Human Rights Education

Theory and Applications

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Introduction

Human Rights : Concept and Meaning

Human rights refer to the "basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education. "All human beings are born free and equal in dignity and rights.

They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."—United Nations Universal Declaration of Human Rights (UDHR). The earliest sign of human rights has been found on the Cyrus Cylinder written during the reign of Cyrus the Great of Persia/ Iran. The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout recorded history.

Several ancient documents and later religions and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Edicts of Ashoka issued by Ashoka the Great of India between 272-231 BC; and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known

as Medina), including Muslims, Jews and Pagans. The English Magna Carta of 1215 is particularly significant in the history of English law, and is hence significant in international law and constitutional law today.

Much of modern human rights law and the basis of most modern interpretations of human rights can be traced back to relatively recent history. The Twelve Articles of the Black Forest (1525) are considered to be the first record of human rights in Europe. They were part of the peasants' demands raised towards the Swabian League in the Peasants' War in Germany. The British Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") of 1689 made illegal a range of oppressive governmental actions in the United Kingdom. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded a number of fundamental rights and freedoms into law.

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G. W. F. Hegel during the 18th and 19th centuries. The term *human rights* probably came into use sometime between Paine's *The Rights of Man* and William Lloyd Garrison's 1831 writings in *The Liberator* saying he was trying to enlist his readers in "the great cause of human rights."

Many groups and movements have managed to achieve profound social changes over the course of the 20th century in the name of human rights. In Western Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labour. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Quaid-Azam's movement to free his native

India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the civil rights movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

The World Wars, and the huge losses of life and gross abuses of human rights that took place during them were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined in its Charter was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role. This body was to be the United Nations. The United Nations has played an important role in international human rights law since its creation. Following the World Wars the United Nations and its members developed much of the discourse and the bodies of law which now make up international humanitarian law and international human rights law.

Concepts in Human Rights

Indivisibility and Categorization: The most common categorization of human rights is to split them into civil and political rights, and economic, social and cultural rights.

Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights

(ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Indivisibility

The UDHR included both economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination: "The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights"—International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, 1966.

This is held to be true because without civil and political rights the public cannot assert their economic, social and cultural rights. Similarly, without livelihoods and a working society, the public cannot assert or make use of civil or political rights (known as the *full belly thesis*).

The indivisibility and interdependence of all human rights has been confirmed by the 1993 Vienna Declaration and Programme of Action: "All human rights are universal, indivisible and interdependent and related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis" —Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993.

This statement was again endorsed at the 2005 World Summit in New York (paragraph 121).

Although accepted by the signatories to the UDHR, most do not in practice give equal weight to the different types of rights. Some Western cultures have often given priority to civil and political rights, sometimes at the expense of economic and social rights such as the right to work, to education, health and housing.

For example, in the United States there is no universal access to healthcare free at the point of use. That is not to say that Western cultures have overlooked these rights entirely (the welfare states that exist in Western Europe are evidence of this). Similarly the ex Soviet bloc countries and Asian countries have tended to give priority to economic, social and cultural rights, but have often failed to provide civil and political rights.

Categorization

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:

- *positive*, meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)
- *resource-intensive*, meaning that they are expensive and difficult to provide
- *progressive*, meaning that they will take significant time to implement
- *vague*, meaning they cannot be quantitatively measured, and whether they are adequately provided or not is difficult to judge
- *ideologically divisive/political*, meaning that there is no consensus on what should and shouldn't be provided as a right
- *socialist*, as opposed to capitalist
- *non-justiciable*, meaning that their provision, or the breach of them, cannot be judged in a court of law
- *aspirations or goals*, as opposed to real 'legal' rights

Similarly civil and political rights are categorized as:

- *negative*, meaning the state can protect them simply by taking no action
- *cost-free*

- *immediate*, meaning they can be immediately provided if the state decides to
- *precise*, meaning their provision is easy to judge and measure
- *non-ideological/non-political*
- *capitalist*
- *justiciable*
- *real 'legal' rights*

In *The No-Nonsense Guide to Human Rights* Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights it is easy to find examples which do not fit into the above categorisation. Amongst several others, they highlight the fact that maintaining a judicial system, a fundamental requirement of the civil right to due process before the law and other rights relating to judicial process, is positive, resource-intensive, progressive and vague, while the social right to housing is precise, justiciable and can be a real 'legal' right.

Another categorization, offered by Karel Vasak, is that there are *three generations of human rights*: first-generation civil and political rights (right to life and political participation), second-generation economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition.

This categorisation is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritisation of rights for pragmatic reasons is however a widely accepted necessity. Human rights expert Philip Alston argues: "If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important." —Philip Alston.

He, and others, urge caution with prioritisation of rights: "...the call for prioritizing is not to suggest that any obvious violations of rights can be ignored." —Philip Alston.

"Priorities, where necessary, should adhere to core concepts (such as reasonable attempts at progressive realization) and principles (such as non-discrimination, equality and participation." —Olivia Ball, Paul Gready.

Some human rights are said to be "inalienable rights." The term inalienable rights (or unalienable rights) refers to "a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered."

Universalism vs. Cultural Relativism

The UDHR enshrines universal rights that apply to all humans equally, whichever geographical location, state, race or culture they belong to.

Proponents of cultural relativism argue for acceptance of different cultures, which may have practices conflicting with human rights.

For example female genital mutilation occurs in different cultures in Africa, Asia and South America. It is not mandated by any religion, but has become a tradition in many cultures. It is considered a violation of women's and girl's rights by much of the international community, and is outlawed in some countries. Universalism has been described by some as cultural, economic or political imperialism. In particular, the concept of human rights is often claimed to be fundamentally rooted in a politically liberal outlook which, although generally accepted in Europe, Japan or North America, is not necessarily taken as standard elsewhere.

For example, in 1981, the Iranian representative to the United Nations, Said Rajaie-Khorassani, articulated the position of his country regarding the Universal Declaration of Human Rights by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law. The former Prime Ministers of Singapore, Lee Kuan Yew, and of Malaysia, Mahathir bin Mohamad both claimed in the 1990s that *Asian values* were significantly different from western values and included a sense of loyalty and foregoing personal

freedoms for the sake of social stability and prosperity, and therefore authoritarian government is more appropriate in Asia than democracy. This view is countered by Mahathir's former deputy: "To say that freedom is Western or Unasian is to offend our traditions as well as our forefathers, who gave their lives in the struggle against tyranny and injustices." — A Ibrabim in his keynote speech to the Asian Press Forum title *Media and Society in Asia*, 2 December 1994 and also by Singapore's opposition leader Chee Soon Juan who states that it is racist to assert that Asians do not want human rights.

An appeal is often made to the fact that influential human rights thinkers, such as John Locke and John Stuart Mill, have all been Western and indeed that some were involved in the running of Empires themselves.

Cultural relativism is a self-detonating position; if cultural relativism is true, then universalism must also be true. Relativistic arguments also tend to neglect the fact that modern human rights are new to all cultures, dating back no further than the UDHR in 1948. They also don't account for the fact that the UDHR was drafted by people from many different cultures and traditions, including a US Roman Catholic, a Chinese Confucian philosopher, a French zionist and a representative from the Arab League, amongst others, and drew upon advice from thinkers such as Mahatma Gandhi.

Michael Ignatieff has argued that cultural relativism is almost exclusively an argument used by those who wield power in cultures which commit human rights abuses, and that those who's human rights are compromised are the powerless. This reflects the fact that the difficulty in judging universalism versus relativism lies in who is claiming to represent a particular culture. Although the argument between universalism and relativism is far from complete, it is an academic discussion in that all international human rights instruments adhere to the principle that human rights are universally applicable. The 2005 World Summit reaffirmed the international community's adherence to this principle: "The universal nature of human rights and freedoms is beyond question." —2005 World Summit, paragraph 120.

State and Non-state Actors

Companies, NGOs, political parties, informal groups, and individuals are known as *non-State actors*. Non-State actors can also commit human rights abuses, but are not generally subject to human rights law other than under International Humanitarian Law, which applies to individuals. Also, certain national instruments such as the Human Rights Act 1998 (UK), impose human rights obligations on certain entities which are not traditionally considered as part of government ("public authorities").

Multinational companies play an increasingly large role in the world, and are responsible for a large number of human rights abuses. Although the legal and moral environment surrounding the actions of governments is reasonably well developed, that surrounding multinational companies is both controversial and ill-defined. Multinational companies' primary responsibility is to their shareholders, not to those affected by their actions. Such companies may be larger than the economies of some the states within which they operate, and can wield significant economic and political power. No international treaties exist to specifically cover the behavior of companies with regard to human rights, and national legislation is very variable. Jean Ziegler, Special Rapporteur of the UN Commission on Human Rights on the right to food stated in a report in 2003: "the growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power."—Jean Ziegler.

In August 2003 the Human Rights Commission's Sub-Commission on the Promotion and Protection of Human Rights produced draft *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*. These were considered by the Human Rights Commission in 2004, but have no binding status on corporations and are not monitored.

Theory of Value and Property

Henry of Ghent articulated the theory that every person has a property interest in their own body. John Locke uses the word property in both broad and narrow senses. In a broad sense, it covers a wide range of human interests and aspirations; more narrowly, it refers to material goods. He argues that property is a natural right and it is derived from labour." In addition, property precedes government and government cannot "dispose of the estates of the subjects arbitrarily." To deny valid property rights according to Locke is to deny human rights. The British philosopher had significant impacts upon the development of the Government of the UK and was central to the fundamental founding philosophy of the United States.

Karl Marx later critiqued Locke's theory of property in his *Theories of Surplus Value*, seeing the beginnings of a theory of surplus value in Locke's works. In Locke's *Second Treatise* he argued that the right to own private property was unlimited as long as nobody took more than they could use without allowing any of their property to go to waste and that there were enough common resources of comparable quality available for others to create their own property. Locke did believe that some would be more "industrious and rational" than others and would amass more property, but believed this would not cause shortages. Though this system could work before the introduction of money, Marx argued in *Theories of Surplus Value* that Locke's system would break down and claimed money was a contradiction of the law of nature on which private property was founded.

Reproductive Rights

Reproductive rights are rights relating to reproduction and reproductive health. The World Health Organisation defines reproductive rights as follows: "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make

decisions concerning reproduction free of discrimination, coercion and violence." —World Health Organisation.

Reproductive rights were first established as a subset of human rights at the United Nation's 1968 International Conference on Human Rights. The sixteenth article of the resulting Proclamation of Teheran states, "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children."

Reproductive rights may include some or all of the following rights: the right to legal or safe abortion, the right to control one's reproductive functions, the right to quality reproductive healthcare, and the right to education and access in order to make reproductive choices free from coercion, discrimination, and violence.

Reproductive rights may also be understood to include education about contraception and sexually transmitted infections, and freedom from coerced sterilization and contraception, protection from gender-based practices such as female genital cutting (FGC) and male genital mutilation (MGM).

Theories : Natural, Legal, Social Welfare, Idealist and Historical

Several theoretical approaches have been advanced to explain how and why human rights become part of social expectations. One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds.

Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (associated with Hume).

Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls)-a social contract.

Legal Issues

Human Rights vs. National Security: With the exception of non-derogable human rights (international conventions class the right to life, the right to be free from slavery, the right to be free from torture and the right to be free from retroactive application of penal laws as non-derogable), the UN recognises that human rights can be limited or even pushed aside during times of national emergency-although "the emergency must be actual, affect the whole population and the threat must be to the very existence of the nation. The declaration of emergency must also be a last resort and a temporary measure" —United Nations. *The Resource*

Rights that cannot be derogated for reasons of national security in any circumstances are known as peremptory norms or *jus cogens*. Such United Nations Charter obligations are binding on all states and cannot be modified by treaty.

Examples of national security being used to justify human rights violations include the Japanese American internment during World War II, Stalin's Great Purge, and the actual and alleged modern-day abuses of terror suspects rights by some western countries, often in the name of the War on Terror.

Natural Rights

Natural law theories base human rights on a "natural" moral, religious or even biological order that is independent of transitory human laws or traditions.

Socrates and his philosophic heirs, Plato and Aristotle, posited the existence of natural justice or natural right (*dikaion physikon*, Latin *ius naturale*). Of these, Aristotle is often said to be the father of natural law, although evidence for this is due largely to the interpretations of his work by Thomas Aquinas.

The development of this tradition of natural justice into one of natural law is usually attributed to the Stoics.

Some of the early Church Fathers sought to incorporate the until then pagan concept of natural law into Christianity.

Natural law theories have featured greatly in the philosophies of Thomas Aquinas, Francisco Suarez, Richard Hooker, Thomas Hobbes, Hugo Grotius, Samuel von Pufendorf, and John Locke.

In the Seventeenth century Thomas Hobbes founded a contractualist theory of legal positivism on what all men could agree upon: what they sought (happiness) was subject to contention, but a broad consensus could form around what they feared (violent death at the hands of another). The natural law was how a rational human being, seeking to survive and prosper, would act. It was discovered by considering humankind's natural rights, whereas previously it could be said that natural rights were discovered by considering the natural law. In Hobbes' opinion, the only way natural law could prevail was for men to submit to the commands of the sovereign. In this lay the foundations of the theory of a social contract between the governed and the governor.

Hugo Grotius based his philosophy of international law on natural law. He wrote that "even the will of an omnipotent being cannot change or abrogate" natural law, which "would maintain its objective validity even if we should assume the impossible, that there is no God or that he does not care for human affairs." (*De iure belli ac pacis*, Prolegomeni XI). This is the famous argument *etiamsi daremus* (*non esse Deum*), that made natural law no longer dependent on theology.

John Locke incorporated natural law into many of his theories and philosophy, especially in *Two Treatises of Government*. Locke turned Hobbes' prescription around, saying that if the ruler went against natural law and failed to protect "life, liberty, and property," people could justifiably overthrow the existing state and create a new one. The Belgian philosopher of law Frank Van Dun is one among those who are elaborating a secular conception of natural law in the liberal tradition. There are also emerging and secular forms of natural law theory that define human rights as derivative of the notion of universal human dignity. The term "human rights" has replaced the term "natural rights" in popularity, because the rights are less and less frequently seen as requiring natural law for their existence.

Social Contract

The Swiss-French philosopher Jean-Jacques Rousseau suggested the existence of a hypothetical *social contract* where a group of free individuals agree for the sake of the common good to form institutions to govern themselves. This echoed the earlier postulation by Thomas Hobbes that there is a contract between the government and the governed-and led to John Locke's theory that a failure of the government to secure rights is a failure which justifies the removal of the government.

International equity expert Paul Finn has echoed this view:

> *"the most fundamental fiduciary relationship in our society is manifestly that which exists between the community (the people) and the state, its agencies and officials." —Paul Finn*

The relationship between government and the governed in countries which follow the English law tradition is a fiduciary one. In equity law, a politician's fiduciary obligations are not only the duties of good faith and loyalty, but also include duties of skill and competence in managing a country and its people. Originating from within the Courts of Equity, the fiduciary concept exists to prevent those holding positions of power from abusing their authority. The fiduciary relationship between government and the governed arises from the governments ability to control people with the exercise of its power. In effect, if a government has the power to abolish any rights, it is equally burdened with the fiduciary duty to protect such an interest because it would benefit from the exercise of its own discretion to extinguish rights which it alone had the power to dispose of.

Reciprocity

The Golden Rule, or the *ethic of reciprocity* states that one must do unto others as one would be treated themselves; the principle being that reciprocal recognition and respect of rights ensures that one's own rights will be protected. This principle can be found in all the world's major religions in only slightly differing forms, and was enshrined in the "Declaration Toward

a Global Ethic" by the Parliament of the World's Religions in 1993.

Other Theories of Human Rights

The philosopher John Finnis argues that human rights are justifiable on the grounds of their instrumental value in creating the necessary conditions for human well-being. Interest theories highlight the duty to respect the rights of other individuals on grounds of self-interest:

> *"Human rights law, applied to a State's own citizens serves the interest of states, by, for example, minimizing the risk of violent resistance and protest and by keeping the level of dissatisfaction with the government manageable" —Niraj Nathwani in Rethinking refugee law.*

The biological theory considers the comparative reproductive advantage of human social behavior based on empathy and altruism in the context of natural selection.

Human security is an emerging school of thought which challenges the traditional, state-based conception of security and argues that a people-focused approach to security is more appropriate in the modern interdependent world and would be more effective in advancing the security of individuals and societies across the globe.

Philosopher Friedrich Nietzsche has argued to the effect that those who speak most vehemently about their rights, doubt at the bottom of their soul if they truly have any.

Critiques of Human Rights

Philosophers who have criticized the concept of human rights include Jeremy Bentham, Edmund Burke, and Karl Marx. A recent critique has been advanced by Charles Blattberg in his essay "The Ironic Tragedy of Human Rights." Blattberg argues that rights talk, being abstract, demotivates people from upholding the values that rights are meant to assert.

2

Human Rights : International Mechanism

International Councils and Commission on Human Rights—International Court of Justice

The International Court of Justice (French: *Cour internationale de justice*; commonly referred to as the World Court or ICJ) is the primary judicial organ of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states and to give advisory opinions on legal questions submitted to it by duly authorized international organs, agencies, and the UN General Assembly. The ICJ should not be confused with the International Criminal Court, which also potentially has "global" jurisdiction.

Activities

Established in 1945 by the UN Charter, the Court began work in 1946 as the successor to the Permanent Court of International Justice. The Statute of the International Court of Justice, similar to that of its predecessor, is the main constitutional document constituting and regulating the Court. The Court's workload is characterised by a wide range of judicial activity.

The ICJ has dealt with relatively few cases in its history, but there has clearly been an increased willingness to use the Court since the 1980s, especially among developing countries.

The United States withdrew from compulsory jurisdiction in 1986, and so accepts the court's jurisdiction only on a case-to-case basis. Chapter XIV of the United Nations Charter authorizes the UN Security Council to enforce World Court rulings, but such enforcement is subject to the veto power of the five permanent members of the Council. Presently there are twelve cases on the World Court's docket.

Composition

The ICJ is composed of fifteen judges elected to nine year terms by the UN General Assembly and the UN Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration. The election process is set out in Articles 4–12 of the ICJ statute. Judges serve for nine year terms and may be re-elected for up to two further terms. Elections take place every three years, with one-third of the judges retiring (and possibly standing for re-election) each time, in order to ensure continuity within the court.

Should a judge die in office, the practice has generally been to elect a judge of the same nationality to complete the term. No two may be nationals of the same country. According to Article 9, the membership of the Court is supposed to represent the "main forms of civilization and of the principal legal systems of the world". Essentially, this has meant common law, civil law and socialist law (now post-communist law). Since the 1960s four of the five permanent members of the Security Council (France, Russia, the United Kingdom, and the United States) have always had a judge on the Court. The exception was China (the Republic of China until 1971, the People's Republic of China from 1971 onwards), which did not have a judge on the Court from 1967–1985, because it did not put forward a candidate. The rule on a geopolitical composition of the bench exists despite the fact that there is no provision for it in the Statute of the ICJ.

Article 2 of the Statute provides that all judges should be "elected regardless of their nationality among persons of high moral character", who are either qualified for the highest judicial office in their home states or known as lawyers with sufficient

competence in international law. Judicial independence is dealt specifically with in Articles 16-18. Judges of the ICJ are not able to hold any other post, nor act as counsel. In practice the Members of the Court have their own interpretation of these rules. This allows them to be involved in outside arbitration and hold professional posts as long as there is no conflict of interest. A judge can be dismissed only by a unanimous vote of other members of the Court. Despite these provisions, the independence of ICJ judges has been questioned. For example, during the *Nicaragua Case*, the USA issued a communique suggesting that it could not present sensitive material to the Court because of the presence of judges from Eastern bloc states. Judges may deliver joint judgments or give their own separate opinions. Decisions and Advisory Opinions are by majority and, in the event of an equal division, the President's vote becomes decisive. Judges may also deliver separate dissenting opinions.

Ad hoc Judges

Article 31 of the statute sets out a procedure whereby *ad hoc* judges sit on contentious cases before the Court. This system allows any party to a contentious case to nominate a judge of their choice (usually of their nationality), if a judge of their nationality is not already on the bench. *Ad hoc* judges participate fully in the case and the deliberations, along with the permanent bench. Thus, it is possible that as many as seventeen judges may sit on one case.

This system may seem strange when compared with domestic court processes, but its purpose is to encourage states to submit cases to the Court. For example, if a state knows it will have a judicial officer who can participate in deliberation and offer other judges local knowledge and an understanding of the state's perspective, that state may be more willing to submit to the Court's jurisdiction. Although this system does not sit well with the judicial nature of the body, it is usually of little practical consequence. *Ad hoc* judges usually (but not always) vote in favour of the state that appointed them and thus cancel each other out.

Chambers

Generally, the Court sits as full bench, but in the last fifteen years it has on occasion sat as a chamber. Articles 26-29 of the statute allow the Court to form smaller chambers, usually 3 or 5 judges, to hear cases.

Two types of chambers are contemplated by Article 26: firstly, chambers for special categories of cases, and second, the formation of *ad hoc* chambers to hear particular disputes. In 1993 a special chamber was established, under Article 26(1) of the ICJ statute, to deal specifically with environmental matters (although this chamber has never been used).

Ad hoc chambers are more frequently convened. For example, chambers were used to hear the *Gulf of Maine Case* (USA v Canada). In that case, the parties made clear they would withdraw the case unless the Court appointed judges to the chamber who were acceptable to the parties. Judgments of chambers may have less authority than full Court judgments, or may diminish the proper interpretation of universal international law informed by a variety of cultural and legal perspectives. On the other hand, the use of chambers might encourage greater recourse to the Court and thus enhance international dispute resolution.

Current Composition

As of 6 February 2009, the composition of the Court is as follows:

Name	Country	Position	Elected	Term End
Hisashi Owada	Japan	President	2003	2012
Peter Tomka	Slovakia	Vice-President	2003	2012
Shi Jiuyong	China	Member	1994, 2003	2012
Abdul G. Koroma	Sierra Leone	Member	1994, 2003	2012
Awn Shawkat Al-Khasawneh	Jordan	Member	2000, 2009	2018
Thomas Buergenthal	United States	Member	2000, 2006	2015
Bruno Simma	Germany	Member	2003	2012
Ronny Abraham	France	Member	2005, 2009	2018
Sir Kenneth Keith	New Zealand	Member	2006	2015
Bernardo Sepúlveda Amor	Mexico	Member	2006	2015
Mohamed Bennouna	Morocco	Member	2006	2015
Leonid Skotnikov	Russia	Member	2006	2015
Antônio Augusto Cançado Trindade	Brazil	Member	2009	2018
Abdulqawi Yusuf	Somalia	Member	2009	2018
Christopher John Greenwood	United Kingdom	Member	2009	2018

Results of the last election of 6 November 2008:

- Re-elected were France's Ronny Abraham and Awn Shawkat Al-Khasawneh (terms expire on 5 February 2009), while UK's Christopher Greenwood, Brazil's Antonio Augusto Cancado Trindade and Somalia's Abdulqawi Yusuf (terms begin on 6 February 2009) were newly elected.
- The declared candidates Sayeman Bula-Bula (Democratic Republic of the Congo), Miriam Defensor-Santiago (Philippines) and Maurice Kamto (Cameroon) lost in the final voting. The 3 new judges replaced UK's Rosalyn Higgins (as ICJ President), Gonzalo Parra Aranguren of Venezuela and Madagascar's Raymond Ranjeva (terms all expire on 5 February 2009).

Jurisdiction

As stated in Article 93 of the UN Charter, all 192 UN members are automatically parties to the Court's statute. Non-UN members may also become parties to the Court's statute under the Article 93(2) procedure. For example, before becoming a UN member state, Switzerland used this procedure in 1948 to become a party. And Nauru became a party in 1988. Once a state is a party to the Court's statute, it is entitled to participate in cases before the Court. However, being a party to the statute does not automatically give the Court jurisdiction over disputes involving those parties. The issue of jurisdiction is considered in the two types of ICJ cases: contentious issues and advisory opinions.

Contentious Issues

In contentious cases (adversarial proceedings seeking to settle a dispute), the ICJ produces a binding ruling between states that agree to submit to the ruling of the court. Only states may be parties in contentious cases. Individuals, corporations, parts of a federal state, NGOs, UN organs and self-determination groups are excluded from direct participation in cases, although the Court may receive information from public international organisations. This does not preclude non-

state interests from being the subject of proceedings if one state brings the case against another. For example, a state may, in case of "diplomatic protection", bring a case on behalf of one of its nationals or corporations.

Jurisdiction is often a crucial question for the Court in contentious cases. (See Procedure below.) The key principle is that the ICJ has jurisdiction only on the basis of consent. Article 36 outlines four bases on which the Court's jurisdiction may be founded.

- First, 36(1) provides that parties may refer cases to the Court (jurisdiction founded on "special agreement" or "*compromis*"). This method is based on explicit consent rather than true compulsory jurisdiction. It is, perhaps, the most effective basis for the Court's jurisdiction because the parties concerned have a desire for the dispute to be resolved by the Court and are thus more likely to comply with the Court's judgment.
- Second, 36(1) also gives the Court jurisdiction over "matters specifically provided for ... in treaties and conventions in force". Most modern treaties will contain a compromissory clause, providing for dispute resolution by the ICJ. Cases founded on compromissory clauses have not been as effective as cases founded on special agreement, since a state may have no interest in having the matter examined by the Court and may refuse to comply with a judgment. For example, during the Iran hostage crisis, Iran refused to participate in a case brought by the US based on a compromissory clause contained in the Vienna Convention on Diplomatic Relations, nor did it comply with the judgment. Since the 1970s, the use of such clauses has declined. Many modern treaties set out their own dispute resolution regime, often based on forms of arbitration.
- Third, Article 36(2) allows states to make optional clause declarations accepting the Court's jurisdiction. The label "compulsory" which is sometimes placed on Article 36(2) jurisdiction is misleading since declarations by states are voluntary. Furthermore, many declarations contain

reservations, such as exclusion from jurisdiction certain types of disputes ("*ratione materia*"). The principle of reciprocity may further limit jurisdiction. As of October 2006, sixty-seven states had a declaration in force. Of the permanent Security Council members, only the United Kingdom has a declaration. In the Court's early years, most declarations were made by industrialised countries. Since the *Nicaragua Case*, declarations made by developing countries have increased, reflecting a growing confidence in the Court since the 1980s. Industrialised countries however have sometimes increased exclusions or removed their declarations in recent years. Examples include the USA, as mentioned previously and Australia who modified their declaration in 2002 to exclude disputes on maritime boundaries (most likely to prevent an impending challenge from East Timor who gained their independence two months later).

- Finally, 36(5) provides for jurisdiction on the basis of declarations made under the Permanent Court of International Justice's statute. Article 37 of the Statute similarly transfers jurisdiction under any compromissory clause in a treaty that gave jurisdiction to the PCIJ.
- In addition, the Court may have jurisdiction on the basis of tacit consent (*forum prorogatum*). In the absence of clear jurisdiction under Article 36, jurisdiction will be established if the respondent accepts ICJ jurisdiction explicitly or simply pleads on the merits. The notion arose in the *Corfu Channel Case* (UK v Albania) (1949) in which the Court held that a letter from Albania stating that it submitted to the jurisdiction of the ICJ was sufficient to grant the court jurisdiction.

Advisory Opinion

An advisory opinion is a function of the Court open only to specified United Nations bodies and agencies. On receiving a request, the Court decides which States and organizations

might provide useful information and gives them an opportunity to present written or oral statements. Advisory Opinions were intended as a means by which UN agencies could seek the Court's help in deciding complex legal issues that might fall under their respective mandates. In principle, the Court's advisory opinions are only consultative in character, though they are influential and widely respected. Whilst certain instruments or regulations can provide in advance that the advisory opinion shall be specifically binding on particular agencies or states, they are inherently non-binding under the Statute of the Court.

This non-binding character does not mean that advisory opinions are without legal effect, because the legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and, in arriving at them, the Court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states. An advisory opinion derives its status and authority from the fact that it is the official pronouncement of the principal judicial organ of the United Nations.

Advisory Opinions have often been controversial, either because the questions asked are controversial, or because the case was pursued as an indirect "backdoor" way of bringing what is really a contentious case before the Court. Examples of advisory opinions can be found in the section advisory opinions in the List of International Court of Justice cases article. One such well-known advisory opinion is the *Nuclear Weapons Case*.

The ICJ and the Security Council

Article 94 establishes the duty of all UN members to comply with decisions of the Court involving them. If parties do not comply, the issue may be taken before the Security Council for enforcement action. There are obvious problems with such a method of enforcement. If the judgment is against one of the permanent five members of the Security Council or its allies, any resolution on enforcement would then be vetoed. This occurred, for example, after the *Nicaragua* case, when Nicaragua

brought the issue of the U.S.'s non-compliance with the Court's decision before the Security Council. Furthermore, if the Security Council refuses to enforce a judgment against any other state, there is no method of forcing the state to comply.

The relationship between the ICJ and the Security Council, and the separation of their powers, was considered by the Court in 1992 in the *Pan Am* case. The Court had to consider an application from Libya for the order of provisional measures to protect its rights, which, it alleged, were being infringed by the threat of economic sanctions by the United Kingdom and United States. The problem was that these sanctions had been authorised by the Security Council, which resulted with a potential conflict between the Chapter VII functions of the Security Council and the judicial function of the Court.

The Court decided, by eleven votes to five, that it could not order the requested provisional measures because the rights claimed by Libya, even if legitimate under the Montreal Convention, prima facie could not be regarded as appropriate since the action was ordered by the Security Council. In accordance with Article 103 of the UN Charter, obligations under the Charter took precedence over other treaty obligations. Nevertheless the Court declared the application admissible in 1998. A decision on the merits has not been given since the parties (United Kingdom, United States and Libya) settled the case out of court in 2003.

There was a marked reluctance on the part of a majority of the Court to become involved in a dispute in such a way as to bring it potentially into conflict with the Council. The Court stated in the *Nicaragua* case that there is no necessary inconsistency between action by the Security Council and adjudication by the ICJ. However, where there is room for conflict, the balance appears to be in favour of the Security Council.

Should either party fail "to perform the obligations incumbent upon it under a judgment rendered by the Court", the Security Council may be called upon to "make recommendations or decide upon measures" if the Security

Council deems such actions necessary. In practice, the Court's powers have been limited by the unwillingness of the losing party to abide by the Court's ruling, and by the Security Council's unwillingness to impose consequences. However, in theory, "so far as the parties to the case are concerned, a judgment of the Court is binding, final and without appeal," and "by signing the Charter, a State Member of the United Nations undertakes to comply with any decision of the International Court of Justice in a case to which it is a party."

For example, the United States had previously accepted the Court's compulsory jurisdiction upon its creation in 1946, but in *Nicaragua v. United States* withdrew its acceptance following the Court's judgment in 1984 that called on the U.S. to "cease and to refrain" from the "unlawful use of force" against the government of Nicaragua. The Court ruled (with only the American judge dissenting) that the United States was "in breach of its obligation under the Treaty of Friendship with Nicaragua not to use force against Nicaragua" and ordered the United States to pay war reparations (see note 2).

Examples of contentious cases include:

- A complaint by the United States in 1980 that Iran was detaining American diplomats in Tehran in violation of international law.
- A dispute between Tunisia and Libya over the delimitation of the continental shelf between them.
- A dispute over the course of the maritime boundary dividing the U.S. and Canada in the Gulf of Maine area.
- A complaint by the Federal Republic of Yugoslavia against the member states of the North Atlantic Treaty Organisation regarding their actions in the Kosovo War. This was denied on 15 December 2004 due to lack of jurisdiction, because the FRY was not a party to the ICJ statute at the time it made the application.

Generally, the Court has been most successful resolving border delineation and the use of oceans and waterways. While the Court has, in some instances, resolved claims by one State

espoused on behalf of its nationals, the Court has generally refrained from hearing contentious cases that are political in nature, due in part to its lack of enforcement mechanism and its lack of compulsory jurisdiction. The Court has generally found it did not have jurisdiction to hear cases involving the use of force.

Law Applied

When deciding cases, the Court applies international law as summarised in Article 38. Article 38 of the ICJ Statute provides that in arriving at its decisions the Court shall apply international conventions, international custom, and the "general principles of law recognized by civilized nations". It may also refer to academic writing ("the teachings of the most highly qualified publicists of the various nations") and previous judicial decisions to help interpret the law, although the Court is not formally bound by its previous decisions under the doctrine of stare decisis. Article 59 makes clear that the common law notion of precedent or *stare decisis* does not apply to the decisions of the ICJ. The Court's decision binds only the parties to that particular controversy. Under 38(1)(d), however, the Court may consider its own previous decisions. In reality, the ICJ rarely departs from its own previous decisions and treats them as precedent in a way similar to superior courts in common law systems. Additionally, international lawyers commonly operate as though ICJ judgments had precedential value.

If the parties agree, they may also grant the Court the liberty to decide *ex aequo et bono* ("in justice and fairness"), granting the ICJ the freedom to make an equitable decision based on what is fair under the circumstances. This provision has not been used in the Court's history. So far the International Court of Justice has dealt with about 130 cases.

International Criminal Tribunals and Criminal Courts

The United Nations established special international criminal tribunals in Rwanda and Yugoslavia to prosecute those responsible for atrocities during times of war and genocide.

Successful convictions of these political and military leaders are meant to bring justice to victims and to deter others from committing such crimes in the future.

These special tribunals gave impetus to the formation of the International Criminal Court (ICC), finally established in 2003. Unlike the ICC, the special tribunals have limited jurisdictions and do not threaten the possible prosecution of leaders or nationals of powerful countries like the United States.

This section follows important cases in the Yugoslavia and Rwanda tribunals, as well as developments at the Special Courts in Sierra Leone, Lebanon, Cambodia and East Timor. In addition, the page covers discussions about the trials of Saddam Hussein and other top Baath Party officials, as well as the implications for international justice and criminal law.

International Criminal Court

The **International Criminal Court** (**ICC** or **ICCt**) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression (although it cannot currently exercise jurisdiction over the crime of aggression).

The court came into being on 1 July 2002 — the date its founding treaty, the Rome Statute of the International Criminal Court, entered into force—and it can only prosecute crimes committed on or after that date. The official seat of the court is in The Hague, Netherlands, but its proceedings may take place anywhere.

As of March 2009, 108 states are members of the Court; A further 40 countries have signed but not ratified the Rome Statute. However, a number of states, including China, Russia, India and the United States, are critical of the court and have not joined.

The ICC can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the court by the United Nations Security Council. The court is designed to complement existing national judicial

systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

To date, the court has opened investigations into four situations: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic and Darfur. The court has issued public arrest warrants for thirteen people; seven of them remain free, two have died, and four are in custody. The ICC's first trial, of Congolese militia leader Thomas Lubanga, began on 26 January 2009.

History

In 1948, following the Nuremberg and Tokyo Tribunals, the United Nations General Assembly recognised the need for a permanent international court to deal with atrocities of the kind committed during World War II. At the request of the General Assembly, the International Law Commission drafted two draft statutes by the early 1950s but these were shelved as the Cold War made the establishment of an international criminal court politically unrealistic.

Benjamin B. Ferencz, an investigator of Nazi war crimes after World War II and the Chief Prosecutor for the United States Army at the Einsatzgruppen Trial, one of the twelve military trials held by the U.S. authorities at Nuremberg, later became a vocal advocate of the establishment of an international rule of law and of an International Criminal Court. In his first book published in 1975, entitled *Defining International Aggression-The Search for World Peace*, he argued for the establishment of such an international court.

The idea was revived in 1989 when A. N. R. Robinson, then Prime Minister of Trinidad and Tobago, proposed the creation of a permanent international court to deal with the illegal drug trade. While work began on a draft statute, the international community established *ad hoc* tribunals to try war crimes in the former Yugoslavia and Rwanda, further highlighting the need for a permanent international criminal court.

Following years of negotiations, the General Assembly convened a conference in Rome in June 1998, with the aim of finalising a treaty. On 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. The seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, the United States, and Yemen.

The Rome Statute became a binding treaty on 11 April 2002, when the number of countries that had ratified it reached 60. The Statute legally came into force on 1 July 2002, and the ICC can only prosecute crimes committed after that date. The first bench of 18 judges was elected by an Assembly of States Parties in February 2003. They were sworn in at the inaugural session of the court on 1 March 2003. The court issued its first arrest warrants on 8 July 2005, and the first pre-trial hearings were held in 2006.

Membership

As of March 2009, 108 countries have joined the court, including nearly all of Europe and South America, and roughly half the countries in Africa. However, these countries only account for a minority of the world's population.

A further 40 states have signed but not ratified the Rome Statute; the law of treaties obliges these states to refrain from "acts which would defeat the object and purpose" of the treaty. In 2002, two of these states, the United States and Israel, "unsigned" the Rome Statute, indicating that they no longer intend to become states parties and, as such, they have no legal obligations arising from their signature of the statute.

Jurisdiction

Crimes within the Jurisdiction of the Court: Article 5 of the Rome Statute grants the court jurisdiction over four groups of crimes, which it refers to as the "most serious crimes of concern to the international community as a whole": the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The statute defines each of these crimes except for aggression: it provides that the court will not

exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.

Many states wanted to add terrorism and drug trafficking to the list of crimes covered by the Rome Statute; however, the states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might overwhelm the court's limited resources.

India lobbied to have the use of nuclear weapons and other weapons of mass destruction included as war crimes but this move was also defeated. India has expressed concern that "the Statute of the ICC lays down, by clear implication, that the use of weapons of mass destruction is not a war crime. This is an extraordinary message to send to the international community."

Some commentators have argued that the Rome Statute defines crimes too broadly or too vaguely. For example, China has argued that the definition of 'war crimes' goes beyond that accepted under customary international law.

A Review Conference is due to take place in the first half of 2010. Among other things, the conference will review the list of crimes contained in Article 5. The final resolution on adoption of the Rome Statute specifically recommended that terrorism and drug trafficking be reconsidered at this conference.

Territorial Jurisdiction

During the negotiations that led to the Rome Statute, a large number of states argued that the court should be allowed to exercise universal jurisdiction. However, this proposal was defeated due in large part to opposition from the United States. A compromise was reached, allowing the court to exercise jurisdiction only under the following limited circumstances:

- where the person accused of committing a crime is a national of a state party (or where the person's state has accepted the jurisdiction of the court);
- where the alleged crime was committed on the territory of a state party (or where the state on whose territory

the crime was committed has accepted the jurisdiction of the court); or

- where a situation is referred to the court by the UN Security Council.

Temporal Jurisdiction

The court's jurisdiction does not apply retroactively: it can only prosecute crimes committed on or after 1 July 2002 (the date on which the Rome Statute entered into force). Where a state becomes party to the Rome Statute after that date, the court can exercise jurisdiction automatically with respect to crimes committed after the statute enters into force for that state.

Complementarity

The ICC is intended as a court of last resort, investigating and prosecuting only where national courts have failed. Article 17 of the Statute provides that a case is inadmissible if:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

Article 20, paragraph 3, specifies that, if a person has already been tried by another court, the ICC cannot try them again for the same conduct unless the proceedings in the other court:

(a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or

(b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

Structure

The ICC is governed by an Assembly of States Parties. The court consists of four organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry.

Assembly of States Parties

The court's management oversight and legislative body, the Assembly of States Parties, consists of one representative from each state party. Each state party has one vote and "every effort" has to be made to reach decisions by consensus. If consensus cannot be reached, decisions are made by vote.

The Assembly meets in full session once a year in New York or The Hague, and may also hold special sessions where circumstances require. Sessions are open to observer states and non-governmental organisations.

The Assembly elects the judges and prosecutors, decides the court's budget, adopts important texts (such as the Rules of Procedure and Evidence), and provides management oversight to the other organs of the court. Article 46 of the Rome Statute allows the Assembly to remove from office a judge or prosecutor who "is found to have committed serious misconduct or a serious breach of his or her duties" or "is unable to exercise the functions required by this Statute".

The states parties cannot interfere with the judicial functions of the court. Disputes concerning individual cases are settled by the Judicial Divisions.

At the seventh session of the Assembly of States Parties in November 2008, the Assembly decided that the Review

Conference of the Rome Statute shall be held in Kampala, Uganda, during the first semester of 2010.

Presidency

The Presidency is responsible for the proper administration of the court (apart from the Office of the Prosecutor). It comprises the President and the First and Second Vice-Presidents — three judges of the court who are elected to the Presidency by their fellow judges for a maximum of two three-year terms. The current President is Sang-Hyun Song, who was elected on 11 March 2009.

Judicial Divisions

The Judicial Divisions consist of the 18 judges of the court, organized into three divisions — the Pre-Trial Division, Trial Division and Appeals Division — which carry out the judicial functions of the court. Judges are elected to the court by the Assembly of States Parties. They serve nine-year terms and are not generally eligible for re-election. All judges must be nationals of states parties to the Rome Statute, and no two judges may be nationals of the same state. They must be "persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices".

The Prosecutor or any person being investigated or prosecuted may request the disqualification of a judge from "any case in which his or her impartiality might reasonably be doubted on any ground". Any request for the disqualification of a judge from a particular case is decided by an absolute majority of the other judges. A judge may be removed from office if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. The removal of a judge requires both a two-thirds majority of the other judges and a two-thirds majority of the states parties.

Office of the Prosecutor

The Office of the Prosecutor is responsible for conducting

investigations and prosecutions. It is headed by the Prosecutor, who is assisted by two Deputy Prosecutors. The Rome Statute provides that the Office of the Prosecutor shall act independently; as such, no member of the Office may seek or act on instructions from any external source, such as states, international organisations, non-governmental organisations or individuals.

The Prosecutor may open an investigation under three circumstances:

- when a situation is referred to him by a state party;
- when a situation is referred to him by the United Nations Security Council, acting to address a threat to international peace and security; or
- when the Pre-Trial Chamber authorises him to open an investigation on the basis of information received from other sources, such as individuals or non-governmental organisations.

Any person being investigated or prosecuted may request the disqualification of a prosecutor from any case "in which their impartiality might reasonably be doubted on any ground". Requests for the disqualification of prosecutors are decided by the Appeals Division. A prosecutor may be removed from office by an absolute majority of the states parties if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. However, critics of the court argue that there are "insufficient checks and balances on the authority of the ICC prosecutor and judges" and "insufficient protection against politicized prosecutions or other abuses". Henry Kissinger says the checks and balances are so weak that the prosecutor "has virtually unlimited discretion in practice".

As of March 2009, the Prosecutor is Luis Moreno-Ocampo of Argentina, who was elected by the Assembly of States Parties on 21 April 2003 for a term of nine years.

Registry

The Registry is responsible for the non-judicial aspects of

the administration and servicing of the court. This includes, among other things, “the administration of legal aid matters, court management, victims and witnesses matters, defence counsel, detention unit, and the traditional services provided by administrations in international organisations, such as finance, translation, building management, procurement and personnel”. The Registry is headed by the Registrar, who is elected by the judges to a five-year term.. The current Registrar is Silvana Arbia, who was elected on 28 February 2009.

Rights of the Accused

The Rome Statute provides that all persons are presumed innocent until proven guilty beyond reasonable doubt, and establishes certain rights of the accused and persons during investigations. These include the right to be fully informed of the charges against him or her; the right to have a lawyer appointed, free of charge; the right to a speedy trial; and the right to examine the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf.

Some argue that the protections offered by the ICC are insufficient. According to one conservative think-tank, the Heritage Foundation, “Americans who appear before the court would be denied such basic constitutional rights as trial by a jury of one’s peers, protection from double jeopardy, and the right to confront one’s accusers.” The Human Rights Watch argues that the ICC standards are sufficient, saying, “the ICC has one of the most extensive lists of due process guarantees ever written”, including “presumption of innocence; right to counsel; right to present evidence and to confront witnesses; right to remain silent; right to be present at trial; right to have charges proved beyond a reasonable doubt; and protection against double jeopardy”. According to David Scheffer, who led the US delegation to the Rome Conference (and who voted against adoption of the treaty), “when we were negotiating the Rome treaty, we always kept very close tabs on, ‘Does this meet U.S. constitutional tests, the formation of this court and the due process rights that are accorded defendants?’ And we were

very confident at the end of Rome that those due process rights, in fact, are protected, and that this treaty does meet a constitutional test."

In order to ensure "equality of arms" between defence and prosecution teams, the ICC has established an independent Office of Public Counsel for the Defence (OPCD) to provide logistical support, advice and information to defendants and their counsel. The OPCD also helps to safeguard the rights of the accused during the initial stages of an investigation. However, Thomas Lubanga's defence team say they have been given a smaller budget than the Prosecutor and that evidence and witness statements have been slow to arrive.

Amnesty International

Amnesty International (commonly known as Amnesty or AI) is an international non-governmental organisation which defines its mission as "to conduct research and generate action to prevent and end grave abuses of human rights and to demand justice for those whose rights have been violated." Founded in London, England in 1961, AI draws its attention to human rights abuses and campaigns for compliance with international standards. It works to mobilise public opinion which exerts pressure on individuals who perpetrate abuses. The organisation was awarded the 1977 Nobel Peace Prize for its "campaign against torture" and the United Nations Prize in the Field of Human Rights in 1978, but has been the subject of criticism for both alleged anti-Western and alleged pro-Western bias.

In the field of international human rights organisations (of which there were 300 in 1996), Amnesty has the longest history and broadest name recognition, and "is believed by many to set standards for the movement as a whole."

History

1960s

Amnesty International was founded in London in July 1961 by English labour lawyer Peter Benenson. According to his own account, he was travelling in the London Underground

on 19 November 1960, when he read of two Portuguese students who had been sentenced to seven years of imprisonment for having drunk a toast to liberty. In his famous newspaper article *The Forgotten Prisoners*, Benenson later described his reaction as follows: *"Open your newspaper any day of the week and you will find a story from somewhere of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his government [...] The newspaper reader feels a sickening sense of impotence. Yet if these feelings of disgust could be united into common action, something effective could be done."*

Benenson worked with friend Eric Baker. Baker was a member of the Religious Society of Friends who had been involved in funding the Campaign for Nuclear Disarmament as well as becoming head of Quaker Peace and Social Witness, and in his memoirs Benenson described him as "a partner in the launching of the project". In consultation with other writers, academics and lawyers and, in particular, Alec Digges, they wrote via Louis Blom-Cooper to David Astor, editor of *The Observer* newspaper, who, on May 28, 1961, published Benenson's article *The Forgotten Prisoners*. The article brought the reader's attention to those "imprisoned, tortured or executed because his opinions or religion are unacceptable to his government" or, put another way, to violations, by governments, of articles 18 and 19 of the Universal Declaration of Human Rights(UDHR). The article described these violations occurring, on a global scale, in the context of restrictions to press freedom, to political oppositions, to timely public trial before impartial courts, and to asylum.

It marked the launch of "Appeal for Amnesty, 1961", the aim of which was to mobilise public opinion, quickly and widely, in defence of these individuals, who Benenson named "Prisoners of Conscience". The "Appeal for Amnesty" was reprinted by a large number of international newspapers. In the same year Benenson had a book published, *Persecution 1961*, which detailed the cases of several prisoners of conscience investigated and compiled by Benenson and Baker. In July 1961 the leadership had decided that the appeal would form the basis

of a permanent organisation, which on 30 September 1962 was officially named 'Amnesty International' (Between the 'Appeal for Amnesty, 1961' and September 1962 the organisation had been known simply as 'Amnesty'.)

What started as a short appeal soon became a permanent international movement working to protect those imprisoned for non-violent expression of their views and to secure worldwide recognition of Articles 18 and 19 of the UDHR. From the very beginning, research and campaigning were present in Amnesty International's work. A library was established for information about prisoners of conscience and a network of local groups, called 'THREES' groups, was started. Each group worked on behalf of three prisoners, one from each of the then three main ideological regions of the world: communist, capitalist and developing.

By the mid-1960s Amnesty International's global presence was growing and an International Secretariat and International Executive Committee was established to manage Amnesty International's national organisations, called 'Sections', which had appeared in several countries. The international movement was starting to agree on its core principles and techniques. For example, the issue of whether or not to adopt prisoners who had advocated violence, like Nelson Mandela, brought unanimous agreement that it could not give the name of 'Prisoner of Conscience' to such prisoners. Aside from the work of the library and groups, Amnesty International's activities were expanding to helping prisoner's families, sending observers to trials, making representations to governments, and finding asylum or overseas employment for prisoners. Its activity and influence was also increasing within intergovernmental organisations; it would be awarded consultative status by the United Nations, the Council of Europe and UNESCO before the decade ended.

1970s

Leading Amnesty International in the 1970s were key figureheads Sean MacBride and Martin Ennals. While continuing to work for prisoners of conscience, Amnesty

International's purview widened to include "fair trial" and opposition to long detention without trial (UDHR Article 9), and especially to the torture of prisoners (UDHR Article 5). Amnesty International believed that the reasons underlying torture of prisoners, by governments, were either to obtain information or to quell opposition by the use of terror, or both. Also of concern was the export of more sophisticated torture methods, equipment and teaching by the superpowers to "client states", for example by the United States through some activities of the CIA.

Amnesty International drew together reports from countries where torture allegations seemed most persistent and organised an international conference on torture. It sought to influence public opinion in order to put pressure on national governments by organising a campaign for the 'Abolition of Torture' which ran for several years.

Amnesty International's membership increased from 15,000 in 1969 to 200,000 by 1979. This growth in resources enabled an expansion of its program, 'outside of the prison walls', to include work on "disappearances", the death penalty and the rights of refugees. A new technique, the 'Urgent Action', aimed at mobilising the membership into action rapidly was pioneered. The first was issued on March 19, 1973, on behalf of Luiz Basilio Rossi, a Brazilian academic, arrested for political reasons.

At the intergovernmental level Amnesty International pressed for application of the UN's Standard Minimum Rules for the Treatment of Prisoners and of existing humanitarian conventions; to secure ratifications of the two UN Covenants on Human Rights (which came into force in 1976); and was instrumental in obtaining United Nations General Assembly resolution 3059 which formally denounced torture and called on governments to adhere to existing international instruments and provisions forbidding its practice. Consultative status was granted at the Inter-American Commission on Human Rights in 1972.

In 1976 AI started a series of fundraising events informally known as The Secret Policeman's Balls. Initially they were

staged in London primarily as comedy galas featuring popular British comedic performers such as members of Monty Python, later expanding to include leading musical performers. The series was created and developed by Monty Python alumnus John Cleese and entertainment industry executive Martin Lewis working closely with Amnesty staff members Peter Luff (Assistant Director of Amnesty 1976-1977) and subsequently with Peter Walker (Fund-Raising Officer from 1978). Cleese, Lewis and Luff worked together on the first two shows (1976 and 1977).

The organisation was awarded the 1977 Nobel Peace Prize for its "campaign against torture" and the United Nations Prize in the Field of Human Rights in 1978.

1980s

By 1980 Amnesty International was drawing more criticism from governments. The USSR alleged that Amnesty International conducted espionage, the Moroccan government denounced it as a defender of lawbreakers, and the Argentine government banned Amnesty International's 1983 annual report.

Throughout the 1980s, Amnesty International continued to campaign for prisoners of conscience and torture. New issues emerged, including extrajudicial killings, military, security and police transfers, political killings; and disappearances.

Towards the end of the decade, the growing numbers worldwide of refugees was a very visible area of Amnesty International's concern. While many of the world's refugees of the time had been displaced by war and famine, in adherence to its mandate, Amnesty International concentrated on those forced to flee, because of the human rights violations it was seeking to prevent. It argued that rather than focusing on new restrictions on entry for asylum-seekers, governments were to address the human rights violations which were forcing people into exile.

Apart from a second campaign on torture during the first half of the decade, the major AI event of the 1980s was the 1988

Human Rights Now! tour. Designed to increase awareness of Amnesty and of human rights on the 40th anniversary of the United Nations' Universal Declaration of Human Rights (UDHR), it featured some of the most famous musicians and bands of the day playing a series of concerts on five continents over six weeks.

1990s

Throughout the 1990s, Amnesty International continued to grow, to a membership of over 2.2 million in over 150 countries and territories, led by Senegalese Secretary General Pierre Sane. AI continued to work on a wide range of issues and world events. For example, South African groups joined in 1992 and hosted a visit by Pierre Sane to meet with the apartheid government to press for an investigation into allegations of police abuse, an end to arms sales to the African Great Lakes region and abolition of the death penalty. In particular, Amnesty International brought attention to violations committed on specific groups including: refugees, racial/ethnic/religious minorities, women and those executed or on Death Row. The death penalty report *When the state kills* and the 'Human Rights are Women's Rights' campaign were key actions for the latter two issues and demonstrate that Amnesty International was still very much a reporting and campaigning organisation.

During the 1990s Amnesty International was forced to react to human rights violations occurring in the context of a proliferation of armed conflict in: Angola, East Timor, the Persian Gulf, Rwanda, Somalia and the former Yugoslavia. Amnesty International took no position on whether to support or oppose external military interventions in these armed conflicts. It did not (and does not) reject the use of force, even lethal force, or ask those engaged to lay down their arms. Instead, it questioned the motives behind external intervention and selectivity of international action in relation to the strategic interests of those sending troops. It argued that action should be taken in time to prevent human rights problems becoming human rights catastrophes and that both intervention and

inaction represented a failure of the international community. Amnesty International was proactive in pushing for recognition of the universality of human rights. The campaign 'Get Up, Sign Up' marked 50 years of the UDHR. Thirteen million pledges were collected in support of the Declaration and a music concert was held in Paris on December 10, 1998 (Human Rights Day). At the intergovernmental level, Amnesty International argued in favour of creating a United Nations High Commissioner for Human Rights (established 1993) and an International Criminal Court (established 2002).

After Senator Augusto Pinochet of Chile was arrested in London in 1998 by the Metropolitan Police, Amnesty International became involved in the legal battle of Senator Pinochet, a former Chilean President, who sought to avoid extradition to Spain to face charges relating to his rule of Chile in the 1970s and 80s. It emerged during this legal process that one of the judges in the English House of Lords, Lord Hoffman, had an indirect connection with Amnesty International and this led to an important test for the appearance of bias in legal proceedings in UK law. Amnesty then sought a judicial review of the decision to release Senator Pinochet, taken by the then British Home Secretary Mr. Jack Straw, before that decision had actually been taken, in an attempt to prevent the release of Senator Pinochet. The English High Court refused the application and Senator Pinochet was released and returned to Chile. This legal challenge was a novel attempt to use legal process to challenge a decision before it was taken and could be seen as hard to reconcile with the rule of law, as it was predicated on a presumption that the Home Secretary had erred in law whatever the reasons were for the decision.

2000

After 2000, Amnesty International's agenda turned to the challenges arising from globalisation and the reaction to the September 11, 2001 attacks in the United States. The issue of globalisation provoked a major shift in Amnesty International policy, as the scope of its work was widened to include economic, social and cultural rights, an area that it had declined to work

on in the past. Amnesty International felt this shift was important, not just to give credence to its principle of the indivisibility of rights, but because of the growing power of companies and the undermining of many nation states as a result of globalisation.

In the aftermath of the September 11 attacks, the new Amnesty International Secretary General, Irene Khan, reported that a senior government official had said to Amnesty International delegates: "Your role collapsed with the collapse of the Twin Towers in New York". In the years following the attacks, some of the gains made by human rights organisations over previous decades were eroded. Amnesty International argued that human rights were the basis for the security of all, not a barrier to it. Criticism came directly from the Bush administration and *The Washington Post*, when Khan, in 2005, likened the US government's detention facility at Guantanamo Bay, Cuba, to a Soviet Gulag.

During the first half of the new decade, Amnesty International turned its attention to violence against women, controls on the world arms trade and concerns surrounding the effectiveness of the UN. With its membership close to two million by 2005, AI continued to work for prisoners of conscience.

Amnesty International reported, concerning the Iraq war, on March 17, 2008 that despite claims the security situation in Iraq has improved in recent months, the human rights situation is disastrous, after the start of the war five years ago in 2003.

In 2008 Amnesty International launched a mobile donating campaign in the United States, which allows supporters to make $5 micro-donations by sending a text message to the short code 90999 with the keyword RIGHTS. Amnesty International's mobile fundraising campaign was created in partnership with Mgive and the Mobile Giving Foundation.

Work

"Amnesty International's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal

Declaration of Human Rights and other international human rights standards.

In pursuit of this vision, Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights." —Statute of Amnesty International, 27th International Council meeting, 2005.

Amnesty International primarily targets governments, but also reports on non-governmental bodies and private individuals ("non-state actors").

There are five key areas which Amnesty deals with:

- Women's Rights,
- Children's Rights,
- Ending Torture and Execution,
- Rights of Refugees,
- Rights of Prisoners of Conscience.

Some specific aims are to abolish the death penalty, end extra judicial executions and "disappearances", ensure prison conditions meet international human rights standards, ensure prompt and fair trial for all political prisoners, ensure free education to all children worldwide, decriminalise abortion, fight impunity from systems of justice, end the recruitment and use of child soldiers, free all prisoners of conscience, promote economic, social and cultural rights for marginalised communities, protect human rights defenders, promote religious tolerance, stop torture and ill-treatment, stop unlawful killings in armed conflict, and to uphold the rights of refugees, migrants and asylum seekers.

To further these aims, Amnesty International has developed several techniques to publicise information and mobilise public opinion. The organisation considers as one of its strengths the publication of impartial and accurate reports. Reports are researched by interviewing victims and officials, observing trials,

working with local human rights activists and by monitoring the media. It aims to issue timely press releases and publishes information in newsletters and on web sites. It also sends official missions to countries to make courteous but insistent inquiries.

Campaigns to mobilise public opinion can take the form of individual, country or thematic campaigns. Many techniques are deployed such as direct appeals (for example, letter writing), media and publicity work and public demonstrations. Often fund-raising is integrated with campaigning.

In situations which require immediate attention, Amnesty International calls on existing urgent action networks or crisis response networks; for all other matters, it calls on its membership. It considers the large size of its human resources to be another one of its key strengths.

Rank	Country	#Press Releases	% Total
1	USA	136	4.24
2	Israel and O.T.	128	3.99
3	Indonesia and E. Timor	119	3.71
3	Turkey	119	3.71
4	China	115	3.58
5	Serbia and Montenegro (FRY)	104	3.24
6	U.K.	103	3.21
7	India	85	2.65
8	U.S.S.R. and Russia	80	2.49
9	Rwanda	64	2.00
10	Sri Lanka	59	1.84

Source: *Ronand et al. (2005:568) Data for 1986-2000.*

International Committee of the Red Cross.

The International Committee of the Red Cross (ICRC) is a private humanitarian institution based in Geneva, Switzerland. The community of states has given the ICRC a unique role, based on international humanitarian law of the Geneva Conventions as well as customary international law, to protect the victims of international and internal armed conflicts. Such victims include war wounded, prisoners, refugees, civilians, and other non-combatants.

The ICRC is part of the International Red Cross and Red Crescent Movement along with the International Federation and 186 National Societies. It is the oldest and most honoured organization within the Movement and one of the most widely recognized organizations in the world, having won three Nobel Peace Prizes in 1917, 1944, and 1963.

International Red Cross

History

Solferino, Henry Dunant and the Foundation of the ICRC: Up until the middle of the 19 century, there were no organized and well-established army nursing systems for casualties and no safe and protected institutions to accommodate and treat those who were wounded on the battlefield. In June 1859, the Swiss businessman Henry Dunant travelled to Italy to meet French emperor Napoleon III with the intention of discussing difficulties in conducting business in Algeria, at that time occupied by France. When he arrived in the small town of Solferino on the evening of June 24, he witnessed the Battle of Solferino, an engagement in the Austro-Sardinian War. In a single day, about 40,000 soldiers on both sides died or were left wounded on the field. Henry Dunant was shocked by the terrible aftermath of the battle, the suffering of the wounded soldiers, and the near-total lack of medical attendance and basic care. He completely abandoned the original intent of his trip and for several days he devoted himself to helping with the treatment and care for the wounded. He succeeded in organizing an overwhelming level of relief assistance by motivating the local population to aid without discrimination. Back in his home in Geneva, he decided to write a book entitled *A Memory of Solferino* which he published with his own money in 1862.

He sent copies of the book to leading political and military figures throughout Europe. In addition to penning a vivid description of his experiences in Solferino in 1859, he explicitly advocated the formation of national voluntary relief organizations to help nurse wounded soldiers in the case of

war. In addition, he called for the development of international treaties to guarantee the neutrality and protection of those wounded on the battlefield as well as medics and field hospitals.

On February 9, 1863 in Geneva, Henry Dunant founded the "Committee of the Five" (together with four other leading figures from well-known Geneva families) as an investigatory commission of the Geneva Society for Public Welfare. Their aim was to examine the feasibility of Dunant's ideas and to organize an international conference about their possible implementation.

The members of this committee, aside from Dunant himself, were Gustave Moynier, lawyer and chairman of the Geneva Society for Public Welfare; physician Louis Appia, who had significant experience working as a field surgeon; Appia's friend and colleague Theodore Maunoir, from the Geneva Hygiene and Health Commission; and Guillaume-Henri Dufour, a Swiss Army general of great renown. Eight days later, the five men decided to rename the committee to the "International Committee for Relief to the Wounded". In October (26-29) 1863, the international conference organized by the committee was held in Geneva to develop possible measures to improve medical services on the battle field.

The conference was attended by 36 individuals: eighteen official delegates from national governments, six delegates from other non-governmental organizations, seven non-official foreign delegates, and the five members of the International Committee. The states and kingdoms represented by official delegates were Baden, Bavaria, France, Britain, Hanover, Hesse, Italy, the Netherlands, Austria, Prussia, Russia, Saxony, Sweden, and Spain. Among the proposals written in the final resolutions of the conference, adopted on October 29, 1863, were:

- The foundation of national relief societies for wounded soldiers;
- Neutrality and protection for wounded soldiers;
- The utilization of volunteer forces for relief assistance on the battlefield;

- The organization of additional conferences to enact these concepts in legally binding international treaties;
- The introduction of a common distinctive protection symbol for medical personnel in the field, namely a white armlet bearing a red cross.

Only one year later, the Swiss government invited the governments of all European countries, as well as the United States, Brazil, and Mexico, to attend an official diplomatic conference. Sixteen countries sent a total of twenty-six delegates to Geneva. On August 22, 1864, the conference adopted the first Geneva Convention "for the Amelioration of the Condition of the Wounded in Armies in the Field". Representatives of 12 states and kingdoms signed the convention: Baden, Belgium, Denmark, France, Hesse, Italy, the Netherlands, Portugal, Prussia, Switzerland, Spain, and Wurttemberg. The convention contained ten articles, establishing for the first time legally binding rules guaranteeing neutrality and protection for wounded soldiers, field medical personnel, and specific humanitarian institutions in an armed conflict. Furthermore, the convention defined two specific requirements for recognition of a national relief society by the International Committee:

- The national society must be recognized by its own national government as a relief society according to the convention,
- The national government of the respective country must be a state party to the Geneva Convention.

Directly following the establishment of the Geneva Convention, the first national societies were founded in Belgium, Denmark, France, Oldenburg, Prussia, Spain, and Wurttemberg. Also in 1864, Louis Appia and Charles van de Velde, a captain of the Dutch Army, became the first independent and neutral delegates to work under the symbol of the Red Cross in an armed conflict. Three years later in 1867, the first International Conference of National Aid Societies for the Nursing of the War Wounded was convened. Also in 1867, Henry Dunant was forced to declare bankruptcy due to business failures in Algeria,

partly because he had neglected his business interests during his tireless activities for the International Committee. Controversy surrounding Dunant's business dealings and the resulting negative public opinion, combined with an ongoing conflict with Gustave Moynier, led to Dunant's expulsion from his position as a member and secretary. He was charged with fraudulent bankruptcy and a warrant for his arrest was issued. Thus, he was forced to leave Geneva and never returned to his home city. In the following years, national societies were founded in nearly every country in Europe. In 1876, the committee adopted the name "International Committee of the Red Cross" (ICRC), which is still its official designation today. Five years later, the American Red Cross was founded through the efforts of Clara Barton. More and more countries signed the Geneva Convention and began to respect it in practice during armed conflicts. In a rather short period of time, the Red Cross gained huge momentum as an internationally respected movement, and the national societies became increasingly popular as a venue for volunteer work.

When the first Nobel Peace Prize was awarded in 1901, the Norwegian Nobel Committee opted to give it jointly to Henry Dunant and Frederic Passy, a leading international pacifist. More significant than the honor of the prize itself, the official congratulation from the International Committee of the Red Cross marked the overdue rehabilitation of Henry Dunant and represented a tribute to his key role in the formation of the Red Cross. Dunant died nine years later in the small Swiss health resort of Heiden. Only two months earlier his long-standing adversary Gustave Moynier had also died, leaving a mark in the history of the Committee as its longest-serving president ever.

In 1906, the 1864 Geneva Convention was revised for the first time. One year later, the Hague Convention X, adopted at the Second International Peace Conference in The Hague, extended the scope of the Geneva Convention to naval warfare. Shortly before the beginning of the First World War in 1914, 50 years after the foundation of the ICRC and the adoption of the first Geneva Convention, there were already 45 national

relief societies throughout the world. The movement had extended itself beyond Europe and North America to Central and South America (Argentina, Brazil, Chile, Cuba, Mexico, Peru, El Salvador, Uruguay, Venezuela), Asia (the Republic of China, Japan, Korea, Siam), and Africa (Republic of South Africa).

World War One

With the outbreak of World War I, the ICRC found itself confronted with enormous challenges which it could only handle by working closely with the national Red Cross societies. Red Cross nurses from around the world, including the United States and Japan, came to support the medical services of the armed forces of the European countries involved in the war. On October 15, 1914, immediately after the start of the war, the ICRC set up its International Prisoners-of-War (POW) Agency, which had about 1,200 mostly volunteer staff members by the end of 1914. By the end of the war, the Agency had transferred about 20 million letters and messages, 1.9 million parcels, and about 18 million Swiss francs in monetary donations to POWs of all affected countries. Furthermore, due to the intervention of the Agency, about 200,000 prisoners were exchanged between the warring parties, released from captivity and returned to their home country. The organizational card index of the Agency accumulated about 7 million records from 1914 to 1923, each card representing an individual prisoner or missing person. The card index led to the identification of about 2 million POWs and the ability to contact their families. The complete index is on loan today from the ICRC to the International Red Cross and Red Crescent Museum in Geneva. The right to access the index is still strictly restricted to the ICRC.

During the entire war, the ICRC monitored warring parties' compliance with the Geneva Conventions of the 1907 revision and forwarded complaints about violations to the respective country. When chemical weapons were used in this war for the first time in history, the ICRC vigorously protested against this new type of warfare. Even without having a mandate from the

Geneva Conventions, the ICRC tried to ameliorate the suffering of civil populations. In territories that were officially designated as "occupied territories," the ICRC could assist the civilian population on the basis of the Hague Convention's "Laws and Customs of War on Land" of 1907. This convention was also the legal basis for the ICRC's work for prisoners of war. In addition to the work of the International Prisoner-of-War Agency as described above this included inspection visits to POW camps. A total of 524 camps throughout Europe were visited by 41 delegates from the ICRC until the end of the war.

Between 1916 and 1918, the ICRC published a number of postcards with scenes from the POW camps. The pictures showed the prisoners in day-to-day activities such as the distribution of letters from home. The intention of the ICRC was to provide the families of the prisoners with some hope and solace and to alleviate their uncertainties about the fate of their loved ones. After the end of the war, the ICRC organized the return of about 420,000 prisoners to their home countries. In 1920, the task of repatriation was handed over to the newly founded League of Nations, which appointed the Norwegian diplomat and scientist Fridtjof Nansen as its "High Commissioner for Repatriation of the War Prisoners." His legal mandate was later extended to support and care for war refugees and displaced persons when his office became that of the League of Nations "High Commissioner for Refugees." Nansen, who invented the *Nansen passport* for stateless refugees and was awarded the Nobel Peace Prize in 1922, appointed two delegates from the ICRC as his deputies.

A year before the end of the war, the ICRC received the 1917 Nobel Peace Prize for its outstanding wartime work. It was the only Nobel Peace Prize awarded in the period from 1914 to 1918. In 1923, the Committee adopted a change in its policy regarding the selection of new members. Until then, only citizens from the city of Geneva could serve in the Committee. This limitation was expanded to include Swiss citizens. As a direct consequence of World War I, an additional protocol to the Geneva Convention was adopted in 1925 which outlawed the use of suffocating or poisonous gases and biological agents

as weapons. Four years later, the original Convention was revised and the second Geneva Convention "relative to the Treatment of Prisoners of War" was established. The events of World War I and the respective activities of the ICRC significantly increased the reputation and authority of the Committee among the international community and led to an extension of its competencies.

As early as in 1934, a draft proposal for an additional convention for the protection of the civil population during an armed conflict was adopted by the International Red Cross Conference. Unfortunately, most governments had little interest in implementing this convention, and it was thus prevented from entering into force before the beginning of World War II.

World War Two

The legal basis of the work of the ICRC during World War II were the Geneva Conventions in their 1929 revision. The activities of the Committee were similar to those during World War I: visiting and monitoring POW camps, organizing relief assistance for civilian populations, and administering the exchange of messages regarding prisoners and missing persons. By the end of the war, 179 delegates had conducted 12,750 visits to POW camps in 41 countries. The Central Information Agency on Prisoners-of-War (*Zentralauskunftsstelle fur Kriegsgefangene*) had a staff of 3,000, the card index tracking prisoners contained 45 million cards, and 120 million messages were exchanged by the Agency. One major obstacle was that the Nazi-controlled German Red Cross refused to cooperate with the Geneva statutes including blatant violations such as the deportation of Jews from Germany and the mass murders conducted in the concentration camps run by the German government. Moreover, two other main parties to the conflict, the Soviet Union and Japan, were not party to the 1929 Geneva Conventions and were not legally required to follow the rules of the conventions. Thus, other countries were not bound to follow the Conventions regarding their prisoners in return.

During the war, the ICRC failed to obtain an agreement with Nazi Germany about the treatment of detainees in

concentration camps, and it eventually abandoned applying pressure in order to avoid disrupting its work with POWs. The ICRC also failed to develop a response to reliable information about the extermination camps and the mass killing of European Jews. This is still considered the greatest failure of the ICRC in its history.

After November 1943, the ICRC achieved permission to send parcels to concentration camp detainees with known names and locations. Because the notices of receipt for these parcels were often signed by other inmates, the ICRC managed to register the identities of about 105,000 detainees in the concentration camps and delivered about 1.1 million parcels, primarily to the camps Dachau, Buchenwald, Ravensbruck, and Sachsenhausen.

On March 12, 1945, ICRC president Jacob Burckhardt received a message from SS General Ernst Kaltenbrunner accepting the ICRC's demand to allow delegates to visit the concentration camps. This agreement was bound by the condition that these delegates would have to stay in the camps until the end of the war.

Ten delegates, among them Louis Haefliger (Camp Mauthausen), Paul Dunant (Camp Theresienstadt) and Victor Maurer (Camp Dachau), accepted the assignment and visited the camps. Louis Haefliger prevented the forceful eviction or blasting of Mauthausen-Gusen by alerting American troops, thereby saving the lives of about 60,000 inmates. His actions were condemned by the ICRC because they were deemed as acting unduly on his own authority and risking the ICRC's neutrality. Only in 1990, his reputation was finally rehabilitated by ICRC president Cornelio Sommaruga.

Another example of great humanitarian spirit was Friedrich Born (1903-1963), an ICRC delegate in Budapest who saved the lives of about 11,000 to 15,000 Jews in Hungary. Marcel Junod (1904-1961), a physician from Geneva, was another famous delegate during the Second World War. An account of his experiences, which included being one of the first foreigners to visit Hiroshima after the atomic bomb was dropped, can be found in the book *Warrior without Weapons*.

In 1944, the ICRC received its second Nobel Peace Prize. As in World War I, it received the only Peace Prize awarded during the main period of war, 1939 to 1945. At the end of the war, the ICRC worked with national Red Cross societies to organize relief assistance to those countries most severely affected. In 1948, the Committee published a report reviewing its war-era activities from September 1, 1939 to June 30, 1947. Since January 1996, the ICRC archive for this period has been open to academic and public research.

After the Second World War

On August 12, 1949, further revisions to the existing two Geneva Conventions were adopted. An additional convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea", now called the second Geneva Convention, was brought under the Geneva Convention umbrella as a successor to the 1907 Hague Convention X. The 1929 Geneva convention "relative to the Treatment of Prisoners of War" may have been the second Geneva Convention from a historical point of view (because it was actually formulated in Geneva), but after 1949 it came to be called the third Convention because it came later chronologically than the Hague Convention. Reacting to the experience of World War II, the Fourth Geneva Convention, a new Convention "relative to the Protection of Civilian Persons in Time of War," was established. Also, the additional protocols of June 8, 1977 were intended to make the conventions apply to internal conflicts such as civil wars. Today, the four conventions and their added protocols contain more than 600 articles, a remarkable expansion when compared to the mere 10 articles in the first 1864 convention.

In celebration of its centennial in 1963, the ICRC, together with the League of Red Cross Societies, received its third Nobel Peace Prize. Since 1993, non-Swiss individuals have been allowed to serve as Committee delegates abroad, a task which was previously restricted to Swiss citizens. Indeed, since then, the share of staff without Swiss citizenship has increased to about 35%.

On October 16, 1990, the UN General Assembly decided to grant the ICRC observer status for its assembly sessions and sub-committee meetings, the first observer status given to a private organization. The resolution was jointly proposed by 138 member states and introduced by the Italian ambassador, Vieri Traxler, in memory of the organization's origins in the Battle of Solferino.

An agreement with the Swiss government signed on March 19, 1993, affirmed the already long-standing policy of full independence of the Committee from any possible interference by Switzerland. The agreement protects the full sanctity of all ICRC property in Switzerland including its headquarters and archive, grants members and staff legal immunity, exempts the ICRC from all taxes and fees, guarantees the protected and duty-free transfer of goods, services, and money, provides the ICRC with secure communication privileges at the same level as foreign embassies, and simplifies Committee travel in and out of Switzerland.

The ICRC continued its activities throughout the 1990s. It broke its customary media silence when it denounced the Rwandan Genocide in 1994. It struggled to prevent the crimes that happened in and around Srebrenica in 1995 but admitted, "We must acknowledge that despite our efforts to help thousands of civilians forcibly expelled from the town and despite the dedication of our colleagues on the spot, the ICRC's impact on the unfolding of the tragedy was extremely limited." It went public once again in 2007 to decry "major human rights abuses" by Burma's military government including forced labor, starvation, and murder of men, women, and children.

Fatalities

At the end of the Cold War, the ICRC's work actually became more dangerous. In the 1990s, more delegates lost their lives than at any point in its history, especially when working in local and internal armed conflicts. These incidents often demonstrated a lack of respect for the rules of the Geneva Conventions and their protection symbols. Among the slain delegates were:

- Frederic Maurice. He died on May 19, 1992 at the age of 39, one day after a Red Cross transport he was escorting was attacked in the former Yugoslavian city of Sarajevo.
- Fernanda Calado (Spain), Ingeborg Foss (Norway), Nancy Malloy (Canada), Gunnhild Myklebust (Norway), Sheryl Thayer (New Zealand), and Hans Elkerbout (Netherlands). They were murdered at point-blank range while sleeping in the early hours of December 17, 1996 in the ICRC field hospital in the Chechen city of Nowije Atagi near Grozny. Their murderers have never been caught and there was no apparent motive for the killings.
- Rita Fox (Switzerland), Veronique Saro (Democratic Republic of Congo, formerly Zaire), Julio Delgado (Colombia), Unen Ufoirworth (DR Congo), Aduwe Boboli (DR Congo), and Jean Molokabonge (DR Congo). On April 26, 2001, they were en route with two cars on a relief mission in the northeast of the Democratic Republic of Congo when they came under fatal fire from unknown attackers.
- Ricardo Munguia (El Salvador). He was working as a water engineer in Afghanistan and travelling with local colleagues when their car was stopped by unknown armed men. He was killed execution-style at point-blank range while his colleagues were allowed to escape. He died at the age of 39.
- Vatche Arslanian (Canada). Since 2001, he worked as a logistics coordinator for the ICRC mission in Iraq. He died when he was travelling through Baghdad together with members of the Iraqi Red Crescent. Their car accidentally came into the crossfire of fighting in the city.
- Nadisha Yasassri Ranmuthu (Sri Lanka). He was killed by unknown attackers on July 22, 2003, when his car was fired upon near the city of Hilla in the south of Baghdad.

The Holocaust

By taking part in the 1995 ceremony to commemorate the liberation of the Auschwitz concentration camp, the President of the ICRC, Cornelio Sommaruga, sought to show that the organization was fully aware of the gravity of The Holocaust and the need to keep the memory of it alive, so as to prevent any repetition of it.

He paid tribute to all those who had suffered or lost their lives during the war and publicly regretted the past mistakes and shortcomings of the Red Cross with regard to the victims of the concentration camps.

In 2002, an ICRC official outlined some of the lessons the organization has learned from the failure:

- from a legal point of view, the work that led to the adoption of the Geneva Convention relative to the protection of civilian persons in time of war;
- from an ethical point of view, the adoption of the declaration of the Fundamental Principles of the Red Cross and Red Crescent, building on the distinguished work of Max Huber and the late Jean Pictet, in order to prevent any more abuses such as those that occurred within the Movement after Hitler rose to power in 1933;
- on a political level, the ICRC's relationship with Switzerland was redesigned to ensure its independence;
- with a view to keeping memories alive, the ICRC accepted, in 1955, to take over the direction of the International Tracing Service where records from concentration camps are maintained;
- finally, to establish the historical facts of the case, the ICRC invited Jean-Claude Favez to carry out an independent investigation of its activities on behalf of the victims of Nazi persecution, and gave him unfettered access to its archives relating to this period; out of concern for transparency, the ICRC also decided to give all other historians access to its archives dating back

more than 50 years; having gone over the conclusions of Favez's work, the ICRC acknowledged its past failings and expressed its regrets in this regard.

In an official statement made on 27 January 2005, the anniversary of the liberation of Auswitz, the ICRC stated:

> *Auschwitz also represents the greatest failure in the history of the ICRC, aggravated by its lack of decisiveness in taking steps to aid the victims of Nazi persecution. This failure will remain part of the ICRC's memory, as will the courageous acts of individual ICRC delegates at the time.*

3

Human Rights and Other Issues

Ragging

Ragging is a form of abuse on newcomers to educational institutions in Australia, Britain, India, Sri Lanka and in many other Commonwealth countries. It is similar to the American form, known as hazing, but is commonly much more severe.

Some senior students force the unorganized newcomers to undergo several forms of mental, physical and sexual abuses. The juniors are usually too frightened to resist their organized group of tormentors.

Legal Definition

The legal definition is seen as: "'Ragging' means the doing of any act which causes, or is likely to cause any physical, psychological or physiological harm of apprehension or shame or embarrassment to a student, and includes– (a) teasing or abusing of playing Practical joke on, or causing hurt to any student. or (b) asking any student to do any act, or perform any thing, which he/she would not, in the ordinary course, be willing to do or perform."

Current Situation

The torture on innocent students often run for months, and involve the same batch of students being physically and mentally abused by same and/or different group of seniors (including

those from the opposite sex) over and over again. Anti Ragging organization, SAVE, stated in a recent publication that in some institutions it has been reportedly turned into a tool for extorting money from the juniors.

Ragging is different from other crimes because the motive is solely to get perverse pleasure. Ragging is also different from other crimes as it is actively promoted by certain sections of the society.

The following criminal activities can be categorised under ragging (especially if they take place inside a school or college):

- unlawful coercion
- criminal intimidation
- assault
- battery
- sexual abuse
- rape
- murder

Legal and Sociological Aspects

Ragging has a long history, and has been highlighted in literature (*e.g.*, in Britain, Tom Brown's Schooldays, or Boy by Roald Dahl, and in India, Chetan Bhagat's *Five Point Someone*). Another example can be seen in C.S. Lewis's "The Silver Chair" in which the main characters attend a school in which *...what ten or fifteen of the biggest boys and girls liked best was bullying the other children".*

In recent years, it has been the focus of a number of legal actions. For example, the Supreme Court of India defined it in a 2001 judgement as: Any disorderly conduct whether by words spoken or written or by an act which the effect of teasing, treating or handling with rudeness any other student, Indulging in rowdy or indisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a junior student or asking the students to do any act or perform something which such student will not do in the ordinary course and

which has the effect of causing or generating a sense of shame or embarrassment so as to adversely affect the physique or psyche of a fresher or a junior student.

Ragging can be thought of in terms verbal, physical and sexual aggression. A single act may be a combination of more than one of these.

A report from 2007 by the Indian anti-ragging group Coalition to Uproot Ragging from Education analyzed 64 ragging complaints, and found that over 60% of these were related to physical ragging, and 20% were sexual in nature.

While India's only registered Anti Ragging NGO, Society Against Violence in Education (SAVE) has noted 7 reported ragging deaths in the year 2007 alone and 31 reported deaths in the period 2000-2007: Ragging is usually conducted during a fixed period in most institutions, which may range from one day to almost the whole year. Once this period is over, 'seniors' suddenly become "friends" (apparently): the beginning of this new relationship is often a "fresher's party". However, it often turns like a Dracula story, where the seniors incorporate some of the willing juniors to their gang, so that they may continue ragging (which is often used also as a tool for financial exploitations). Next these "incorporated" or "befriended" juniors also rag their juniors when the formers become seniors in the next year.

In any event, innumerable freshers under severe stress may then leave the system, or may be suffering from serious psychological trauma, which may continue to take its toll through post-traumatic stress disorders. Occasionally, there may be physical injury, and some may even commit suicide.

It has been observed that often, after the ragging season, the friendship between juniors & seniors is only apparent, possibly due to the fact the junior still remains dependent on the seniors in many respects. It has also been pointed out by many that the apparent friendship between the seniors and the juniors is only an eyewash. Respect can never be earned with threats, therefore the apparent respect the juniors show to

their seniors is because of the fear (though they cherish hatred for their tormentors).

Human Rights and Ragging

Ragging in India's educational system is widespread, yet ragging is far from being recognized as an issue under human rights by Indian government and Human Rights fraternity. This article attempts to establish "ragging" as an issue of "Human rights in Education" with the help of authoritative reports from the United Nations, and calls upon human rights fraternities to address the issue of ragging from a human rights perspective.

Ragging, a colonial legacy, is widespread in India's education. Various State Legislatures in India have been passing anti-ragging legislations, yet the issue is far from being resolved. Indian legal fraternity has yet to approach the problem of ragging from a perspective other than that of "crime." In the absence of any serious research to that effect, ragging is hardly recognized as an issue under human rights; human rights fraternities in India do not seem to bother about "ragging."

Ragging, though widely believed to be a major factor for campus violence and suicides in educational institutions in India, has yet to be recognized as traditional and systematic human rights abuse in education, and such human right violations in education have not been given the proper attention in India that they deserve. However, within the United Nations, ragging has been considered as an issue of human rights in education.

Katarina Tomasevski, the Special Rapporteur with Commission on Human Rights, Economic and Social Council, United Nations, in her Annual Report in 2001, advocates a 4-A scheme, whereby governmental human rights obligations to make education available, accessible, acceptable, and adaptable have been recognized. The Commission on Human Rights had asked the Special Rapporteur to focus on overcoming obstacles and difficulties in the realization of the right to worldwide education and, in keeping this direction in view, the Special Rapportuer made specific mention of "Ragging" in

Chapter V, "STREAMLINING THE HUMAN RIGHTS FRAMEWORK FOR EDUCATION." "75... The Supreme Court of Sri Lanka decided in April 1998 on the constitutionality of a law that aimed to outlaw and suppress inter alia, verbal abuse (recognized as ragging, bullying, or harassment) within educational institutions. The victimization of students, especially newcomers, through verbal abuse should be outlawed, the Court affirmed, adding that "ragging has far too long been cruel, inhuman and degrading. Our society has been unable to deal with the root causes of ragging, and the anxieties, fears and frustrations of youth on which ragging has fed and flourished."

Appreciating domestic courts' increasing recognition of human rights in education, the Special Rapportuer expressed her satisfaction about the entry of human rights in education law. The report's recommendation section says:

> *"81. the international and domestic human rights law protecting the right to education and guaranteeing human rights in education should be used as a corrective for all education strategies." The Special Rapporteur recommends to all international actors involved in promoting education to review their approach using human rights as the yardstick."*

Making a particular reference to India, the report says:

> *"24...While fully aware of the allocations of responsibility within education between central and State governments, the special rapportuer emphasized the responsibility of the State in ensuring the full implementation of international human rights law binding upon it."*

This mean that State needs to take up the task of making education acceptable to all and elimination of ragging should be construed to be a necessary step in this direction.

The Special Rapportuer's report calls for:

1. Mainstreaming of human rights in educational strategies.
2. The full mobilization of the existing human rights standards for education in order to enable the human

rights community to provide a timely contribution to developments which were, until recently, deemed to lie beyond the reach of human rights safeguards.

Ragging as a Form of Misandry

Some feel that ragging is another form of misandry, which has evolved over time since it affects males much more severely.

Eve Teasing

Eve teasing is a euphemism used in India, Bangladesh and Pakistan for public sexual harassment (Street harassment) or molestation of women by men, with eve being a reference to the biblical eve. Considered a problem related to delinquency in the youth a form of sexual aggression, and a growing menace throughout the Indian subcontinent; eve teasing ranges in severity from sexually suggestive remarks, inadvertent brushing in public places, catcalls, to outright groping, and sometimes with a coy suggestion of "innocent fun", just as euphemism used to describe it in the region, making it appear innocuous and hence warrant no liability on the part of the perpetrator, that is why, many feminists and voluntary organizations have suggested that the expression 'Eve Teasing' be replaced by a more appropriate expression. According to them, considering the semantic roots of the term in Indian English, eve-teasing refers to the temptress nature of eves, making teasing a norm rather than an aberration.

It is a crime easy to commit, but difficult to prove, as eve-teasers often devise ingenious ways to attack women, even though many feminist writers term it as "little rapes", and usually occur in public places, streets, and public transport.

Some guidebooks to the region warn female tourists that eve teasing may be avoided by wearing conservative clothing, though eve teasing is reported both by Indian women and by conservatively-dressed foreign women.

History

Though the problem received public and media attention in 1960s, it was in the coming decades, when more and more

women started going out to colleges and work, independently which meant no longer accompanied by a male escort which had been a norm in traditional society, that the problem grew to an alarming proportion. Soon that the Indian government had to take remedial measures, both judicial and law enforcement, to curb the menace and efforts were made to sensitize the police about the issue, and police started rounding up eve teasers. The deployment of plain-clothed female police officers for the purpose has been particularly effective, other measures seen in various states were setting up of Women's Helpline in various cities, Women Police stations, and special anti-eve-teasing cells by the police.

Also, seen during this period was a marked rise of not just the number women coming forward to report incidence of eve-teasing like cases of sexual harassment due to changing public opinion against eve-teasers. What also grew in this period was the severity of eve-teasing incidences, which in some cases led to acid throwing, which led to states like Tamil Nadu, making eve-teasing a non-bailable offense.

The number of women's organization and those working for womens rights also saw a rise, especially as this period also saw the rise of another social evil of bride burning, this meant previous lackadaisical attitude towards women's right had to be abandoned by law makers, who now had to sit up and take action. In the coming years, such organizations played a key role in lobbying for the eventual passing of several women-centric legislation, during this period, including 'The Delhi Prohibition of Eve-teasing Bill 1984'.

The death of a female student, Sarika Shah, in Chennai in 1998, caused by Eve teasing, brought some tough laws to counter the problem in South India. After this case, there has been about half-a-dozen reports of suicide that have been attributed to pressures caused by eve teasing. In 2007, an eve-teasing resulted in the death of Pearl Gupta, a college student in Delhi. In Feb 2009, Girl students of M.S. University (MSU) Vadodara thrashed four boys near the family and community sciences faculty, after they passed lewd comments on a girl student staying in SD Hall hostel.

Many other cases go unreported for fear of reprisals and exposure to public shame. In some cases police let the offenders go, after public humiliation through the Murga Punishment. In 2008, a Delhi court ordered a 19-year-old youth, after he was caught eve-teasing, to distribute 500 handbills, detailing the consequences of indecent conduct, to youngsters outside schools and colleges.

Depiction in Popular Culture

Traditionally, Indian cinema has depicted eve teasing as a part of flirtatious beginnings of a courtship, along with the usual accompaniment of song and dance routines, which invariably results in the heroine submitting to the hero's advances towards the end of the song, and young men tend to emulate the example, depicted so flawlessly on screen and which gave rise to the *Roadside Romeo* which even made it a film version in *Roadside Romeo* (2007).

Legal Redressal

Though Indian law doesn't use the term 'eve-teasing', victims usually take recourse to Section 298 (A) and (B) of the Indian Penal Code (IPC), which sentences a man found guilty of making a girl or woman the target of obscene gestures, remarks, songs or recitation for a maximum tenure of three months. Section 292 of the IPC clearly spells out that showing pornographic or obscene pictures, books or slips to a woman or girl draws a fine of Rs.2000 with two years of rigorous imprisonment for first offenders. In case of repeated offence, when and if proved, the offender will be slapped with a fine of Rs.5000 with five years imprisonment. Under Section 509 of the IPC, obscene gestures, indecent body language and acidic comments directed at any woman or girl carries a penalty of rigorous imprisonment for one year or a fine or both. The 'National Commission for Women' (NCW) has also proposed No 9. Eve Teasing (New Legislation) 1988.

Public Response

'Fearless Karnataka' or 'Nirbhaya Karnataka' is a coalition of many individuals and groups including 'Alternative Law

Forum', 'Blank Noise', 'Maraa', 'Samvada' and 'Vimochana'. After rise of eve teasing cases in 2000s, it organized several public awareness campaigns, including 'Take Back the Night', followed by another public art project titled, The Blank Noise Project, starting in Bangalore in 2003.. A similar program to fight eve-teasing was also hosted in Mumbai in 2008.

Human Trafficking

Human trafficking is the commerce and trade in the movement or migration of people, legal and illegal, including both legitimate labor activities as well as forced labor. The term is used in a more narrow sense by advocacy groups to mean the recruitment, transportation, harbouring, or receipt of people for the purposes of slavery, forced labor (including bonded labor or debt bondage), and servitude. It is the fastest growing criminal industry in the world, with the total annual revenue for trafficking in persons estimated to be between $5 billion and $9 billion. The Council of Europe states that "people trafficking has reached epidemic proportions over the past decade, with a global annual market of about $42.5 billion." Trafficking victims typically are recruited using coercion, deception, fraud, the abuse of power, or outright abduction. Threats, violence, and economic leverage such as debt bondage can often make a victim consent to exploitation.

Exploitation includes forcing people into prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude. For children, exploitation may also include forced prostitution, illicit international adoption, trafficking for early marriage, or recruitment as child soldiers, beggars, for sports (such as child camel jockeys or football players), or within certain religious groups.

Overview

Human trafficking differs from people smuggling. In the latter, people voluntarily request smuggler's service for fees and there may be no deception involved in the (illegal) agreement. On arrival at their destination, the smuggled person

is usually free. On the other hand, the trafficking victim is enslaved, or the terms of their debt bondage are highly exploitative. The trafficker takes away the basic human rights of the victim.

Victims are sometimes tricked and lured by false promises or physically forced. Some traffickers use coercive and manipulative tactics including deception, intimidation, feigned love, isolation, threat and use of physical force, debt bondage, or other abuse. People who are seeking entry to other countries may be picked up by traffickers, and misled into thinking that they will be free after being smuggled across the border. In some cases, they are captured through slave raiding, although this is increasingly rare.

Trafficking is a fairly lucrative industry. In some areas, like Russia, Eastern Europe, Hong Kong, Japan, and Colombia, trafficking is controlled by large criminal organizations. However, the majority of trafficking is done by networks of smaller groups that each specialize in a certain area, like recruitment, transportation, advertising, or retail. This is very profitable because little startup capital is needed, and prosecution is relatively rare.

Trafficked people are usually the most vulnerable and powerless minorities in a region. They often come from the poorer areas where opportunities are limited, they often are ethnic minorities, and they often are displaced persons such as runaways or refugees (though they may come from any social background, class or race).

Women are particularly at risk from sex trafficking. Criminals exploit lack of opportunities, promise good jobs or opportunities for study, and then force the victims to become prostitutes. Through agents and brokers who arrange the travel and job placements, women are escorted to their destinations and delivered to the employers. Upon reaching their destinations, some women learn that they have been deceived about the nature of the work they will do; most have been lied to about the financial arrangements and conditions of their employment; and find themselves in coercive or abusive

situations from which escape is both difficult and dangerous. Trafficking of children often involves exploitation of the parents' extreme poverty. The latter may sell children to traffickers in order to pay off debts or gain income or they may be deceived concerning the prospects of training and a better life for their children. In West Africa, trafficked children have often lost one or both parents to the African AIDS crisis.. Thousands of male (and sometimes female) children have also been forced to be child soldiers.

The adoption process, legal and illegal, results in cases of trafficking of babies and pregnant women between the West and the developing world. In David M. Smolin's papers on child trafficking and adoption scandals between India and the United States, he cites there are systemic vulnerabilities in the intercountry adoption system that makes adoption scandals predictable.

Thousands of children from Asia, Africa, and South America are sold into the global sex trade every year. Often they are kidnapped or orphaned, and sometimes they are actually sold by their own families.

Men are also at risk of being trafficked for unskilled work predominantly involving forced labor which globally generates $31bn according to the International Labour Organization. Other forms of trafficking include forced marriage, and domestic servitude.

Extent

Due to the illegal nature of trafficking and differences in methodology, the exact extent is unknown. According to United States State Department data, an "estimated 600,000 to 820,000 men, women, and children [are] trafficked across international borders each year, approximately 70 percent are women and girls and up to 50 percent are minors. The data also illustrates that the majority of transnational victims are trafficked into commercial sexual exploitation." However, they go on to say that "the alarming enslavement of people for purposes of labor exploitation, often in their own countries, is a form of human

trafficking that can be hard to track from afar." Thus the figures for persons trafficked for labor exploitation are likely to be greatly underestimated.

Reporters have witnessed a rapid increase in prostitution in Cambodia, Bosnia, and Kosovo after UN and, in the case of the latter two, NATO peacekeeping forces moved in. Peacekeeping forces have been linked to trafficking and forced prostitution. Proponents of peacekeeping argue that the actions of a few should not incriminate the many participants in the mission, yet NATO and the UN have come under criticism for not taking the issue of forced prostitution linked to peacekeeping missions seriously enough.

A common misconception is that trafficking only occurs in poor countries. But every country in the world is involved in the underground, lucrative system. A "source country" is a country that girls are trafficked from. Usually, these countries are destitute and may have been further weakened by war, corruption, natural disasters or climate.

Some source countries are Nepal, Guatemala, the former Soviet territories, and Nigeria, but there are many more. A "transit country", like Mexico or Israel, is a temporary stop on trafficked victims' journey to the country where they will be enslaved.

A "destination country" is where trafficked persons end up. These countries are generally affluent, since they must have citizens with enough "disposable income" to "buy the traffickers' 'products'". Japan, India, much of Western Europe, and the United States are all destination countries.

In a 2006 report the Future Group, a Canadian humanitarian organization dedicated to combatting human trafficking and the child sex trade, ranked eight industrialized nations. In the report, titled "Falling Short of the Mark: An International Study on the Treatment of Human Trafficking Victims", Canada received an F rating, the United Kingdom received a D, while the United States received a B+ and Australia, Norway, Sweden, Germany and Italy all received grades of B or B-.

North America

According to the National Human Rights Center in Berkeley, California, there are currently about 10,000 forced laborers in the U.S., around one-third of whom are domestic servants and some portion of whom are children. The Associated Press reports, based on interviews in California and in Egypt, that trafficking of children for domestic labor in the U.S. is an extension of an illegal but common practice in Africa. Families in remote villages send their daughters to work in cities for extra money and the opportunity to escape a dead-end life. Some girls work for free on the understanding that they will at least be better fed in the home of their employer. This custom has led to the spread of trafficking, as well-to-do Africans accustomed to employing children immigrate to the U.S.

Research conducted by University of California at Berkeley on behalf of the anti-trafficking organisation Free the Slaves found that less than half of people in slavery in the United States, about 46%, are forced into prostitution. Domestic servitude claims 27%, agriculture 10%, and other occupations 17%.

An estimated 14,000 people are trafficked into the United States each year, although again because trafficking is illegal, accurate statistics are difficult. According to the Massachusetts based Trafficking Victims Outreach and Services Network (project of the nonprofit MataHari: Eye of the Day) in Massachusetts alone, there were 55 documented cases of human trafficking in 2005 and the first half of 2006 in Massachusetts. In 2004, the Royal Canadian Mounted Police (RCMP) estimated that 600-800 persons are trafficked into Canada annually and that additional 1,500-2,200 persons are trafficked through Canada into the United States. In Canada, foreign trafficking for prostitution is estimated to be worth $400 million annually.

According to the Future Group report, Canada in particular has a major problem with modern-day sexual slavery, giving Canada an F for its “abysmal” record treating victims. The report concluded that Canada “is an international embarrassment” when it comes to combating this form of slavery.

The report's principal author Benjamin Perrin wrote, "Canada has ignored calls for reform and continues to re-traumatize trafficking victims, with few exceptions, by subjecting them to routine deportation and fails to provide even basic support services." The report criticizes former Liberal Party of Canada cabinet ministers Irwin Cotler, Joe Volpe and Pierre Pettigrew for "passing the buck" on the issue.

Commenting on the report, the then Minister of Citizenship and Immigration, Monte Solberg told Sun Media Corporation, "It's very damning, and if there are obvious legislative or regulatory fixes that need to be done, those have to become priorities, given especially that we're talking about very vulnerable people."

Asia

In Asia, Japan is the major destination country for trafficked women, especially from the Philippines and Thailand. The US State Department has rated Japan as either a 'Tier 2' or a 'Tier 2 Watchlist' country every year since 2001 in its annual *Trafficking in Persons* reports. Both these ratings implied that Japan was (to a greater or lesser extent) not fully compliant with minimum standards for the elimination of human trafficking trade.

There are currently an estimated 300,000 women and children involved in the sex trade throughout Southeast Asia. It is common that Thai women are lured to Japan and sold to Yakuza-controlled brothels where they are forced to work off their price. By the late 1990s, UNICEF estimated that there are 60,000 child prostitutes in the Philippines, describing Angeles City brothels as "notorious" for offering sex with children. UNICEF estimates many of the 200 brothels in the notorious Angeles City offer children for sex.

Many of the Iraqi women fleeing the Iraq War are turning to prostitution, while others are trafficked abroad, to countries like Syria, Jordan, Qatar, the United Arab Emirates and Turkey. In Syria alone, an estimated 50,000 Iraqi refugee girls and women, many of them widows, are forced into prostitution. Cheap Iraqi prostitutes have helped to make Syria a popular

destination for sex tourists. The clients come from wealthier countries in the Middle East. High prices are offered for virgins.

As many as 200,000 Nepali girls, many under 14, have been sold into the sex slavery in India. Nepalese women and girls, especially virgins, are favored in India because of their light skin.

Africa

In parts of Ghana, a family may be punished for an offense by having to turn over a virgin female to serve as a sex slave within the offended family. In this instance, the woman does not gain the title of "wife." In parts of Ghana, Togo, and Benin, shrine slavery persists, despite being illegal in Ghana since 1998. In this system of slavery of ritual servitude, sometimes called *trokosi* (in Ghana) or *voodoosi* in Togo and Benin, young virgin girls are given as slaves in traditional shrines and are used sexually by the priests in addition to providing free labor for the shrine.

Europe

Since the fall of the Iron Curtain, the impoverished former Eastern bloc countries such as Albania, Moldova, Romania, Bulgaria, Russia, Belarus and Ukraine have been identified as major trafficking source countries for women and children. Young women and girls are often lured to wealthier countries by the promises of money and work and then reduced to sexual slavery.

It is estimated that 2/3 of women trafficked for prostitution worldwide annually come from Eastern Europe, three-quarters have never worked as prostitutes before. The major destinations are Western Europe (Germany, Italy, Netherlands, Spain, UK, Greece), the Middle East (Turkey, Israel, the United Arab Emirates), Asia, Russia and the United States. An estimated 500,000 women from Central and Eastern Europe are working in prostitution in the EU alone.

In the United Kingdom, the Home Office has stated that 71 women were trafficked into prostitution in 1998. They also suggest that the actual figure could be up to 1,420 women

trafficked into the UK during the same period. However, the figures are problematic as the definition used in the UK to identify cases of sex trafficking-derived from the Sexual Offences Act 2003-does not require that victims have been coerced or misled. Thus, any individual who moves to the UK for the purposes of sex work can be regarded as having been trafficked-even if they did so with their knowledge and consent. The Home Office do not appear to be keeping records of the number of people trafficked into the UK for purposes other than sexual exploitation.

In Russia, many women have been trafficked overseas for the purpose of sexual exploitation, Russian women are in prostitution in over 50 countries. Annually, thousands of Russian women end up as prostitutes in Israel, China, Japan or South Korea. Russia is also a significant destination and transit country for persons trafficked for sexual and labor exploitation from regional and neighboring countries into Russia, and on to the Gulf states, Europe, Asia, and North America.

In poverty-stricken Moldova, where the unemployment rate for women ranges as high as 68% and one-third of the workforce live and work abroad, experts estimate that since the collapse of the Soviet Union between 200,000 and 400,000 women have been sold into prostitution abroad—perhaps up to 10% of the female population. In Ukraine, a survey conducted by the NGO La Strada Ukraine in 2001–2003, based on a sample of 106 women being trafficked out of Ukraine found that 3% were under 18, and the U.S. State Department reported in 2004 that incidents of minors being trafficked was increasing. It is estimated that half a million Ukrainian women were trafficked abroad since 1991 (80% of all unemployed in Ukraine are women).

The ILO estimates that 20 percent of the five million illegal immigrants in Russia are victims of forced labor, which is a form of trafficking. However even citizens of Russian Federation have become victims of human trafficking. They are typically kidnapped and sold by police to be used for hard labor, being regularly drugged and chained like dogs to prevent them from escaping. There were reports of trafficking of children and of

child sex tourism in Russia. The Government of Russia has made some effort to combat trafficking but has also been criticized for not complying with the minimum standards for the elimination of trafficking.

Causes of Trafficking

Trafficking in people has been facilitated by porous borders and advanced communication technologies, it has become increasingly transnational in scope and highly lucrative. Unlike drugs or arms, people can be "sold" many times. The opening up of Asian markets, porous borders, the end of the Soviet Union and the collapse of the former Yugoslavia have contributed to this globalization.

Some causes and facilitators of trafficking include:

- Lack of employment opportunities
- Organized crime
- Regional imbalances
- Economic disparities
- Social discrimination
- Corruption in government
- Political instability
- Armed conflict
- Mass resettlement for large projects without proper Resettlement and Rehabilitation packages.
- Profitability
- Insufficient penalties against traffickers
- Minimal law enforcement on global sex tourism industry
- Legal processes that prosecute victims for prosecution instead of the traffickers
- Poor international border defence

Relation to Other Vulnerability Issues

Human trafficking is not a stand alone issue. It is closely related other issues that threaten security well being of the

victims. Victims are exposed to continuous threats of physical violence by traffickers to ensure compliance. Many are held in bondage and beaten to suppress resistance. Other threats include absolute poverty due to wage deprivation.

They are unprotected by labor laws, and long working hours as well as lack of holiday is common. For example, 15 is the standard working hours per day among Chinese victims in France. In Japan, Thai trafficking victims also complained of breach of work contracts, non-payment of wages, mandatory night work and poor accommodation.

Human Trafficking and Sexual Exploitation

There is no universally accepted definition of trafficking for sexual exploitation. The term encompasses the organized movement of people, usually women, between countries and within countries for sex work with the use of physical coercion, deception and bondage through forced debt. However, the issue becomes contentious when the element of coercion is removed from the definition to incorporate facilitating the willing involvement in prostitution.

For example, In the United Kingdom, The Sexual Offences Act, 2003 incorporated trafficking for sexual exploitation but did not require those committing the offence to use coercion, deception or force, so that it also includes any person who enters the UK to carry out sex work with consent as having being trafficked.

Save the Children stated "The issue gets mired in controversy and confusion when prostitution itself is considered as a violation of the basic human rights of both adult women and minors, and equal to sexual exploitation per se..... trafficking and prostitution become conflated with each other.... On account of the historical conflation of trafficking and prostitution both legally and in popular understanding, an overwhelming degree of effort and interventions of anti-trafficking groups are concentrated on trafficking into prostitution".

Sexual trafficking includes coercing a migrant into a sexual act as a condition of allowing or arranging the migration.

Sexual trafficking uses physical coercion, deception and bondage incurred through forced debt. Trafficked women and children, for instance, are often promised work in the domestic or service industry, but instead are usually taken to brothels where their passports and other identification papers are confiscated. They may be beaten or locked up and promised their freedom only after earning – through prostitution – their purchase price, as well as their travel and visa costs.

The main motive of a woman (in some cases an underage girl) to accept an offer from a trafficker is better financial opportunities for herself or her family. In many cases traffickers initially offer 'legitimate' work or the promise of an opportunity to study. The main types of work offered are in the catering and hotel industry, in bars and clubs, modeling contracts, or au pair work. Traffickers sometimes use offers of marriage, threats, intimidation and kidnapping as means of obtaining victims. In the majority of cases, the women end up in prostitution.

Also some (migrating) prostitutes become victims of human trafficking. Some women know they will be working as prostitutes, but they have an inaccurate view of the circumstances and the conditions of the work in their country of destination.

In Japan the prosperous entertainment market had created huge demand for commercial sexual workers, and such demand is being met by trafficking women and children from the Philippines, Colombia and Thailand. Women are forced into street prostitution, based stripping and live sex acts. However, from information obtained from detainees or deportees from Japan, about 80 percent of the women went there with the intention of working as prostitutes.

The Fundamentalist Church of Jesus Christ of Latter Day Saints, in the US and Canada, has also been implicated in the trafficking of underage women across state and international boundaries (US/Canada). In most cases, this is for the continuation of polygamous practices, in the form of plural marriage.

Trafficking victims are also exposed to different psychological problems. They suffer social alienation in the host and home countries. Stigmatization, social exclusion and intolerance make reintegration into local communities difficult. The governments offer little assistance and social services to trafficked victims upon their return. As the victims are also pushed into drug trafficking, many of them face criminal sanctions.

Efforts to Reduce Human Trafficking

Governments, international associations, and nongovernmental organizations have all tried to end human trafficking with various degrees of success.

Government Actions

Actions taken to combat human trafficking vary from government to government. Some have introduced legislation specifically aimed at making human trafficking illegal. Governments can also develop systems of co-operation between different nation's law enforcement agencies and with non-government organizations (NGOs). Many countries though have come under criticism for inaction, or ineffective action. Criticisms include failure of governments in not properly identifying and protecting trafficking victims, that immigration policies might re-victimize trafficking victims, or insufficient action in helping prevent vulnerable people becoming trafficking victims.

A particular criticism has been the reluctance of some countries to tackle trafficking for purposes other than sex.

Other actions governments could take is raise awareness. This can take on three forms. Firstly in raising awareness amongst potential victims, in particular in countries where human traffickers are active. Secondly, raising awareness amongst police, social welfare workers and immigration officers. And in countries where prostitution is legal or semi-legal, raising awareness amongst the clients of prostitution, to look out for signs of a human trafficking victim.

Raising awareness can take on different forms. One method is through the use of awareness films or through posters.

International Law

In 2000 the United Nations adopted the Convention against Transnational Organized Crime, also called the Palermo Convention, and two Palermo protocols there to:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;
- Protocol against the Smuggling of Migrants by Land, Sea and Air.

All of these instruments contain elements of the current international law on trafficking in human beings.

Council of Europe

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Council of Europe on 16 May 2005. The aim of the convention is to prevent and combat the trafficking in human beings. The Convention entered into force on 1 February 2008. Of the 47 member states of the Council of Europe, so far 21 have signed the convention and 17 have ratified it.

United Kingdom

In the United Kingdom, after intense pressure from Human Rights organisations, trafficking for labour exploitation was made illegal in 2004 (trafficking for sexual exploitation being criminalised many years previously). However, the 2004 law has been used very rarely and by mid-2007 there had not been a single conviction under these provisions.

Australia

Human trafficking in Australia.

United States Law

Laws against trafficking in the United States exist at the federal and state levels. Over half of the states now criminalize human trafficking though the penalties are not as tough as the federal laws. Related federal and state efforts focus on regulating the tourism industry to prevent the facilitation of sex tourism

and regulate international marriage brokers to ensure criminal background checks and information on how to get help are given to the potential bride.

The United States federal government has taken a firm stance against human trafficking both within its borders and beyond. Domestically, human trafficking is a federal crime under Title 18 of the United States Code. Section 1584 makes it a crime to force a person to work against his will, whether the compulsion is effected by use of force, threat of force, threat of legal coercion or by "a climate of fear" (an environment wherein individuals believe they may be harmed by leaving or refusing to work); Section 1581 similarly makes it illegal to force a person to work through "debt servitude." Human trafficking as it relates to involuntary servitude and slavery is prohibited by the 13th Amendment. Federal laws on human trafficking are enforced by the United States Department of Justice Civil Rights Division, Criminal Section.

The Victims of Trafficking and Violence Protection Act of 2000 allowed for greater statutory maximum sentences for traffickers, provided resources for protection of and assistance for victims of trafficking and created avenues for interagency cooperation. It also allows many trafficking victims to remain in the United States and apply for permanent residency under a T-1 Visa.. The act also attempted to encourage efforts to prevent human trafficking internationally, by creating annual country reports on trafficking and tying financial non-humanitarian assistance to foreign countries to real efforts in addressing human trafficking.

The United States Department of State has a high-level official charged with combating human trafficking, the Director of the Office to Monitor and Combat Trafficking in Persons ("anti-trafficking czar"). The current director is Mark P. Lagon.

International NGOs such as Human Rights Watch and Amnesty International have called on the United States to improve its measures aimed at reducing trafficking. They recommend that the United States more fully implement the United Nations Convention against Transnational Organized

Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and for immigration officers to improve their awareness of trafficking and support the victims of trafficking.

Several state governments have taken action to address human trafficking in their borders, either through legislation or prevention activities. For example, Florida state law prohibits forced labor, sex trafficking, and document servitude, and provides for mandatory law enforcement trainings and victim services. A 2006 Connecticut law prohibits coerced work and makes trafficking a violation of the Connecticut RICO Act.

Non-Governmental Organizations

Human rights organisations, including Amnesty International, Anti-Slavery International and Human Rights Watch have campaigned against human trafficking. Several non-governmental organizations (NGOs) and human rights organizations have been formed to combat human trafficking. Some of these include:

> ***Somaly Mam Foundation**, founded in 2007 at the United Nations with the support of UNICEF, UNIFEM, and IOM, the Somaly Mam Foundation is known for empowering victims of human trafficking to become activists and agents of change. With the leadership of world renowned Cambodian activist, Somaly Mam, the organization has garnered support from influential leaders and celebrities such as Susan Sarandon, Daryl Hannah, Diane von Furstenberg, and Hillary Clinton. The foundation also runs activities to support Rescue and Rehabilitation of victims in Southeast Asia and works to increase global awareness to inspire action.*

Redlight Children Campaign, founded in 2002 is a non-profit organization created by New York lawyer and president of Priority Films Guy Jacobson and Israeli actress Adi Ezroni in 2002, to combat worldwide child sexual exploitation and human trafficking. Its mission is to decrease the demand side of the international sex trade through legislation and enforcement while raising awareness utilizing mass media and

grassroots outreach. Through its partnership with Priority Films, Redlight Children has recently launched the K11 Project—three films which attempt to expose real life experiences of the underage sex trade. K11 consists of two documentaries and a feature-length narrative, Holly (film), which were all filmed on location in Cambodia. Red Light also began working the Somaly Mam Foundation in 2003. A comprehensive blueprint outlines three phases of the attack on this crime against humanity: raising awareness, correcting, improving, and enforcing current legislation, followed by allocating the appropriate resources to mirror the size and scope of the epidemic. The hope is that utilizing both film and mass media will put the issue on the international agenda, inciting action from the general public and policy makers, thereby leading to an allocation of appropriate resources and stricter enforcement that will effectively reduce demand.

Not For Sale, founded in 2007, equips and mobilizes Smart Activists to deploy innovative solutions to re-abolish slavery in their own backyards and across the globe. Headquartered in Montara, CA, Not For Sale has 42 regional chapters across the United States. Through the innovation and implementation of 'open-source activism', the campaign identifies trafficking rings inside the United States, and collaborates with local law enforcement and community groups to shut them down and provide support for the victims. Internationally, the campaign partners with poorly resourced abolitionist groups to enhance their capacity.

Polaris Project, founded in 2002, is an international anti-human trafficking organization with offices in Washington DC, New Jersey, Colorado, and Japan. Polaris Project's comprehensive approach includes operating local and national human trafficking hotlines, conducting direct outreach and victim identification, providing social services and housing to victims, advocating for stronger state and national anti-trafficking legislation, and engaging community members in grassroots efforts.

Tiny Stars, Using the Protect Act of 2003, Tiny Stars works closely with Federal Law enforcement agencies to capture

American child predators. Founded by Jake Collins in 1997, Tiny Stars focuses on identifying, tracking, and capturing pedophiles who victimize girls between the ages of 8–14 years old. To advance its mission, the organization has developed a network of undercover agents, often former agents of the CIA, FBI, or Navy SEALS. Tiny Stars has more recently begun conducting operations and fundraising under the name Global Centurion.

National Human Trafficking Resource Center (NHTRC) is a program funded by the Department of Health and Human Services. The NHTRC operates the National Human Trafficking Resource Center Hotline 24-hours a day, 365 days a year.

Made By Survivors (MBS)[6] is a division of **The Emancipation Network** (TEN) and is an organization that uses economic empowerment to help survivors of trafficking and people at high risk to rebuild their lives. MBS's handicraft programs offer these survivors a job that enables them to support themselves and live a meaningful, independent life. For those still living at the shelter, handicrafts programs provide therapeutic benefits, job training, literacy, social interaction, and a stipend for part-time work.

MBS partners with 18 anti-slavery organizations around the world, including Thailand, Cambodia, Nepal, India, Ukraine, Uganda, the Philippines, Tanzania, and the United States. MBS also runs volunteer trips to India as a way to educate people who can use the experience to get more involved and educate the public. The trips also help the survivors to trust people again and reintegrate them back into a normal life. In addition, MBS offers people the opportunity to host parties at their homes to sell the handicrafts and educate friends and family.

Criticisms

Lack of Accurate Data and Possible Overestimation: Estimates of the number of people trafficked for sexual purposes is contentious-problems of definition can be compounded by the willingness of victims to identify as being trafficked.

Distinguishing trafficking from voluntary migration is crucial because the ability of women to purposefully and voluntarily migrate for work should be respected. In a 2003 report the Thai sex worker support organization EMPOWER stated that many anti-trafficking groups fail to see the difference between migrant sex workers and women forced to prostitute themselves against their will. They documented a May 2003 "raid and rescue" operation on a brothel in Chiang Mai that was carried out without the consent of the workers, resulting in numerous human rights violations.

In her 2007 book *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, sociologist Laura Mar'a Agust'n has likewise criticized what she calls the "rescue industry" for viewing most migrant sex workers as victims of trafficking that need to be saved, with the effect of severely restricting international freedom of movement. Agust'n does not deny human trafficking or forced prostitution takes place, but rather that the 'rescue industry' overestimates figures.

Much criticism of the recent publicity around sex trafficking and the associated demands for legal sanction against prostitutes or their customers, has come from sexual health / AIDS organisations. Their principle concern being that such measures hinder efforts to prevent the spread of HIV/AIDS. The epidemiologist Elizabeth Pisani, in her book *The Wisdom of Whores: Bureaucrats, Brothels, and the Business of AIDS*, examines the phenomenon of sex trafficking and its impact on HIV prevention in detail. She concludes that forced trafficking (as opposed to voluntary involvement in sex work) is wildly over estimated.

Focus on "Sex Trafficking"

Whilst most mainstream human rights groups acknowledge all forms of trafficking, there is growing criticism of the focus on trafficking for sexual exploitation at the expense of tackling other forms such as domestic or agricultural trafficking. Ambassador Nancy Elly Raphael, the first director of the U.S. Federal Trafficking in Persons Office, resigned over what she saw as misrepresentation of the issue in order to provide support

for the anti-prostitution lobby. She says "It was so ideological. Prostitution, that's what was driving the whole program. They kept saying, 'If you didn't have prostitution, you wouldn't have trafficking.' I was happy to leave."

In many countries, particularly the United States and the United Kingdom, the overwhelming majority of interventions concentrate on sex trafficking. For example, on 8 July 2008, Fiona Mactaggart MP, a prominent UK government spokesperson on the issue, admitted that the UK government concentrated on disrupting sex trafficking. Quoting from Sigma Huda, UN special rapporteur on trafficking in persons, she said "For the most part, prostitution as actually practised in the world usually does satisfy the elements of trafficking."

War and Terrorism

Since its independence in 1947, India has been facing the problem of insurgency and terrorism in different parts of the country. For the purpose of this column, insurgency has been taken to mean an armed violent movement, directed mainly against security forces and other government targets, to seek territorial control; terrorism has been taken to mean an armed violent movement directed against government as well as non-government targets, involving pre-meditated attacks with arms, ammunition and explosives against civilians, and resorting to intimidation tactics such as hostage-taking and hijacking, but not seeking territorial control.

India has faced exclusively terrorist movements in Punjab and Jammu and Kashmir, bordering Pakistan, and part insurgent-part terrorist movements in the northeast, bordering Myanmar and Bangladesh; in Bihar, bordering Nepal; and in certain interior states like Andhra Pradesh, Madhya Pradesh and Orissa that do not have international borders.

India has also faced terrorism of an ephemeral nature, which sprang suddenly due religious anger against either the government or the majority Hindu community or both and petered out subsequently. Examples of this would be the simultaneous explosions in Mumbai on March 12, 1993, which

killed about 250 civilians, and the simultaneous explosions in Coimbatore, Tamil Nadu, in February 1998. Tamil Nadu has also faced the fallout of terrorism promoted by the Liberation Tigers of Tamil Eelam in Sri Lanka in the form of attacks by LTTE elements on its political rivals living in the state and in the assassination of former prime minister Rajiv Gandhi in May 1991.

India had also faced, for some years, Hindu sectarian terrorism in the form of the Anand Marg, which, in its motivation and irrationality, resembled to some extent the Aum Shinrikiyo of Japan.

The Marg, with its emphasis on meditation, special religious and spiritual practices and use of violence against its detractors, had as many followers in foreign countries as it had in India. Its over-ground activities have petered out since 1995, but it is believed to retain many of its covert cells in different countries. However, they have not indulged in acts of violence recently.

Causes

The causes for the various insurgent/terrorist movements include:

***Political Causes*:** This is seen essentially in Assam and Tripura. The political factors that led to insurgency-cum-terrorism included the failure of the government to control large-scale illegal immigration of Muslims from Bangladesh, to fulfil the demand of economic benefits for the sons and daughters of the soil, etc.

***Economic Causes*:** Andhra Pradesh, Madhya Pradesh, Orissa and Bihar are prime examples. The economic factors include the absence of land reforms, rural unemployment, exploitation of landless labourers by land owners, etc. These economic grievances and perceptions of gross social injustice have given rise to ideological terrorist groups such as the various Marxist/Maoist groups operating under different names.

***Ethnic Causes*:** Mainly seen in Nagaland, Mizoram and Manipur due to feelings of ethnic separateness.

***Religious Causes*:** Punjab before 1995 and in J&K since 1989.

In Punjab, some Sikh elements belonging to different organisations took to terrorism to demand the creation of an independent state called Khalistan for the Sikhs. In J&K, Muslims belonging to different organisations took to terrorism for conflicting objectives. Some, such as the Jammu & Kashmir Liberation Front, want independence for the state, including all the territory presently part of India, Pakistan and China. Others, such as the Hizbul Mujahideen, want India's J&K state to be merged with Pakistan. While those who want independence project their struggle as a separatist one, those wanting a merger with Pakistan project it as a religious struggle.

There have also been sporadic acts of religious terrorism in other parts of India. These are either due to feelings of anger amongst sections of the Muslim youth over the government's perceived failure to safeguard their lives and interests or due to Pakistan's attempts to cause religious polarisation.

The maximum number of terrorist incidents and deaths of innocent civilians have occurred due to religious terrorism. While the intensity of the violence caused by terrorism of a non-religious nature can be rated as low or medium, that of religious terrorism has been high or very high. It has involved the indiscriminate use of sophisticated Improvised Explosive Devices, suicide bombers, the killing of civilians belonging to the majority community with hand-held weapons and resorting to methods such as hijacking, hostage-taking, blowing up of aircraft through IEDs, etc.

Certain distinctions between the modus operandi and concepts/beliefs of religious and non-religious terrorist groups need to be underlined, namely:

Non-religious terrorist groups in India do not believe in suicide terrorism, but the LTTE does. Of the religious terrorist groups, the Sikhs did not believe in suicide terrorism. The indigenous terrorist groups in J&K do not believe in suicide terrorism either; it is a unique characteristic of Pakistan's pan-Islamic jihadi groups operating in J&K and other parts of

India. They too did not believe in suicide terrorism before 1998; in fact, there was no suicide terrorism in J&K before 1999. They started resorting to it only after they joined Osama bin Laden's International Islamic Front in 1998. Since then, there have been 46 incidents of suicide terrorism, of which 44 were carried out by bin Laden's Pakistani supporters belonging to these organisations.

Non-religious terrorist groups in India have not resorted to hijacking and blowing up of aircraft. Of the religious terrorists, the Sikh groups were responsible for five hijackings, the indigenous JKLF for one and the Pakistani jihadi group, the Harkat-ul-Mujahideen (which is a member of the IIF), for one. The Babbar Khalsa, a Sikh terrorist group, blew up Air India's *Kanishka* aircraft off the Irish coast on June 23, 1985, killing nearly 200 passengers and made an unsuccessful attempt the same day to blow up another Air India plane at Tokyo. The IED there exploded prematurely on the ground. The Kashmiri and the Pakistani jihadi groups have not tried to blow up any passenger plane while on flight. However, the JKLF had blown up an Indian Airlines aircraft, which it had hijacked to Lahore in 1971, after asking the passengers and crew to disembark.

All terrorist groups — religious as well as non-religious — have resorted to kidnapping hostages for ransom and for achieving other demands. The non-religious terrorist groups have targeted only Indians, whereas the religious terrorist groups target Indians as well as foreigners. The Khalistan Commando Force, a Sikh terrorist group, kidnapped a Romanian diplomat in New Delhi in 1991. The JKLF kidnapped some Israeli tourists in J&K in 1992. HUM, under the name Al Faran, kidnapped five Western tourists in 1995 and is believed to have killed four of them. An American managed to escape. Sheikh Omar, presently on trial for the kidnap and murder of American journalist Daniel Pearl in Karachi in January last year, had earlier kidnapped some Western tourists near Delhi. They were subsequently freed by the police.

Non-religious terrorist groups in India have not carried out any act of terrorism outside Indian territory. Of the religious terrorist groups, a Sikh organisation blew up an Air India

plane off the Irish coast and unsuccessfully tried to blow up another plane at Tokyo the same day, plotted to kill then prime minister Rajiv Gandhi during his visit to the US in June 1985 (the plot was foiled by the Federal Bureau of Investigation), attacked the Indian ambassador in Bucharest, Romania, in October 1991, and carried out a number of attacks on pro-government members of the Sikh diaspora abroad. The JKLF kidnapped and killed an Indian diplomat in Birmingham, England, in 1984. In the 1970s, the Anand Marg had indulged in acts of terrorism in foreign countries.

None of the non-religious terrorist groups advocate the acquisition and use of Weapons of Mass Destruction. Of the religious groups, the Sikh and the indigenous Kashmiri terrorist groups did/do not advocate the acquisition and use of WMD. However, the Pakistani pan-Islamic groups, which are members of the IIF and which operate in J&K, support bin Laden's advocacy of the right and religious obligation of Muslims to acquire and use WMD to protect their religion, if necessary.

The Sikh terrorist groups did not cite their holy book as justification for their acts of terrorism, but the indigenous Kashmiri groups as well as the Pakistani jihadi groups operating in India cite the holy Koran as justification for their jihad against the government of India and the Hindus.

The Sikh and the indigenous Kashmiri groups projected/ project their objective as confined to their respective state, but the Pakistani pan-Islamic terrorist groups project their aim as extending to the whole of South Asia — namely the 'liberation' of Muslims in India and the ultimate formation of an Islamic Caliphate consisting of the 'Muslim homelands' of India and Sri Lanka, Pakistan and Bangladesh.

The Sikh terrorist groups demanded an independent nation on the ground that Sikhs constituted a separate community and could not progress as fast as they wanted to in a Hindu-dominated country. They did not deride Hinduism and other non-Sikh religions. Nor did they call for the eradication of Hindu influences from their religion. The indigenous Kashmiri organisations, too, follow a similar policy. But the Pakistani

pan-Islamic jihadi organisations ridicule and condemn Hinduism and other religions and call for the eradication of what they describe as the corrupting influence of Hinduism on Islam as practised in South Asia.

The Sikh and indigenous Kashmiri terrorist organisations believed/believe in Western-style parliamentary democracy. The Pakistani jihadi organisations project Western-style parliamentary democracy as anti-Islam since it believes sovereignty vests in people and not in God.

Religious as well as non-religious terrorist groups have external links with like-minded terrorist groups in other countries.

Examples: The link between the Marxist groups of India with Maoist groups of Nepal, Sri Lanka and Bangladesh; the link between the indigenous Kashmiri organisations with the religious, fundamentalist and jihadi organisations of Pakistan; the link between organisations such as the Students Islamic Movement of India with jihadi elements in Pakistan and Saudi Arabia; and the link between the Pakistani pan-Islamic jihadi organisations operating in India with bin Laden's Al Qaeda and the Taliban.

The Role of the Diaspora

Religious as well as non-religious terrorist groups draw moral support and material sustenance from the overseas diaspora. The Khalistan movement was initially born in the overseas Sikh community in the UK and Canada and spread from there to Punjab in India. The indigenous Kashmiri organisations get material assistance from the large number of migrants from Pakistan-occupied Kashmir, called the Mirpuris, who have settled in Western countries. The Marxist groups get support from the Marxist elements in the overseas Indian community.

Funding

The following are the main sources of funding for terrorist and insurgent groups:

Clandestine contributions from Pakistan's Inter-Services Intelligence.

Contributions from religious, fundamentalist and pan-Islamic jihadi organisations in Pakistan.

Contributions from ostensibly charitable organisations in Pakistan and Saudi Arabia.

Contributions from trans-national criminal groups, such as the mafia group led by Dawood Ibrahim who operates from Karachi, Pakistan.

Extortions and ransom payments for releasing hostages.

Collections — voluntary or forced — from the people living in the area where they operate.

Narcotics smuggling.

The funds are normally transmitted either through couriers or through the informal hawala channel. Rarely are funds transmitted through formal banking channels.

Sanctuaries

Religious terrorist organisations have their main external sanctuaries in Pakistan and Bangladesh, while non-religious terrorist organisations look to Nepal, Bhutan and Myanmar. Some northeast non-religious terrorist groups also operate from Bangladesh, while certain religious groups get sanctuary in Nepal.

Since 1956, Pakistan has been using its sponsorship of and support to different terrorist groups operating in India as a strategic weapon to keep India preoccupied with internal security problems. Before the formation of Bangladesh in 1971, the then East Pakistan was the main sanctuary for non-religious terrorist groups operating in India. Since 1971, the present Pakistan, called West Pakistan before 1971, has been the main sanctuary for all Sikh and Muslim terrorist groups.

Pakistan has given sanctuary to 20 principal leaders of Sikh and Muslim terrorist groups, including hijackers of Indian aircraft and trans-national criminal groups colluding with terrorists. Despite strong evidence of their presence in Pakistani territory and active operation from there, its government has

denied their presence and refused to act against them. It has also ignored Interpol's notices for apprehending them and handing them over to India.

For some years after 1971, the Bangladesh authorities acted vigorously against Indian groups operating from their territory. This has gradually diluted due to the collusion of the pro-Pakistan elements in Bangladesh's military-intelligence establishment with Pakistan's military-intelligence establishment, the collusion of Bangladesh's religious fundamentalist parties with their counterparts in Pakistan and the unwillingness or inability of successive governments in Dhaka to act against these elements.

In Nepal, Bhutan and Myanmar, there is no collusion of the governments with the Indian terrorist groups operating from their territory. Their authorities have been trying to be help India as much as they can. However, their weak control over the territory from which the terrorists operate and their intelligence and security establishment does not allow for effective action against the terrorists.

Child Labour

The problem of child labour continues to pose a challenge before the nation. Government has been taking various pro-active measures to tackle this problem. However, considering the magnitude and extent of the problem and that it is essentially a socio-economic problem inextricably linked to poverty and illiteracy, it requires concerted efforts from all sections of the society to make a dent in the problem.

Way back in 1979, Government formed the first committee called Gurupadswamy Committee to study the issue of child labour and to suggest measures to tackle it. The Committee examined the problem in detail and made some far-reaching recommendations. It observed that as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would not be a practical proposition. The Committee felt that in the circumstances, the only alternative left was to ban child labour

in hazardous areas and to regulate and ameliorate the conditions of work in other areas. It recommended that a multiple policy approach was required in dealing with the problems of working children.

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted in 1986. The Act prohibits employment of children in certain specified **hazardous occupations and processes** and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, a **National Policy on Child Labour** was formulated in 1987. The Policy seeks to adopt a gradual & sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance. The Action Plan outlined in the Policy for tackling this problem is as follows:

- **Legislative Action Plan** for strict enforcement of Child Labour Act and other labour laws to ensure that children are not employed in hazardous employments, and that the working conditions of children working in non-hazardous areas are regulated in accordance with the provisions of the Child Labour Act. It also entails further identification of additional occupations and processes, which are detrimental to the health and safety of the children.
- **Focusing of General Developmental Programmes for Benefiting Child Labour**-As poverty is the root cause of child labour, the action plan emphasizes the need to cover these children and their families also under various poverty alleviation and employment generation schemes of the Government.
- **Project Based Plan of Action** envisages starting of projects in areas of high concentration of child labour. Pursuant to this, in 1988, the **National Child Labour Project (NCLP)** Scheme was launched in 9 districts

of high child labour endemicity in the country. The Scheme envisages running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, a stipend of Rs.100 per month, supplementary nutrition and regular health check ups so as to prepare them to join regular mainstream schools. Under the Scheme, funds are given to the District Collectors for running special schools for child labour. Most of these schools are run by the NGOs in the district. □

Government has accordingly been taking proactive steps to tackle this problem through strict enforcement of legislative provisions along with simultaneous rehabilitative measures. State Governments, which are the appropriate implementing authorities, have been conducting regular inspections and raids to detect cases of violations. Since poverty is the root cause of this problem, and enforcement alone cannot help solve it, Government has been laying a lot of emphasis on the rehabilitation of these children and on improving the economic conditions of their families. The coverage of the NCLP Scheme has increased from 12 districts in 1988 to 100 districts in the 9 Plan to 250 districts during the 10 Plan.

Strategy for the Elimination of Child Labour under the 10 Plan

An evaluation of the Scheme was carried out by independent agencies in coordination with V. V. Giri National Labour Institute in 2001. Based on the recommendations of the evaluation and experience of implementing the scheme since 1988, the strategy for implementing the scheme during the 10 Plan was devised. It aimed at greater convergence with the other developmental schemes and bringing qualitative changes in the Scheme. Some of the salient points of the 10 Plan Strategy are as follows:

- Focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the Plan period.

- Expansion of National Child Labour Projects to additional 150 districts.
- Linking the child labour elimination efforts with the Scheme of Sarva Shiksha Abhiyan of Ministry of Human Resource Development to ensure that children in the age group of 5-8 years get directly admitted to regular schools and that the older working children are mainstreamed to the formal education system through special schools functioning under the NCLP Scheme.
- Convergence with other Schemes of the Departments of Education, Rural Development, Health and Women and Child Development for the ultimate attainment of the objective in a time bound manner. □

The Government and the Ministry of Labour & Employment in particular, are rather serious in their efforts to fight and succeed in this direction. The number of districts covered under the NCLP Scheme has been increased from 100 to 250, as mentioned above in this note. In addition, 21 districts have been covered under **INDUS**, a similar Scheme for rehabilitation of child labour in cooperation with US Department of Labour. Implementation of this Project was recently reviewed during the visit of Mr. Steven Law, Deputy Secretary of State, from the USA. For the Districts not covered under these two Schemes, Government is also providing funds directly to the NGOs under the Ministry's **Grants-in-aid Scheme** for running Special Schools for rehabilitation of child labour, thereby providing for a greater role and cooperation of the civil society in combating this menace. □

Elimination of child labour is the single largest programme in this Ministry's activities. Apart from a major increase in the number of districts covered under the scheme, the priority of the Government in this direction is evident in the quantum jump in **budgetary allocation** during the 10 Plan. Government has allocated Rs. 602 crores for the Scheme during the 10 Plan, as against an expenditure of Rs. 178 crores in the 9 Plan. The resources set aside for combating this evil in the Ministry is around 50 per cent of its total annual budget. □

The implementation of NCLP and INDUS Schemes is being closely monitored through periodical reports, frequent visits and meetings with the District and State Government officials. The Government's commitment to achieve tangible results in this direction in a time bound manner is also evident from the fact that in the recent Regional Level Conferences of District Collectors held in Hyderabad, Pune, Mussoorie and Kolkata district-wise review of the Scheme was conducted at the level of Secretary. These Conferences provided an excellent opportunity to have one-to-one interaction with the Collectors, who play a pivotal role in the implementation of these Schemes in the District. Besides, these Conferences also helped in a big way in early operationalisation of Scheme in the newly selected 150 districts.

The Government is committed to eliminate child labour in all its forms and is moving in this direction in a targeted manner. The multipronged strategy being followed by the Government to achieve this objective also found its echo during the recent discussions held in the Parliament on the Private Member's Bill tabled by Shri Iqbal Ahmed Saradgi. It was unanimously recognized therein that the problem of child labour, being inextricably linked with poverty and illiteracy, cannot be solved by legislation alone, and that a holistic, multipronged and concerted effort to tackle this problem will bring in the desired results.□

Patriarchism

One of the rare truthful moments in one's life arrives when one is at her writing table putting together her cv that will officially announce her presence as an available adult in the employment world. Call them solipsist or honest, there are some queries on that paper that need enumeration when you write that resume.

Honorific: Mr/Mrs/Ms/Miss/Master. The last is archaic and is hence never included in the checkboxes. So, indeed, is the next, and the middle option sits on the fence in its timeliness (the term was first suggested as a convenience to writers of business letters by such publications as the '*Bulletin of the*

American Business Writing Association' (1951) and '*The Simplified Letter,'* issued by the National Office Management Association, the USA (1952)) and superfluity (especially if single/ married checkboxes are going to appear later on the biodata although office romances are still mostly outlawed). What's the point of an honorific if one wants to withhold an idea of one's place in her own domestic life and, even if there is, doesn't it get somewhat limited? Why not then, being Hindu and Indian, use the more egalitarian Sri/Srimati (abbreviated Smt)/Kumar/ Kumari version which is also based on age of consent/adulthood but not on marriedness/actual loss of virginity? Or, whether married or not, wear the timeless 'Mrs' as a universal feminine?

Name: Shakespeare was wrong and while a first name often gives out a persona to go with it (think Lucy (graceful), Tom (rakish), Walter (ineffectual), Emma (practical), Phil (sensitive)), a last name denotes your lineage (which is partly why some of you saw the light of day). And while most countries including our own (it is valid by our constitution) have married women keep their natural (born) surnames today as it would have been unfair (and incest-like?) to have done otherwise (and ridiculous to have men change theirs at marriage and pointless), mothers lose out when it comes to naming their children on their share of posterity, the easy answer to that naming game being letting women carry their mother's surnames and men their father's to accommodate both patrilineal and matrilineal realities. That is even infinitely better than handing out American Indian style names to individuals like Shining Water and Laughing Brook as suggested by certain poetic and literary circles of intellectuals to evade addressing heredity altogether. As the modern nuclear family made up of independent, adult children has satisfactorily resolved the unnecessary locality conundrum.

Address/Locality: Here's a regressive court ruling. An Italian court order passed in 2003 allows adult men to live with their parents if they are not employed or have no source of income. Here's another. The Calcutta High Court, in 2006, made it compulsory for fathers to provide for their grown, unmarried daughters in India's West Bengal. Here's a third.

This year (2008), Tamil Nadu down south legalises a pension for unmarriageable, unemployed spinsters above the age of 49.

Sex: Pointless unless job applied for is sex-specific *e.g.* surrogate motherhood. Which is still rare on the prospective wage earner's weekly news bulletin.

Subcaste: Quotas, anyone? (Somewhere down the line we have to strike a balance. It has to be noted that nowhere else in the world do castes, classes or communities queue up for the sake of gaining backward status. Nowhere else in the world is there competition to assert backwardness and then to claim we are more backward than you. Supreme Court. March 29, 2007).

Guardian's Name: Writer Gita Hariharan famously won guardianship rights for mothers in the Indian Supreme Court in 2000, the year many of us came to appreciate for the first time the meaning of the words, a landmark case. Hariharan had the apex court observe the mother is also, if secondary to the father (which is unjust and unjustified), the natural legal guardian of her child. That ruling triggered a change in official records from school applications to provident fund forms as also formats for cvs, making way for inclusion of the candidate's mother's name as an option next to the father's.

In 1910, German women won the right to work without the need of consent from their fathers or husbands. Indian adult women still need to provide the name of their father, husband or a legal guardian when applying for a stay at a guesthouse or a hostel. Forty per cent of them are beaten for stepping outdoors sans "the nod." How can a mother "guard" a child if the laws of the same land do not grant her the right and, authority that accrues thereof, to guard herself, community and family? Women have, can and do provide and protect as well as any other sex, some of them working to support the education and artistic projects of their spouses but 'Name of Wife' hardly figures in the professional records of such dependents, it is at best presented as a generic 'Name of Spouse(s).' It will take another enterprising couple to set right this account: Hariharan's victory merely bares the contradictions and shows the way.

Wear: Feeling 'empowered' in a sari? That's only because you are looked upon as a girl in other garb which accrues even less respect in Indian societal surrounds than an adult woman. If you aren't upto subverting others' ideas and responses to life for gain or fun from start-off right away and, rather than take the elevator, want to climb the learning ladder the innocent and sincere way, do not seriously wear one to your job interview. It is both overtly (in its flimsy midriff-baring uppers) and covertly (in its unreasonably restrictive lowers) sexual, informal, not-so-traditional (it is only just over two centuries old) and un-Indian (its idea was borrowed from Europe by the Tagorean women). Contrary to common opinion, pants are not so casual as much as practical and while not ethnic, are basic international attire.

Attitudes: Have you noticed how sometimes a generation gap doesn't exist outside a family? Humility is the first cousin of shyness. It is the awareness of thin wrists and heartbeats and of the eventuality of the need to pee, even if sans an urge once in a period of two days. It is hence a necessary evil. So is shyness because it stops us from getting into trouble. So is tolerance. It helps build fortitude. Which is far from the helpless resignation that masquerades as the value in some cultures. Religion is individual, it is prayers that are participatory. Don't get exploited for a bad reason. Don't be apologetic if you are. Anger is a virtue. It moves earth, creates and shakes the worlds. Tears should be involuntary. Wanting to cry is masochism. Homosexuals self-fertilise. It's better to be celibate. Female umpires will be the next good thing happening to cricket. Do not be quick to judge (if you don't know enough to do so) but do trust your judgment. Society is falling in love with mobile phones and gadgets and falling out of love with common sense and decency.

Abstractions: In 2006, the European Union did a rethink on some words pertaining to a religion, even planning to banish them from English vocabulary. Though the initiative did not work out, it was joyously appreciated by this writer who has borne since decades the same misgivings about the constant misuse of ideas and words leading to misnomenclature, both

journalistic and academic, and unnecessary definition problems. Now is the time to reclaim for what they really mean some of the following words.

Fundamentalism Means: Rootedness. Once meant (subjectively): A movement in American Protestantism that arose in the early part of the 20th century in reaction to modernism and that stresses the infallibility of the Bible not only in matters of faith and morals but also as a literal historical record. Used to mean: Orthodox adherence to a set of principles considered, usually incorrectly, as basic to a faith because adherents are unaware that the teachings handed down to them had mutated over time.

Conservative Meaning: Disposed to preserve. Used to mean: One that preserves degenerated and degenerating systems and structures instead of truly everlasting ones. Suggested replacement in this form: Degenerative.

Traditional Meaning: Established. Used to mean: Old-fashioned. Suggested replacements in this form. Conventional, customary.

Social Meaning: Of or pertaining to the life, welfare and relations of human beings in a community. Used to mean: Of or pertaining to anti-life, malevolent and anti-relationship attitudes and mindsets within or outside a community if the same are widely accepted or conventional. Suggested replacement: Societal.

Religious: Used to mean and should be replaced with godly and/or orthodox.

Patriarchy: Used to mean and should be replaced with misogyny. Or patriarchism. Patriarchy is good as is matriarchy as is egalitarianism provide the power is in the hands of those that deserve it and it is them who will use it the best.

Feminine: Used to mean weak, petty, vain, affected in specific ways and inferior to men but the word is not an oxymoron, contrary to expectations. Just two reasons why. The earliest life forms like the algae and the fungi have the least differentiation of sex, the humans, being the most developed

among the living must have the most, so to be human must also equally mean to be feminine for one of the two opposite sexes. Second. Women's liberation and evolution in the latter part of the millennium must have been a natural response to beat a threat of extinction brought about by weakening of the genes by weakening the female of the species.

Differently Abled: Used to mean disabled.

Terrorism: Used to mean insurgency and should be written as such unless it takes the form of mercenary militantism.

Activism: Used to mean political activity and initiative in social engineering and reform.

Radical, Extremist: Used to mean rational or natural and should be written as such. For example, I do not, since decades, live off my parents' money, indeed, I take care of at least one person with the sum I make that is decidedly meagre, given my renunciations. Sage, even personally complacent to the point of boredom unless provoked, I do not whine and am not known to complain, indeed, I am so free of that anti-establishment paranoia that even those that compromise daily with the state of things and actually contribute in its maintenance are seen to fashionably share and display as an excuse for their behaviour, that I am often considered "dumb" or deliberately "naïve." Why is it then that I lack a voice? Why are agents for my book so hard to come by? Why am I so summarily dismissed whenever I seek to do anything that will touch the greater order, like study further or find the resources to raise the baby that I have never had for fear of its abject poverty, publish a book, mobilise social change, save the world?

Communal: Meaning common or for all as in a communal kitchen or a communal pencil sharpener but now denoting exclusivity to some who are privy to access of privileges as in a communal issue of conflict.

Discrimination: Used to mean unfounded prejudice or bias when, in reality, it means good judgment based on discerning of worth or merit.

Westernised: Variously used to mean rational, unorthodox,

free-spirited, natural, international, egalitarian, effete or urban, depending on context of use, mostly by those who are the worst upholders of Oriental values who ignore and forget our individualistic and egalitarian texts, traditions, practices and schools, hence this is one of the most ironic and misused of all (mis)constructs.

Moral: Used to mean unliberated and judgmental.

Judgmental: Used, in its turn, to mean misjudgmental.

Myth: Used to mean a lie, unconscious or deliberate as opposed to a profound fable or a simple fairy tale.

Justify: Used to mean usually failed attempts at real justification. The 'judgmental' are said to 'justify' their judgment by 'myth' and not by fact.

Sex Worker: Used to mean prostitute. Who does not practise the "oldest profession in the world" because since when did crime (as in a confidence trick or dogma assisted robbery) become glorified to the status of paid work rather than a mere individual occupation and is there any reason why one party should pay the other for the benefit of the mutual pleasure derived from a consensual act even if that is solicited by either? Prostitutes also have little role to play in women's safety which can be only achieved through quashing of the "honour theory," awareness of women's equal strength and power and the real threat of the more vulnerable men's rape and castration.

Honour: Often used to mean just the opposite with regard to a woman whose pride is first vested in her soul (which is, physically, her actions and her brain) and last in her vagina which, again, is pregnable but equally often not and never violable.

Family: Often used to mean the sum of petty egotisms of the elderly and the male within or outside a domestic household and their spin-off effects on the vanities of its older female members which, taken as a whole, detracts from everyone's well being while accomplishing little else.

Guilt: Used to mean just so but is strangely devalued, even viewed as a vice, just to help evade consequences of one's

actions instead of making amends for them or redressal. Have you just harmed somebody? Are you guilty? You should be if you cannot justify yourself.

Islamism: This is the word the Europeans sought to ban. Some of them believe that no true faith would justify acts of deliberate untruth and true terror. Does the same section uphold multiculturalism over universal humanity? Is Hirsi Ali right or is Irshad Manzi, strictly the religion's first and only reformer till date – the others have mostly deserted it including the 13 century Sufis, the real Mussalman?

Domestic Violence

The response to the phenomenon of domestic violence is a typical combination of effort between law enforcement agencies, social service agencies, the courts and corrections/probation agencies. The role of all these has progressed over last few decades, and brought their activities in public view.

The traditional attitude on issues related to domestic violence gave top priority to privacy. Police officers, government and other social forces were always reluctant to interfere in family matters in the past and preferred to simply counsel the couple even in extreme cases instead of making arrests and generating the process of criminal justice.

However in recent times, the spirit of activism shown by advocacy and feminist groups has brought the effect and scope of the criminal justice system to redress wrongs done by domestic abuse in sharp visibility. Domestic violence is now being viewed as a public health problem of epidemic proportion world over- and many public, private and governmental agencies are seen making huge efforts to control it. Given below are the main bodies from the leading countries of the world that are rendering great service in this area. There are several organizations all over the world – government and non government – actively working to fight the problems generated by domestic violence to the human community.

Police intervention, law and justice, social workers and medical professionals are all tackling this sensitive problem in

a more realistic manner now. United Kingdom, US, Canada, India and all other leading countries in the world have made rapid progress in this area.

In India-Sakshi – a violence intervention agency for women and children in Delhi works on cases of sexual assault, sexual harassment, child sexual abuse and domestic abuse and focuses on equality education for judges and implementation of the 1997 supreme Court Sexual Harassment Guidelines. Women's Rights Initiative – another organization in the same city runs a pro bono legal aid cell for cases of domestic abuse and work in collaboration with law enforcers in the area of domestic violence.

In Mumbai–the commercial capital of India, bodies like Majlis and Swaadhar are doing meaningful works in this field. Sneha in Chinnai and Vimochana in Bangalore are working on many women's issues arising from domestic abuse. They are also doing active work in issues related to labour. Services ranging from counseling, education and outreach, giving provisions, and mobilizing and organizing activism are provided by them. Anweshi is a women's counseling centre in Kozhikode that doubles up as meditation, resource and counseling center for battered women. Then there are several domestic violence redressal bodies in Calcutta like the Socio-Legal Aid Research and Training Center, Prgatisheel Mahila Manch and Swayam. All the above bodies have their own registered offices, contact numbers and websites for those who want to seek help.

In the United Kingdom Kiran Asian Women's Aid and Asiana operate as Asian Women's refuge center. They are run by women who understand the culture and needs of Asian women. There are various bodies in all the states of US to redress the wrongs done to human beings by domestic violence and abuse. They are situated in California, Connecticut, Georgia, Illinois, Louisiana, and Maryland. Michigan, Massachussetts, New York, New Jersey, North Carolina, Pennsylvania, Virginia, Texas, Oregon, Washington State and Washington DC. In Canada-Saskatchewan, Montreal and Vancouver house several bodies which provide redressal, safe services and shelter for victims of domestic violence.

Sexual Harassment

According to the Protection of Human Right Act, 1993 "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women as to live with dignity is a human right guaranteed by our constitution.

It has been laid down by the Supreme Court that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the Commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

What Amounts to Sexual Harassment?

Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact and advances

(b) a demand or request for sexual favours

(c) sexually coloured remarks

(d) showing pornography

(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem it amounts to sexual harassment.

It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work

including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Steps to be Taken by the Employers

All Employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

(a) Express prohibition of sexual harassment as defined, above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules / regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1940.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

Criminal Proceedings / Disciplinary Action

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall

initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer. Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Complaints

- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.
- The complaint mechanism, referred above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support services, including the maintenance of confidentiality.
- The Complaints Committee should be headed by a woman and not less than half of its member should be a woman. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.
- Complaint procedure must be time bound.
- Confidentiality of the complaint procedure has to be maintained.
- Complainants or witnesses should not be victimised or discriminated against while dealing with complaints.
- The Complaints Committee must take an annual report to the Government department concerned of the complaints and action taken by them.

- The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

Conducting Inquiry by the Complaints Committee

Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident. The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravener and the complaint shall be addressed to the Complaints Committee.

If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover.

Upon receipt of such complaint the head of the organisation shall retain the original complaint with him and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complainant and other details, which might disclose the identity of the complainant.

The Complaints Committee shall take immediate necessary action to cause an inquiry to be made discreetly or hold an inquiry, if necessary.

The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.

The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.

The Management of the Organisation shall confirm with or without modification the penalty recommended after duly

following the prescribed procedure. Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The Central / State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

Laws under which a case can be Filed

Section 209, IPC deals with obscene acts and songs and lays down:

Whoever, to the annoyance of others:

a) does any obscene act in any public place or

b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term, which may extend to 3 months or with fine or both. (Cognizable, bailable and triable offences).

Section 354, IPC deals with assault or criminal force to a woman with the intent to outrage her modesty and lays down that: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.

Section 509, IPC deals with word, gesture or act intended to insult the modesty of a woman and lays down that:

Whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both. (Cognizable and bailable offences).

Civil suit can be filed for damages under tort laws. That is, the basis for filing the case would be mental anguish, physical harassment, loss of income and employment caused by the sexual harassment.

Under the Indecent Representation of Women (Prohibition) Act (1987) if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing "indecent representation of women"; they are liable for a minimum sentence of 2 years. Further section 7 (Offenses by Companies) holds companies where there has been "indecent representation of women" (such as the display of pornography) on the premises guilty of offenses under this act, with a minimum sentence of 2 years.

Exploitation of Labour

- In our country majority of companies not willing to pay proper salary to the workers. They are exploiting the worker beyond the limit of human tolerance. The industry only wants maximum profit with out any responsibility and liability. The workers are forced to work more than 8 hours a day with and any benefits. The minimum basic salary fixed by govt is just a peanut and eye wash.. The minimum salary should be at least 150 Rs to 200 Rs Per hour for unskilled worker. If the salary is less than the said amount, there no value for man power and he /she not able to buy minimum calories to keep body and soul together.

Many foreign multinational companies wish to invest in India is almost a for free labour destination. For example in

USA per hour minimum labour cost is not less than 5 US dollar for a unskilled worker.

Above that the industry wants everything free such as tax cut and labour reforms etc. etc to exploit maximum. Workers are not paid slaves or object of exploitation. If the industry wants quality work, the company should quality salary too. Most of the companies charging extremely for their service and products. Any householder can understand the meaning of inflation.

In India how many the so called industries pay salary to get minimum calorie per day?

You may find 80 to 90 % workers the take home salary is not even sufficient to buy or afford to purchase the minimum calorie of 10 days food, out of his/her one month salary. A worker need at least 1800 calorie daily in take. Forget the other needs of children's education, medical expenses of family and day to day expenses of the month etc.

In India the term salary is not only for individual worker, The salary is for one unit, (Means 1 to 5 persons.) Is it a salary or slavery? In India all are not CEOs, engineers, doctors, and industrialists!!!. Cheap labour does not mean the field and freedom for exploitation.

The cost of living is gone beyond salary limit. The industry & business community increase prices with out any interpretation and responsibility in the name industrial growth of nation and generate employment. It is only to exploit the people. The management of companies dismisses the work force, if they do not dance according the choice. The working class is not a puppets of India.

The working class have all rights to demand, as the industry is carrying out business in India and with the PEOPLE OF INDIA and they are the end consumer of production too, The management have no right to dismiss a worker and forcing the workers to go labour courts, which may take years to get judgment. What will be the economically condition of working class? Is the Govt paying any attention to take care his family

during the period of legal dispute? If the working class forces the management to go court for their various actions, Then the so called exploiting industry may not survive. No political party or any establishment is not above the people of India. Why the working class form the Union? Because the industry or any establishment never paid any attention to the needs of working class, is long struggle in human history. Union demands, right to strike, is part of human expression against exploitation. It is not dada-giri or militancy as called by the exploiters of Nations man power wealth and people of India.

The minimum salary fixed by government is sufficient to eat one time food in this days? The concept welfare state for whom ? Is it only for few rich peoples of India or for all citizen of India? The government should impose strong rule and regulation, If management dismiss a worker, the company should be closed on the same day, unless the dispute settle in the court of law or pay salary up to the day of court judgment. The company may claim the closer of the company may deteriorate the finical conditions, the same logic will apply to the working class too. Which may prevent illegal actions, strikes, and unpleasant incidents.

Female Infanticide

In rural areas where a lot of people do not have access to sex determination facilities, female infanticide is shockingly common. The parents wait until the mother gives birth, and when they find out that a daughter is born, they go ahead and kill the baby by adopting various means such as strangling the baby, giving her poison, dumping her in a garbage bin, drowning her, burying her alive, starving her, stuffing her mouth with salt, or leaving her outdoors overnight so she dies of exposure.

What is disturbing is that female infanticide is not considered a big crime and rarely do culprits get convicted. Once in while there is a harsh conviction of the parent followed by some publicity, and it isn't long before the news dies down. Surprisingly, mothers are the ones who often perpetrate the crime, with the support of other women in her network. Since the mother is the one who has given birth to the unwanted

female, she is the one who must do away with it. She is forced to do so at times, and willingly does so at others since she herself desires a male child. How much the mother, another victim of atrocities, is really to blame though, is anybody's guess.

Where the daughter's life is spared, parents often neglect her and expect her to work around the house serving her brothers and father. Girls are rarely sent to school, and if they are, they are removed after a few years of education and put to work-perhaps sent to cities to work as maids in homes, and send back money earned by them. In all probability, they are treated far better at the homes they work in as maids than they are in their own homes-but instances of harsh ill-treatment and abuse of such girls are also just as common.

Rural life is far removed from city life. Although we may have come across villagers who perhaps now work under us as office boys, peons, waiters in restaurants, drivers, cooks and household help, rarely do we ever try and bring about a change in their mindset. Sadly though, educated, urban and fairly wealthy people too often nurse a desire for a male child, and although they may not kill their daughter after she is born, they do try and find out the sex of their child, and abort female fetuses.

Although disclosing the gender of a foetus is illegal, there are numerous doctors that disclose the child's sex for an enhanced fee, and then offer to arrange for the abortion. Thus although there is a good law in place, its implementation is not as effective as it should be.

Although all of us take pride in our Indian culture, we need to recognize that there is something fundamentally wrong with a culture that assumes the superiority of males, and that celebrates Indian women for being meek, submissive and sacrificial. One way you can help counter this mindset is by being proud of the women in your life, and by taking pride in yourself if you are a woman.

4

Universal Declaration of Human Rights

Lecture

Much of the literature on anti-discrimination law is dauntingly technical, self-congratulatory or overly polemical. Two useful background collections are *Non-Discrimination Law: Comparative Perspectives* (Hague: Kluwer 1999) edited by Titia Loenen & Peter Rodrigues and *Anti-Discrimination Law Enforcement: A Comparative Perspective* (Brookfield: Avebury 1997) edited by Martin MacEwen. There is a broader discussion in the two volume *The Law of Human Rights* (Oxford: Oxford Uni Press 2000) by Richard Clayton & Hugh Tomlinson and in Theodor Meron's *Human Rights & Humanitarian Norms as Customary Law* (Oxford: Clarendon 1989). For NGOs see in particular *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell Uni Press 1998) by Margaret Keck & Kathryn Sikkink.

Australian Law

We have noted particular Australian works in the individual guides, for example Bede Harris' cogent *A New Constitution for Australia* (London: Cavendish 2002), George Williams' *Human Rights under the Australian Constitution* (Melbourne: Oxford Uni Press 1999), *A Bill of Rights for Australia* (Sydney: Uni of NSW Press 2000) and *The case for an Australian Bill of Rights: Freedom in the War on Terror* (Sydney: UNSW Press 2004).

Others include Chris Ronalds' *Discrimination Law & Practice* (Annandale: Federation Press 1998), *Discrimination Law & Practice* (Leichhardt: Federation Press 2004) by Chris Ronalds & Rachel Pepper, *Retreat from Injustice: Human Rights Law in Australia* (Leichhardt: Federation Press 2004) by Nick O'Neil, Simon Rice & Roger Douglas, Michael Kirby's *Through The World's Eye* (Annandale: Federation Press 2000), Hilary Charlesworth's concise *Writing In Rights: Australia & the Protection of Human Rights* (Sydney: Uni of NSW Press 2002) and Luke McNamara's *Regulating Racism: Racial Vilification Laws in Australia* (Sydney: Federation Press 2002).

Peter Bailey's *Human Rights: Australia in an International Context* (Melbourne: Butterworths 1990) and Margaret Thornton's *The Liberal Promise: Anti-Discrimination Legislation in Australia* (Oxford: Oxford Uni Press 1990) been largely superseded by *Human Rights in International & Australian Law* (Melbourne: Butterworths 2000) by Stuart Kaye & Ryszard Piotrowicz and by *Human Rights & Australian Law: Principles, Practice and Potential* (Annandale: Federation Press 1998) edited by David Kinley.

An official overview is provided by the Human Rights & Equal Opportunity Commission's 255 page *Federal Discrimination Law 2004* handbook.

As noted on the following page of this profile, only the Australian Capital Territory currently has a Bill of Rights enactment, which serves to inform lawmakers and the community about the interpretation of the Territory's legislation rather than establish specific rights directly accessible by members of the public.

New Zealand

For New Zealand see *Rights & Freedoms: the New Zealand Bill of Rights Act 1990 & the Human Rights Act 1993* (Wellington: Brooke's 1995) edited by Grant Huscroft & Paul Rishworth and *Justice, Ethics & New Zealand Society* (Auckland: Oxford Uni Press 1992) edited by Graham Oddie & Roy Perrett.

Other Nations

For the UK and other EU jurisdictions see *Anti-Discrimination Law* (Aldershot: Dartmouth 1991) edited by Christopher McCrudden, *EU Human Rights Policies: A Study in Irony* (Oxford: Oxford Uni Press 2004) by Andrew Williams and *Discrimination: The Limits of Law?* (London: Mansell 1992) edited by Bob Hepple & Erika Szyszczak.

McCrudden and Gerry Chambers co-edited *Human Rights & Civil Liberties in Britain* (Oxford: Clarendon Press 1993).

Rachel Murray's *Human Rights in Africa: From the OAU to the African Union* (Cambridge: Cambridge Uni Press 2004), Randall Peerenboom's *China's Long March toward Rule of Law* (Cambridge: Cambridge Uni Press 2002), Stanley Lubman's *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford Uni Press 1999) and *Human Rights in Contemporary China* (New York: Columbia Uni Press 1986) edited by R Randle Edwards are invaluable. For the beginnings of intervention see Carole Fink's *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection* (Cambridge: Cambridge Uni Press 2004).

For Eastern Europe see in particular *(Un)Civil Societies: Human Rights and Democratic Transitions in Eastern Europe and Latin America* (Lanham: Lexington Books 2005) edited by Rachel May & Andrew Milton.

Points of entry to the literature regarding Canada include Christopher MacLennan's *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929-1960* (Montreal: McGill-Queen's Uni Press 2003) and Ross Lambertson's *Repression and Resistance: Canadian Human Rights Activists, 1930-1960* (Toronto: Uni of Toronto Press 2005).

UN Declarations

The Universal Declaration of Human Rights: A Common Standard of Achievement (Hague: Nijhoff 1999) edited by Gudmundur Alfredsson & Asbjorn Eide is a somewhat self-congratulatory collection from the human rights professoriat.

There is a more tart account in *Human Rights As Politics & Idolatry* (Princeton: Princeton Uni Press 2001) edited by Amy Gutmann, *NGO's and the Universal Declaration of Human Rights* (New York: St Martins 1998) by William Korey and *White Hats or Don Quixotes?: Human Rights Vigilantes in the Global Economy* (PDF) by Kimberly Elliott & Richard Freeman.

Questions of the applicability of human rights as a particularly 'western' and 'bourgeois' construct are explored in *Human Rights: Cultural & Ideological Perspectives* (New York: Praeger 1979) edited by Adamantia Pollis & Peter Schwab, A*sian Values & Human Rights: A Confucian Communitarian Perspective* (Cambridge: Harvard Uni Press 1998) by William De Bary, *The East Asian Challenge for Human Rights* (Cambridge: Cambridge Uni Press 1999) edited by Joanne Bauer & Daniel Bell, and *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester Uni Press 1998) edited by Tony Evans.

For the UN Convention Relating To The Status of Refugees see in particular *The Refugee Convention at Fifty: A View From Forced Migration Studies* (New York: Lexington 2003) edited by Joanne van Selm & Khoti Kamanga, *Managing Displacement: Refugees & the Politics of Humanitarianism* (Minneapolis: Uni of Minnesota Press 2000) by Jennifer Hyndman and *Free Movement: Ethical Issues in the Transatonal Migration of People & Money* (Hemel Hempstead: Harvester 1992) edited by Brian Barry & Robert Goodin. We have highlighted other studies here.

Michael Ignatieff's 2000 *Human Rights As Politics* and *Human Rights as Idolatry* lectures (PDF) considers the 'rights debates'.

Costas Douzinas, in *The End of Human Rights* (Cambridge: Hart 2000) despairs of triumphalist column writers, bored diplomats and rich international lawyers ... whose experience of human rights violations is confined to being served a bad bottle of wine.

There is a more positive view in Richard Falk's *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (New York: Routledge 2000).

Perceived tensions between human rights and state integrity-evident in claims by authorities in China and Indonesia that strengthened human rights will result in disintegration of the state and thus widespread suffering-are explored in *The New World Order: Sovereignty, Human Rights & the Self-Determination of Peoples* (Oxford: Berg 1996) edited by Mortimer Sellers, *Religion & Human Rights: Conflicting Claims* (Armonk: Sharpe 1999) edited by Carrie Gustafson & Peter Juviler, *Autonomy, Sovereignty & Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: Uni of Pennsylvania Press 1996) by Hurst Hannum, *Prisoners of Freedom: Human Rights and the African Poor* (Berkeley: Uni of California Press 2006) by Harri Englund and *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (New York: Rowman & Littlefield 1998) edited by Jonathan Moore.

For a detailed philosophical and historical analysis see *The International Bill of Rights: the Covenant on Civil & Political Rights* (New York: Columbia Uni Press 1981) edited by Louis Henkin, *Making Sense of Human Rights* (Berkeley: Uni of California Press 1987) by James Nickel and *The Universal Declaration of Human Rights: Origins, Drafting & Intent* (Philadelphia: Uni of Pennsylvania Press 1998) by Johannes Morsink. *The Evolution of International Human Rights: Visions Seen* (Philadelphia: Uni of Pennsylvania Press 1998) by Paul Lauren and *The Political Economy of Civil Society & Human Rights* (London: Routledge 1998) by Gary Madison.

Treaties and Enforcement

For perspectives on treaty-making powers and limitations under the Australian constitution, of particular relevance for the UN Conventions, see *Trick or Treaty? Commonwealth Power to Make and Implement Treaties*-the 1995 report of the Senate Legal & Constitutional References Committee.

The federal Department of Foreign Affairs & Trade has an online Australian Treaties Library on AustLII (here), which identifies current international instruments.

There is a broader treatment in *The Effect of Treaties in Domestic Law* (London: Sweet & Maxwell 1987) edited by

Francis Jacobs & Shelley Roberts and *Delegating State Powers: The Effect of Treaty Regimes on Democracy and Sovereignty* (Ardsley: Transnational 2000) edited by Thomas Franck.

For questions of enforcement-highlighted in decisions by the Commonwealth Human Rights & Equal Opportunity Commission regarding vilification, privacy and online accessibility-see in particular *Enforcing International Human Rights in Domestic Courts* (The Hague: Nijhoff 1997) edited by Benedetto Conforti & Francioni Francesco, *European Human Rights Convention in Domestic Law-A Comparative Study* (Oxford: Clarendon 1983) by Andrew Drzemczewski and *International Prosecution of Human Rights Crimes* (Berlin: Springer Verlag 2006) edited by Wolfgang Kaleck, Michael Ratner, Tobias Singelnstein & Peter Weiss.

Howard Meyer's *The World Court in Action: Judging among the Nations* (Lanham: Rowman & Littlefield 2002) offers an introduction to the court.

Discussion

Characterisations of human rights-and respect for them in practice, rather than merely as aspirational statements-vary considerably, with disagreement for example about privacy, censorship, freedom of religion and "cruel, inhuman or degrading treatment". In 1943 Roosevelt and Churchill proclaimed that "freedom means the supremacy of human rights everywhere".

Slavoj Zizek bizarrely commented 65 years later in *Violence* (London: Picador 2008) that "universal human rights" are an ideological sham: "effectively the rights of white male property owners to exchange freely on the market and exploit workers and women".

Much of the legislation and debate highlighted throughout this site is predicated on human rights as those rights which which a person is endowed simply because he/she is a human being. They are sometimes characterised as those entitlements without which people cannot live in dignity. Violation of human rights treats an individual as though he or she is not a human being.

Landmark statements of principle such as the 1948 United Nations *Universal Declaration of Human Rights* (UDHR) identifies human rights as being held by all people equally, universally, and forever. Those rights are interdependent, inalienable and indivisible. Interdependence, for example, means that an individual's right to free expression and to participation in government is directly affected by rights to the physical necessities of life, to education, to free association and non-interference by police or other agencies. Inalienability means that those rights are innate: a person cannot lose those rights and cannot be denied a right because it is "less important" or "non-essential."

Human rights are aspirational and practical. Human rights principles provide a vision of a just and peaceful world. Human rights agreements establish minimum standards for how organisations, individuals and societies should treat people. They provide a framework that empowers action by civil society advocates, governments and businesses when minimum standards are not met, as people still have human rights even if national laws and institutions do not recognise or respect those rights.

Rights are not isolated from responsibilities. The UDHR for example specifies that Article 29.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. As statements of principle, national/ international human rights codes assume that there will be support for those whose rights are abused or denied, a support that frequently leads to conflicts between governments (or with NGOs and international bodies) along with disagreement about expectations and mechanisms.

Human rights are also aspects of markets, with the European Union for example highlighting five 'freedoms': free expression, free movement of goods, labour, capital and services.

That is an echo of the US-Anglo declaration of 1941, which identified four freedoms-free speech and expression, freedom of religion, freedom from want and freedom from fear (initially through restrictions on physical agression by states)-and identified the individual as a legitimate object of international concern. Michael Burleigh commented that "our societies stand judged by the degree of tolerance we evince towards the most distressed or weakest members".

Civil, Political and Other Rights

Disagreement about the nature of rights-or merely about the priority to be given to particular rights-has been reflected in the cascade of national and international statements of principle, enactments and agreements.

It is common to differentiate between two classes of rights (sometimes labelled as fundamental and complementary rights)-

- civil and political rights
- economic, social and cultural rights

Although distinctions are often unclear and particular rights might appear in either class.

Australian lawyer Peter Bailey commented that: if civil and political rights can be described as the rights which enable individuals to operate freely within the political system and to be protected from arbitrary action in the administration of the law, including particularly the criminal law, then economic, social and cultural rights can be described as allowing people to own property, to work in fair conditions and to be guaranteed an adequate standard of living and facilities for education and the enjoyment of life and of the culture in which they live or have been brought up.

Equity

The initial articles of the UDHR, a child of the Enlightenment, indicate that: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood with entitlement to rights and freedoms without

distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and without distinction on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs.

Everyone has the right to recognition everywhere as a person before the law; no one should be subjected to arbitrary arrest, detention or exile. Articles 7 and 8 of the UDHR declare that: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

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

As a corollary it indicates that all are entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights, obligations and any criminal charge. Those charged with a penal offence have the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

The emphasis on equity means it is unsurprising that Article 16 of the UDHR states that: Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Some states have inferred that equity and just provisions imply civil recognition of same-sex relationships, e.g. the removal of discrimination in access to partner superannuation in Australia.

The UDHR indicates that everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in

accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Elyn Saks' *Refusing Care: Forced Treatment and the Rights of the Mentally Ill* (Chicago: Uni of Chicago Press 2002).

Liberty

The UDHR indicates that everyone has the right to "life, liberty and security of person", with explicit prohibition of slavery. Article 5 indicates that no one shall "be subjected to torture or to cruel, inhuman or degrading treatment or punishment", although there is considerable disagreement about what is cruel or inhumane and how the article is to be put into effect. Everyone has the right to own property, whether alone or in association with others, and no one should be arbitrarily deprived of property.

Privacy-most traditionally in the form of non-interference-is a salient human right. Article 12 of the UDHR for example states that: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Freedom of movement (including a rights-based passport and travel regime) is also important, with UDHR Article 13 stating that everyone has a right to freedom of movement and residence within the borders of each state, along with the right to leave any country, including his own, and to return to his country.

Everyone has the right to a nationality and under Article 15 should not be arbitrarily deprived of nationality nor denied the right to change nationality. Everyone has the right to seek and, more contentiously, to enjoy in other countries asylum from persecution.

Thought and Expression

For visitors to this site two critical UDHR articles concern thought and expression of that thought.

Article 18 indicates that: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. That article is reflected in debate about censorship and surveillance, which also draws on articulation in Article 19 of the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Participation and Association

Those rights are complemented by positive and negative rights of association and participation. The UDHR indicates that all have a right to freedom of peaceful assembly and association; no one may be compelled to belong to an association.

Under Article 21 everyone has the right to :

- take part in the government of his country, directly or through freely chosen representatives
- equal access to public service in his country

The UDHR seeks expression of the will of the people as the basis of government authority through “periodic and genuine elections” on the basis of universal and equal suffrage. That aspiration has not, alas, been met in roughly half the world.

Livelihood

Consistent with aspirations to realisation of “economic, social and cultural rights” the UDHR indicates that everyone has the right to:

- work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment
- equal pay for equal work
- form and to join trade unions for the protection of his interests

- rest and leisure, including reasonable limitation of working hours and periodic holidays with pay

And that everyone who works has the right to just and favourable remuneration ensuring for that individual and family "an existence worthy of human dignity". That remuneration should be "supplemented, if necessary, by other means of social protection", because everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. A perspective is provided in *Freedom From Poverty As A Human Right: Who Owes What To The Very Poor* (Oxford: Oxford Uni Press 2007) edited by Thomas Pogge.

Education, Culture, Creativity

Article 26 of the UDHR identifies a salient right to education, "directed to the full development of the human personality".

Critics of digital divides hail the UDHR's statement that:

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Recognition of the significance of intellectual property for economic, community and personal development is evident in the statement that:

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

The cultural rights of people belonging to minorities are not explicitly recognised by the Universal Declaration of Human Rights, which assumes that cultural participation will take place in a single culture of a nation-state. They were belatedly recognised by Article 27 of the International Covenant on Civil & Political Rights in 1996 and by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which covers deliberate acts with the intent to destroy the language,

religion or culture of a national, racial or religious group on grounds of national or racial origin or religious belief (including prohibiting use of a language in schools or publications and destroying libraries, museums, schools, historical monuments, places of worship or other cultural institutions).

Information Access as a New Right?

UNESCO has ambitiously argued (PDF) that access to information (aka right to information or RTI) is a fundamental human right in the 21st century, in line with the 1948 UN *Universal Declaration of Human Rights*.

Article 19 of the UDHR concerns "freedom of expression and the right to seek, receive and impart information", characterised in 2003 as particularly important in the Information Society since it forms the necessary condition for the realization of other internationally recognized human rights.

It encompasses freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In 1997 the UN's Administrative Committee on Coordination (ACC) issued a Statement on *Universal Access to Basic Communication and Information Services*, foreshadowing a 'Human Right for Universal Access to Basic Communication & Information Services'.

The UNHCR argued in 2003 that:

> *the right to access information would also entail the availability of adequate tools to access information, and has implications for the sharing of knowledge as well.*

Although cited at gatherings such as the 2003 World Summit on the Information Society (WSIS), discussed here, there has been little progress in moving beyond generalities. Debate has centred on:

- political or other censorship as a restriction on human rights, with disagreement between the groups in advanced economies and the rest of the world, along with disagreements within most states

- intellectual property as an incentive for or impediment to development in emerging economies (characterised by some as a North-South IP Divide or disparity between the "Information Rich and Information Poor")
- the most effective mechanisms for bridging a variety of national and international digital divides, including barriers posed by disability, lack of education, inadequate infrastructure, expectations and even lack of a credit card (often a prerequisite for engaging in electronic commerce)

Outside the West there has arguably been less interest in- or merely awareness of-a right for individuals to control what information is collected about them and how that information is used, an extension of the right of privacy that has emerged over the past two centuries and is particularly challenging because of pervasive ICT.

Article 27 (1) of the UDHR has been acclaimed as establishing a global 'right to art'-

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits.

In practice it is unclear whether such aspirational statements have much meaning.

Case Study

Protection of Right of Victims in Cases of Industrial Hazards: Uttar Pradesh

The petitioner, Ms. Subhashini Ali, drew the attention of the Commission to the occurrence of a ghastly incident in the factory premises of Jyoti capsules on 4 January 1998 in Kanpur, in which 8 workers had lost their lives. The accident occurred due to an explosion caused by the leakage of an inflammable chemical, hexane. The petitioner alleged that the factory had resumed production without taking due care of safety conditions.

The Special Rapporteur of the Commission investigated the case and stated that the accident was the result of criminal

negligence by the factory owner in handling and storing explosive chemicals and that he had failed to maintain safe working conditions in the factory. A major contributory factor was supervisory lapse on the part of the Inspectorate of Factories.

The Commission directed the Government of Uttar Pradesh to finalise criminal cases registered against the owner and also ordered that the factory should not be permitted to resume production without complying with all safety requirements. The Labour Department of the Government was directed to investigate the reasons for the supervisory lapse and to penalise the culprits. The District Magistrate, Kanpur was directed to ensure early payment of all financial benefits in case of death and injuries. The intervention of the Commission brought about the award of immediate relief of Rs. 5000/-each to the victims apart from the compensation which was sanctioned to them by the State.

Comment

The Directive Principles contained in Art. 48A of the Constitution direct the State to endeavour to protect and improve the environment.

Principle 13 of the UN Declaration on Environment and Development proclaims that States shall develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Public Liability Insurance Act 1991 is in consonance with the spirit of principle 13 of the Rio Declaration, in as much as it aims at providing for public liability insurance for the purpose of providing immediate relief to persons affected by accident occurring while handling any hazardous substance or matters connected therewith or incidental thereto.

Under the Act, any person handling any hazardous substance is required to take out insurance policies so that he is insured against liability to give relief in case of death or injury to a person, or damage to any property, arising from an accident occurring while handling any hazardous substance. This Act has been enacted subsequent to the Bhopal Gas leak

disaster where MIC leaked from the plant of Union Carbide India Ltd. and caused the death of over 3000 persons and serious injuries to a large number of others.

It is important to mention here that in the case brought before the Commission by Ms. Subhashini Ali, negligence was involved on the part of the factory owner. In such cases, exemplary compensation and damages are to be awarded to the victims.

The Supreme Court of India has modified the English rule of strict liability in M.C. Mehta vs. UOI and has laid down the concept of 'absolute liability' in the case of industrial hazards, even though there might not have been any negligence on the part of the enterprise owner. By providing additional relief and ordering the expeditious criminal trial of the culprits, the Commission has kept in mind the constitutional obligations of the State and also the UN Declaration on the Environment and Developments.

5

Human Rights Related to Education

Human Rights Education: Meaning, Objectives and Principles

Today education is one of the most important functions of State and local governments. It is required in the performance of our most basic responsibilities. It is the principal instrument in awakening the human beings to cultural values, non-judgementalism, tolerance, and in preparing them to adjust to complex environments where rights and duties cooperate. There is growing consensus that education in and for human rights is essential and can contribute to both the reduction of human rights violations and the building of free, just and peaceful societies. Human rights education is also increasingly recognized as an effective strategy to prevent human rights abuses.

To receive Human Rights Education is also a Human Right to which everyone is entitled to by virtue of being a human being. In the present Indian society poor people have been ignored as far as education is concerned. They too are entitled to Human Rights Education so that they become aware of all the rights to sustain a life, full of dignity.

The irony of our times is that on the one hand we have a human rights jurisprudence which has reached its peak of glory and on the other we see human rights violations all around and this keeps happening in newer and newer forms-

ethnic, displacement from homeland, etc. to name a few. Last decade was dedicated to the concept of Education For All and it primarily focused on access to education.

However, after a decade of action, the results show that access to education is not enough. More than that a right to access education, each person has a right to participate in a quality education. There is growing consensus that education in and for Human Rights is essential and can contribute to both the reduction of Human Rights violations and the building of free, just and peaceful societies. Human rights education is also increasingly recognized as an effective strategy to prevent human rights abuses.

Human Rights Education is stressed in all human rights documents as “an essential contribuion to the development of a global human rights culture”.

Universally, Human Rights Education is defined as training, dissemination, and information efforts aimed at building a universal culture of Human Rights by imparting knowledge and skills, and moulding attitudes.

This kind of education is needed to identify and eliminate from the school system all that is prejudicial to the human rights. Moreover, it would lay down certain guidelines to translate conceptual clarity and focus for each stage.

Under the present conditions of market mechanisms in economy, the greatest part of the society considers it impossible to achieve rule of law and form a civil society without creating new ideology, which should combine revival or our national ideals with the universal democratic values.

Just Human Rights and freedoms represent the main values and fundamental elements of rule of law. The strategic line of modern civilization’s spiritual development is to consider Human Rights the supreme value and bring up the society to respect and protect Human Rights. The society which is based on violence, hostility and hatred, lacks vitality, it has no prospects. Since the adoption of the World declaration on Human Rights in 1948 UN and UNESCO constantly appeal to the governments

of different countries to give more information about human rights in the society, spread various international documents in primary and secondary educational institutions.

Human Rights Education-Problem and Prospects

A second decade on Human Rights Education is proposed, which would:

> *provide a sense of common collective vision, goals and action, as well as an opportunity to increase partnership at all levels;*
>
> *provide international support for regional and national programmes created in line with the first Decade, an incentive to continue them and to start new ones;*
>
> *represent the commitment of the international community (including the United Nations, Governments and civil society) to continue to pursue human rights education'.*

Therefore, it is hoped that the importance of the Human Rights education will be realized and our country will be able to overcome the Human Rights violations.

Research in Human Right Education

Over the last five decades, the process of internationalization and globalization of the concept of human rights has generated the movement "All Human Rights for All." In a complex country such as India, violations of human rights at all levels necessitate human rights education at all school levels in general and teacher education in particular.

Hence, human rights education should find its rightful place in the school curriculum, teacher training courses—pre- and in-service, textbooks, supplementary reading materials, educational policies, and school administration. Human rights education must exert its influence from early childhood education onward and through a broad range of disciplines to build a human rights culture. India even after fifty years of legislative functioning has not been able to fill the dearth of Human Rights law. Therefore, the future sounds promising

with the greater commitment from all sectors. And preparation of a sound, realistic plan of action can help us achieve human rights education for all and transform the human rights movement into a mass movement to achieve a better social order and peaceful coexistence. Indeed, this is one of the greatest challenges in the 21st century.

National Human Rights Commission's Guidelines for Sponsoring Research

Scope: Non-recurring assistance may be given for undertaking research studies in the field of human rights. A suggestive list of broad areas for research studies in subjects related to human rights is enclosed **(Annexure-I).** The detailed guidelines for giving financial assistance for research projects will be as follows:

Funds for Research

(1) Funds for research projects will be made to an institution or a group of institutions for carrying out a specific research project. An institution which is associated in any manner with any aspect of protection and promotion of human rights with good track record and which is not run for profit, shall be eligible to be considered for entrusting the research project, such as:

1. a research and training institution set up and fully funded by the Central Government/State Government/Public Sector Undertaking;
2. an institution/organisation registered under the Societies Registration Act, 1860 (Act XXI of 1860);
3. a registered public trust;
4. a registered institution exclusively devoting itself to the espousal of the cause of human rights;
5. a university or a deemed university;
6. a State Human Rights Commission.

(2) *Research Project:* The project should be submitted by the Director/Head of the Institution as follows:

1. A brief outline of the project indicating objectives,

methodology, stages of research work proposed, item-wise budget, number of personnel required, time frame, etc. should be submitted by the Director/ Head of the Institution to the Commission.

2. It should be clearly mentioned whether a similar proposal has been submitted to any other organisation for financial assistance and, if so, whether any assistance is received/expected to be received.
3. The Project Director shall give a declaration that he/she will undertake and complete the work as per the terms and conditions specified by the Commission.

(3) The project would be granted to individuals who have ample research experience and would take the responsibility of completing it. However, the grant for the project will be made available to him/her only through the institution which, while forwarding the proposal shall agree to:

1. Administer and manage the finance by opening a separate bank account in the name of the project in any nationalised bank to be operated jointly by the Project Director and one other person nominated by the institution. All funds released by the NHRC will be credited to this account.
2. Provide accommodation and furniture and other logistic support required for the project.
3. Make available all its research facilities, such as library and other facilities.
4. Arrange all other assistance necessary for the project.
5. Ensure that the project is completed within the specified time.
6. Also make sure that the funds are utilized for the purpose for which it is sanctioned.

(4) In addition to the above, the Project Director will enclose a detailed note on the work done so far on the subject

and the precise contribution which the research project is expected to make to the existing body of knowledge.

(5) *Items covered under the Fund:* The following items would be covered under the Fund:

1. Fixed fee/allowance to the minimum required project staff.
2. Travel undertaken in relation to the project.
3. Consultancy charges.
4. Contingency.
5. Overhead Charges, wherever necessary.
6. Printing and Publication.
7. Stationery.

No asset should be generated out of the funds provided by the NHRC for the project. The funds shall be spent exclusively for the purpose for which they are released.

Note: Payment for the work already done before the submission of the research proposal will not be allowed.

(6) *Time Frame:* The duration of the research study proposed to be conducted should not normally exceed two years.

(7) *Scrutiny:* Every research proposal submitted to the Commission will be scrutinized,

1.1 After scrutiny of the project the Commission may call for any clarification or suggest modifications therein.

1.2 If the research project satisfies the criteria laid down by the Commission from time to time, the Commission will approve the proposal.

The decision of the Commission to accept or reject the proposal shall be final.

2. The institution receiving funds will confirm in writing that the conditions applied by the Commission are acceptable to it.
3. The institution will maintain separate accounts in respect of the research project. The accounts will

remain open to inspection of the Commission or its representative.

(8) *Release of Funds:* The project will clearly indicate the different stages of implementation of the project along with objectives, activities and the outcome in each phase. The funds will be released in installments depending on the completion of the various phases of the project. The directions of the Commission shall be complied with and the unspent funds available at the time of termination would then have to be refunded to the Commission immediately.

(9) *Progress Reports:* The Project Director will submit to the Commission progress reports of the project periodically through the Head of the Institution as may be decided by the Commission along with Utilization Certificate of the funds released by that time.

(10) *Changes in Approved Projects:* The Project Director will have to obtain prior approval of the Commission in case any change is to be made in the research project already approved by the Commission.

(11) *Termination of the Project:* If the Commission is not satisfied with the progress of the project, or if it finds that its rules are violated in any manner, it reserves the right to terminate the research project without any notice.

(12) *Final Report:*

1. The draft final report of the project will be submitted by the Project Director to the Commission (two copies) upon completion of the project period and in no case later than one month thereafter. The draft report will be scrutinized in the Commission and on the basis of that scrutiny, the Commission may suggest some changes. 20 copies of the final report, after incorporating suggestions made by the Commission, if any, should be submitted to the Commission at the earliest. The final report should be comprehensive enough to serve as a definite record and should generally cover the following points:

I. The problem studied/objectives.

II. Methodology of the study :

(a) The design of research.

(b) The selection of the universe and the units for study, considerations that governed the selection of the universe, size of the sample and the procedure for the sample drawn.

(c) Tools used: detailed account of the exercise of tool construction, special contribution made by the project in devising new tools or sharpening existing ones.

(d) Field work: the manner in which field work was conducted including division of labour among the project staff, problems encountered.

(e) The schedule of the project.

(f) Organisational structure and problems.

(g) Methodological gains.

(h) Limitations of the study.

(i) Other observations.

III. Description and analysis of data.

IV. Findings and conclusion:

(a) Summary of findings.

(b) Conclusion.

(c) Implications for further research.

(d) Recommendations.

2. The Project Director will submit, along with the final report, 20 copies of the summary of the report.

3. The report of the research will be the exclusive property of the Commission.

(13) *Finalisation of Accounts:* When the project is completed the institution will submit a statement of accounts with a Utilization Certificate for the expenditure incurred, within three months of the date of acceptance/clearance of the project report. 15% of the funds shall be released only after full accounts are furnished to the Commission.

(14) *Conditions for Publication:* NHRC shall have exclusive right over the project report, which shall be mentioned in the report itself. The Commission reserves the exclusive right to publish the final report of the research project financed by it. The Commission will give directions with regard to publication/dissemination of the final report. The Commission's approval shall be necessary to the use of the report/publication in any manner.

(15) *Preservation of Data:* The institution receiving funds for a project should also submit to the Commission the entire project in a floppy.

Broad Areas for Undertaking Research in Human Rights

1. Gender Justice :

1.1 Collect and analyse the available studies on the conditions of widows in general and in particular, in Mathura, Vrindavan and Varanasi; nature of their human rights violations; review the working of social security programmes for vulnerable sections and in particular for widows and destitute women; review the effectiveness of various plans and programmes and suggest new ones where necessary.

1.2 Review the safeguards to protect human rights of women prisoners.

1.3 Collect and analyse the available studies on the nature of human rights violations faced by commercial sex workers; causes and remedies; and to evolve comprehensive recommendations for improving their lot.

1.4 Domestic violence against women (dowry death/ rape/sexual abuse/wife battering etc.); to monitor and evaluate the impact of laws; policies and programmes to protect women; reform of laws; to study entrenched attitudes and stereotypes.

1.5 Status of dalit women; special problems/ violence faced by dalit women; evaluate the impact of special protective provisions in the laws.

1.6 Female literacy.

1.7 Study the implementation of Supreme Court guidelines on sexual harassment across different sectors and to make comprehensive recommendations.

1.8 Human rights violations faced by the women in the unorganised sector.

2. Rights of Children:

2.1 Child Labour— to monitor and evaluate the impact of policies and programmes designed to eliminate child labour in hazardous industries; undertake State-wise studies on child labour in specific industries; study the child labour in beedi-rolling, silk industry and such other sectors where no studies have been conducted earlier; to monitor the implementation of Supreme Court guidelines; reform of laws and strengthening of enforcement; to study the child labour projects in different States to see which are working and which are not; identifying innovations in rehabilitation of child labourers; sharing of best experiences between States.

2.2 Child Prostitution— to evaluate the impact of on-going programmes; identification of steps for better rehabilitation of victims and to strengthen enforcement.

2.3 Child Marriages— study the underlying causes, effectiveness of the legislation, weaknesses in enforcement and to make suggestions for better enforcement.

2.4 Female Infanticide and Foeticide— review the working of the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

2.5 Education of the Girl Child.

2.6 Rights of Disabled Children.

3. Custodial Justice:
   - 3.1 A systematic study of torture, its implications, methods, attitudes of police personnel and other sections on torture.
   - 3.2 Custodial Violence— causes and remedies.
   - 3.3 Monitor and evaluate the impact of NHRC's recommendations made since its establishment to stop custodial violence — suggestions for future, working of the NHRC/Supreme Court guidelines to check custodial violence in practice.
   - 3.4 Conditions of Juvenile Homes and other Institutions/Homes set-up under different statutes; nature of human rights violations therein.
   - 3.5 Protection of Human Rights in Prisons.
   - 3.6 Application of Forensic Science in the Administration of Justice; studying the conditions of Forensic Science Laboratories so as to streamline the criminal justice system.
   - 3.7 Human Rights and Administration of the Criminal Justice System.
4. Health and Human Rights:
   - 4.1 Iron and Iodine Deficiency related Health Problems—to monitor and evaluate the national programme for the control of anaemia, and in particular maternal anaemia; evolving better delivery systems for the supply of iron/folic acid tablets.
   - 4.2 Quality Assurance in Mental Hospitals—to study the implementation of NHRC's recommendations.
   - 4.3 HIV/AIDS and Human Rights—to study emerging trends in the spread of infection, nature of human rights violations faced by those affected/infected by HIV/AIDS; review the laws, policies and programmes on HIV/AIDS in order to secure the protection of rights of victims.
5. Environment and Human Rights:

5.1 Monitor and evaluate Government programmes to check arsenic poisoning of drinking water and flurosis.

5.2 Study of people affected by mega projects and the implementation of rehabilitation programmes in order to evolve recommendations for the protection of human rights of those ousted by mega projects.

5.3 Study the trends in air/water pollution in different States—right to clean air, handling of hazardous, toxic waste and hospital waste.

5.4 Rights of Workers in Hazardous Industries/Mining etc.

5.5 Tribal Rights and Environment.

5.6 Natural Calamities and Rights of People Affected.

6. Review of Laws and Constitutional Provisions:

6.1 Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. Is it draconian? What amendments can be suggested to improve the working of the Act?

6.2 Review of the legislation on manual scavenging with a view to secure its effective implementation, eliminate this scourge and rehabilitate those engaged in this profession.

7. Terrorism, Insurgency and Human Rights:

7.1 Impact of militancy on women/children/minorities/ environment/education and employment /media/civil and political rights as well as economic, social, cultural rights of civilians in Jammu and Kashmir.

7.2 Study the conditions of detention in Jammu and Kashmir; recommendations for improvement.

7.3 Mental Health Institutions in Jammu and Kashmir.

7.4 Role of Civilian Administration in the Protection of Human Rights in strife-torn areas of Jammu and Kashmir.

7.5 Study the underlying causes of human rights violations as a result of insurgency in North East;

nature of State response; use of special laws; violations by non-state actors; practical suggestions/ recommendations for improvement in the situation.

8. Review of International Instruments and Treaties:
   - 8.1 Accession to the UN Convention relating to the Status of Refugees, 1951.
   - 8.2 Accession to the Optional Protocol to the CEDAW.
   - 8.3 Accession to the two Optional Protocols to the Convention on the Rights of the Child.
   - 8.4 Desirability of Accession to the two Optional Protocols to the ICCPR.
   - 8.5 Desirability of Accession to the two Optional Protocols additional to the 1949 Geneva Conventions.
9. Human Rights Literacy and Education:
   - 9.1 Ascertaining the Status of Human Rights Education in Schools, Colleges and Universities— to evaluate the curriculum in different institutions with a view to evolve standards and to ensure quality.
   - 9.2 Furthering Human Rights Education through Non-Formal/Distance Education Mode — effective ways to achieve this objective, spreading legal literacy on the rights, institutions and mechanisms.

9.3 Impediments to the Universalisation of Primary Education—possible solutions.

10. Bonded Labour—study the underlying causes, effectiveness of legislation; monitor the implementation of Supreme Court guidelines and NHRC's instructions; evaluate the impact of programmes to eliminate bonded labour; rehabilitation of bonded labourers.
11. Status of the Disabled/Aged— gaps in the protection of their Rights.
12. Role of Media in the Protection of Human Rights as well as being a Causative Factor in Human Rights Violations.

13. Role of NGOs in the Protection of Human Rights—response of civil society in areas of terrorism/insurgency.
14. Caste Clashes in Bihar—causes, consequences and remedies.
15. Special Problems faced by Religious Minorities—working of protective provisions in laws; extent of protection afforded by the Police to minorities.
16. Impact of Globalisation/Liberalisation on the Poor/Women/Children.
17. Role of Non-State Actors in Engendering Human Rights Violations (private companies/MNCs/armed groups/underworld/religious leaders).

Human Rights Related to Education at Different Level : Primary, Secondary and Higher Education

Human rights education is a way of preparing the ground for reclaiming and securing our right to be human. It is learning about justice and empowering people in the process. It is a social and human development strategy that enables women, men, and children to become agents of social change. It can produce the blend of ethical thinking, action, and participation of people in the decisions which shape their lives, that is needed to cultivate public policies based on human rights. It opens the possibility of creating a human rights culture for the 21st century. The human right to education entitles every woman, man, youth and child to: The human right to free and compulsory elementary education and to readily available forms of secondary and higher education.

The human right to freedom from discrimination in all areas and levels of education, and to equal access to continuing education and vocational training.

The human right to information about health, nutrition, reproduction and family planning.

The human right to education is inextricably linked to other fundamental human rights—rights that are universal, indivisible, interconnected and interdependent including:

- The human right to equality between men and women and to equal partnership in the family and society.
- The human right to work and receive wages that contribute to an adequate standard of living.
- The human right to freedom of thought, conscience, religion and belief.
- The human right to an adequate standard of living.
- The human right to participate in shaping decisions and policies affecting one=s community, at the local, national and international levels.

6

Human Rights: Family as Educators and Various Organisations

Human Rights Education: Role of Family

Human rights provide meaning for relationship between individuals, as well as for their individual and social lives. The concept of human rights is relevant to families at two levels: (a) the rights of the individual member of the family and (b) the rights of the family with reference to its environment. Indeed, the advancement of human rights within the family, equal rights and responsibilities of individual members of families, gender equality, the role of the males and protection and development of children etc. are issues of central significance to social development.

Numerous human rights documents recognize the family as the basic unit of society and its entitlement to protection and support by society and the State. This is reflected in provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and especially and most recently in the Declaration and Programme of Action of the World Summit for Social Development held in Copenhagen in 1995.

The family's welfare, its ability to fulfil basic societal functions and its support by the society and the State are major elements in achieving human rights. The explicit articulation of the rights, functions and responsibilities of families can be

a source of inspiration and a point of reference for efforts to support families and create family-friendly societies. Indeed, numerous family issues are human rights issues. Human rights education is a necessary condition in the broad process of social change, social integration and social justice, which are preconditions for development and peace.

Families are central to the process of human rights education. The promotion of the enjoyment of human rights within the family by all its members is essential, on the basis of equality and human dignity, and the fostering of respect for human rights in society at large. The family is a vehicle for transforming human rights from the expression of abstract norms to the reality of social, economic, cultural and political conditions.

Issues related to infants and children attract the closest attention from Governments and organizations in the context of the relationship between human rights and families. In this regard, high priority is attached to the family's responsibility for caring for the child. Families, as major educational channels in contemporary society, are the principal means for the transmission of values, culture, attitudes and patterns of behavior. Attitudes toward one's society or culture or toward other social groups are profoundly imprinted during childhood within the family and circle. They serve as communicators and transmitters as well as intermediaries between formal and other institutions of informal education. The well being of families is contingent on the achievement of equal rights, access and opportunities for women as well as protecting the rights of the girl-child. The empowerment of women, equal sharing of responsibilities for the family by men and women and a harmonious relationship between them are critical and necessitates the promotion of attitudes, structures, policies, laws and practices which eliminate inequality in the family.

Families as Educators and Providers of Human Rights Education: Suggested Actions

As the fundamental unit of society, families are important in promoting human rights, particularly their enjoyment within

the family in society at large. It is in the family where respect to human rights starts. Intra-familiar relationships, irrespective of gender, age, ability, ethnicity or religion, are a natural learning mechanism of how family members can related to each other and to others outside the family unit.

Families should be helped to meet the basic needs of their members with emphasis on the principles of equality, nondiscrimination, the inviolability of rights and responsibilities of the individual, mutual respect and tolerance.

Policy makers, legislators, social service personnel, educators, community activities, and all those involved in the process of Human Rights Education must take into consideration this closely and complex interrelation of interactions in the family.

Suggested Action to Further Strengthen the Role of Families as Educators and providers of Human Rights

a. Policies should be adopted to ensure the appropriate protection of labor laws and social security benefits; enact family-sensitive legislation; design and provide educational programmes to raise awareness on gender equality; integrate gender perspectives in legislation, public policies, programmes and projects;
b. It is the responsibility of educational institutions to work in concert with families in the development and nurture of children and young people, consulting with parents as partners in the human rights education process;
c. All public policies must be entrenched in the principles of gender equality, the responsibilities of parents to their children and children's rights to a secure family environment;
d. The United Nations Decade for Human Rights Education should highlight and accord adequate attention to the important role that families can and should play in promoting the learning and practice of human rights.

Peer Group

In the broadest sense Human Rights is the right of every citizen in this country to be treated with dignity regardless of caste, community, gender and thereby realize their own capabilities and capacities. Access to education is but a part to this right to a life of dignity.

There can be two ways in which the question of human rights can be dealt with in the context of education. One is to state that the education system should facilitate the spreading of an awareness of the importance of human rights and an awareness of the importance of human rights and an understanding of the premises on which they are based as well as the safeguards that are available for the protection of these rights. This can be broadly referred to as Human Rights Education (HRE), and NCERT and UGC documents broadly refer to this. The second is to critically look at the practice of human rights within the education system.

There can be no quarrel with the objective of wanting to strengthen the subject content in relation to human rights wherever it is appropriate in subject areas such as social studies, civics as on. In this context it is probably adequate to integrate the teaching of human rights within the content of what is already being taught rather than introduce an additional subject at the school stage and thereby increase and lad of an already burdened school curriculum. There is considerable potential within existing content areas to do so and it is a matter of how effectively and sensitively this is done.

Of crucial importance to the issue of human rights in relation to education is the practice of human rights within the education system itself. In other words we probably need to first understand the concrete practice of human rights within the education system (and the manner in which the experience of different social groups varies in this context), before we can speak in general of Human Rights Education, the content of this education, whom it should focus upon and so on.

Any one who looks at the schooling statistics in any government document will be struck by the extent to which

certain social groups lack even the minimal access to opportunities where they can acquire basic skills of literacy and numeracy, *i.e.*, to the primary stage of education. I am specifically referring to the relatively low enrolment and high drop-out rates from school of children from Dalit communities, officially called the scheduled Castes. What is however important is that these are social groups that have also been traditionally denied a life of dignity in society.

Today when we are discussing the role of education in human rights literacy it becomes important to see whether children from communities whose human rights continue to be trampled upon are able to receive education with dignity from schools. The school is of particular importance as these are institutions that occupy public space and profess aims of equity ensuring equality of educational opportunity with social justice.

There are two points of importance that need to be remembered in the context of the education of Dalit children. One is that these children come from communities that have been traditionally denied opportunities for education.

The lack of exposure of generations to skills of literacy, numeracy, literature and other forms of knowledge considered desirable is likely to put them at a disadvantage where access to school knowledge is concerned. This would imply that such children are likely to require specific pedagogic supp9rt from the school system. This is integral to their right of education. The other point is that Dalit communities have been denied learning in the past specifically because of the caste to which they belong. There is hence need for special vigilance to see that they do no continue to face social discrimination with in the school.

As mentioned earlier the majority of Dalit Children in both rural and urban areas do not attend schools. Though education documents assure us that schools are available within walking distance to all children in rural areas, this does not even hold if one looks more closely at official statistics. Further, given the spatial segregation of Dalit communities in villages and among them specially those who traditionally remove night soil and

the fact that schools are located within the upper caste areas, the question of how socially accessible schools are is also relevant.

Coming to the schools themselves what needs to be seen is the quality of facilities that are available to Dalit children. One knows that the general quality of primary schools in rural areas is poor. What is the condition of schools that cater primarily to Dalit children by virtue of being located in their habitations? Passing references in a few studies and reports give rise to the suspicion that schools where Dalit children predominate may be in poorer conditions than the average rural schools-the minimal facilities may not be available to ensure that education is received in conditions that maintain the dignity of the individual child.

Inadequate inputs in schooling, the poor quality of teaching, and as on-likely to be particularly detrimental to the education of children from these communities-are relatively less exposed to the kind of skills required in the classroom.

Equally important particularly for Dalit communities are the social processes within school and classroom that influence the learning environment provided for children. There is not much research evidence on what it means to be a Dalit child within the Indian classroom especially in the rural areas where the majority of Dalit school children are to be found. Scattered references in a number of studies do indicate that the eduation of Scheduled castes may still not be looked upon with favour by upper and dominant castes in many parts of India.

Within the school it appears that Dalit students continue to experience social discrimination and this can be seen both in the official curriculum, *i.e.*, in the approved content of education and the hidden curriculum of schooling. Scheduled caste communities and the experience of untouchability rarely form part of school knowledge. Textbooks are silent about Dalit communities, even in states where these communities form a significant section of the population. Though untouchability and the maintenance of social distance from certain communities still persists in most parts of India such practices are rarely

mentioned in school books or discussed in the classroom. Dalits who look back upon their often painful experiences in school refer not to their invisibility in textbooks but to the distinct message of social inferiority that is conveyed to them by their teachers (the majority of teachers continue to come from middle and upper castes) and peers.

Personal experiences of Dalits educated in the post independence period mention instances of Dalit children being asked to sit separately from their classmates, of being refused drinking water and served in broken teacups, made to dine separately and so on. A number of observers have noted the fact that teachers refuse to touch their slates or copies, or even resort to physical punishment for fear of pollution. Discouragement from teachers (who by and large still belong to the middle and upper castes in rural India) and indifference on their part to the academic needs to Dalit students is also reported in a few studies. Passing reference is also made to friendship patterns tending to remain within caste boundaries in schools.

The point being made here is that children belonging to communities that belong to the lowest of castes in the social hierarchy continues to be discriminated within the school and classroom. While blatant practices of untouchability may be less common than in the past, discrimination continues to exist in school practices particularly in the attitudes of teachers and school authorities as well as in peer behaviour. The inadequate academic support given to dalit children, the prevailing attitudes regarding these communities and the stereotypes that teachers and other members of the school community hold regarding their educability and their destiny impinges on the right of the child to education with dignity.

Given the scenario that exists regarding social groups that suffer from the backlash of caste in society at large, it is unlikely that human rights education in the abstract will bring about any significant change in the education environment provided for children belonging to these communities. What is required is that school practices in relation to discrimination,

or the need for social justice within schools, is directly addressed. How this needs to be done is a matter of democratic debate and discussion but one can point to a few areas of intervention.

One is the official content of school education where a conscious effort should be made to critically analyze the manner in which school text books portray socially vulnerable communities both in terms of their visibility as well as the kind of roles they are seen to play if represented. In the context of what is called the hidden curriculum there is need for a multipronged strategy.

One is the need to ensure that all children (specially in the rural areas) are entitled to equal access to facilities within educational institutions and the meting of stringent punishment where there is any form of discrimination. The other is in the context of programmes to sensitize and create awareness among teacher educators, teachers and school administrators not only of human rights where these children are concerned but also of the deleterious consequences that social discrimination can have for the development of children and the realizing of their full potential.

The special role that the schools can play in reinforcing academic inputs for these children need to be stressed. Similarly within the classroom the raising of awareness of human rights requires that such awareness is linked to critical consciousness of school practices including peer group behaviour in as sensitive a manner as possible. For both teachers and students this can be done more effectively through dialogue and discussion rather than in a didactic manner. Group projects can offer opportunities both for the recognition of underlying attitudes and critically looking at them.

Children especially those from Dalit and Minority communities are in an extremely vulnerable position in the classroom. Protection and support to children in order that they can exercise their rights will be important in efforts to create an educational environment conductive to learning with dignity. In this context the links that democratic and civil liberties organisations forge with schools will be critical.

Religious and Social Organisation

United Nations

The **United Nations (UN)** is the only multilateral governmental agency with universally accepted international jurisdiction for universal human rights legislation. Human rights are primarily governed by the United Nations Security Council and the United Nations Human Rights Council, and there are numerous committees within the UN with responsibilities for safeguarding different human rights treaties. The most senior body of the UN with regard to human rights is the Office of the High Commissioner for Human Rights. The United Nations has an international mandate to: "...achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."

Human Rights Council

The United Nations **Human Rights Council**, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights. The Human Rights Council is a subsidiary body of the General Assembly and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter. Forty-seven of the one hundred ninety-one member states sit on the council, elected by simple majority in a secret ballot of the United Nations General Assembly. Members serve a maximum of six years and may have their membership suspended for gross human rights abuses. The Council is based in Geneva, and meets three times a year; with additional meetings to respond to urgent situations.

Independent experts (*rapporteurs*) are retained by the Council to investigate alleged human rights abuses and to provide the Council with reports. The Human Rights Council may request that the Security Council take action when human

rights violations occur. This action may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal jurisdiction of the ICC.

Security Council

The United Nations **Security Council** has the primary responsibility for maintaining international peace and security and is the only body of the UN that can authorize the use of force (including in the context of peace-keeping operations), or override member nations sovereignty by issuing binding Security Council resolutions. Created by the UN Charter, it is classed as a *Charter Body* of the United Nations. The UN Charter gives the Security Council the power to:

- Investigate any situation threatening international peace;
- Recommend procedures for peaceful resolution of a dispute;
- Call upon other member nations to completely or partially interrupt economic relations as well as sea, air, postal, and radio communications, or to sever diplomatic relations;
- Enforce its decisions militarily, if necessary.

The Security Council hears reports from all organs of the United Nations, and can take action over any issue which it feels threatens peace and security, including human rights issues. It has at times been criticised for failing to take action to prevent human rights abuses, including the Darfur crisis, the Srebrenica massacre and the Rwandan Genocide.

The Rome Statute of the International Criminal Court recognizes the Security Council the power to refer cases to the Court, where the Court could not otherwise exercise jurisdiction.

Other UN Treaty Bodies

A modern interpretation of the original Declaration of Human Rights was made in the Vienna Declaration and

Programme of Action adopted by the World Conference on Human Rights in 1993. The degree of unanimity over these conventions, in terms of how many and which countries have ratified them varies, as does the degree to which they are respected by various states.

The UN has set up a number of *treaty-based* bodies to monitor and study human rights, under the leadership of the UN High Commissioner for Human Rights (UNHCHR). The bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created by the treaty that they monitor.

- The *Human Rights Committee* promotes participation with the standards of the ICCPR. The eighteen members of the committee express opinions on member countries and make judgements on individual complaints against countries which have ratified the treaty. The judgements are not legally binding.
- The *Committee on Economic, Social and Cultural Rights* monitors the ICESCR and makes general comments on ratifying countries performance. It does not have the power to receive complaints.
- The *Committee on the Elimination of Racial Discrimination* monitors the CERD and conducts regular reviews of countries' performance. It can make judgements on complaints, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the convention.
- The *Committee on the Elimination of Discrimination against Women* monitors the CEDAW. It receives states' reports on their performance and comments on them, and can make judgements on complaints against countries which have opted into the 1999 Optional Protocol.
- The *Committee Against Torture* monitors the CAT and receives states' reports on their performance every four years and comments on them. It may visit and inspect individual countries with their consent.

- The *Committee on the Rights of the Child* monitors the CRC and makes comments on reports submitted by states every five years. It does not have the power to receive complaints.
- The *Committee on Migrant Workers* was established in 2004 and monitors the ICRMW and makes comments on reports submitted by states every five years. It will have the power to receive complaints of specific violations only once ten member states allow it.
- The *Committee on the Rights of Persons with Disabilities* was established in 2008 to monitor the Convention on the Rights of Persons with Disabilities.

Each treaty body receives secretariat support from the Treaties and Commission Branch of Office of the High Commissioner on Human Rights (OHCHR) in Geneva except CEDAW, which is supported by the Division for the Advancement of Women (DAW). CEDAW meets at United Nations headquarters in New York; the other treaty bodies generally meet at the United Nations Office in Geneva. The Human Rights Committee usually holds its March session in New York City.

Media

The Bhagalpur blindings provide an object lesson in the crucial contribution that sustained journalistic research can make in creating public awareness of human rights, more so in a traditional society in which entrenched abuses are apt to be overlooked. The reporter must be able to place the abuse in its wider legal, social and constitutional context to enable the reader to realise its implications. Stories on human rights must touch the conscience of the reader if they are to arouse rethinking of traditional norms. This requires skill in presentation as well. But the impact can be more lasting and more valuable to society than other newspaper events.

In Bhagalpur, many residents protested against the suspension of the policemen, arguing that such punishment deterred crime more effectively than protracted legal cases. It

took a sustained campaign on the rights of prisoners, together with the impact of pictures of the blinded men, to touch the public conscience and expose similar brutal practices elsewhere.

In recent years, media has reflected and further strengthened increasing awareness of human rights in many areas in which they were overlooked before. Exploitation and ill-treatment of domestic workers, often children, is still routine in many households. But a series of press reports describing the cruel conditions in which they are often kept has pierced the silence and forced the police to intervene.

Special cells have been set up to deal with violence against and ill-treatment of women following sustained exposure of dowry deaths and other crimes.

Bonded labour-workers and children chained to fields or workplace for their lifetimes to repay old debts-is treated as an offence only after the press joined social activists in exposing the evil. Now the police are active, at least in Delhi. On September 10, 2000, it was reported that the "South District (Delhi) police have rescued 19 children from Bihar who were being used as bonded labourers." They were between six and 12 years of age. But investigations into the trauma of the children and the circumstances in which they were bonded in Bihar are missing.

Few countries, if any, have inherited such a wide-ranging legacy of social, cultural, economic and other restrictions on human rights as India. At the same time, India has given itself a Constitution guaranteeing human rights to an extent unequalled for a country of its size and complexity. But human rights abuses persist; in some areas they have increased. The primary reason lies in widespread ignorance of the rights due to every citizen of the country, even fifty years after the Constitution came into force in 1950. India was a signatory to the Universal Declaration of Human Rights adopted by the United Nations even earlier, in 1948.

India has nurtured a free press since it became independent, except for the brief experience of censorship under the Emergency regulations of 1975-76. This provides an opportunity

to create widespread awareness of human rights, a social obligation yet to be adequately fulfilled, as evident from India's low listing in the annual UN Human Development Reports. As a developing country, the range of human rights issues requiring media intervention is particularly wide, with a marked social content. This was recognised by the United Nations in December 1986, when the Universal Declaration was expanded to include Right to Development. Access to education, health services, food, housing, employment and fair distributions of income were mentioned specifically. Measures to ensure that women have an active role in development were stressed.

Few papers have taken up the challenge; it needs study and skill to rouse reader interest in often distant processes of human development. But reports selected by the Press Institute of India for publication in Grassroots, its monthly journal on development reporting, demonstrate that such stories can stand out and have a far more lasting impact than routine news stories, however big their headlines. Kalpana Sharma of The Hindu received a prize for her sensitive treatment of the gradual change in caste relations enabling lower caste girls in a Karnataka village to defy the traditional custom of "sitting in the laps" of upper caste elders, and bring out what this meant for social reform. Latha Jishnu's account of the transformation of a remote backward village in Madhya Pradesh by a locally conceived literacy programme has helped promote literacy in the region. Other reports make such issues as panchayati raj, exploitation of tribals, preservation of forests and water conservation meaningful for the urban reader.

One of the biggest contributions of the press in recent years is to make the right to information a national issue. The campaign for right to information began five years ago with villagers of south Rajasthan demanding access to official files containing details of money disbursed for local development works. They knew that much of the money was misappropriated, but could not prove it without access to the files. Though opposed by the local bureaucracy, they were able to establish corruption in some cases. Taken up by the press, especially local newspapers, the campaign spread to many parts of the

country. At the time of writing, four states have passed their own right to information legislation and the Central Government has introduced a Bill in Parliament.

That the press has a role in promoting awareness of human rights, then described as social reform, was realised long before Independence. In 1823, the noted Bengali author, Raja Ram Mohan Roy, brought out weeklies in three languages to campaign against caste discrimination and sati and for widow remarriage. Social reformers elsewhere followed his example. Nearly a century later, Mahatma Gandhi, the most outstanding exponent of journalism in the service of human rights, entered the field. He focussed on the evil of untouchability but also campaigned for women's rights, basic education, prisoner's rights (long before Bhagalpur), community health, rural employment and other development objectives later adopted by the United Nations.

In 1933, Gandhi brought out the first issue of Harijan, or God's children, his name for untouchable. It marshalled support, including a contribution from Rabindranath Tagore, for the Temple Entry Bill that sought to give untouchables the right to enter temples, the first step in their liberation. That the Bill was defeated in the Central Assembly and officially described as "a serious invasion of private rights" indicates the temper of the times. Largely due to Gandhi's sustained campaign at public meetings and in print, untouchability was abolished and its practice forbidden in 1950 under Article 17 of the Constitution. But, as recounted vividly by the prize-winning journalist P. Sainath in a series of articles in The Hindu, it continues to be practised in many ways. The challenge to eradicate the most deep-rooted denial of human rights in India survives.

School/Educational Institution

Postgraduate Programme in Indian Institute of Human Rights

Postgraduate Programme in Indian Institute of Human Rights Indian Institute of Human Rights Course : Postgraduate

Programme in Human Rights Eligibility: Graduation How to apply: Prospectus and admission form can be obtained from institute's counter on payment of Rs.45 by cash or by sending MO/IPO/Bank Draft of Rs. 45.

Post Graduate Programme Course in Indian Institute of Human Rights for New Delhi.

Indian Institute of Human Rights Course: Post Graduate Programme in Human Rights Eligibility: Graduation in any discipline How to apply: Prospectus and admission form can be obtained from the institute's counter on cash payment of Rs.45 or by sending MO/IPO/Bank Draft for Rs.45 drawn in favour of institute payable at New Delhi.

Indian Institute of Human Rights (IIHR)

Indian Institute of Human Rights (IIHR) Course: PG in Human Rights Eligibility: Graduation How to Apply : Prospectus and Admission Form can be obtained from the institute on payment of Rs.45 in cash or via a MO/IPO/Bank Draft drawn in favour of the institute.payable at New Delhi Contact: IIHR, A-16, Paryavaran.

Three Months online certificate course on Intellectual Property Rights and Information Technology by The Indian Law Institute, New Delhi.

Three Months online certificate course on Intellectual Property Rights and Information Technology by The Indian Law Institute, New Delhi Three Months online certificate course on Intellectual Property Rights and Information Technology in the Internet Age by The Indian Law Institute, Bhagvandas Road, New Delhi-110001, commencing November 6,2006. You need: Rs 3,000 fees.

LLB with specialisation in intellectual property rights and PGDIPL at Indian Institute of Kharagpur.

Bachelor of Law (LLB) with specialisation in intellectual property rights and Postgraduate Diploma in Intellectual Property Law (PGDIPL) at Indian Institute of Kharagpur. Deadline: Extended to May! 5,2007 for submission at the institute. Notified:Times of India, Mumbai, April 22, 2007.