill executed, involving the highest offices of the country? Would the minister and Kumar assume command responsibility if the entire incident was the result of mistaken information followed by arbitrary and insensitive action undertaken with the cover of impunity?

The only explanation Kumar has offered so far is that "he was so informed by his officers" that at least four persons killed out of the 20 are Maoists. Kumar iterated that his men were following 'standard operating procedures' and have observed all operational safeguards. Considering the incongruence between the casualty and the alleged target achieved, should there be one, perhaps it is time to undertake a thorough review of these 'standard' procedures. Or does the incident underscore the fact that many officers deputed for anti-Maoist operations in fact are petrified about the fatalities in ambushes that the force has suffered repeatedly and are willing to shoot to kill at any stranger they come across?

Equally despicable is the role, played by most of the electronic media in India that have justified the incident. Most television stations are repeatedly airing misinforming views, asserting that the incident is in fact a combat operation wherein those killed are Maoists, that they were armed and are using villagers as human shields. These stations are broadcasting stock shots of militant training camps and pictures of armed guerrillas, about which there is no verification as to whether these pictures are in fact what they are purported to be. There is a clear difference between what has been reported in the print and electronic media. While many print media published reasonably balanced reports about the incident with pictures of villagers having suffered blunt trauma injuries, clearly indicating assault and torture, many electronic media is on an overdrive to justify the incident.

These media have fallen to the bottom of the pit of irresponsibility, lack of independency and are biased. Their nepotism was exposed when they called civil society groups "Maoist sympathisers" referring to those speaking against the brute and arbitrary force of the state agencies. They have evidently disconnected themselves from the larger civil society in the country, exposing their lack of morale and understanding of what amounts to the civil society.

The distinguishable and despicable tone of reporting the event is that 'the villagers must be punished' for harbouring Maoists. The concept of collective, arbitrary and disproportionate punishment rimes well with deep-rooted practices of caste-based discrimination, an elemental character of many dominant caste individuals in India, of which many dominate the country's media. The pattern and timing during which false reports are repeatedly broadcast, proves that an alarming section of the country's media have reduced

themselves to be the spokespersons of the government. These entities cannot be referred to as 'the media'. A more fitting description would be to refer to them as government spokespersons.

The inquiry ordered into the incident is inadequate and definitely lacks transparency. The assumption that if a magistrate undertakes the inquiry, it would be independent is plain wrong. Or is it a fact that the government is aware, but would not want to bother, since all that it wants is a 'clean-up operation'? Additionally, the inquiring officer does not have any acceptable experience in working with communities in extreme trauma. In fact, such expertise should not be expected from an inquiring officer, but from professional psychologists, who are not included in the inquiry team.

The villagers who are traumatised by the event would not be in a state of mind to speak about the incident at the moment. It requires a thorough psychological approach guarantying confidentiality and assurances that they are safe to depose before an inquiring agency. At the moment there is nothing to suggest that any of them would depose about the incident, given that they are caught between the state and anti-state forces, fighting at each other, and in the process punishing the villagers in all conceivable means. In such an environment, the inquiry ordered without considering any of the above issues is nothing more than a sham.

No doubt the Indian state is engaged in an internal armed conflict. Yet the government is in no mood to first accept that the conflict, to a considerable extent, is of its own making and that anti-state actors like the Maoists are merely exploiting each one of the state's numerous failures.

Murdering civilians, pillaging villages at random and sexually abusing women and children are definitely not the manner in which the state could ensure security to the life and property of its people. Unfortunately, the Indian state is in a mode of continued denial, that the apathy it has shown thus far to human concerns of Indians living in the remotest corners of the country has distanced a substantial proportion of the country's population from their government.

The Indian state has lost the trust of its people, most importantly of the original inhabitants of the land, who are neglected, exploited and punished before and after 1947. Murder, molestation of women, and pillage, as it is reported to have happened at Kotteguda is no way to gain it. At the very minimum, those who have lost their dear ones in the firing deserve an unconditional apology from the government. However, such things only matter to a government that cares for its people, a concept alien to Indian administration, where responsibility has always been the casualty of administration.

The then Union Home Minister, Mr. P. Chidambaram, has said that he is "deeply sorry" for the death of any innocent person during the Central Reserve Police Force (CRPF) firing at Kotteguda panchayat of Bijapur district in Chhattisgarh state. Chidambaram qualified his apology however by saying that "... if any girl, or boy or man or woman not involved with the Maoists at all has been killed, I can only be deeply sorry". The qualifier exposes the shallowness of the minister's apology, and worse is the clarity the minister demonstrably lacks as to his responsibility to the nation, its people and in upholding the rule of law.

The statement is the depiction of an alarming scenario, of the enlargement in the scope of arbitrary punishment, a self-assumed state right that could now prevail even in the absence of proof of guilt. The "sorry if" position justifies the shocking mutation in the principle of the state's unqualified responsibility to conclusively prove guilt, into that of the right to punish based on assumptions, proposed in India a decade ago by the infamous Malimath Committee.[17] This conjectural metamorphosis in state responsibility vitally negates crucial concepts of justice and fair trial and pitches justice institutions to undergo a change in their original engagement architecture through practices and not by the written writ of a legitimate parliament.

Six days after the Kotteguda incident, if the minister is still left to guess as to the details of the persons killed, perhaps he should demit office or at the very least get someone to serve at his office who could brief the minister with facts and figures of incidents concerning national security, particularly when the incident upon which the minister is called upon to assume immediate responsibility is bad enough to be quoted as yet another national shame. If the minister is still uncertain about the background of the persons who lost lives in the incident, does it not contradict the alleged certainty of the assumption upon which the CRPF acted?

The CRPF firing of June 29th is not an incident that could be written off with an apology. Lives the state is bound to protect at all costs have been lost. Had it happened in any state civilised enough to consider human lives as most precious it would have brought down the government and persons responsible for the incident would have been investigated and punished. Or was the minister suggesting that there are dispensable souls in India, in this case, the tribal community?

The Kotteguda incident was not the home ministry's family fun fair, where unintended feelings of hurt could be excused-off with friendly apologies. If the same principle is applied in the Mumbai attack case, the accused, Mr. Mohammed Ajmal Amir Kasab, could be set free should he issue a statement of apology. Legal principles apply equally to suspects, irrespective of the person's background. Being a state agent or a minister only increases the gravity of responsibility, a legal and moral principle apparently lacking appreciation at the home ministry, though the concept has been around before Prof. Michael Walzer's classic, Just and Unjust Wars.

The Kotteguda firing is far more serious than seeking, and if possible obtaining, explanations. What is required is proper investigation about what has happened and what led to the killing of villagers, including children. It is not an option that the government 'may' consider, but a constitutional mandate it must comply with. That will require an independent agency investigating the incident. Instead, an irresponsible statement, such as the conditional apology offered, is in fact an insult upon the people and the families that are grieving their dead.

Worse still is the blanket defence the minister offered to the CRPF when he said "...CRPF chief has said he has nothing to hide, nothing to fear ... I do not think any central force has been so transparent ...". Indeed with an assurance like this the CRPF would not have anything to be afraid of. The officers need to be

17 Recommendations of the Malimath Committee on reforms of Criminal Justice System

concerned only when there is the possibility of an independent investigation about the incident. It is a mandatory legal requirement that every case of death in encounter must be investigated. It is not a concession. Had there been even just a 10 percent possibility for independent criminal investigations in India, a substantial number of state officers in the country would have been in prison by now.

Additionally, if the CRPF is the most transparent force in the country, does it imply that others are not? Can the country afford such a proposition, given the number of other armed units of the Indian state engaged in active field duty, like the Border Security Force and the Assam Rifles deployed in the northeast and in Jammu and Kashmir, where these forces are already infamous for crimes they commit with impunity? Now that the minister has admitted the guilt, would there be any action to fasten accountability upon these forces? It could bring down drastically the number of extrajudicial executions reported from India, and will certainly add value to the call to the people living in these regions to join the so called national main-stream.

The country's agencies are ill equipped, morally and technically, to undertake quality criminal investigations. Had it been otherwise, there would not have been such wide-spread atrocities committed against the tribal and rural communities in India, which is one of the reasons why militant groups could get rooted in remote regions of the country, to the peril of the people and the country.

In fact, improving the capacity and quality of criminal investigation has never been a priority for any governments, state or central since independence. Sixty-five years of independent existence has only seen the deterioration of the entire justice apparatus in India, from where the British left, of what they constituted as procedures to administer a colony, an act that fundamentally lacked moral and legal legitimacy.

The honesty of the minister's apology would be tested in the actions that would follow in the coming days. If the minister is serious when he said that the ministry is considering a thorough review of the standard operating procedures of agencies like the CRPF, it must be also based upon scientific and legal findings that would follow from independent investigations into incidents like that which happened at Kotteguda.

To make this happen the government has done nothing so far. The scene of crime has been contaminated since long. The government is not even able to identify what kind of weapons were used, had there been a firing against the CRPF other than unsubstantiated statements by police officers that they were fired upon using muzzleloaders and 303 rifles. No ballistic expert has visited the scene to ascertain if there were shots fired against the police officers, from where such shots were fired, and what weapons were used.

Assumption is not scientific criminal investigation. Unfortunately, in the absence of the state's will and the lack of expertise of its agencies, the conclusions in the inquiry ordered into the incident at the moment would be mostly assumptions based on sheer guess-work. There are reports that the injuries sustained by the police officers in the incident are from friendly-fire and of officers falling into pits due to their lack of proper knowledge of the terrain in which they were deployed.

The apology Chidambaram offered is no reflection of residual guilt. If it is not to be considered as a hollow attempt to explain-off the blatant negation of absolute non-combatant immunity, credible and transparent actions must follow. The minister and the CRPF that he commands should fear such actions. It is a legal constraint that the minister, his CRPF chief and other officers, down to the constable on the ground, must be subjected to. That responsibility cannot be washed-off by an apology, since none who lost their dear ones would give it more value than a spent cartridge.

The extent to which the country's justice apparatus has failed is most visible in the infamous Gujarat Riot cases. The statement by Gujarat's Director General of Police (Acting), Mr. Chittaranjan Singh, immediately after the conviction in the Ode riot case[18], 'that the conviction is a lesson for the critics of the state police as well as the state's judiciary', is disgusting, to say the least. A statement will not absolve the police and the state's administration of their responsibility from preventing the riot, and further contributing to it. The 2002 riot will remain a deep scar on the psyche of the nation; just as other orchestrated communal violence that Indians have been forced to live with.

Chittaranjan certainly will not require someone to remind him that one of the alleged triggers for the Ode riot that burned 24 people alive in two separate incidents is the death of minor Nishith in the police firing on March 1, 2002. In fact, Chittaranjan's statement is part of an elaborate and pretentious state act of whitewashing the past, which ironically right now reads well with his designation, Acting DGP!

Referring to those who criticised the judiciary, the state police and the administration for their despicable role in the state-sponsored riot and handling the post riot scenario, as 'impediments in the process of justice', is again an insult to the victims. The statement intentionally portrays those who critique the state and its functionaries, as being always wrong. It also reads in an additional misinformation, targeted at the civil society organisations, with an intention to differentiate human rights organisations from the victims of human rights violations. In fact, Chittaranjan is just an addition to a growing number of individuals in the country who hold an antagonistic view against civil society groups, accusing them as responsible for maligning the country due to vested interests. Such gross statements ignore the fact that no more damage could be brought to the country and to its people beyond orchestrated violence. The convoluted logic is that speaking openly against injustice is more harmful than the injustice itself. The Prime Minister of India is also a member of this chauvinistic club that celebrate hypocrisies of silence.

In all the cases relating to Gujarat riots, the witnesses are threatened, and in some, wrong persons cited as the accused to save the actual miscreants. Is it not enough proof to the conniving role the state police played in the entire incident? That none from the state administration, or its political elite, are charged for the crimes they have committed during the 2002 Gujarat riots are proof to the fact that the term justice is a misnomer in India.

But for the intervention of the civil society organisations, even this much, of investigation and holding a trial, would not have happened. At the very least, it required a special investigation team constituted at the

18 Nine convicted in 2002 Ode riot case, The Hindu, 4 May 2012

behest of the Supreme Court, to complete the investigation, however unsatisfactory. The state police which Chittaranjan heads and now pompously speaks about had done enough damage to the investigation by then.

That Gujarat is an example where the police undertake targeted assassinations for claiming rewards or obliging their political masters does not speak well for the state police. It reiterates the fact that the police in Gujarat, like in most of India, are nothing but uniformed criminals paid by the exchequer. This caricature of the Indian police cannot be whitewashed with the conviction in the Ode riot case. The damage that the police have done to themselves, to their morale, which is the basis of the public perception that the country's police are not more than uniformed street thugs is far deeper and requires more than a few belated convictions to change.

The fact that the trial took more than seven years to start and the first trial judge resigned after the trial started speaks volumes about the judiciary. The delay in the process was not because of the civil society filing applications, but due to the inability of the state police to file a proper charge sheet in court. A true investigation would and should have booked those who instigated a state-wide carnage. The state police cannot and will not venture into this task, since many of them are the top political brass of the country. What justice is then Chittaranjan claiming to talk about?

Violence committed upon individuals leave deep wounds. When it is committed upon a community, the magnitude of it is higher and incalculable. What have the state police done to address this? Or does the establishment have even an understanding about what it means by post violence trauma? The state administration and the police deny admitting that the 2002 state-sponsored violence has not only adversely affected the Muslims who were the target, but has equally hurt the rest of the population who witnessed the violence and are today forced to live as part of the same wounded society without the possibility of healing.

Much has been exposed and written about the Gujarat riots of 2002 – that once again mentioning that it is entirely a state creation is repetition. Of the mess that Gujarat is today, officers like Chittaranjan are merely parroting what the government would want a person in such positions to say. Had there been a true police officer in his uniform, the sentence and conviction in the case should have gone down as an affirmation by the judiciary of what his force failed to prevent. The conviction would have been understood as the shameful failure of the state and of its various apparatuses. Instead, just as it is fitting for an Indian bureaucrat, failure is considered an occasion to celebrate shameful ineptitude.

This apathy of understanding deep internal fault lines of failed accountability architecture in India is reflected internationally. The Universal Periodic Review (UPR) in its second cycle conducted on India is the most alarming example to this.

The second cycle of India's UPR at the United Nations was held on May 24, 2012. The three countries (Troika) involved in the review are Kuwait, Mauritius and Mexico. That these countries have worse records of human rights in comparison to the country they would collectively review suggests how firmly,

and perhaps blindly, such processes are operating at the UN. Yet, the UPR may still be considered beneficial because it at least presents recurring opportunity at the UN for human rights organisations to flag their concerns about the country under review.

The national report places overwhelming emphasis upon the jurisprudence developed by the Supreme Court on human rights. In page 3 of the report, the government claims that the Court has initiated a "revolutionary interpretative evolution" of fundamental rights in India. It is true. What is false, however, is the affirmation that the Court's initiative is "fully supported by the [g]overnment". The evolution of the Court's interpretation of Article 21 of the Constitution encompasses the right to housing, against forced eviction, right to education, clean environment and against forced labour proves that on each occasion someone had to approach the Court seeking its assistance and writ jurisdiction to 'direct' the government concerned toward what that government had to do. Each one of these cases highlights the failure of the state to fulfil its duties. The Court has also reiterated its authority to review both legislative and executive actions. Within the Constitutional architecture, the government is legally compelled to obey with the Court's directives. Essentially, the government's 'concessionary' claim that it has 'fully supported' the Court's directives possess no inherent merit.

The absence of honesty in the government's claim as to its compliance of the Court's directives is visible from facts on the ground. The first case cited by the government is the Naga People's Movement for Human Rights (petitioners) against Union of India and others (respondents) reported in All India Reporter Supreme Court 431. The Court was called upon to decide the constitutional vires of the Armed Forces (Special Powers) Act, 1958 in this occasion. While maintaining that the central government had adequate powers to enact the law now held to have had the worse impact on the protection of human rights, the Court drew comparison from the Reserve Forces Act, 1980 of the United Kingdom where the government is empowered to "call upon" its reserve forces when there is a threat to the security of the nation. The Court failed to recognise, however, that the conditions in the United Kingdom (UK) and India are vastly different. The UK could afford to have legislation such as the Reserve Forces Act because its justice institutions are far superior to those of India (in terms of transparency, accountability, resources dedicated to training, solid theoretical and philosophical foundation and an infinitely less corrupt bureaucracy), both then and now. The Court however could not be blamed in totality for this serious omission and disparity since it had not been requested to consider the misuse of the law in the infringement of human rights as it happened then and continues now.

Despite this, jurisprudential wisdom at the time warranted the Court to impose 10 'dos and don'ts', none of which has been followed since then. Given knowledge of the cases of human rights violations available today, one could argue that the Court failed to critically appreciate the nature of the threat the AFSPA was supposed to help diminish, the population upon which the law is thrust upon, and the possibility of enforcing discipline upon the armed units which would be protected by the impunity provided them by the law. Today, AFSPA has not merely failed to reduce or contain this violence, but has instead inflamed it. The populations in places throughout India where this law is enforced have further alienated themselves from the national mainstream – this is also due to the discrimination practiced against them by the rest of the country. The number of human rights abuses committed by armed units under the protection of this

Act, as documented by numerous NGOs and civil society organisations, is alarmingly high. This has substantially contributed to the considerable lack of discipline within the country's armed units.

Incidents left inadequately investigated due to the absence of an independent investigating agency in the country and the unwillingness of the government to create one has resulted in gross human rights abuses wherever this draconian law is in use. The unmarked mass graves in the state of Jammu and Kashmir, the countless cases of rape, torture, enforced disappearances, and extrajudicial executions reported from states like Manipur stares balefully in the face of the Supreme Court's jurisprudential piety in issuing some ineffective dos and don'ts in deciding the Naga People's case.

They are of such nature that it is worth reproducing here:

Do's

1. Action ...

   (b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.

   (c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.

   (d) As far as possible co-opt representative of local civil administration during the raid.

2. Action during Operation

   (a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention to law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning.

   (b) Arrest only those who have committed cognizable offence or who are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.

   (c) Ensure that troop under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.

   (d) Ensure that women are not searched / arrested without the presence of female police. In fact women should be searched by female police only.

3. Action after operation

(a) After arrest prepare a list of the persons so arrested.

(b) Handover the arrested persons to the nearest Police Station with least possible delay.

(c) While handing over to the police a report should accompany with detailed circumstances occasioning the arrest.

(d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. The least possible delay may be 2-3 hours extendable to 24 hours or so depending upon particular case.

(e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.

(f) All such arms, ammunition, stores, etc. should be handed over to the police State along with the seizure memo.

(g) Obtain receipt of persons arms/ammunition, stores etc. so handed over to the police.

(h) Make record of the area where operation is launched having the date and time and the persons participating in such raid.

(i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force.

(k) Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death.

4. Dealing with Civil Court

(a) Directions of the High Court/Supreme Court should be promptly attended to.

(b) Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid.

(c) Answer questions of the court politely ad with dignity.

(d) Maintain detailed record of the entire operation correctly and explicitly.

Don'ts

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest Police Station.

2. Do not use any force after having arrested a person except when he is trying to escape.

3. Do not use third degree methods to extract information or to extract confession or other involvement in unlawful activities.

4. After arrest of a person by the member of the Armed forces, he shall not be interrogated by the member of the armed force.

5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities.

6. Do not tamper with official records.

7. The Armed Forces shall not take back person after he is handed over to civil police.

That the judicial logic behind these directions has failed, and miserably so, is proved by D. K. Basu (petitioner) against State of West Bengal and others (respondents), reported in All India Reporter Supreme Court, 610. Ironically, the government has cited this case as well in its report to showcase the prowess of the safeguards provided by the judiciary to protect fundamental rights in India. The Court's intervention in this case was due to the repeated instances of blatant violations of prescribed procedures and fundamental rights, in particular custodial killings, by the state police. The argument that the legal guarantees even civilian police fail to provide in peaceful environments and times would be provided by armed units operating in hostile environments is naivety and nothing short of laughable. The present quality of life in places where the AFSPA is enforced is proof of this. That the Supreme Court of India has declared AFSPA constitutional in 1988 should not be an excuse for the government to review, and, if necessary, repeal it.

The government has claimed that it is considering a domestic law against torture. It is true that the law was passed in the Lok Sabha in 2010. The importance the members of the Lok Sabha attributed to this law and informed nature of the debate is apparent from the long discussion on the law in the Lok Sabha. Most members complained in jest that holding them back in the parliament at 9.30 pm is torture and requested that the law be quickly passed. The Rajya Sabha has placed in its deep freezer the Parliamentary Select Committee's review of the 625-word-long Bill that failed to even properly define the term 'torture' for the past two years.

Even the members of the parliament do not know the fate of the Bill. No government worthy of its mandate would go to an international body like the UN and state that even though the government is still not serious about this law, "the Supreme Court of India, through its judgments, has ... laid down exacting standards on this issue". This statement about the Court laying down exacting standards is false. There is simply no such judgment.

The Court has dealt with this issue on several occasions, most importantly in Kishore Singh (petitioner) against the State of Rajasthan (respondents) when the court said "...[n]othing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts deeper wound on our constitutional culture than a state official running berserk regardless of human rights."[19] Yet torture has not been defined, as it is understood in international law. Neither does the offense carry significance particular to crimes against humanity that warrants serious investigation and prosecution. That the D. K. Basu case came 16 years after the Kishore Singh case proves this. Torture is endemic in India and there are painfully few means to change this reality at the moment.

The accolades showered upon the National Human Rights Commission by the government in its report need to be viewed with exceptional caution. Mr. K. G. Balakrishnan, who bears a tainted image concerning his integrity as a judge, heads the NHRC. This was reflected in the NHRC's own consultative process for the UPR. Many consultations were held where members of the army, human rights defenders and victims were invited to the same room. Then the human rights defenders and victims of rights abuses were asked to depose against the army, which they did not due to fear of reprisals. The very same insensitivity of the NHRC, when adjudicating claims, has attracted criticism so much so that during the accreditation review process the NHRC underwent in 2011, a considerable number of Indian human rights organisations appealed to the International Coordination Committee for NHRIs to degrade the NHRC from its 'A' status.

The lobby did not succeed, yet it was one of the most embarrassing moments for the NHRC in its entire history. That the NHRC received near 100,000 complaints is no surprise owing to the poor human rights standards in India. Admittedly, expecting the NHRC to deal with so many complaints with the present limited infrastructure itself is injustice. That the NHRC disposed-off 87,568 cases in two years itself shows the quality of adjudication. This means that, excluding holidays, the NHRC has the unique capacity to adjudicate about 300 cases in each working day. This poses troubling questions about the quality of the adjudication being dealt out.

It is true that State Human Rights Commissions are constituted in 20 states. However, fewer than five among these twenty states possess adequate infrastructure for day-today functioning, including independent Commissioners. Many Commissions have ceased to function as appointments to office-bearing positions critical to the commissions' operations have not made. That the NHRC has resorted to monetary compensation instead of proper resolution of the cases / grievances suggests that a meagre USD $ 6,020 has been used to "buy off" 583 victims. This fails to bring the investigations to the heart of the

19 1981 All India Reporter, Supreme Court 625

matter, where institutional failures have occurred, and where systemic abuses of human rights have become the norm.

Similar claims made by the government concerning child rights, the right to food and the right to equality are equally questionable. That 42 percent of the children below the age of five in India are severely malnourished places India lower in living standards than all countries in Sub-Saharan Africa. It is not a record that speaks well of any government that 42 percent of its future population might not even live their life to the fullest, having suffered substantial and permanent physiological damage that will prevent them from developing their intellectual and physical capacities. For a country to plan an estimated USD $ 40.44 billion outlay not to have means to rescue its children from acute poverty lacks logic. The Supreme Court of India cannot supplement the provision of nutrition with its empty judgments.

Worse still are the accusations laid upon country's civil society by its government in a report concerning the Maoist issue. The government has placed the responsibility upon the civil society organisations to urge the Maoists to join the national mainstream. The question that needs to be asked is which side of the national main stream – whether that of the increasing number of rich upper middle-class or that of the starving 42 percent. Indeed, the country's civil society bears some responsibility to urge violent political forces to resort to democratic ways of participation.

However this is not possible without the government undertaking effort to address the root cause of the rebellion. Legislations like the Chhattisgarh Special Public Security Act, 2005 or private militias like the Salwa Judum – which the Supreme Court of India has also held illegal, but which the government continues to promote – provide no answer to the Maoist concern. If Maoism was the answer to Stalin's snubbing of China, what it fuels today in India is criminal neglect by the government of its people. The answer to this concern lies partially with the government, and it is the honesty, sincerity and humility of that admission which is lacking in the government's report.

The UPR did not address any of these concerns. It remained a reduced space for the country's civil society to articulate and debate concerns about the people of India and their interests. What is required is action by the government on the ground. That would not come about through the government's voluntary pledge to the Human Rights Council or from the government's treaty obligations to international conventions and covenants. Nor can the administrative writ of a government, even supplemented by court judgements, result in improvement of the human rights conditions. In India, well-intentioned, but hollow and ultimately ineffective, judgements remain a desperately inadequate substitute for the good governance that will systematically and sustainably improve the mechanisms protecting human rights and standards of living.

National Human Rights Commission, a paramour of state agencies:

The National Human Rights Commission (NHRC) is a specialised statutory body mandated to protect, promote and fulfil human rights. Set up by virtue of the Protection of Human Rights Act, 1993, the NHRC is the result of India's pre-emptive commitment to United Nations General Assembly resolution 48/134 of December 20th, 1993, also known as Principles relating to the Status of National Institutions (The Paris Principles). The affirmative vote India cast recently in support of the protection and promotion of human rights in Sri Lanka, concerning the UN resolution for reconciliation and accountability in that country, is an example to the country's commitment to human rights. India is the only country in Asia that supported the UN resolution.

Over the years, however, the NHRC and its subordinate constituents have only occasionally shown tendencies to fulfil their legal mandates. More often, the experience is the sad reality that the institution behaves as if it is just a component of an elaborate window-dressing project, which the government rolls out from time to time concerning human rights in India. The latest decision of the NHRC concerning the case of brutal execution of a person at the Indo-Bangladesh border confirms this.

The incident happened at about 5 am on July 24, 2011. Mr. Mohammed Rafikul Islam, aged about 35 years, from Ufarmara village under the jurisdiction of Patgram Police Station, Lalmonirhat district in Bangladesh was first stoned and later assaulted by the Border Security Force and killed. The BSF attacked Rafikul when he was illegally crossing the Shaniajan River near Bamdol village from India to Bangladesh. Odhikar and MASUM, two reputed organisations in Bangladesh and India investigated the incident and found it to be true. Dr. Motachib, Dr. Mehedi and Dr. Biswas who conducted an autopsy upon Rafikul's body at Sadar hospital, Lalmonirhat on July 25, 2011, confirmed that Rafikul died from multiple head injuries caused from hitting with hard objects like stones and sticks. A case is registered at Patgram Police Station on July 4, 2011, concerning the incident and is under investigation.

The AHRC issued a statement on October 6, 2011, on the case.[20] The NHRC considered the statement a petition and registered a case, numbered 1133/25/6/2011-PF. The NHRC then directed the petition to be inquired by the Director General of the BSF. The DG BSF filed a report dated January 4, 2012, to the NHRC. The report mentions about a squabble between the BSF and the Border Guards Bangladesh (BGB) on July 4, 2011, concerning Rafikul's death. The NHRC's order also mentions a protest note sent by the BGB to the BSF concerning Rafikul's death, and a reply sent by the BSF to the BGB. The NHRC received a copy of both these letters, accepted the refusal of the incident by the BSF, and dismissed the complaint.

Neither does the order indicate the lack of an independent inquiry, not has the NHRC itself undertaken an independent investigation concerning the incident. This, however, is not the first instance where the

20 INDIA: BSF stones a man to death, AHRC-STM-138-2011

NHRC has concluded cases without independent inquiries. The AHRC and MASUM are on receipt of many such decisions from the NHRC, concerning cases that they have brought to the Commission's attention. In addition, Section 19 of the Protection of Human Rights Act, 1993, does not permit the NHRC to issue an order 'acquitting' the BSF in a complaint. Upon receipt of a complaint concerning the armed forces, the NHRC must call for a report from the 'government' concerning the incident, and decide what actions it should follow. The NHRC could then either decide to recommend to the government actions that should follow, or drop the case. 'Acquitting' the respondent is no option and the BSF is not 'the government'.

Over the past ten years MASUM and AHRC have transmitted to the NHRC about 300 cases of custodial violence from West Bengal. At least 88 of them are concerning extrajudicial executions reported from West Bengal. Most of these cases are treated by the NHRC in similar fashion, that today it confirms the belief that the NHRC does not have adequate investigative apparatus or an initiative to constitute this and entertains complete indifference for protection of human rights.

In several cases, the NHRC palms-off the case to the state human rights commissions, which in states like West Bengal only has an 'acting chairperson' since the past four years, or which in some states are non-functional due to long pending appointments. There is an allegation that the West Bengal SHRC is a farcical institution that has sought and appointed members to fit political interests rather than their human rights commitments.

The Protection of Human Rights Act, 1993, provides enough authority to the NHRC and its state components to undertake investigations concerning complaints of human rights abuses. Just like a civil or criminal court, the Commissions could seek and obtain reports, undertake independent investigations and summon and examine witnesses. In addition, the Commissions could also study treaties and legislations and advise the government, measures to be adopted to fulfil human rights mandate, as per the constitution as well as the country's treaty obligations under international human rights law.

Over the past years, the NHRC has consistently proved that it is ineffective in protecting, promoting, and fulfilling human rights. It has repeatedly failed to protect human rights defenders at risk – an alarming concern reflected by the UN Special Rapporteur on the situation of human rights defenders, in her report to the 19th Session of the UN human Rights Council. A consortium of human rights organisations in India and abroad, including the AHRC, has raised this issue when the accreditation of the NHRC came up for hearing in 2011. This is reflected in the Chairperson's despicable stand promoting capital punishment, which was condemned by human rights organisations.

Section 18 of the Act empowers the Commissions to make recommendations to the government, or to any other appropriate body, as to the measures to be taken to address a human rights issue. The Commissions could initiate prosecutions should they find it appropriate. Contrary to the common belief, Section 19 of the Act empowers the Commission to initiate inquiries concerning allegations of human rights abuses by the armed forces.

Yet, all of these powers are of no use, should the Commissions, as it is in the case of the NHRC, according to the experience of the AHRC and MASUM, decide to be inactive, be insensitive and biased, favouring the state and its agencies. The travesty and inattention with which the NHRC initiates complaints is evident from its consideration of everything that it receives from an organisation as a petition.

The AHRC on December 9, 2011, issued a statement concerning the conviction of Mr Filipp Kostenko, a human rights activist in Russia by the Kuybyshev district court in Saint Petersburg.[21] The NHRC along with thousands of others in the AHRC's mailing list received the statement. The NHRC however considered the statement a petition, numbered it 181542, proceeded to hear it suo mottu, and not surprisingly dismissed it on January 17, 2012, 'in limine'. Waste of time and resources due to lack of professionalism and commitment to work are its defining operational features.

The NHRC's order in Rafikul's case however has a different dimension as well. The NHRC could have dismissed the case due to lack of evidence at most, though it did not bother as usual to attempt to collect and appreciate any evidence. Instead, the NHRC has 'found' that the BSF is not responsible for Rafikul's murder, indirectly meaning that the petition is concocted. The intriguing question however is – based on what did the NHRC come to such a finding? There is no reasoning attributed in the NHRC's order.

If one is to assume that the NHRC's reasoning is based on the report filed by DG BSF, then there are a few questions one could ask. What is the rationale of the NHRC to conclude that a statement provided by the respondent in a case is always true? If that is the case, then why should there be an NHRC in the first place? Whenever the victims approach the BSF with a complaint, it is a similar report that the BSF provides to the victims, accusing them of fabricating complaints. So how is the NHRC different from the BSF or other state agencies? Does the NHRC have a different understanding about the term 'independence'?

Most people who approach the NHRC are the poorest of the poor. That is precisely why the procedures for filing a complaint before the NHRC are kept simple. Additionally, a substantial number of cases filed at the NHRC are against the government. The NHRC has a legal as well as moral duty to ensure that a thorough inquiry is undertaken in every complaint that it receives, and adjudication undertaken with absolute independency, legal norms the institution is expected to uphold. Should the NHRC lack resources to undertake this, it is the duty of the NHRC to demand it from the government. It equally has a legal responsibility to monitor and correct if required the functioning of the state human rights commissions. Instead, what is visible so far is nothing more than quackery in the name of justice.

21 RUSSIA: Kostenko trial, a ghost from the communist past, AHRC-STM-209-2011

Stifling the whistleblower, by law and in action:

On 10 May 2012, the District Magistrate Barwani in Madhya Pradesh state issued a "show cause" notice to human rights defender Ms. Madhuri Krishnaswami asking her why actions should not be initiated against her under the Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (Madhya Pradesh State Security, Act, 1990) to expel her from Barwani and six neighbouring districts. The notice was served to Madhuri and the organisation - a people's movement with thousands of families as members - at the same time that the Indian delegation, led by the Attorney-General of India, Mr. G. E. Vahanvati, addressed the United Nations' Human Rights Council on India's human rights commitments.[22]

The Madhya Pradesh Rajya Suraksha Adhiniyam, often referred to as a black (draconian) law has questionable premises concerning its enactment, a fact proved from the pattern of its enforcement. This law allows the executive magistrate unbridled powers to curtail the civil rights of a person. The executive magistrate, after a summary proceeding, may (i) restrict the movements of a person; (ii) restrict the person from entering any place within his jurisdiction and places 'contiguous' to the magistrate's jurisdiction, which usually implies the entirety of the state; (iii) impose conditions upon a person as to contain the person's freedom of association and communication; (iv) dispossess the person of the person's property; or (v) require a person to sign a security bond. Worse still is the statutory prohibition in the law (vide section 9) that restricts the options available to an aggrieved person, by order of an executive magistrate, to appeals only to the state government. This limits the jurisdiction of the courts to intervene only where errors are apparent in the procedure followed by the executive magistrate as specified in section 10 of this law.

This law contravenes constitutional guarantees. The state, in the absence of any proclamation of emergency, could exercise its powers through a state agent (in this case, the executive magistrate who is not a judicial officer) to restrict the civil liberties of a citizen. The law crucially assumes that a person served a "show cause" notice has committed an offence; this leaves only one option for the person so blindly charged.

This is a summary procedure, where the law does not require the adjudicating executive officer to write a reasoned-out order. Here again the law breaches yet another elementary proposition of justice, where the prosecutor and the adjudicator are the same. Put simply, this particular law breaches two fundamental principles in criminal law: (i) presumption of innocence and (ii) impartial adjudication. This law is, as such, prone to misuse – the notice served against Madhuri and JADS is but one example. The AHRC believes that this law is not yet adequately questioned and would certainly fail the test of constitutionality.

It is reported that the executive magistrate who has served the Madhuri and JADS the show cause notice is acting merely on the dictates of the state's government, which has decided to use the Madhya Pradesh Rajya Suraksha Adhiniyam against the work of peoples' movements such as JADS. The government states

22 Report of the Working Group on the Universal Periodic Review, A/HRC/21/10, 9 July 2012

that the 'compelling causes' that lead them to exercise this law against the JADS and Madhuri are certain criminal cases registered against the organisation over the past several years. However, to date, the courts have dismissed all these cases.

It is also alleged in the notice that the organisation has been "obstructing" government-sponsored development work in the state. These accusations are baseless. The organisation has instead been insisting that the state administration ensure its welfare schemes are properly implemented and weed out corruption in the implementation of these schemes. The movement has been working to ensure that the benefits of these government schemes reach the tribal communities who are the rightful beneficiaries. The JADS is engaged in educating its members and the extended tribal communities in support of their rights.

The fact that informed citizens question government servants has irked not just the administration, but the state government as well. The JADS strives to ensure dignity of the indigenous people, women and children. The organisation has spearheaded protest gatherings when the corrupt district administrators have siphoned money off the poor who did manual labour under the national rural employment guarantee scheme. It has organised protests against the neglect of the district administration of tribal communities. It works with the victims of human rights abuses who have complained against forest officers who molest women, steal from tribal hamlets and demand bribes from the tribal communities in exchange for allowing them to live peacefully. These are searing issues of oppression that a corruption-ridden and inept administration would not appreciate. Unfortunately, legislations like the Madhya Pradesh Rajya Suraksha Adhiniyam compose the manner in which the administration responds to such calls for accountability. Under this law, any and all calls for greater accountability and transparency could be termed "anti-state" or "a threat to national security"; this results in a reduced space for dissent and expressions of a desire for true democracy in India.

The process adopted by the state concerning JADS has now become an ingrained pattern of state oppression of people's movements in Madhya Pradesh. On at least five occasions the state government has followed this pattern of registering a series of false cases against social and political activists and later serving them "show cause" notices under the Madhya Pradesh Rajya Suraksha Adhiniyam so their activities could be legally and "legitimately", albeit unconstitutionally, stopped. Some of these cases have been withdrawn by the state administration, whereas others are fought out in courts. The law is claimed by the government to be necessary in the prevention of organised crime, yet it serves instead to generate organised civil resistance, the suppression of which could end in widespread civil unrest. Thus, ingloriously dissected, such an Act is an act indeed, a performance or miming of law which permits puppets in the administration to move, wave and bow according to the insecurities of the government not robust enough to engage in public debate.

If the magistrate under instructions from Bhopal is to proceed with the notice served upon JADS, the officer will have to forcefully evict at least a few thousand families from their homes for them to remain outside Barwani and six neighbouring districts. The impossibility of the process will force the magistrate to target a few individuals representing and or leading the JADS, exposing the actual absence of justice in issuing the notice and initiating proceedings against JADS in the first place.

The case against JADS is not an isolated incident. It is yet another example in a long chain of state-sponsored assaults upon democracy, rule of law, and the collective wisdom of the people. The JADS is an organisation working for the rights of the indigenous communities and against corruption, deforestation, malnutrition, forced eviction and it is the collective voice of protest by the people against systematic injustice meted out against them by the governments for the past 14 years. To term legitimate protests and organisations as organised crime is itself a criminal act, one that denies the inherent dignity of the Indian peoples and their voice.

If a police officer decides to make money illegally, what would the officer do? There are many well-trammelled ways the officer could go about this, including, but not limited to, seeking bribes, illegally registering and compromising cases, or collecting protection money from people and businesses. In all of this, irrespective of the mode, the officer is selling the officer's uniform, figuratively. However an incident reported from Kerala suggests that a police officer did sell his uniform, literally.

Mr. Hassan Kutty, Assistant Sub Inspector, attached to the Karimannur police station of Idukki district in Kerala sold his uniform to Mr. Beeran for 50,000 rupees. Beeran, wearing the uniform and posing as a police officer from Kerala, robbed Mr. Moideen, a businessman near Ukkadam bus stand at Coimbatore in neighbouring Tamil Nadu state on September 25th. When the 'act' was exposed, Hassan Kutty was suspended from service.The incident however is not handled with the seriousness it deserves. In all likelihood, Hassan Kutty will soon be reinstated, since a proper investigation in this case is not expected.

In that, police in Kerala is no exception to the rest in the country. Police officers with serious criminal charges like murder, rape and abduction against them are in service throughout the country. Cases of police torture and other forms of brutal custodial violence reported from India also suggests that a considerable number of officers in fact suffer from serious psychological conditions and that these officers use brute and perverted forms of violence against the people and are unfit to serve in any law enforcement units.

The entire establishment is in fact misused and the officers let it be so, by those who wield financial, political and religious influences. The country's political elite believes that the police must implement the writ of the state by force and creating fear. This requires allowing and cultivating a culture of impunity for the establishment. It is for this reason there is no attempt in India to create a legislative framework that is able to deal with criminality and professional misconduct among law enforcement officers.

Crime control in India is thus reduced to maintaining order, without a just legal framework. The limited scope offered by the Criminal Procedure Code, 1974 is negated in all possible means. Due to this redundant approach to policing, police service has remained one of the least reformed state institutions in India.

It is reflected right at the inception into the force itself. Candidates offer, and selecting agencies accept, huge sums of money as bribe to obtain a job in the police. From then on, for everything else, officers must

bribe politicians and senior officers. This includes transfer and promotion, or to obtain officers' quarters, or to get a 'good service' entry in the service book.

The fate of most disciplinary proceedings against officers is decided according to the bribes demanded and paid to senior officers and often to politicians. Even if an officer is suspended from service, the proceedings could be easily revoked, if bribes are paid at the right places.

It is reported that at the moment, the bribe paid to obtain postings within Delhi city limits as an Assistant Commissioner of Police is 40-50 lakh rupees. It is natural that these officers who pay right from their entry into service to everything else maintain no morale at all. It is quite nigh impossible in India to be a police officer with morale, as there is no environment in the forces that can mould and maintain officers with professionalism and integrity. Officers across the country use the filthiest of language, even in their wireless communications. Anyone who has overheard messages passed over a police constable's wireless devise can vouch for this.

The absence of professionalism in service is not, however, limited to use of foul language. It is common for senior officers to abuse their subordinates in some of the most inhuman manners. Officers lack respect between each other and, in particular, the subordinate officers treat their seniors as spineless criminals and with utter disrespect. Worse is the treatment meted to civilians inside police stations. Most police stations in India resemble frightening dungeons from the medieval period.

Officers lack basic skills and equipments to undertake criminal investigations. Most criminal investigations begin and end with a confession from the suspect, extracted using torture. The practice of torture is so rampant in the country that a police station where torture is not used would be an exception.

In fact, most police officers do not know that torture is a crime against humanity. Irrespective of ranks, officers believe that they have a legal right to torture suspects and in fact many do not know how to undertake a criminal investigation without torturing suspects. Many Magistrates also believe that a police officer torturing a subject is an acceptable form of investigation.

It is due to these reasons that conviction rate in India is a dismal four to six percent. The attempt, however, is not to modernise the police, but to shortcut jurisprudential fundamentals on the pretext that at the moment the criminal law is unevenly pitted against the prosecution, and is favouring the accused.

It is this rotten institution that is expected to police the largest democracy of the world. Unfortunately, the present state of policing in India is incompatible with the concept of fair trial and hence with democracy.

Conclusion:

Despite all this, the country's judiciary once in a while underlines the fact that there is something fundamentally wrong with the police in India. On November 7th, the Chief Justice of Karnataka High Court, Justice Vikramajit Sen, while hearing a case said, "I never understand why the police always take the side of villains. Whether it is Haryana or Karnataka, it is the same." Justice Sen, chairing the Division Bench of the court was hearing a criminal case. Expressing concern about the conduct of police with regard to women, Justice Sen said, "... the police have no sympathy over the plight of the [rape] victim ... [u]ntil it happens to their families, they cannot understand".

The courts in India, including the Supreme Court, on several occasions have lashed out at the police and other law enforcement agencies in the country, each time expressing concern for the fact that these agencies are professionally unfit to undertake their mandate. For instance, the Kerala High Court while hearing a case relating to crimes committed by the state's police officers expressed serious concern over the high number of police officers, ranking from constable to Inspector General of Police, who have criminal cases against them, and are still in active service.

The report submitted by the Director General of Police in Kerala to the High Court on August 8, 2011, reveals the names of 533 police officers that fall into this category. The state government however has tried to dismiss the seriousness of the issue and no action whatsoever has been taken against these officers so far.

One of the most notorious cases in the list is that of an officer of the rank of the Inspector General of Police, accused of charges including corruption, smuggling, and threatening and intimidating witnesses. The fact that these officers are not only responsible for formulating policies for the department, but are also directly involved in criminal investigation, challenges the capacity of the Indian police to undertake criminal investigation, one of the foundation stones of criminal justice delivery in the country.

In fact, the Government of India does not have a real picture of the state of affairs concerning the alarming internal wilt that has occurred in the police. The record available with the National Crime Records Bureau (NCRB) is an example of this. The NCRB report claims that out of the 61,786 complaints made against the police in 2011 in the whole of the country, only 916 policemen were charge-sheeted.

Human rights organisations like the AHRC and other civil society organisations have been calling upon the Government of India to take immediate action to deal with this serious absence of professionalism and morale within the police and other law enforcement agencies in the country. Cases documented from India, including that of corruption, the widespread practice of torture, and other forms of custodial violence, substantiate this concern. The AHRC has been calling upon the Indian authorities to address with immediate effect the resultant moral wilt within the police as well as other law enforcement agencies, which has led to the breakdown of the day-to-day administration of criminal justice in India.

Just as it is in the case of any other disciplined force suffering from lack of morale and professionalism, the despicable conduct of the police is not limited to cases involving private complaints. The lack of an enforceable disciplinary and accountability framework has resulted in the police treating crimes committed against their own rank and file with the same temperament as it does in the case of private complaints. Criminal investigations in the country resemble a marketplace, where negotiations are made in the open and deals sealed under the table.

The internal investigation report filed by the Director of Police Intelligence, Mr. T. P. Senkumar, to the Director General of Police, Mr. K. S. Balasubramaniyam, concerning the case of assault and death of a Sub Inspector of Police (SI), Mr. Thankaraj, in Kerala speaks about the alarming fact that police officers even compromise with criminals, crimes committed against fellow police officers by local thugs, after demanding and accepting bribes from these criminal elements.

The intelligence report prepared by Senkumar alleges that the Superintendent of Police, Mr. K. B. Balachandran and other police officers have accepted bribes from a local thug, Mr. Sebastian, so that Sebastian's name is dropped from the list of suspects accused of assaulting the SI that died as a result of the assault. That such demeaning and corrupt practices are highly prevalent among the rank and file of the state police department, not only negates every legitimate purpose of criminal investigation, but also encourages all officers to be corrupt within the force.

In this case too, unfortunately, the Government of Kerala is reportedly refusing to take action against the errant police officers due to illegal and political considerations. These incidents are not rare in India, but rather the standard conduct of police officers, that the entire force does not enjoy an iota of trust among the population, and unfortunately the country's judiciary subscribes to this general perception.

The AHRC is of the opinion that the single largest impediment to police reforms in India is the police force itself. Police force in India, which by now has reduced to a mere uniformed criminal gang that brokers with authority, enjoy absolute impunity in return to the role of middlemen they play in power brokering.

Officers agree to do the clean-up jobs for the powerful and the rich with the least amount of persuasion and they are willing to illegally manipulate investigations into corruption and other crimes. While high-ranking police officers often sell their uniforms to the country's corrupt political and financial elite, the lower-ranking officers extort money from the ordinary people, by engaging in crimes like extortion, fabrication of charges or even undertaking smuggling activities.

The police and all law enforcement agencies, to extort bribe from detainees and suspects, use threat of torture. Some police officers engage in supporting anti-national and terror syndicates after accepting money and other favours from these gangs. In that, the single largest threat to national security in India is its own police force. Unfortunately, this is an issue the country's administration is yet to admit to, forget about remedy.

The continuance of such a state of affairs in police and other law enforcement agencies not only impedes the overall framework of the rule of law in India but also absolutely negates the country's capacity to fulfil the constitutionally mandated domestic human rights standards. Such faulty institutions that are incapable of discharging everything that is expected to be undertaken within the framework of the rule of law, is exploited further by the government to implement draconian legislations like The National Security Act 1980, The Unlawful Activities (Prevention) Act 1967 and their state variants like The Maharashtra Control of Organised Crime Act, 1999; The Karnataka Control of Organised Crimes Act, 2000; The Uttar Pradesh Control of Goondas Act, 1970; The Assam Preventive Detention Act, 1980; The Armed Forces (Assam and Manipur) Special Powers Act, 1958; and The Madhya Pradesh Rajya Suraksha Adhiniyam, 1990. There are at least 44 such legislations in India, which allows the police to arbitrarily take action against innocent members of the public.

The police, to sidestep the rule of law guarantees, use all the above legislations, without exception, and in so doing the other procedural restrictions, built in into the Criminal Procedure Code, 1974, to prevent misuse of authority, is today meaningless. Today, the police could illegally detain, keep in prolonged custody, and even murder people with absolute impunity. This negates the fundamental premise of fair trial.

All these legislations, however, are implemented in the guise of empowering law enforcement agencies to control and prevent crime. Yet, the most simple and elementary step, to discipline the police, is yet to be implemented in India.

The basic flaw in this mindset of the government is that the law enforcement agencies are conceived as organs to maintain order at the expense of awarding arbitrary authorities to the state agencies, who subject these laws to wanton misuse since the agencies implementing these legislations themselves act with the same mindset of organised criminal syndicates. Today, if anyone refers to the law enforcement agencies in India as organised criminals in uniform, is not speaking untruth.

It is not that exceptions to this general perception do not exist in the rank and file in the law enforcement agencies. It is only that the number of such officers is far too low, that they alone cannot improve the image or performance of the rest of the force. It is a sad truth that both the government and the law enforcement officers know that, for the conditions to improve, the change has to come from within, yet both choose to do nothing about it.

Caste and gender discrimination:

India, the largest democracy in the world, today is slowly becoming the worst democracy in the world. The notion of democracy in the country today has got limited to just voting once in five years, and that is if one still does so. Otherwise the state today is nothing less than dictatorship, dictatorship of the select few politicians or political families who believe that they can do anything and get away with it, who believe that the common man has no right to question them or their actions.[23]

This only becomes more apparent when it comes to the state of women and girls in the country. A lot of lip service, big promises that sounds like ranting but at the back of it nothing concrete, no change; it just continues to become worse. Almost every woman in the country today feels unsafe, unprotected, barring the few who have the whole security system running around them, twenty-four hours of the day.

There is not much respect for women that one sees either in the behaviour or the thinking of the politicians or ministers today. Recently, many of the ministers or ex-ministers have been making statements about women, which are just not sexist but utterly derogatory and humiliating towards women.

Minister for Coal, Mr. Sriprakash Jaiswal, in a poetry meet in a women's college in Kanpur, comparing a victory in cricket with a marriage said, '*jaise jaise samay beet-taa jata hai patni purani hoti chali jati hai, woh maza nahin rehta hai* (with the passage of time, wife does not remain much of a fun)'. One doesn't need to think what a man like him perceives women as. For him marriage and a game of cricket are one and the same. To make mockery of women and their status in not just your personal life but in the society, only reflects the thinking and belief systems of these political men and their political parties today. The political leaders make such comments because of the belief that it is ok and they can get away with it. The political parties also do not do anything about it till the media highlights it and there is uproar. Therefore, after there was uproar over his sexist remark he was asked to apologize by his party command. He then apologized but in the most unapologetic way. What is important here is that he had to be asked to apologize and then he did it defending his remark by saying it was put out of context by the media. In the whole apology one could not see any form of shame or guilt or any change in the attitude towards women leave alone feeling apologetic about saying something so derogatory.

Few days before the above incident, the MP representing the Baujan Samaj Party, Mr. Rajpal Singh Saini said, 'women and girls should not be given mobile phones because it distracts them and only invites trouble'. Then he went on to add, 'my mother, wife, sister and daughter have never had a mobile phone and they are fine. When they have something 'important' to talk about they ask for the phone and I give it'. One can clearly see that who decides what is 'important' here. Obviously the women have to first explain what is 'important' that they need to talk about and to whom and then if only he deems it important

23 Contributed by Dr. Nidhi Mitra, and published by the AHRC as an article entitled INDIA: Politicians and the status of women in India, for details kindly see AHRC-ART-117-2012

enough can they use the phone. So in the process the basic right of a woman to have free communication and the right to decision-making is curbed and controlled by the men in the family. These politicians then carry over these attitudes and beliefs to the public where they advise the public on what the status of women should be in the homes and in the society.

Recently in the wake of seventeen cases of rapes reported in a month in Haryana out of which a large number of victims were dalit girls, the Congress spokesperson in Haryana, Dharam Veer Goyat said, 'in ninety percent of rape cases the girls accompany the accused of their own free will'. This then makes ninety percent of rapes, not rapes but consensual sex? If a girl accompanies a boy does it mean that she is giving him the right to rape her? Of course, accompanying someone and getting raped are two entirely different things. By making such a statement, Goyat is trying to put the onus on the girls for getting raped. This is victim blaming and is used by perpetrators to gain control over their victims and not feel responsible for the act of crime that they commit. Such statements by political leaders made in public clearly show their and their party's beliefs and perceptions about women and how women are responsible for the crimes committed against them – which further leads to victim blaming by the society and the law itself as then these girls have to prove harder that they were not responsible for the rape committed on them by the perpetrators. Many of the victims give up fighting their cases in courts because they find it extremely painful and humiliating to go on proving their innocence when in reality it should be the perpetrator trying to prove his innocence.

The former Chief Minister of Haryana, Om Prakash Chautala, went over the wall in giving a solution to the most heinous crime known to mankind. He said, 'in Mughal times to save their daughters from the Mughal emperors and their atrocities, people used to marry off their daughters at a very young age. Therefore, he agrees with the khap panchayats of today that the girls should be married off at an early age and therefore the legal marriageable age of girls should be brought down'. Does he mean that married women do not get raped? Or that marrying girls at an early age does not amount to child rape? Will it really stop the crime or does it mean that to curb a crime it is ok to commit another crime? Again after uproar over his stance towards the khap panchayats, he retracted the statement saying it is their suggestion and not his point of view.

Why would one make statements like that in the first place if they were not ones points of view? Obviously for political gains even if it means to derogate or humiliate women, it is ok. The basic belief that women are to be blamed and curbed for all the wrongs committed against them comes out very strongly and clearly in politicians such as them and their political parties as well. If the political parties and there leaderships had strong and clear commitments towards respecting women and women having equal status in the constitution and the society, then such deplorable incidents would not take place. If the politicians knew that they cannot get away from their misdeeds just by simple apologies and retracting their statements, which actually mean nothing, and that they would have to face strong action against them for making such a mockery of the women and their status, then they would more careful.

Haryana being a highly patriarchal society, one is not surprised by such comments, but it is very painful for the victims and their families when they have to go through all the blames for getting raped as if they asked

for it. But it is just not Haryana rather everywhere in the country that whenever a man rapes a girl or violates any woman, she is blamed for it. It's the mind-set of the society at large that believes in blaming victims for the crimes committed against them as it then reduces the sense of responsibility and the guilt on the part of the perpetrators and the society at large. Such attitudes bring in more apathy and inaction towards victims in the society and the law itself as the people forming and maintaining the law also come from the same society and carry on with such beliefs.

Congress party president, Sonia Gandhi made a visit to the family of a victim, a dalit girl who committed suicide by immolating herself after she was gang-raped, and commented that 'this is a barbaric act and strict action should be taken'. When asked about the inaction of the Haryana Government on the incident she said that 'rapes are reported from across the country and not Haryana alone'. Comments like this only add further to the apathy and the inaction towards curbing crime. Is it enough to visit victims, because there is uproar, and say it is wrong and should not happen and strict action should be taken? What about actually taking stringent actions and making sure the perpetrators are punished and not able to get away easily. Why is law not enforced to its full capacity to protect the girls and every citizen of the country? It only shows that as long as there is apathy and lack of respect for law and only blame and counter-blame and no responsibility, nothing much is going to change in the system and women will continue to get degraded and humiliated.[24]

After the sexual assault upon a woman in Guwahati, in Assam state in July, a shocking event the national media in India competed in telecasting, and the despicable 'culture' discussion that followed, the country scored again, internationally, for similar criminal conduct by Indian men. Impelled by sexual lust and contempt to women, the members of a youth delegation that travelled to China misbehaved with Chinese women during their cultural and diplomatic mission. The members of the delegation that returned to India on July 21st are now being questioned for their misconduct. Understandably no punitive action will follow, since those accused of committing this despicable crime are some of the most privileged in the country, worse, are protégées of the country's various political parties - left, right and centre included.

According to some members of the delegation and Indian diplomats, Ms. Nita Chowdhury, Secretary from the Ministry of Youth Affairs and Sports, had to warn the delegates during their 10-day trip to China that they would be sent back mid-way through the visit if they did not improve their conduct. The Secretary must have been aware of her 'jurisdictional' limitations, since had she for instance reported the incident to the Chinese authorities formally as required by law, the Secretary would have had to face worse adverse consequences at home. Perhaps what would be more discussed in India then would be how the Secretary hurt national pride, rather than how members of the delegation harassed women in China.

The delegation, all of them reportedly under 35 years, included students from the Nehru Yuva Kendra Sangathan (NYKS), members of youth wings of political parties and representatives of Panchayat Raj Institutions. It is reported that many members of the delegation used sexually abrasive language against Chinese women and attempted to physically molest them. The women were assisting the delegation with

24 Id. from the beginning of this section till this page

translation and logistics in China. So much for the alleged future leadership of India and the national culture they represented in a neighbouring country.

Both these incidents, in Guwahati and in China, are tell-tale and vivid examples of how women are treated in India. It is no exaggeration if one were to argue that the country treats its women as chattel, mere objects of labour, sex, and as personal cooks at home. It will take more than sari-clad politicians and presidents to change this.

The statement "women's fashion, lifestyle and conduct should be in accordance with Indian culture ... women should not wear clothes which provoke others (to misbehave with them)" by Mr. Kailash Vijayvargiya, a minister from the Bharatiya Janata Party (BJP) concerning the Guwahati incident is mere ratification of what the Chairperson of the National Commission for Women (NCW), Ms. Mamata Sharma said earlier this year. The NCW is the national body in India mandated to safeguard and promote women's interest. Both statements represent the dominant opinion in India about women.

Whether these persons have legitimate mandate to represent the country, much less its women and culture is a genuine question. Those who represented India in China and made use of the opportunity to approach women with their home grown detestable personality abrasions were acting out what they learn and practice at home. In that many Indian men in the delegation must be in fact wondering what is there in their conduct for the women to complain about in the first place?

Ill-treating women - parading a victim of sexual violence in the media included - is in fact a crime. Unfortunately, among many other abrasions, impunity writs large in Indian culture, caste-based discrimination, for instance. Impunity is inbuilt into social values in India promoted by deep caste prejudices that have transcended religious boundaries. Caste-based discrimination is practiced within all religions and political parties in the country. All of them without exception treat women with least respect. What was witnessed in Guwahati and China are thus expressions of true Indian culture.

Discrimination is, however, not limited to gender. It continues to get strikingly reflected in the practice of caste-based discrimination in India. For instance, the AHRC has documented caste-based discrimination in the implementation of the Mid-Day-Meal scheme in Maregaon Village of Tehsil Gadarwara, Narshingpur, Madhya Pradesh.

The monstrous failure of provincial authorities to distribute such welfare to those most in need is believed to be a reaction to a specific decision by the Ahirwar community to abandon the oppressive practice of carrying the carcasses of dead beasts imposed on them by the varna (upper) castes. Instead of actively resisting pervasive stereotypes of caste, the local government itself perpetuates parochial prejudices long rendered unconstitutional and commits acts of discrimination punishable by law.

The deprivation of adequate food, water and employment necessary to a person's health and well-being, to a person's right to life and to his or her inherent dignity is a crime against humanity. The provision of such is a responsibility that falls to the state.

An investigation by the AHRC on May 2, 2012, in Maregaon Village of Gadarwara Tehsil of Narsinghpur district, uncovered the following details. Maregoan Village has a population of approximately 2000 individuals. Out of these, 100 families are of the Ahirwar community. Dalits make up most of the agricultural labourers in this area, where Ahirwars (Chamars) compose a majority of the Dalits. The Ahirwar are classified as a Scheduled Caste in India. Ahirwar are spread across Gadarwara and in nearly all adjoining villages, playing an important role in the socioeconomic activities of the region. The Lodhi community in Maregaon village belong to what is termed in India as the 'Other Backward Class' (OBC). They own farmland and generally hire Ahirwar to cultivate their fields.

Division of labour in the community has resulted in the imposition of certain menial and lowly occupations upon the Ahirwar. For centuries, the Ahirwar have been tasked to do "dirty" jobs such as carrying the carcasses of animals. Despite the necessity of such workers, and for forcing them to take up such jobs, the Ahirwar are seen as being polluted by death and greatly despised. The Ahirwar are made to live in a hamlet separated from the main village.

In 2009, the Ahirwar Samaj Mahaparishad built a consensus among the Ahirwar community to abandon the practice of carrying the carcasses of animals and shake-off the label of "untouchable" imposed by the dominant castes. This decision was first acted upon by three or four individuals and was soon claimed by other Ahirwar. In response, individuals from dominant castes began a social and economic boycott against the Ahirwar. The Ahirwar were not permitted to pass through the village and were forced to take a longer route in order to travel to other villages. The Ahirwar were prohibited from taking rations from the local shopkeeper; even the local milk vendor was intimidated by the Lodhi into not selling milk to the Ahirwar. The Ahirwar were even more cruelly persecuted through the denial of water from the hand pump located near the village temple. Prior to their decision to abandon the practice of carrying animal carcasses, the Ahirwar were still permitted to use this hand pump because there had been two at the time and the villagers were not facing a shortage of water. Today, the Lodhi have fenced in and put wire around the temple and areas surrounding it – this includes the hand pump the Ahirwar depended on for their water. In addition to such mistreatment and deprivation, the Ahirwar were further prohibited from using water from a communal water tank. This tank was also fenced in with wire by the Lodhi. The Ahirwar's cattle were also not permitted to partake of water from the tank. The Ahirwar face a severe shortage of water at this present time.

Children of the oppressed castes are forced to clean the school while children from dominant castes are not. The school also discriminates through seating arrangements in class. To exacerbate the situation, the cook engaged in preparing the Mid-Day-Meal in Maregaon Village is a Lodhi. Despite efforts by authorities to relieve malnutrition in the area by implementing a Mid-Day-Meal scheme, the Ahirwar children who most require the sustenance are discriminated against. They are served only leftovers, if there are any, and the food is given to them from a distance. The Ahirwar children are also forced to bring their own plates while other students from the dominant castes are served from plates provided by the school. The children from the Ahirwar community are also fed insufficient amounts of food and punished for asking for more. Instead of the social, economic and intellectual progress that might be expected in the world's largest democracy, Madhya Pradesh looks increasingly like Dickensian London: "please, sir, I want

some more." Will the authorities intervene, or participate in the silencing of such cries for help by refusing to intervene?

Finally, the investigation exposes shockingly poor implementation of the apex court's orders concerning the government food, employment and welfare schemes to prevent hunger and malnutrition among the people of Maregaon Village. Central to this failure has been the wrong identification of Below Poverty Line (BPL) families. Of the more than 100 Ahirwar families who conduct manual labour for a living, only 20-25 families have been issues the BPL card. Many live in terrible conditions and should be included on the BPL list. Most Ahirwar are thus deprived of the benefits of the government scheme that targets BPL families. The Ahirwar have job cards, but only two to three individuals have found employment under the MNREGA[25] scheme, while the rest languish, unemployed and "unemployable" due to their caste affiliation. So far local officials have not acted to discipline such blatant acts of discrimination and assure the Ahirwar of protection against future abuses.

Conclusion:

Equality is one of the fundamental quotients to guarantee gender rights. It is one of the foundation stones of all rights. Unfortunately in India, equality, whether legal or cultural, is no norm. In a country where the justice apparatus is in a dysfunctional state, where manipulation is possible at all levels, rights, gender included, do not make any sense. A right that cannot be sought and realized, translated into quantifiable and achievable guarantees in life, is no right at all.

Engendering equality is impossible without the architecture of justice. Today, the country's justice machinery, particularly the police, prosecution and the judiciary are a far cry from what such institutions ought to be in a democratic framework. So much so, getting posted at what is called a 'women's cell' in the police is considered to be punishment since the possibilities of demanding and accepting bribes is the least in such positions. This is not to say that the parties who approach the women's cell would not pay a bribe. For, approaching the police by a woman is considered to be a life-threatening affair in India. It's just that there is less money to be made here.

Police stations, the very institution maintained by the public exchequer to assist a citizen to seek and obtain her right is one of the most unsafe places to be in the country. Veteran women's rights activists in the country would agree with this conclusion. Yet, there is hardly any concern in India. The gender rights movement that has lobbied and worked to bring about commendable legislative changes in the country with a view to ensure gender parity has avoided debating about the despicable nature of the justice institutions. They have, however, on occasions, taken law into their own hands.

The so-called mainstream anti-discrimination movement in the country has ignored the singular and unique protest of Ms. Irom Chanu Sharmila of Manipur. For the past 11 years, Sharmila's fight to ensure

25 Mahatma Gandhi National Rural Employment Guarantee Act.

equality has found hardly any assuring resonance from the equal rights activists of the country. One cannot find fault with those who allege that for the majority of the equal rights activists in the country, equality is interpreted as an analogous continuum of racial and regional discrimination practiced for the past 65 years against the people of the northeast. Those who speak about Elizabeth Smith Miller and Lucy Stone in India would not even know who Sharmila is and what she is protesting against.

In countries where equality is protected and cherished as a norm, gender-based discrimination is today considered an exception. In a country like India where inequality is the norm - caste based discrimination as one example - gender rights speak is mere empty rhetoric. Rhetoric though assures no rights.

The Question of Right to Food:

Yet another shocking revelation of 2012 was that of private companies found to be engaged in stealing food earmarked for welfare schemes aimed at arresting malnutrition, the biggest 'national shame' according to the Prime Minister Manmohan Singh and 'humiliation like none other' according to President Pranab Mukherjee.

The only thing that is more shocking than the revelation is the enormity of the loot from the one of the flagship project of the incumbent United Progressive Alliance government. The companies have stolen more than INR 1,000 Crore, or USD $ 185 Million in the state of Maharashtra alone. A report estimates the total amount all over India to be close to INR 8,000 Crore and finds that all this is done in direct contravention to various orders of the Supreme Court in the Civil Writ Petition 196/ 2001 (PUCL vs. UOI).

The findings are from the report of Biraj Patnaik, Principal Adviser, Commissioners to the Supreme Court, submitted to the court with reference to SLP (Civil) No. 10654 of 2012, in the matter of Vyankateshwar Mahila Auyodhigik Sahakari Sanstha v. Purnima Upadhyay and Others, listed along with Civil Writ Petition 196 of 2001 (PUCL v. UOI). The report explores the iron grip maintained by the private profiteers in collusion with the vested interests entrenched in both political and administrative hierarchy and traces the modus operandi they use to siphon-off rations earmarked for the millions of starving Indians.

The report shows how private companies had usurped the supply chains of the Integrated Child Development Scheme (ICDS) by floating fake 'mahila mandals' (women collectives) which are in fact nothing more than fronts of their private for-profit operations. The usurpation clearly contravenes the clear-cut and binding order of the Supreme Court delivered on December 13, 2006, that directed Chief Secretaries of all states and union territories 'to submit affidavits giving details of the steps that have been taken' with regard to an earlier order of the Court directing that 'contractors shall not be used for supply in

Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.
But, it does not stop at merely contravening the Court's order. It also shows that the Indian Executive has not merely become absolutely inefficient and incompetent to discharge their mandate but has also capitulated to the vested interests to the extent of enforcing the Supreme Court's order. The report, further, shows that this is not merely public money but also children's lives that these profiteers are playing with. The report clearly shows the collusion of the suppliers and the corruption in the solitary lab they use for quality check, given every single random sample of the take home ration (THR) taken to the government lab has failed miserably on the nutrition standard. The report notes a similar finding in a private lab, by an independent quality check of THR, courtesy the efforts of the investigation bureau of English newspaper Daily News and Analysis. The lives of the children consuming these rations have been endangered by an executive propped-up only by greed.

Most unfortunately, the findings might be limited to the implementation of the ICDS but this is the state of affairs prevailing in the implementation of almost all other schemes. The very recommendation of the Commissioners to the Court is a telling comment on the executive and its nexus with the corrupt corporate and political players. The commissioners want an independent inquiry, under the supervision of the apex court, to be conducted for investigating the possible nexus "between politicians, bureaucrats and private contractors in the provisioning of rations to ICDS, leading to large scale corruption and leakages".

The AHRC strongly endorses the recommendation and demands for not only an impartial and time bound investigation into the issue but also stern punishment for those responsible for multiple crimes of stealing public money and putting the lives of Indian children at risk. India will have no moral right to claim itself as even a democracy; leave alone the largest democracy of the world, if it fails to stop this culture of impunity and establishes rule of law in the true sense of the word.

The case report from Sheopur district in Madhya Pradesh about the death of 28 children belonging mostly to the Sahariya community; a scheduled tribe ravaged by malnutrition and diseases underlines the point that many things are fundamentally wrong in India that results in deaths from malnutrition. Most unfortunately, the deaths reported from the Sahariya community have occurred despite the administration being well aware of the situation.

Hunger and malnutrition plaguing the district, claimed the lives of 23 children less than a month ago creating an uproar across the nation. In this regard the AHRC had issued a hunger alert, and also lodged a complaint with the National Human Rights Commission of India (via complaint number 1934/12/43/2012/UC). The National Commission intervened and issued a notice to the Chief Secretary, Government of Madhya Pradesh, for submitting an action-taken-report within six weeks of the notice.

Soon after the death of 23 children caused by malnutrition and disease, the district had witnessed the deaths of 28 more children, despite the administrative overdrive to contain the malnutrition. The fact that malnutrition is behind these deaths is hard to deny despite all the pretences being offered by the administration. As a fact check, the Block Medical Officer of Karahal conceded that 395 children out of a

total of 950 deliveries in the block were underweight at the time of their birth. And, more than 90% of the tribal women are suffering from anemia.
The names of the identified victims from Sheopur District are as follows:

1) Laxman s/o Lalpat Adivasi, age 10 years, Virpur Village
2) Sonu s/o Bhole Adivasi, 3 years, Virpur Village
3) Suraj s/o Mohan Adivasi, 2 years, Virpur Vilage
4) Ankesh s/o Antu Adivasi, age 8 years Virpur Village
5) Rajni d/o Pintu Adivasi, age unknown, Virpur Village
6) Gudiya d/o Horilal Adivasi, age 20 days, Virpur Village
7) Satish s/o Jagram Adivasi, age 1 year, Jhirnya Village
8) Saraswati d/o Jagram Adivasi ,4 year Unchikhori Village
9) Arun s/o Padam Adivasi, age 2 year, Bandrhar Village
10) Mangal s/o Rakesh Adivasi, age 2 years
11) Sarnam s/o Halke Adivasi, age 2 years, Dhari ka Sahrana Village
12) Rani s/o Rakesh, age 2 years, Daulatpura Village
13) Shippu s/o Rajpal Kushwaha, age 15 days, Virpur Village
14) Rajkumari d/o Ramprasad Adivasi, age unknown
15) Amar s/o Chhote Adivasi, age unknown, Malipura Village
16) Mukesh S/o Siyaram Adivasi, age 9 Months, Malipura Village
17) Guddi d/o Rupsingh Adivasi, age 18 months, Hathedi Village
18) Lala s/o Sukha Adivasi, age 2 years, Hathedi Village
19) Rajni d/o Bantu Adivasi, age 6 years, Virpur Village
20) Gaurav s/o Govind Adivasi, age 3 months, Radep Village
21) Kishori d/o Shankar Adivasi, age 1 year, Karahal Village
22) Pawan s/o Ramjilal Adivasi, age 6 months, Radep Village
23) Monu s/o Shriram Mali 18 months, Gware ka Sahrana, Raghunathpur Village

And, from Shivpuri District:

24) Ankesh s/o Baisram Adivasi, age 2 years, Sonipura Pohari Village
25) Nirmal s/o Ramkishan, age 8 years, Sonipura, Pohari Village
26) Savita d/o Shaitan Adivasi, age 9 Year, Badrwas Village
27) Gudiya d/o Kidiya Adivasi age 4 months,Badrwas Village
28) Ramu S/o Khana Adivasi, age 2 years, Badrwas Village

The horrible state of affairs was confirmed by a personal visit by Vandana Prasad, a member of the National Commissioner for Protection of Children's Rights (NCPCR). She found gross administrative lapses in monitoring children in the areas where most of the earlier deaths had occurred. She lambasted the functioning of anganwadis (government run day-care centres for children under six) and found them completely unequipped to maintain nutritional records of the children. She added, however, that the gross

poverty and deprivation of the families these children belonged to and the nutrition status of their surviving siblings left no iota of doubt that the deceased children might have been malnourished.

The administration, however, has been trying its best to blame the deaths on diseases. What it fails to explain, though, is how easily curable gastrointestinal diseases like diarrhoea could kill so many children if not for their compromised immune systems due to being malnourished for a long time. The fact is that it is the administrative apathy and inaction in rescuing the tribal families living in the region which have been impoverished over a long period. This is why the district has been identified as a 'vulnerable' region and yet there seems to be no significant change in the deaths due to malnutrition. The primary reason for this lies in the lack of intervention by the state authorities. Growth monitoring in this district has been neglected by the authorities for a long period. Further, the health facilities are abysmal with no proper records of immunizations. The prolonged period of malnutrition has led to a high incidence of anaemia and other conditions among the women.

The recent spate of malnutrition deaths in these two districts speaks volumes about the apathy and inaction of the administration. The fact that these deaths followed the death of other children and the consequent outcry as well interventions from the NHRC and NCPRI exposes not only the inefficiency but also the criminal negligence on the part of the administration. It should, therefore, be held responsible for the loss of so many lives and the officers responsible for criminal dereliction of duty should be brought to justice.

Having to repeat one-self, year after year and keeping hope alive against all odds, what can be more melancholic than this? Only the fact that one does it counting the bodies of those who perished because of failure in keeping the promises made to them. Observing World Food Day (WFD) annually provides us one such occasion of gloom. The statistics says it all. Though the number of the hungry of this world has breached the one billion mark long ago, more than a 100 million were added to the list last year according to the UN Food and Agriculture Organisation (FAO). It is not difficult to identify those responsible for so many more people falling prey to absolute poverty imperilling their food security. The increase has come in the face of governments across the world, pegged on by the neoliberal economic regimes, cutting down heavily on investments in agriculture and official developmental assistance as noted by Dr. José Graziano da Silva, Director-General of the FAO.

The consequences of these cut downs had been catastrophic to say the least. Just to give an example, year 2011 witnessed 14,004 farmers committing suicide in India alone as per the data of the country's National Crime Records Bureau. The situation there has been so grim that that Mr. Pranab Kumar Mukherjee, the President of India, has to acknowledge in his acceptance speech that there is "no humiliation more abusive than hunger." Not only this, he was right about the reasons causing hunger in his country which touts itself as the 'largest democracy of the world' and hopes to become a superpower by 2020. President Mukharjee knows that "trickle-down theories," as espoused by the current economic regime dominating the world, "do not address the legitimate aspirations of the poor."

Considering the fact that 14,004 farmers committed suicide in 2011 as per the data of the National Crime Records Bureau, once again, means more than 10.3 per cent of the total number of suicides in India through the year was committed by farmers. Factoring issues like huge underreporting of cases and the practice of never counting women as 'farmers', the actual number of incidents must be much more. This must be enough to shame any country let alone the one that claims to be the 'largest democracy' of the world.

Not really, for the state did not seem to do even as much as taking note of a situation that should have set off alarm bells. More so, for it was not the first time that the government has found these many of farmers, citizens otherwise, committing suicide. The corresponding figures for the year before were pegged at an even higher 15,933. Unfortunately, there was not much to rejoice in the 'decline' as the Times of India, leading English daily, pointed out. It has asserted that the 'dip' could as well be explained by the curious assertion of the Government of Chhattisgarh claiming that no farmers in the province committed suicide in 2011 as against 1412 of them who had taken the extreme step in 2010!

The very fact that the figures are this high after almost half a decade of implementation of welfare schemes like MNREGA speaks volumes about the enormity of distress. All that MNREGA and other schemes seem to have arrested is less than 20 per cent of average number of suicides annually. Unmistakably, it is not merely the worst of the times that Indian peasantry has undergone but in fact is, as P Sainath puts it 'the worst-ever recorded wave of suicides of this kind in human history.' The numbers substantiate the claim. With more than 15,000 farmers committing suicide annually, and the total number has marked a quarter million two years ago, the situation warrants a response at war-footing. The government, on its part, has chosen to not even acknowledge the situation and pay lip service to it.

Here it differs significantly with its own track record of acknowledging problems even while making no attempts to address them. One can remember, for instance, even the ever so silent Prime Minister of India conceding the deteriorating status of child malnutrition in India as being nothing less than a 'national shame'.

Governmental response to the issue invokes a strange sense of déjà vu. Strange, unlike the case of child malnutrition which the Prime Minister has acknowledged as a matter of 'national shame' not long ago. The fact that the study that brought out the fact was commissioned by an NGO lobbying for substituting wholesome meals with fortified food; something Right to Food Campaign of India criticizes as another ploy of bringing in commercial interests is beside the point. The message that this government responds only when corporate interests are involved was clear then, it is clearer now. It has not acted then for it was moved by the plight of more than 42 per cent of country's children being severely malnourished. Had it been concerned with that it would not have been sitting on the Prime Minister's National Council on Nutrition way back in 2008, set up for fighting malnutrition! Incidentally, the council did never meet but once ever since. Adding insult to injury, the decisions taken in that meeting, like strengthening of the ICDS, close cooperation and coordination among ministries dealing with different aspects of the issue and so on were never implemented upon.

Unfortunately, one can safely assume that the death of farmers, in how many ever millions of numbers, is not going to move the corporations, forget about making them act on the issue. For instance, the apex bodies of Indian capital like the Federation of Indian Chambers of Commerce and Industry (FICCI) had opposed the MNREGA arguing that it would put heavy pressures on the Indian economy that was on a surge those days. FICCI had the cheek of saying this at the peak of annual suicides, which speaks volumes about its sensitivity. The same body later opposed the governmental plan of linking MNREGA wages to inflation, asserting that it would 'distort the labour market', which leaves no residual doubts about its sympathies vis-a-vis dying farmers.

But then, FICCI is not the state. Despite all its claims, it has never been civil enough to be treated as a part of 'civil society'. One can, therefore, understand its silence over the issue. How though, does, one explain the deafening silence of a broad cross-section of Indian population over the issue? More than 15,000 farmers committing suicide a year, or more than 41 a day should have caused nothing less than the disgust one feels at a genocide. It should have generated popular anger to the extent of waking the government out of its slumber and making it work. Nothing like this happened though. But for a tiny minority of social activists and civil society organizations, everyone seems to have chosen to shut eyes and let the farmers die.

These suicides, murders in fact, are almost never sudden. They follow a pattern that begin with and remain entwined with the cropping cycle that dominates in their area. They have to take loans for buying seeds. For they do not have anything to 'guarantee' the payback, banks treat them as 'unreliable' and refuse to give them any loans. That brings them to the local, and illegal, moneylenders who charge exorbitant rates beginning with 10 per cent per month to 60 per cent per month! Sowing seeds, however, does not guarantee anything as they are then forced to wait for the monsoons. And if the monsoons fail even by a few weeks, it signals the end of the road for the farmer. Unable to pay back even the interest, forget the principal, the farmer gets inhumanely insulted and hounded by the moneylenders who more often than not are the strongmen of the area. The shame, the crippling sense of losing honour sets in slowly and ends in the suicide.

Unfortunately, the pattern remains the same even if the harvest is anything more than the average, just that modalities of the exploitation change. Then, faced with the excessive supply against lesser demand many peasants find their crops unsold. The state governments are mandated to buy the harvest on a predefined Minimum Support Price in case the farmers bring it to the procurement centers. Government officials, always in tandem with what is termed as food grain mafia, then, will keep farmers waiting citing factors from lack of storage to paucity of jute bags. Further, even if they buy the grain, the payments would reach the farmer only in instalments spread over months. This is a situation the farmer can ill-afford for requirements of repaying loans, buying basic necessities for the household and so on. He would, finally, be compelled to sell his produce off to the hoarders on prices much lesser than that stipulated by the government. It might often also be at a loss. The cycle of taking loans to repay the interest on the loans already taken will repeat to the extent of pushing the farmers to the wall and finally making many commit suicide.

The pattern, well established by meticulous researches, is known to all stakeholders. What then stops the government from taking the corrective steps and arresting the deaths at least if not the distress altogether? That is a question that the Indian authorities will have to answer at the earliest even if all they want is to keep pretending as a democracy, largest or otherwise.

Conclusion:

Come June every year, Indian media has a welcome break from the dearth of positive news. They do not need to repeat telecast the same scams, nor are they forced to fill their 'news programs' with this soap opera or that comedy show running on countless entertainment channels. They get their OB vans chasing monsoons right from Kerala all the way to the foothills of Himalaya with their young and chirpy reporters getting drenched in the pours.

In a country where most of the agriculture is rain-fed, the obsession with the onset of monsoon is completely understandable. Here, monsoon cannot be anything other than most welcome. Unfortunately, that is not the case everywhere. In some parts of the country, any news of its onset makes people tremble with fear. That is despite the fact that even their agriculture is dependent upon monsoons. Monsoon, for them, is harbinger of death and destruction. In these parts of the country, it does never come alone. It brings in Acute Encephalitis Syndrome (AES) and the Japanese Encephalitis and takes their children away.

Encephalitis had killed more than a thousand children last year, 884 of them by 15 November, as admitted by the minister of state for health and family welfare Mr. Sudeep Bandhopadhyay in the Rajya Sabha. Exactly 501 of them are from Uttar Pradesh alone. The government, on its part, made all the noises it had made the year before, and the year before that. It promised to develop an 'indigenous' vaccine that would reach areas where the disease is endemic, by February this year – just that the vaccines did not reach all the needy children and death count was pegged at 492 by June 30th, i.e. well before the monsoon reached eastern Uttar Pradesh.

That a curable disease could kill more than thousand children every year should be enough to shame the governments, both at the provincial and central level? The fact that it is one that has a vaccine makes government's inaction nothing less than criminal. Seen in this light, the children are not dying, they are getting killed. And the government of India is complicit in the crime on account of its failure in providing the affected areas with vaccination and quality medical service to save the lives it is duty bound to protect.

Worse even, the story is going on unabashedly for 34 years now and even the most conservative estimates put the number of total deaths at nothing less than 34,000. And these estimates are really conservative as they do not factor in the massive under-reporting of cases, for many of the victims do not even get to reach the hospitals. Neither do they take inaccessibility of many villages during rainy season into account. This is why social activists and local media put the estimates at a staggeringly high 50,000, and then add a note of caution. For them, even this figure is a conservative estimate though not the most conservative one.

All this happens when the government has all that takes to control this annual dance of death. It has 54 Sentinel and 12 Apex Referral Laboratories dedicated for maintaining surveillance and prevent deaths scattered across the country. That the set-up has failed terribly is evidenced by the sheer volume of deaths this year, 492 to repeat, that too by 30 June, or before the onset of proper rains. Getting to why of this failure, opens up a Pandora box of apathy, inaction and ignorance of those in power. All their initiatives do not fail after all. There had been instances of outbreaks of diseases where the powers of the Indian state had much to do – not only control such outbreaks, but also almost eradicate the diseases.

The recurrent outbreaks of dengue in Delhi in the last decade are proof to this. The government went on an overdrive to control the menace and brought down instances of dengue to a considerable extent in a short span. It has kept itself prepared ever since. There are regular cleanliness drives with a team of dedicated officers to deal with the disease. There are mobile squads to check sources where mosquitoes could breed. These mobile squads go even inside private houses to check the electric coolers, flower pots and all that could contain stagnant water and are authorized to fine the household if they could find mosquitoes.

Why then do the authorities not show the same enthusiasm for controlling the disease in places like Gorakhpur, Deoria, or Kushinagar? Are these places any less part of the Union of India than Delhi? Are the people living in such poor and impoverished places any 'less citizen' than those who live in flashy metropolitan cities? What then explain the authorities' overzealous reaction to the woes of one of them and an almost criminal negligence of the other? The point begets another question about the media's silence over the issue.

Well, nothing to deny that media does report this. In fact, all the related data noted here has been collated through media reports. But then, there is a definite pattern in the way media reports this issue. They would run a stray editorial in the print. All those channels would run a few stories. And then they will bury it all to run it roughly the same time next year. All that would change would be the names of the victims with even the theatres of this tragedy remaining the same.

Compare this with the same media reporting cases that are close to its heart. Remember all those Justice for Jessica campaigns that the same media ran. Or the outrage it carried in its reports while Delhi was slowly becoming the rape capital of India. Or the anger that resonated through our television sets when a top cop, who was found guilty of sexually molesting a young player to the extent of driving her to commit suicide, was let off with almost no punishment. The media do not get silent over these cases.

Everyone deserves justice in a country where the rule of law prevails. All just causes should be taken up with the same intensity and media is well within its rights to shape a national conscience against such injustice, such ghastly violations of our fundamental rights.

Why does, though, the same media get so eerily silent over these deaths, killings to be precise? Why does it not shame the authorities into action? Why does it not organize panel discussions with experts debating the issue and the middle classes watching it with all that horror on their faces that the enormity of the issue

generates? Are these people any less than the one the media is concerned about? Perhaps yes, for these people are not the ones who become 'us' to the media. They are not their people. They are neither from their class nor their caste. Their deaths should still concern the media as killings in faraway places like Syria bother it, does not it? Why does it remain silent on this one then?
The answer lies in the fundamental flaws that define the deficient democracy. It lays in those structures of inequality that have produced a political culture where some people are more equal than the others. It lies in that phantom limb of caste that has gotten engrained into the façade of all those democratic mechanisms, which form the base of our claims of being the largest democracy of the world.

It lies in the idea of hierarchy that dehumanizes certain sections of our society to the extent that they become easily expendable. They remain invisible for all practical purposes. Their lives come real cheap. The only thing that matters about them is their labour that this future super power needs. The problem is that even this labour comes in abundant supply. Death of a few thousand every year does not matter much; there is always plenty of replacement. That is why a state like Uttar Pradesh can afford to spends 685 crores on a park and 18 crores on Japanese Encephalitis.

For the authorities they are not human beings, they are population. Have they not been taught, then, all their lives that population is a problem, in fact the biggest problem of India? And if they are the population, then they are the biggest problem and dispensable therefore. That explains the silence and the absence of all that anger that should be generated by such criminal loss of human lives. The explanations, though, do not absolve anyone. The media, the civil society and the government, all remain complicit in these murders most foul.

Despite all this,[26] the government continues to have a minimalist vision for the National Food Security Bill. The Right to Food Campaign in India has been demanding a comprehensive food security legislation that takes in account the production, procurement, storage and distributional aspects of food security along with making special provisions for vulnerable groups such as children, migrants, the aged and disabled. The campaign has repeatedly stated that the current draft of the Bill is minimalist and unacceptable as it seeks to legalise inequity by imposing a Targeted Public Distribution System instead of creating universal entitlements.

In this context, the proposal to do away with the multiple categories (priority, general, etc.) and move towards a uniform entitlement for everyone, except for the rich who will be excluded, is a step forward. However, if as reported in the press, the category to be excluded is as large as 33 percent of the population across the country, then this would remain a form of targeting, with many of the needy actually being left out. This still falls far short from the principle of universalisation. Exclusion should rather be based on a few, easily identifiable criteria such as permanent government employees, income tax payers and so on.

Further, there is no logic in common entitlement being as low as 25 kgs per month per household under this new proposal. The government cannot continue to argue that there is not enough grain when the FCI

26 Adopted from the recommendations made by the Right to Food campaign group in India

godowns are overflowing, with the current food grain stocks being around 80 million tonnes. The last three years have seen food inflation spiralling to highest levels in three decades. The food ministry has been at the centre of the most scandalous mismanagement of food grains, with huge food stocks rotting in the godowns and set to be exported for consumption by cattle in industrialised countries.
India's poor track record on food and nutrition, and indeed all the social sector indicators along with its patently over-stated ambitions of being a global leader, has made the government a laughing stock internationally. It cannot be accepted that the Government of India can afford to contribute USD $ 10 billion to the International Monetary Fund to bail out irresponsible European bankers, while it hides behind the excuse of fiscal constraints to explain its inability to guarantee food security to its citizens. In a situation where nearly every second child in the country's children carries the scourge of malnourishment, such an attitude of the government is indeed shameful.

There has been a consistent demand from the civil society groups to strengthen the NFSB by expanding its scope. The PDS entitlements must be universal and quantities must be linked to the Indian Council of Medical Research (ICMR) recommended daily allowances (14 kgs per adult). In addition, the PDS must also provide pulses and cooking oil. Introducing such an expanded PDS would be the most appropriate way of dealing with the current contradiction of excess stocks and widespread hunger. In this context what is in fact required are:

i. a Universal PDS, which includes cereals, millets, pulses and oil so that all especially the food insecure, the vulnerable, and the deprived get included. The quantity should be decided on the basis of ICMR norms per adult consumption;

ii. appropriate MSPs and decentralised procurement of rice, wheat and millets;

iii. universalisation with quality of ICDS including the provision of nutritious locally prepared food for all children;

iv. and entitlements including social security pensions for vulnerable persons – the aged, single women, and persons with disabilities, school mid-day meals, maternity entitlements, and community kitchens in urban areas must be ensured.

Conclusion:

The government is again planning to change the criminal justice mainframe of the country. Again, the ruse is that of justice to the people and national security. The proposal is open; its true purpose clandestine. If the 2007 report of the Committee on National Policy on Criminal Justice, chaired by Dr. N.R. Madhava Menon, is what has lead to this reform proposal, heed the sign that reads: caution.

On August 9, Mr. Mullapally Ramachandran, union state minister at the Ministry of Home Affairs, stated in Lok Sabha that his ministry is planning to effect a comprehensive change to the criminal justice

landscape of the nation. The minister said the overhaul would include amendments to the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Indian Evidence Act (1872), collectively known as the criminal major acts.

The 'reform' plans to closely consider proposals made by the Committee chaired by Justice V. S. Malimath on reforms of the Criminal Justice System (2003), and the Draft National Policy on Criminal Justice, submitted to the government by Dr. Menon (2007). The Draft National Policy document is itself, in fact, nothing but a summary of the earlier Malimath Committee report.

Mr. Ramachandran informed the House that his ministry has sent its suggestions to the National Law Commission, with a request that the Commission detail the legislative changes needed to bring about the reforms the ministry have in mind. However, neither did the minister care to elaborate, nor did any Member of Parliament think of demanding, the details concerning the proposed reforms. And, no such information is available in the public domain, even at the Home Ministry's website.

The minister also failed to inform the house whether there would be any public consultation. Given the precedence, there could be some token consultation. Given the history though, not many civil society groups will participate meaningfully, even if they have knowledge of such consultation. This is because the criminal justice system remains a blind-spot amongst Indian civil society groups. Thus, either way, public at large will not be consulted, even though the 'reforms' propose to substantially take away their fundamental freedoms.

If the draft national policy is the guideline for the proposed reforms, soon Indians will find their civil rights substantially curtailed. It is a literal death trap for fundamental freedoms. Telephone conversations and other communications will be intercepted by state agencies, acting with statutory impunity, redefining thus the very notion of privacy and privilege in communications.

The draft policy proposes a rights trade-off in the excuse of national security, including the negation of the fundamental right to silence and the presumption of innocence. The principle of 'preponderance of probabilities' will find itself introduced into criminal trials to convict a person, rather than the requirement of 'conclusiveness in proof', the current norm. Statements made by persons to the police during investigation would become admissible as evidence without adequate verification. Expert opinions would be treated as substantive evidence and not as estimations. The trials of offenses punishable with a maximum sentence below 3 years would be reduced into summary proceedings. The draft policy would allow the state to restrict at whim the very scope of the concepts of freedom of opinion and expression. The freedom of the media to report cases, and expose crimes, including those of corruption at high places, would be relegated to the dustbin of history.

If the national policy as proposed by Dr. Menon's committee were to be implemented by requisite legislative and constitutional amendments, the relationship between the state and subjects will be re-defined. The amendments will take away the scope of fair trial, since what the police say would soon become proof for conviction. It will, of course, reduce delays in adjudication. This is because it would

hardly leave any need for adjudication. Since the policy does not speak about reforming the police by imposing accountability upon the force, the rich and the powerful will still manage to escape investigation, trials and convictions. The national policy only speaks of awarding more powers to the investigating agencies, which, as it is, today, are selectively used and would remain the same. The government has already spoken its mind in failing to implement the Supreme Court's directives in the Prakash Singh case, watershed directives towards independence and accountability in the criminal justice system. Continued and shameless ignorance of the Court's directives on one hand, and the institution of these 'reforms' on the other, the country will have to continue contending with the same criminals in uniform, policing the people, the only difference being enormous enhancement in police powers, and consequent reduction of individual freedom. With these changes, India will become a police state.

To justify the draconian proposals, Dr. Menon's committee has liberally used presumptions and surmises, laced together with weaselly generalisations. The draft policy, as far as addressing issues that have rendered the criminal justice system in India a complete failure goes, is a non sequitur. The committee is of the opinion that the Indian state is 'soft', which has rendered crime control impossible in the country, and hence has recommended the changes cited above.

It has, in no uncertain terms, discriminated regions in the country, as 'terrorist', where it prescribes the role played by the state as an iron fist as just and right, never-mind the fact that such thinking has only helped worsen the living conditions in these regions, with innumerable instances of human rights abuses committed by state and non-state actors.

The committee has, in unambiguous terms, used exceptions such as terrorist attacks as excuse for the dilution of civil liberties, and has encouraged the state to constitute a national framework that could curtail fundamental freedoms to ensure security. The committee has cited restrictions made in other countries as an excuse to justify similar changes in India, suggesting a subjugation of the intellectual sovereignty that Indians must maintain when legislating. The committee's opinion of blindly following the 'global trend' to restrict freedoms suggests two elementary flaws made by the committee: 1) it shows that the committee's process was not consultative enough, and 2) it shows how, with a single presumptuous sweep, the committee negates the civil liberty movements in the rest of the world that are fighting against such draconian state controls, and how, with equal contempt, the committee treats the collective intellect of the common Indian person. The committee is sure it knows what liberties India should and should not have.

The Menon Committee's draft national policy emphatically suggests standardising exceptions into norms. On one occasion it quotes an anonymous lawyer, who, according to the committee, demands drastic changes in legal procedures to mandate that the accused, by law, 'assist' the court in testifying against himself / herself. To justify formulation of draconian state control in the name of security, the committee repeatedly uses the term 'public expectation' in reference to the duty of the state to provide security even at the cost of fundamental freedoms. However, in reality, the committee never approached the public to seek its views.

The policy document and those who drafted it lack the basic honesty expected of such proposals and bodies. They failed to point out the elephant in the room: that the problems affecting the criminal justice system in the country are deep-rooted corruption within the police and within all tiers of the judiciary; ineptitude; an assortment of crimes, including that of torture, committed by law-enforcement officers with impunity; lack of professionalism and any form of training and opportunities for enforcement officers to cultivate the same; and a close to non-existent prosecutorial framework.

There has been so far no attempt by the government to study these evils that have held the country's justice apparatus at ransom. Without this, propounding that the public gift away their fundamental freedoms to guarantee security is nothing less than fraud upon the country. The only result will be ensuring the security of tenure for criminals in seats of power in the country. Unwillingness to end the aforementioned issues is what adversely affects justice administration in India. It is not a passive oversight, but an active pursuit, easily apparent if one only considers the minimal resources allocated to justice institutions; today, the judiciary is literally smothered out due to lack of adequate funds.

What is the security a citizen can expect when law-enforcement officers only attract deep contempt from the public and display shameless ineptitude in discharging their duties? What is the meaning of protection when police officers rob money and life out of the people and are more feared for rape and murder than street thugs? Where is the value of civilian law-enforcement when the officers mandated to enforce the law breach all laws possible? What is the meaning of 'reform', when the officers of the state who are to be reformed are forced to continue in the public perception as criminals in uniform?

Committees constituted to play background scores to a treachery, not advocating reforms where they are needed, and proposing to filch away even those few, but crucial, freedoms that protect common people today – with or without the protection of their state and its agencies – are the real security threat to the nation. Such committees would suggest anything required by those that constitute them. These committees have nothing in common with the larger mass of the country. They have no understanding of how ordinary Indians struggle daily to survive, protecting themselves from criminals in uniform.

Six or seven clandestine paper presentations held at universities, where the public has no access, cannot be the basis for the formulation of a national policy that could diminish fundamental freedoms in India. But the fact is, such a policy is now in place to be implemented and the term 'public demand' is used liberally in the policy document, as an excuse to justify parochial, restrictive and draconian changes to be brought into the national legal mainframe.

Security of life and property of the citizen is directly proportional to what is implied as 'national security.' Unlike exceptions of violence sponsored by anti-state entities, every day in the length and breadth of the country, fundamental rights of the people are brutally violated by law enforcement agencies, especially the local police. Not a single attempt has been made in the country to criminalise violence committed by law enforcement agencies, often in the name of social control, and crime investigation.

Every police station in India routinely practices torture. It is performed publicly, without any form of legislative or practical control. Police officers and policy-makers equally believe that torture is an acceptable means of crime investigation. Just as it is done in the Menon Committee, the country has failed to treat this single fatal cancer, something that has rendered the entire police service in India as nothing more than a group of uniformed thugs lacking moral and operation discipline.
Conditions are far worse when it comes to paramilitary units stationed along the borders and in areas where they are deployed to assist state administrations, like in Manipur, Jammu and Kashmir, and West Bengal. There is no data available in the public domain as to what actions are initiated upon complaints of human rights abuses committed by these forces. As per the information collated by the AHRC, there is little doubt that the BSF stationed along the Indo-Bangladesh border is a threat to national security. They engage in crimes like rape, torture and extrajudicial execution in routine. The BSF is a demoralised and corrupt force that engages in all forms of corruption, including anchoring trans-border smuggling.

If national security is of any importance, law enforcement agencies must be held accountable, as must members of submissive and myopic committees that advance dangerous proposals, set to further harm lives of their country-men.

Information provided at the National Bureau of Crime Records for the past several years only advances this argument further. According to the Bureau, in 2011 there were only 72 reported cases of human rights abuses alleged against the police in the entire country. Out of this only 7 were cases of alleged torture. There were only 6 cases of illegal arrest and detention, and only 1 and 3 cases of alleged extortion were reported from Punjab and Delhi, respectively. In states like Assam, Bihar, Goa, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim and Tripura there were no cases of human rights abuses registered for the year! To say that the statistics mock reality would be an understatement. India does need reform. It should begin with ending the practice of shameless lying.

One of the sad truths that Indians have to live with today is that the people's struggles for human rights are highly fragmented in India. Equally disheartening is the fact that whenever or wherever human rights comes up for discussion, it is addressed in piecemeal, ignoring and leaving far behind a comprehensive approach to rights based on the notion of justice. The focus is usually on the concept of rights understood within the limited periphery of 'people's welfare' in which quotient of 'justice' is forgotten.

In India there are 713 legislations that deal with people's rights, their entitlements and protection. Another 19 on food, nutrition and health are on the anvil. In fact what Indians have is a law-making regime for last 65 years, and the concept of justice is missing in the country.

Do rights make any sense without justice? Can we expect that human rights will be guaranteed without justice? Can Indians afford to seek justice only through the courts, exempting the executive? The rule of law is not the state generating fear about its might and ruling by it. What Indians have are rules and laws that could exploit the marginalised.

When public pressure concerning an issue disturbs the state, the state comes out with a policy and passes a law. But laws are meaningless if there is no system to implement them. And where there is no accountability within the system legislating becomes a farcical exercise. The basic objective of the people's struggles in the country is to ensure proper implementation of the laws. What is required is to think where and how deep is the passive or sometimes active negations of rights permissible within the system. Otherwise the enormous efforts of the people's struggle to claim these rights would go in vain.
There are more than 3,000 struggles for justice going on in the country's 640 thousand villages where over 3,500 thousand voluntary and non-governmental organisations work. This is ironic, because India has some of the most progressive laws in the world and claims to be the world's largest functioning democracy. Yet it is a country in which 9,000 custodial deaths take place every year and over 1,500,000 children die of malnutrition, while policymaking continues unmindfully!

In such a situation how can we ignore the question of why the system refuses to change? Why the lives of people count for nothing and why their standard of living shows little sign of improvement?

There are 15,777 under trial prisoners in Madhya Pradesh and 15,784 in Maharashtra. They are not considered eligible for bail, and are forced to wait for a final verdict till an uncertain time. Many among them have already spent more time in the prison than what the sentences for the crimes alleged against them might warrant. The path of justice tends to veer towards injustice because the state, which has the responsibility to dispense justice, is not accountable to the people. Is this, perhaps, part of its well thought out strategy to retain state's supremacy over the society? It's a thought worth considering.

The first question that Indians should to ask themselves is: what are the tribulations in the society and what kind of change does Indians necessitate deciphering them? We are living in a period of policy changes and laws. The government formulates policies and passes laws, allegedly to solve these problems. But the laws remain on paper. They are of use to the society only if an institutional framework for implementing them is created, an adequate budget sanctioned, officers appointed, and other necessary infrastructure put in place.

For instance, the government claims that the people have a right to health. But if there are no doctors, no hospitals, no money to buy medicines, what does this right mean? When will people enjoy its benefits? The government has also passed a law giving people the right to free and compulsory education. But to ensure quality and equal education to all we need enough teachers, introduce new teaching methodologies and provide classrooms and toilets in schools. But the financial resources available for this are not even half of what is in fact required. So what kind of right to quality education could the country's children hope for or lay claim to?

Justice must be evident and should appear to be done. Rights cannot be seen as disconnected from justice. If the state is unjust, if it abdicates its responsibility to dispense justice, people can neither claim nor protect their rights. In India, the state is only putting on an act with its 'people-oriented' policies and laws to hoodwink the people. The reality is the continuing violation of all basic rights. Nowhere in the laws is

there a provision that says the government will have zero tolerance for compromise and will take steps to ensure that people get not just their rights but justice as well.

Take the example of the law guaranteeing the Right to Information (RTI Act 2005). It says if people are denied this right the responsible official will be penalised to ensure that such violations do not occur in future. The right is for seeking and obtaining information, but justice is for taking actions to punish those officials who violate the right. As long as this aspect is ignored, talking about rights is mere deception.
Justice and rights are not limited to the judiciary or to the state that is supposed to safeguard them for society. They go beyond these institutions. Justice is a universal trait, a basic human character, like courage, equality and respect for nature. It is not something that one obtains only through a court of law. The notion of justice starts with the faith that justice will not be denied. Justice is also the belief that when the authorities and the system where you go to claim your rights will respect these rights and treat you in a way that raises your morale and reinforces your belief in the system.

The search for justice could begin for instance with the police inspector or a constable in a police station. If they are unjust, one cannot get justice from the court that in a criminal case will have to depend upon the police for investigation of a criminal charge. The decision of the court is based on the case report the police present. That is why justice is not something that only a court of law ensures.

There is also the country's media that presents a case before the public. If the media is unjust, they cannot feel the soreness that a victim experiences when rights are violated. Investigations about rights violations without a perspective of justice serve only the purpose of whitewashing of some and slinging mud at some others.

If more and more cases of rights violation keep occurring, and if they continue to be viewed in a perspective devoid of justice, the policies that are eventually formulated will also be devoid of justice. If justice is not ingrained into the system, it will become a purveyor of injustice. There are no half measures, or middle path. One can either have justice or injustice, corruption or transparency. It is a shame to say that 40 percent justice is dispensed or 60 percent of the system is corrupt. A system can be either completely just or absolutely unjust. It is a dangerous reasoning for the future of democracy, society and the constitution to claim that the District Collector is an honest person but the subordinate officers are corrupt, or the chief minister is honest but his ministers are corrupt, or the prime minister is a good person but his cabinet colleagues are bad.

The British ruled India for more than 200 years. They came for business and later continued to influence the country's institutions - political, economic and social. They also make laws and created institutions. Definitely those were not for the welfare of the people and to ensure justice. They made it; to control any action, which might challenge their rule here in any form. They forced people not to speak, they created police in 1861, and they made forest a state property by creating the forest department in 1861 - 62, with a clear message that community has no ownership over their natural resources; and suddenly with the creation of a law and system, people become encroachers from the owners.

The colonisation reduced the space for the people up to a level, where they found themselves unable to breath. The colonial rulers follows a specific meaning of the rule of law; which for them translates as regime to establish the rule of the state over the native society, to suppress the strength of people, so that there is no opposition to the colonial interests. One country rules the other for looting, not for welfare; so one cannot expect that the coloniser will take any pain for setting up standards of living, welfare or norms for human rights. In such a situation ruler (not the state per say) is the key culprit in human rights violations. And justice here means protection to a section of people who provides them support for ruling their own country or society.

The British hanged Indians who demanded justice, dignity, rights and freedom. They did follow a system of judiciary - which was created to hang such people, who challenged the then state; without considering the norms of justice or that of rights. At that moment justice translated as the protection of those who were fighting for the country's freedom. Tax and revenue systems were made for looting resources; education system was contaminated to create a bonded society. There should be no revolt even after extreme injustices like massive food shortages. This was the key objective of the coloniser and that is why the concept of law and order become important for them. We, in the independent state, continue to follow the same. If you go for an agitation, you will be booked and may be disappeared forever. Why there is no scope and space for those in the country who want to share their anger, frustration and agony; why they are treated as criminals? Such space was not there before 1947 and still not there, 65 years since.

Making laws is a collective process of the legislature. The government drafts a bill and presents it to the parliament. The bill is normally sent to the parliamentary standing committee, which invites comments and suggestions from institutions/organisations and from the public. The bill is accordingly modified and sent back to the parliament. But the government is not bound to accept all the recommendations of the committee. So it is free to ignore any provisions that may be mistakenly viewed as diluting the legislature's power or compromise its positions. The passage of the bill depends on the strength of the ruling coalition. If it enjoys a majority in the house it faces no compulsion to keep the people at the centre of its legislation.

A law is an all-encompassing document of the right in question. But often it does not outline the steps required for its implementation or for creating the required institutional structure. These are dealt with in the rules and procedures and this is where the next deception of the people occurs. Unlike the bill, there is no scope for the standing committee to offer its views and suggestions about the rules and procedures nor do people have the right to have their say. There are enough loopholes and pitfalls in them for the people to stumble into and get trapped. There are no systems to ensure that our rights are clothed in the cloak of justice.

The key to the implementation of a law is with the state. The 73rd Amendment of the Constitution had paved the way for the decentralisation of state power through the Panchayati Raj, with authority given to the panchayats (elected local body at the cluster of villages) and gram sabhas (village councils). But no panchayat can impede the salary of a corrupt official or who do not perform his/her duty. It can only make recommendations to the executive that action is to be taken against an erring officer. In the past, the village

institutions controlled resources but today these resources are retained in the central treasury by the state and the panchayats and gram sabhas have to extend their palms to plead for central 'alms'.

India is still ruled by the caste system; we all know this truth. It is plagued with discrimination, gender inequality, untouchability and feudalism, which is the reason why there is little hope for the society or for its social institutions to make any real effort in creating a system that is based on equality and social justice. Our society remains silent when confronted by deaths from starvation and malnutrition. It fails to raise its collective voice against the rapes that it witnesses. And instead of resisting the naked exploitation of our resources it spends its energies looking for escape routes such as internal or external migration. It is in such situations that the role of the state comes into focus.

The expectation is that the state will create a system to counter and abolish inequality, discrimination, exploitation and social boycotts. Such a system cannot be limited to policy formulation and law making. Laws create the system and the system should, in principle, function within its ambit. Social contradictions can only be resolved by governance guided by value and justice-based laws. In today's context, it means justice and values should remain not just the responsibility of the state, but also that of its banks, media, markets, production systems and in the private sector. Otherwise these agencies inevitably become the new players in the processes of exploitation and subjugation.

Rights cannot be claimed or given unless and until an accountable and institutionalised structure is created to implement them. The laws enacted should be such that they carry the message of rights with justice. They should explicitly state that an institutionalised structure will be set up for implementation, with an effective, transparent and decentralised mechanism to monitor the implementation and register and resolve complaints within a specified time. They should also contain provisions to punish the guilty and compensate the victims of rights violations. Equally important is sanctioning of the required budget, because without such allocations, nothing is possible.

Madhya Pradesh is a state where six million children are battling malnutrition. Their chances of winning this battle are slim because the state government does not provide them the kind of support they need. But eradicating malnutrition is a battle that the state should be fighting because it is the constitutional guardian of our children. The Integrated Child Development Scheme (ICDS) was formulated in 1975 to address and resolve the problem. Its primary target is children aged below six years, who are most susceptible to malnutrition. But 37 years after its launch, malnutrition remains a scourge that continues to play with the life of our children. The question we need to ask is: Why did such an ambitious scheme fail to bring any significant change in the situation?

The ICDS provides for setting up *anganwadis* (child development centre at the level of every local habitation) to care for all children and the Supreme Court has decreed that such care centres must be established in every village and habitation and no child should be denied its services. The *anganwadis* have the infrastructure to provide six crucial services to children, at least on paper. These include monitoring their growth and development, providing nutritious food, imparting health and nutrition education to

pregnant/lactating mothers as well as adolescent girls, vaccinating children, imparting pre-school education and admitting the seriously ill in hospitals.

An *anganwadi* has to cater to the needs of around 40 children aged below six years, under the supervision of an *anganwadi* worker and a helper, who are recruited from the village. The worker has to maintain six registers with vital data about the children and the services rendered. Can two workers cope with this large burden of responsibility? The Supreme Court has instructed that the *anganwadi* services should be universalised and their quality should be improved. The government continues to enrol children in the care centres but it has done very little to increase human resources, their capacities, infrastructure facilities and remuneration.

In 1991, the government made an allocation of one rupee per child for providing nutritious food. But the actual disbursal was Paisa 47 ($0.023) per child. If seen from another angle the budgetary provisions would be adequate for only 47 percent of the child population in this age group. Moreover, when the village community complains that nutritious food is not provided for six months in a year, the bureaucracy did not point out that the allocation itself has been drastically cut and that is why children remain hungry. Instead, it blames the *anganwadi* workers and takes action against them to maintain the power of the state. Where can the *anganwadi* workers go to fight for their rights and justice? There is no mechanism to give them justice.

Another distressing fact is that the budgetary provision remained unchanged for 15 years until 2005, when it was raised to Rupees two per child. Today, in 2012, the amount is Rupees four per child, which is still only half of the actual need. This is the irony. The government calls malnutrition a 'national shame' yet allocates a measly amount - which cannot even buy a cup of tea in today's market price - to resolve the crisis. A country with one of the fastest growing economies of the world has the largest population of malnourished children among all nations and yet it has no willingness to give more than one percent of its budget for children aged below six years, who constitute 14 percent of its population!

The ICDS has been riddled with corruption since the time it was launched. There is no mechanism in the system to register complaints against this corruption, carryout an impartial investigation, take immediate action, award punishment, or protect the rights of the children and women. If a complaint is registered, the state government asks the District Collector and the programme head in the district to conduct an inquiry. These officials themselves are an integral part of the implementing agencies. So in a way they are responsible for the corruption and negligence. Should the accused be given the responsibility of investigating the misdemeanour and felony?

Madhya Pradesh has constituted a State Commission for Protection of Child's Rights. To begin with, it is a moribund organisation. Even if any of its members take the initiative to fulfil its responsibilities, there is little likelihood of anything coming out of the exercise because the commission only has the power to make recommendations but not the power to ensure compliance by the implementing agency, which has

unlimited and unrestrained power. Perhaps the government wants it this way. That is why it never acknowledges that the lack of accountability.

The state does not appear committed to protect human rights or dispense justice. In such a situation, children will continue to starve and be malnourished. Their hunger is not so much the outcome of inadequate food but the lack of accountability, corruption, carelessness and despicable apathy of the state.

It is a question of intent. On the one hand there is no system or mechanism to ensure justice, while on the other our judicial system is caught up in protecting its own interests. In 2011, a total of 26.3 million cases were pending in Indian courts. It would require 24 years for the courts to clear the backlog, provided no new cases are registered in the interim. If cases continue to be registered at the current rate, the courts would have a backlog of 240 million pending cases.

This only shows that the state is becoming progressively ill-equipped to deal with its responsibilities even as its officials show an increasing tendency to abuse their authority. Even then the government makes no commitment to overhaul the system to ensure that the people do not have to wait endlessly for justice. People living in Manipur, Arunachal Pradesh, Nagaland and Tripura have to travel all the way to the high court in Guwahati because there are no other high courts in these northeastern states.

Take a look at the following example. In 2006, the Indian government passed a law recognising the forest rights of scheduled tribes and other traditional forest dwellers. The law declares in its opening statement that the indigenous communities have been subjected to historical injustice for centuries and the state seeks to give them justice through this legislation. Now take a look at its provisions. In order to establish community rights to forests the villagers have to produce adequate documentation to show that they have been using forests for their livelihood, grazing and access or for cultural and religious purposes or for foraging forest produce for their daily needs. This is a task that is beyond most of them.

In India, systematic records have been maintained at the district level (in district record room) from even before 1950 of every village, its resources and their use. Many people are not even aware of this storehouse of data and information. These documents are called Nistar Patrak (record of use of land, forest and other natural resources) and Bajib-ul-Arz. It is almost impossible for villagers to access these documents in the maze of modern bureaucracy and red tape. The result is that only around five percent of the claims to community rights have been legally established and recognised.

If the intent of the government is to confer community rights to the rightful claimants why did it not add a provision to the law stating that it will make available all the documents in its possession to the Gram Sabha and the village level forest rights committees to enable them to process claims and establish the rights of the community? It is the responsibility of the government to provide the required documentation, not of the people who have been subjected to this historic injustice. Until and unless the state internalises the concept of justice every utterance of its officials will be futile and meaningless. But the state is reluctant to part with the power it has over the people.

It is not as if the government has never built a strong institutional framework for implementing its laws. Wherever it needs to protect its powers it ensures that such a system is established. For example, when electricity production was privatised, private companies were permitted to decide electricity tariffs, a job which the government did earlier. It set up an Electricity Regulatory Commission to approve the tariff increases and give them the official stamp. The commission gives priority to the arguments of the private companies, not the government or the people, in arriving at its decisions. As a result, electricity tariffs have been raised by 20-30 percent every year.

Water is also in the process of being privatised and the appropriate institutional changes will be affected. Poor people living in slums will now have no access to free water. Prices will be raised periodically and those who cannot pay will be deprived of their right to water and electricity. The government gives statutory powers to these commissions, which make them more powerful than even the parliamentarians. This clearly shows that the implementation of a law depends on the kind of enabling institutional structures that are created.

The problem is not that 42 percent of our children are victims of malnutrition or that our prime minister calls this a national shame. The problem is that the state has made no concrete effort to resolve the problem, nor created accountable and resource-rich institutions to deal with it. Nor does the system have responsible people and policy makers or a planned mechanism to implement a solution. The problem is that the bureaucracy is neither accountable nor capable of dealing with the situation. Even if there are capable bureaucrats who do good work, they end up being punished instead of rewarded because corruption is accepted as a way of life.

The problem is that the state has been given too much power and sees itself as supreme. It understands strength and turns a blind eye to those pages in the constitution that elaborate its duties and responsibilities. Its limited perspective tells it to silence and neutralise anyone who dares to criticise its functioning. This is the reason why the state is very often seen to be despotic in its work. It adopts every means to protect its powers, whether through the use of the law and its policies or otherwise. One needs to analyze these methods and counter such despotism with democratic values.

One also needs to understand the link between people's struggles, agitation and advocacy. People's struggles emerge in certain circumstance and the initiatives they take aim to change the mindset of society. They see the problem from a social and political perspective, but find themselves caught up in many dilemmas. They cannot decide how to change the system if the very root of the crisis lies in its unjust nature. The system can only be changed by democratic means, but there is a reluctance to enter into electoral politics to affect such political change. The people find themselves caught up in answering the questions posed by the government when in reality it is they who should be demanding answers from the government. The people's struggles have been weakened and divided by the state through its power to distribute favours and services.

Prior to 1997, everyone could get ration through the public distribution system. In 1997 the government decided to draw a poverty line and declared that only those below this line could receive subsidised rations.

The poverty line was a ruse to deny rations to 64 percent of the population. And now when a people's struggle is being fought to bring about institutional change in the rationing system, the middle-class and the class of people excluded from the ambit of rations by the poverty line turn their faces on this struggle, saying they have nothing to do with it. And those who are eligible for rations are so socially and economically debilitated and deprived that they find it difficult to fight for their rights lest they lose even their precarious perch.

The state weakens the people's struggle for social, political and economic rights in this way. In the past 20 years we have seen farmers and agricultural labour meld into a powerful force, but the state created divisions between them through its policies. For example, it has reduced the concessions and subsidies extended to agriculture, raising the cost of production. At the same time, it has raised the wages of unskilled labour, who also work as farm labour, through the National Rural Employment Guarantee Act. The government has not given proper support prices for agricultural produce while it has given a fillip to the import of cheaper agriculture products from other countries, where farmers are given large subsidies. With cheap imports flooding the markets the local farmers have no market for their produce. The outcome is that they are in a pitiable state today. Most of them (77 percent) are small and medium-scale farmers owning less than two hectares of cultivable land. They find committing suicide to be an easy alternative to farming.

The growing urbanisation of the country is also responsible for alienating society from the concerns of our villages. The pitiable state of health and education services in rural areas and the crisis caused by development project linked displacement of people does not strike a chord in the cities. The possibility of launching a people's campaign is low in such a scenario.

There is a thin line between people's struggles and advocacy. People's struggles raise issues and slap the government to take notice of these issues. Advocacy involves building up a fact-based and analytical understanding of issues to strengthen the people's struggles. The two do not themselves look for solutions to problems but try to force society and the state to take up the task of looking for solutions.

Advocacy is a process that takes up one or several linked issues with the objective of bringing about a change. When one works on any issue, case or incident there are three objectives that the person should have in mind: The affected individual, people or community should receive their rights with justice. Those responsible for perpetrating injustice should be punished and their accountability should be fixed so that no abrogation of rights can occur in future. The weaknesses of the system should be removed, in keeping with these objectives, so that it is no longer unjust in character.

And finally, Indians must clearly understand that human rights cannot be defined without justice. And justice cannot be limited to the courts but must permeate and become an integral part of society, the state and the system. Change cannot happen only by formulating policies or making laws. It requires provisions being made for an administrative, economic and infrastructural system (buildings, equipment, roads, water supply, sanitation, etc.), creating an accountable grievance redressal mechanism that works in a time-

bound manner. One would have to decide the values and standards that govern this system and the government should pledge to adopt these values and standards.

The concept of independence and an independent state is more deep and vast than its apparent legal or political connotations. Independence includes the possibility of a nation and its people to dream, based on their belief in self and the possibilities to pursue dreams without fear and want of opportunity. Independence is the celebration of all freedoms and the iteration of the state's responsibility to guarantee the same to all subjects. It is the victory of fairness and equality over subjugation, discrimination, and servitude. For a nation, the day marking its founding or independence must be a celebrated occasion, where every citizen could call upon the government and demand each bit of that dream the founding fathers of the nation promised.

For a great country like India, with its unique diversity of all forms, fulfilling independence, in completeness, is a challenge of enormous proportions. The country and its people have come a long way from the impoverished nation and colonial ravishing ground that it once was. With its resources limited, and coffers empty, the country has struggled to be what it is today in no uncertain terms.

However, a question remains, and must be faced. Is this the India that was dreamed about three score and five years ago? Collectively, as a nation, has India done enough in pursuit of the dreams that it promised to achieve on the eve of August 15, 1947? It is crucial to answer whether the unity of this great nation and its people have withered away in the past six decades? If so, have there been adequate efforts to prevent this? Has India strengthened itself morally to withstand threats that are gaining strength to destroy it from within and without?

Histories of great nations speak of internal wilt exploited by external forces. The greatness of a nation is not reflected in the volume and capacity of its uniformed forces. It is measured by the belief every citizen has in their state, of seeking adequate counsel from the people and protecting them from all evils.

It is a reality that India is more weak and polarised than it was 65 years ago. India's weakness is reflected, not only in the state and anti-state conflicts that are continuing to cause deep social and personal wounds along the length and breadth of the country. It is evident from the acute and expanding polarisation of Indians who consider themselves privileged or discriminated. It is annoyingly audible in the hate speeches that self-proclaimed leaders of Hindu, Muslim, Christian, and ethnic denominations make, as they carve into the thinning wall of cultural and religious tolerance of this great nation in all possible forms. It is blindingly lit in the dishonesty of the politicians and policy makers that the people refer to as their representatives. It is soaked in the tears and heart-wrenching stories of families that are forced to live as refugees within the four boundaries of their country, in the empty stomachs of women, children and men who have no guarantee of a meal even once a week.

It resonates in the cries of parents who lose their young ones to malnutrition and starvation. It is proven in the crimes committed by those who are by law mandated to prevent crime and who enjoy impunity from prosecution. It emanates from the dust that rises with the destruction of those lands and communities that

have started perishing after being ravaged by corporate greed. It is printed in the words of injustice, termed as judgements, delivered by institutions of injustice. It is experienced in the hereditary claims made and won by political princes and princesses who have helped erode democracy into a marketplace.

Every Indian should ask themselves: is this what we deserve? If not, then what is the meaning of independence and of sovereign existence?

While it is clearly the duty of the state to provide answers, such answers will only be forthcoming if there are questions. This will require an awakening of the country and of its spirit. It will demand more courage and passion than that was displayed to drive the colonisers away, since what has colonised New Delhi for the past 65 years are modern day prophets of exploitation that wear cheap robes of nationalism and patriotism.