



THE STATE OF HUMAN RIGHTS IN INDIA – 2008

EXPECTATION, PROMISE AND PERFORMANCE - HUMAN RIGHTS REPORT 2008

If particular countries are viewed from the standpoint of what their citizens are promised or offered by the system, a basis exists for evaluating that country's treatment of human rights. If the promise is reality, then human rights are not being violated. If the promise does not match the actual situation, then human rights are being violated.¹

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¹ Conformity, Compliance and Human Rights: Nicholas P. Pollis; Human Rights Quarterly, Vol. 3, No. 1 (Feb.,1981), pp. 93-105 – John Hopkins University



1. INTRODUCTION

Evaluating the human rights record of a country like India, with its varied culture, population and diverse demography is a challenging task. A thorough analysis of the human rights situation of any country requires more than peripheral knowledge about the country. The essence of a country is the sum total of its people, culture, justice mechanisms and polity. Within the limited scope presented by the knowledge gained through the work of a regional human rights organisation, an analysis that evaluates the entire spectrum of human rights issues concerning India is not possible.

The Asian Human Rights Commission (AHRC) through its continuous engagement in India has however gained considerable insight into specific human rights concerns in India. The issues taken up by the AHRC in India are largely concerning civil and political rights, some aspects of the economic social and cultural rights like land rights and the right to food and rights against discrimination, particularly concerning the caste based discrimination. It is obvious thus that in the following chapters it is these specific aspects of human rights issues in India that are highlighted, discussed and debated.

Throughout the discussion, emphasis is given to international norms and standards, as a yardstick to measure 'the promise and the performance'. India is one of the founder members of the United Nations. A country where equal status to women is still a concern was led by Mrs. Hansa Mehta in the UN during the drafting process of the Universal Declaration of Human Rights.²

It is a fact that India's initial energy and enthusiasm in promoting a global perspective of protection, promotion and fulfilment of human rights and human values has faded considerably. In tackling the shifting currents of national, regional and international polity, India too reduced itself to a nation that is primarily concerned about its international image.³ Human rights norms and values that India once stood for, especially during the period soon after independence, have been reduced to be nothing more than an eyesore that the government has to deal with.

In applying cosmetics to cover-up its smear India has increasingly resorted to defensive positions at the UN and has literally bluffed its way through in international review sessions sponsored by the UN and its treaty mechanisms.⁴ Those who tried to put the records straight through alternate means like shadow reports were targeted by the Indian authorities. This domestic response was intense particularly concerning human rights groups operating in the Northeastern states like Manipur and the Jammu and Kashmir.⁵ Of late, human rights work is perceived by the government of India as a domestic smear campaign, than

² Mrs. Hansa Mehta is a Gandhian and a Muslim woman. A Muslim woman leading the Indian delegation during the drafting process of the UDHR, when India was still a British colony showcases the vision of the mainstream Indian leaders of the time. Mrs. Mehta's leadership is definitely an exception considering the fact that in 1945, Muslim women the world over were yet to begin their movement for gender equality within the Muslim community. In the current Indian context where Muslim women are increasingly forced to follow a middle-eastern dress-code for women like wearing Burkhas and are encouraged to study in Islamic religious schools rather than mainstream institutions, Mrs. Mehta's leadership and her advocacy for a universal brotherhood based on the recognition of equality in rights is unique.

³ *India's Changing Role in the United Nations*: Stanley A. Kochanek; *Pacific Affairs*, Vol. 53, No. 1 (Spring, 1980), pp. 48-68 – University of British Columbia

⁴ *Id.*

⁵ *Kashmir Conflict: Secessionist Movement, Mobilization and Political Institutions (Review)*: Reeta Chowdhari Tremblay; *Pacific Affairs*, Vol. 74, No. 4 (Winter, 2001-2002), pp. 569-577 – University of British Columbia



acknowledging and promoting human rights activism as a necessary debate in establishing a democratic framework.

A country with a basic law that guarantees freedom of opinion and expression increasingly found ways to curtail this freedom domestically.⁶ So much so, regulatory standards enforced in some parts of India have literally brought parts of the nation like the Northeastern states and Kashmir under an iron curtain. This isolated the ordinary Indian citizen living in these areas from the rest of the country.⁷ The mainstream media in India, driven by political, religious and business interests, did nothing much to fight against or even to expose this impasse.

Had it not been for the relentless efforts of civic organisations and public-spirited individuals who were eagerly received by the Indian courts, India would have easily become a desert for basic human rights. Whenever the government tried to curtail individual freedom, the justice institutions, particularly the courts, have come to the rescue of the people. By this process not only was the basic structure of the Indian Constitution preserved, but also provided the courts the opportunity to interpret the Constitution to expand its scope to include rights that were not otherwise considered as justiciable.⁸

On a theoretical stage the Indian Constitution is a masterpiece, balancing rights, duties and expectations. The Constitutional text from what it was in 1950 has considerably changed in the past 62 years. Most of them, progressive in nature, were initiated by the courts. Whenever the government shied away from implementing international human rights norms within the country, the courts took the initiative to read these norms into the basic text of the Indian Constitution.

The concept of 'right to life', from its original construction in Article 21 of the Constitution, was expanded to include environment, housing and health. On certain occasions the courts have also instructed the government to make appropriate domestic legislations or amendments into the Constitution to incorporate such rights.⁹

While several countries that follow the dualist system to incorporate international human rights obligations and treaty law are yet to incorporate the treaty obligations into their domestic law, India had several core international human rights norms contained in conventions like the ICCPR in its already existing domestic legal framework.¹⁰ Some of these laws like the Code of Criminal Procedure, 1974 and the Code of Civil Procedure, 1809 have its bedrock in the British common-law. After independence, these legislations were adopted and continued in practice in India.

6 *Opposition to the Entry of the Foreign Press in India, 1991-1995: The Hidden Agenda: Prasun Sonwalkar; Modern Asian Studies, Vol. 35, No. 3 (Jul., 2001), pp. 743-763 – Cambridge University*

7 *The State and the Use of Coercive Power in India: Kuldeep Mathur; Asian Survey, Vol. 32, No. 4 (Apr., 1992), pp. 337-349 – University of California*

8 *Judicial Response to Socio-economic and Cultural Rights: An Indian Perspective: Bijo Francis; LST Review, Vol. 15, No.203 & 204 Sep. - Oct. 2004*

9 *Ibid. see discussion on the right to education, food and housing*

10 *For example India acceded to the ICCPR on 10 April 1979. Even before this, the Code of Criminal Procedure, 1974 in India has provisions synonymous to the Articles in the ICCPR concerning arrest, detention, trials, presumption of innocence, burden of proof and provisions regarding bail.*



1.1. ISSUES COVERED IN THIS REPORT

This report tries to analyse certain aspects of India's human rights record as documented in the year 2008 by the AHRC. Where India failed and continues to fail in meeting the 'promise and performance' is in preventing the legal framework provided by the existing laws and procedures to meet the development in international human rights jurisprudence. India also fails in providing equal access and opportunity to its citizen to make use of its justice mechanisms. This is not only a breach in the fundamental guarantees enshrined in the Constitution, but is also a non-compliance of the common Article 2 of the international treaties India has ratified and Article 8 of the UDHR. To complicate matters further there are legislations pressed into use in India that contravenes Constitutional guarantees.¹¹

In this report, emphasis is given to human rights promises and performance in India concerning the following issues:

a) ICCPR: (International Covenant on Civil and Political Rights) Acceded on 10 April 1979

- 1. Article 7 ~ concerning torture
- 2. Article 8 ~ concerning bonded labour
- 3. Article 14 (3) c ~ concerning right to fair trial without delay
- 4. Article 18 ~ concerning freedom of religion

b) ICESCR: (International Covenant on Economic, Social and Cultural Rights) Acceded on 10 April 1979

- 1. Article 11 ~ concerning the right to food and housing
- 2. Article 12 ~ concerning right to health
- 3. Article 13 ~ concerning right to education

c) ICERD: (International Convention on the Elimination of All Forms of Racial Discrimination) Ratified on 3 December 1968

- 1. Article 5 ~ concerning racial discrimination in all forms
- 2. Article 6 ~ concerning effective remedies against discrimination

For the sake of convenience and coherence some issues are discussed independently, whereas some are discussed jointly. In addition to the thrust areas mentioned above, reference will be made to international human rights norms binding India arising out of its treaty obligations. Reference will be also drawn from the observations made by international human rights bodies like the special procedure mechanisms and its mandate holders, treaty bodies and the former Commission on Human Rights and its successor, the Human Rights Council.

The purpose of this report is not to compile the recommendations made by international human rights bodies on India since such an exercise does not call for the expertise of a regional human rights group. Moreover, such information is freely available from other sources, for example the UN itself. Additionally,

¹¹ For example the Armed Forces (Special Powers) Act, 1958



some of the recommendations have become redundant or obsolete owing to the change in the domestic circumstances and the lack of understanding of some of these bodies about the issues in India.

This report is expected to contribute to the debate concerning key human rights issues emerging in India, from the point of view of the knowledge gained by the AHRC about the country. Similar reports on the same issues from different view points and on other diverse issues not touched upon in this report could provide an adequate platform for the improvement of the overall human rights situation in India.

2. 1. CUSTODIAL TORTURE

Custodial torture is the most commonly used investigative tool by the law enforcement agencies in India. Often the entire criminal investigation depends upon the confession statement extracted from a suspect. In the process of extracting confession, the law enforcement agencies employ different forms of torture. The practice is so widespread often even the presence of a lawyer or a person interested in the suspect who turns up at a police station inquiring about the suspect does not serve as a deterrent for the law enforcement agencies from torturing a suspect.

On 14 October 2008, police officers stationed at Varapuzha Police Station in Ernakulam district took 20-year-old Hithin into custody.¹² The officers suspected Hithin was involved in a theft case. At the police station, Hithin was tortured severely. Later Hithin's relatives arrived at the police station inquiring about him. A local politician had also accompanied them to the police station.¹³ The Sub Inspector summoned Hithin from the room where he was kept at the police station and started caning him in front of his relatives and the politician. Later, the officer allowed Hithin to leave.

Torture is not a crime in India. The only provision in law that could be used to charge a law enforcement officer for resorting to torture are Sections 330 and 331 of the Indian Penal Code, 1860.¹⁴ Contrary to the gravity of the crime, the crime being committed by a law enforcement officer, the Penal Code does not attach any additional gravity to the crime of torture. In addition, the fact that the crime of torture is often committed within a police station which effectively rules out the possibility of an independent witness, the absence of an independent investigating agency makes it almost impossible to successfully prosecute a crime of torture.¹⁵

The absence of successful prosecution and the relative difficulty of even lodging a complaint against a law enforcement officer have provided the law enforcement agencies with a high degree of impunity. This has resulted in an alarming increase in the cases of custodial torture and other crimes committed by law

¹² For further information please see AHRC-UAC-244-2008 <<http://www.ahrchk.net/ua/mainfile.php/2008/3055/>>

¹³ It is common in Kerala for the ordinary people to request politicians to accompany them if they have to go to the police station. The police treat politicians, particularly those from the ruling party, with courtesy. A politician is a guarantee that the person will not be hurt inside a police station.

¹⁴ Section 330: Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, ... shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine Section 331: This section relates to causing grievous hurt and the punishment is enhanced to ten years imprisonment

¹⁵ Concluding observations of the Human Rights Committee: India. 04/08/97; CCPR/C/79/Add.81



enforcement agencies in India. A cursory glance at newspapers published in India is good enough to substantiate this argument.¹⁶

Torture is practised mostly against the poor.¹⁷ The widespread use of custodial torture has isolated the ordinary people from the law enforcement agencies. Torture is used as a tool for social control in India.¹⁸ The government indirectly endorses the use of torture.¹⁹ In most of the states in India where feudalism continues in its full vigour, torture and the fear created by the use of torture by the law enforcement agencies are used to suppress peasant uprisings.

Landlords to thwart any attempts by the peasants to claim proper wages or exercise their right to own land connive with the local police. Landlords bribe police officers to raid peasant houses to pick up their leaders and register false cases against them. It is not rare in such raids for the police to molest or even rape peasant women. This situation in many parts of the country has become a catalyst to anti-state armed movements, which in India is commonly known as Naxal movements/resistance.²⁰

The feudal lords and the police target human rights defenders who speak up against such practices.²¹ Even the officials within the local administration, outside the police force abet to such falsifications and misuse of authority. This also showcases the government's antagonistic attitude towards human rights defenders.

The practice of torture indicates the weakness of the rule of law in the country. The widespread use of custodial torture in any state reflects a wilting justice system. Torture is an external manifestation of an internal cancer that destroys the fabric of justice. A healthy justice system is a prerequisite for development. A simple glance at the states that do not practice torture, in theory or in practice, proves this.²²

In addition to the absence of a legislative framework, there is no institutional framework in the country to prevent the practice of torture. For example, if a person needs to file a complaint against a police officer, the only remedy for the person is to file a complaint against the officer with the officer's superior. Superior officers, who directly and openly endorse the subordinate officer's action, often discourage such complaints. Such an attitude results in the complaint not being investigated at all. The next option available for the complainant is to approach the court. Though the court can direct an investigation, none other than a police officer conducts the investigation. This is because there are no other independent agencies within the country that could accept complaints against police officers. Even agencies like the Central Bureau of Investigation (CBI) have a large number of police officers on secondment posted at the Bureau.

16 *Custodial torture often figures in the news these days. It is a serious violation of human dignity which can destroy the personality of any individual. Press Release by Justice A. S. Anand, as the Chief Justice of India: October 2001; Press Information Bureau – Government of India*

17 *Feudal Forces: Democratic Nations – Police Accountability in Commonwealth South Asia; Commonwealth Human Rights Initiative, 2007 p. 14*

18 *Punishment and Social Control: Thomas G Blomberg and Stanley Cohen, ed. Aldine de Gruyter (New York), August 2003 p. 483*

19 *In June 2008 the Speaker of the Kerala Legislative Assembly while addressing a gathering of police officers during the annual meeting of the State Police Association said that the state government does not agree with the argument that police officers must refrain from the use of force while investigating crimes. The minister further said that often use of force is the only way to 'make suspects tell the truth' which gives a headway for criminal investigation. For further information please see 'India Still Tolerate Torture', Bijo Francis, United Press International, 23 June 2008*

20 *Naxal Movement in India : A Profile : Rajat Kujur Institute of Peace and Conflict Studies, New Delhi September 2008 p. 4*

21 *See for example UP-163-2007, issued by the AHRC on 11 December 2007 <<http://www.ahrchk.net/ua/mainfile.php/2007/2693/>>*

22 *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation : Craig Scott; Hart Publishing, 2001 p.157*



Often investigations against police officers end in a farce. Even in crimes like murder that attract relatively a higher degree of media interest, the police in the country are infamous for suppressing the evidence to protect the accused.²³ Owing to the fear generated by the law enforcement agencies and the impunity they enjoy, these agencies have become synonymous with corruption.

In fact the police force in India is perceived as the second most corrupt government agency in the country.²⁴ Corruption within the police is so widespread and deep rooted that an investigation conducted in October this year about the terrorist recruitment cells operating in Kerala state, revealed that several state police officers deliberately failed to take action, when they came to know about these recruitment cells. It was reported that these officers had accepted huge amounts as bribes to facilitate the stay of foreign mercenaries who visited the state to recruit their cadres to be trained to fight in Kashmir and other parts of India.

In the northeastern states of India and in the state of Jammu and Kashmir, where a draconian law like the Armed Forces Special Powers Act, 1958 is pressed into use, the law enforcement agencies operating in these areas are shielded with the additional protection of the law from being prosecuted for acts of violence, particularly of torture and murder.²⁵ Even journalists, lower court judges and human rights defenders face abuse from the law enforcement agencies due to the overwhelming misuse of this law.²⁶ However each attempt to declare this law as unconstitutional was rejected by the Supreme Court of India. The UN Committee on Elimination of Racial Discrimination (CERD) has repeatedly recommended that the government repeal this law.²⁷ However the government has not only failed to repeal the law, but has consequently extended its operation in the northeastern states and in the state of Jammu and Kashmir.

Law enforcement agencies use torture as a means for corruption. Due to fear, persons detained by the police pay bribes to the police officers so that they are not assaulted, ill-treated or injured while in custody.²⁸ Demand of bribe is not however limited to pre-trial custody. Payment of bribe is common in prisons. A convict is expected to pay bribe to ensure proper treatment while in the prison. Those who fail are denied food and other essential requirements inside the prison. A common tactic used by prison guards is to torture the person as a form of punishment for failing to pay bribe. Prison being a closed environment with minimal chances and opportunities to complain, the inmates are left with no option other than to pay for their safety.²⁹

The Prime Minister of India had in January this year issued a public statement that India would ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It was the first time ever for a Prime Minister in the country to make such a statement. However, since then nothing

23 *Abhaya Case: Two priests and a nun held; The Hindu*, 20, November 2008. This case relates to the suspected murder of a nun in a convent in Kerala state. The incident happened 16 years ago. At least three separate teams of police officers investigated the case and all concluded that the death of Sr. Abhaya was due to suicide. The father of Sr. Abhaya pursued the matter and later the case, under the directions from the court was handed over to the Central Bureau of Investigation (CBI). The CBI also, allegedly under pressure, concluded that the case was that of suicide. The case was again brought to the limelight when the state High Court intervened after 16 years ordering a fresh investigation. The court also directed a Chief Judicial Magistrate to supervise the investigation. This time however, the CBI came out with acceptable evidence that the death was not of suicide, but is in fact a murder. Soon after the three persons suspected of murdering Sr. Abhaya were arrested.

24 *Police Corruption : International Perspectives*, eds. Rick Sarre, Dilip K. Das and H. J. Albrecht, Lexington Books – September 2003, p. 6

25 *The Armed Forces Special Powers Act : A Study in National Security Tyranny*, South Asia Human Rights Documentation Centre <http://www.hrdc.net/sahrdc/resources/armed_forces.htm>

26 *Freedom of Press : Yumnam Rupachandra, E-Pao Net*, 28 November 2008

27 *Concluding observations of the Committee on the Elimination of Racial Discrimination; CERD/C/IND/CO/19*, dated 5 May 2007

28 *Policing the Police : Colin Gonsalves, Combat Law - Volume 6 Issue 4*, July-August 2007

29 *Jails that fail justice : Vijay Hiremath, Combat Law - Volume 7 Issue 2*, March-April, 2008



was heard from the government regarding this. The fact remains, that in the past five years on an average at least four persons die in custody every day in India, most of them from torture.³⁰

Various sources within India has expressed concern about the alarming increase in the use of torture in the country. The National Human Rights Commission (NHRC) has repeatedly expressed its concern on this issue. Successive reports and recommendations by the NHRC emphasise this.³¹ The NHRC has also recommended that the government must not only merely ratify the Convention against Torture as early as possible, but must also come-up with domestic legislation/s to address this issue.

The NHRC has further expressed the need to set-up an independent agency in the country to investigate complaints against law enforcement officers, particularly concerning the use of torture. The NHRC in its report to the Human Rights Council during the Universal Periodic Review (UPR) of India had also recommended the same.³² The organizations that contributed to this report have also recommended the it.³³

In the National Report submitted by the Government of India prior to the Review by the Human Rights Council, the government has assured the Council and its members that the country would soon ratify the Convention against Torture.³⁴ The Council in its Concluding Observations and Recommendations has encouraged the government to ratify the convention and its Optional Protocol without any further delay.³⁵ Reiterating its position, the Government has further assured the Council that it will ratify the Convention soon.³⁶

2.2 CONCLUSION:

The widespread use of torture in India illuminates the disregard the government entertains concerning a serious human rights issue in the country. The practice of the use of torture is not only indicative of the state of policing in the country, but also suggests how far the government is interested in protecting, promoting and fulfilling human rights.

In spite of repeated requests and pressure from various civil society groups, India has not extended an invitation to the UN Rapporteur on Torture to visit the country. The law enforcement agencies on the other hand find the use of torture as the easiest way of investigation and as a tool to instil fear in the people. This has distanced the law enforcement agencies further from the ordinary people.

30 Report – National Human Rights Commission of India, June 2008

31 Please see the annual reports by the NHRC for the years 2001 - 2007

32 Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council Resolution 5/1; A/HRC/WG.6/IND/3 dated 6 March 2008

33 *Id.*

34 National report submitted in accordance with paragraph 15 (a) of the annex to the Human Rights Council Resolution 15/1; A/HRC/WG.1/IND/1, para. 38

35 Universal Periodic Review : Report of the Working Group on the Universal Periodic Review – India, A/HRC/8/26 dated 23 May 2008

36 Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India; A/HRC/8/26/Add.2 dated 11 June 2008



In the context of increasing threats to national security, it is imperative for the law enforcement agencies in the country to instil public confidence in their capacity and function. Fundamental to this is the criminalisation of torture and setting up of independent mechanisms to investigate complaints against police officers.

Maintaining rule of law in a society that fears its law enforcement agencies and view their police officers as a group of organised criminals is impossible. National security and development is impossible without the participation of the average citizen. The average Indian finds himself/herself isolated from their law enforcement agencies. This is more than a congenial situation for terrorists and anti-democratic forces to wreak havoc in the country. The attacks and bomb explosions carried out by anti-state elements who launched co-ordinated attacks in New Delhi, Assam, Uttar Pradesh, Rajasthan, Gujarat and Mumbai in succession stand testimony to this fact.

Continued use of torture to subdue the public and command obedience by the law enforcement agencies in fact results in low morale of the law enforcement agencies themselves. Curbing and preventing the practice of torture by law enforcement agencies is a prerequisite for the overall improvement of rule of law in any country and India is no exception. A society, otherwise deeply divided on the basis of caste, religion, language, culture and economy cannot afford a police force with low morale.

There is no single-capsule remedy for this problem. However the first step to correct the mistakes within the law enforcement agencies will be to discipline the force. Without preventing the use of torture discipline cannot be achieved within the government law enforcement agencies.

Prohibiting torture and enforcing accountability on those who practice torture within the police is one of the primary steps that the administration must implement in India. Instead of posting officers on secondment to the central investigation agencies, a complete independent and competent agency must be created to investigate complaints against law enforcement officers. Rather than depending upon the two century-old, obsolete provisions in the Penal Code to punish officers practicing torture, a new law must be created to criminalise the practice of torture in tune with the internationally accepted norms concerning torture.

As of now no steps in the above directions are visible or even debated in India. All that has been said and heard are occasional statements by the Prime Minister that India will soon ratify the Convention against Torture. It appears that the political will on this aspect is limited to this rhetoric. However the sad reality is that the continuation of the rhetoric will not merely maintain status quo, but will in fact be a contributing factor to the further deterioration of rule of law in India and ultimately India itself.

3.1. BONDED LABOUR

India is one of the founder members of the International Labour Organisation (ILO).³⁷ It has ratified 41 ILO conventions and one Protocol.³⁸ It has legislated several domestic laws concerning the right to work like the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948. To meet the treaty obligation under

37 India - Ministry of Labour and Employment

38 Please see <<http://labour.nic.in/ilas/convention.htm>>



Article 8 of the ICCPR, India has also enacted the Bonded Labour System (Abolition) Act, 1976. However, bonded labour is practised in most of India.

The Bonded Labour System (Abolition) Act, 1976 prohibits the practice of bonded labour. A custom, tradition, contract or agreement cannot be held valid to justify the practice of bonded labour.³⁹ But when each case of bonded labour is thoroughly looked into, one can find the employer justifying bonded labour precisely on these grounds, which are prohibited by the statute.

The case reported by the AHRC concerning Gehru and Bothu Musahar explains this phenomenon.⁴⁰ Gehru and Bothu are from the Musahar community. Musahar literally means 'rat eater'. Musahar is a nomadic tribe in India. They live scattered in the northern states like Uttar Pradesh, Jharkhand, Uttranchal, Orissa and Bihar.⁴¹ Owing to the shrinkage of natural resources, the Musahar in the past two decades have started settling down in remote rural areas in these states. However, due to the lack of government care and proper support, the Musahar families soon become dependent upon upper caste landlords for their survival.⁴²

Gehru and Bhothu had to borrow money from their landlord Mr. Rajendra Prasad Tripathi, for which Tripathi got them to work at his brick kiln. The wages paid were so low to repay the loan. It was just a matter of weeks that the families, including their children, were forced to work for Tripathi. As the work in the kiln demanded strenuous labour in all weather conditions, the more the families worked, the more they became sick. This forced Gehru and Bhothu to borrow further money. Until the case was exposed by the AHRC, Gehru and Bhothu along with their families worked for Tripathi. When the case was exposed, the Varanasi District Magistrate was under pressure to take action.

The Magistrate initially denied the case and its facts. Under pressure, he reluctantly ordered the local police to investigate. The police after accepting bribe from Tripathi furnished a false report denying the case. The AHRC exerted more pressure, by following up the case through its Urgent Appeals Programme. The Magistrate was finally forced to visit the kiln where he found not only Gehru and Bhothu, but almost the entire Musahar village working as bonded labour. The Musahars were released from bonded labour and Tripathi directed to pay fine. Tripathi finding his scheme exposed, threatened the Musahars and the members of the local human rights group the People's Vigilance Committee on Human Rights (PVCHR), that he would make sure that the Musahars were punished for their audacity to lodge a complaint with the PVCHR and also the PVCHR punished for meddling with his business.

Threats of this nature in the rural areas in India are to be taken seriously. And Tripathi did mean business. He bribed the police officers at the local police station to file fabricated cases against the PVCHR members and Gehru and Bhothu. The police did exactly what Tripathi wanted. This case is being currently contested in Varanasi Magistrate court.

What is depicted here is the interplay of caste, corruption and the failure of the local administration that leads to a series of rights abuse for the poor. Musahars being considered as untouchables found it impossible to find work elsewhere. This resulted in hunger deaths in the Musahar village. As of now the PVCHR provides life support to the Musahar village by finding short-term and long-term employment for

39 Section 5 of the Bonded Labour System (Abolition) Act, 1976

40 For further information please see AHRC-UAU-004-2008 <<http://www.ahrchk.net/ua/mainfile.php/2008/2718/>>

41 *The Ideology of Tribal Economy and Society : Politics in Jharkhand : 1950-1980* Stuart Corbridge, *Modern Asian Studies* 22, 1 (1988) pp.1-42

42 *Id.*



the Musahar. Some of them, including Gehru are now employed in another brick kiln where they earn a decent income.

70 percent of Indians live in rural areas. Of this an estimated 35 percent of the population lives in appalling circumstances.⁴³ Of particular concern are their basic needs like food, shelter, education and health. These aspects are separately dealt with in this report. When basic facilities are denied to the rural populace, coupled with discriminatory practices rampant in India like the caste based discrimination, the poor are forced to borrow money and goods from the rich, often from landlords. Such borrowing is often a one-way trap that leads the poor to bonded labour.⁴⁴

To check the practice of bonded labour the Labour Ministry, Government of India along with the state governments in the country has put in place several policies. Since the ratification of the ILO Convention No.29 (Forced Labour Convention 1930) on 30.11.1954, the bonded labour system was abolished by law throughout the country with effect from 25 October 1975 by an Ordinance. Subsequently, Bonded Labour System (Abolition) Act was passed by the Parliament in 1976 but given effect to from 25.10.75, the date when the Ordinance was promulgated. The Act provides for the abolition of bonded labour, bonded labour system and bonded debt. 'Bonded labour stands abolished and would be illegal wherever it exists'- this is how the subject figures as an item in the old 20 Point Programme for national reconstruction, which goes to show the primacy and centrality attached to this subject at the national level.

Institutional mechanisms in the form of vigilance committees at the district and sub-divisional levels under the chairmanship of District and Sub-Divisional Magistrates have been established. Anyone who wants to file a complaint under the law about the existence of bonded/forced labour in any part of India can file it before the vigilance committee under the Act. Executive Magistrates have been empowered under the Act to conduct summary trial of offences, to release the bonded labourers(s) and to issue release certificates. The Act also lays down stringent penal provisions against offending employers. The penalties include imprisonment for a term which may extend to 3 years and also with fine which may extend to two thousand Rupees.⁴⁵

In order to assist the state governments in their task of rehabilitation of released bonded labourers, the Ministry of Labour has launched a centrally sponsored scheme since May, 1978 for rehabilitation of freed bonded labourers. Under the scheme, the Government of India extends rehabilitation assistance at the rate of ten thousand rupees for every freed bonded labourer.

The issue of bonded labour has been discussed in the Supreme Court in the form of several public interest litigations. As per directions of the Supreme Court in WP No.3922/85, a survey for identification of bonded labourers was conducted during October-December 1996. Under the centrally sponsored scheme, expenditure up to the end of 8th Five Year Plan amounted to 40.51 million Rupees. During the 9th Five Year Plan, an expenditure of 24.50 million Rupees has been incurred by the government. During the 10th Five Year Plan (2002-07) central grants amounting to 97.28 million Rupees have been provided to various state governments and union territories under this scheme.

The Supreme Court in its order dated 11 November 1997 has requested the National Human Rights Commission to be involved in dealing with the issue of bonded labour. In pursuance of this order, a Central

43 *Government Spending, Poverty and Growth in Rural India : ShenggenFan, Peter Hazel and Sukhadeo Thorat; American Journal of Agricultural Economics, Vol. 82 No. 4 (Nov., 2000), pp. 1038 - 1051*

44 *Caste, Class, and Clientelism: A Political Economy of Everyday Corruption in Rural North India : Craig Jeffrey; Economic Geography, Vol. 78, No. 1 (Jan., 2002), pp. 21- 41*

45 *Ministry of Labour and Employment, Press Release dated 10 September 2008*



Action Group (CAG) has been constituted in the National Human Rights Commission. The CAG is holding regular meetings/sensitisation workshops at various places in collaboration with the Ministry of Labour and Employment and the matter is being pursued with the state governments. In spite of all this millions of children are employed as bonded labourers in India.⁴⁶

Of the millions employed as bonded labourers, almost 95 percent are from the Dalit community. In a survey conducted by an Indian NGO Mine Labour Protection Campaign in 2003 about 95 percent of the bonded labourers of the three million mine workers in Rajasthan alone are employed as bonded labourers and almost every one of them are from the Dalit community.⁴⁷ The Government of India itself admits that about 85 percent of bonded labourers are from the Dalit community.⁴⁸

The Working Group on Contemporary Forms of Slavery during its 28th Session in Geneva held in June 2003 quotes an observation made by the then Commissioner on Human Rights, "Victims of slavery and slavery-like practices frequently belong to minority groups, particular racial groups or categories of people who are especially vulnerable to a wide range of discriminatory acts, including women, children, indigenous people, people of 'low' caste status and migrant workers".⁴⁹

The Committee on the Elimination of Racial Discrimination's General Recommendation on Descent-Based Discrimination in its review on India categorically recommends that the government : review, enact or amend legislation to outlaw all forms of discrimination based on descent; resolutely implement legislation and other measures in force; and to formulate and implement a comprehensive national strategy, with participation of members of affected groups, in order to eliminate discrimination against members of descent based groups.⁵⁰

By contrast, the recommendations and the domestic legislations ultimately depend upon the local administrator to implement the government policies. This is where in India like several other laws the policy fails to meet practice. The ILO Committee of Experts observed in 2003 that there is a "certain reluctance" by state governments in India to participate in efforts to identify and release bonded labourers.⁵¹ The former Labour Secretary for the Indian Government was less circumspect. He noted that "There have been cases where the magistrate has refused to issue a release certificate even after all the ingredients of bonded labour system have been proved beyond doubt."⁵²

46 *Small Hands of Slavery : Bonded Child Labour in India, Human Rights Watch – Child Rights Project, 1996. According to a survey conducted by the Human Rights Watch in 1996, at least 15 million children work as bonded labourers in India. The conditions since then has only improved marginally, particularly after the intervention of the Supreme Court. However, the marginal improvement only means that out of the 15 million children employed as bonded labourers as averred by the Human Rights Watch only a few thousand has been rescued. Even after rescue many of them are documented to have returned to the same employer due to the absence of any support line to continue life.*

47 *Human Rights Watch estimates that there are 40 million bonded labourers in India alone (Broken People, 1999, page 139)*

48 *Ministry of Labour, Government of India, Annual Report 2000-2001, page 181. Quoted in Human Rights Watch, Small Change, January 2003, page 41*

49 *Report to the 56th session of the United Nations Commission on Human Rights (E/CN.4/2000/12), para 53*

50 *CERD strongly reaffirmed that "discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights."*

51 *The NGO Volunteers for Social Justice (VSJ), has filed some 2,000 cases for the release of bonded labourers in Punjab State. According to VSJ only four of these bonded labourers have been formally released since 1990.*

52 *Dr L Mishra, Secretary to the Government of India, Ministry of Labour, Bonded Labour, presentation in the National Consultation on Forced Labour, 21-22 September 2000, New Delhi, page 35*



3.2. CONCLUSION

Prevention of bonded labour is impossible without complete eradication of caste based discrimination. The practice of caste based discrimination and bonded labour cannot be eradicated in India without the effective implementation of the domestic laws that prohibit these practices. Bonded labour and caste based discrimination is a crime in India. To prevent these crimes, the only deterrence is the effective investigation and prosecution of those who engage in these practices. This requires the active engagement of the law enforcement agencies in India. As discussed in the previous chapter, with the law enforcement agency and its function in absolute chaos and ineptitude, these evil practices will continue in India.

4.1. FREEDOM OF RELIGION

Religion determines the liberty and security of an Indian.⁵³ Religion, and violence sanctioned by religion is used as a tool for social control in the country. Religion determines politics, shapes governments and decides its fate along with that of millions of Indians. It is the most commonly referred denominator of social identity. In this whirlpool, liberty and security are two irrelevant footnotes to religion. From Kashmir to Kanyakumari, religion decides whether one is relatively safe or insecure. Yet in theory India is a secular and democratic republic of an estimated 1.2 billion people.

Religious freedom is a fundamental right in India.⁵⁴ The Constitution also guarantees liberty and security on an equal footing.⁵⁵ Religious violence is often social control. It is a form of self-help by a group and a tool for collective bargaining. Religious violence when unilateral and non-governmental, appears in four major forms-lynching, rioting, vigilantism, and terrorism - each distinguished by its system of liability (individual or collective) and degree of organization (higher or lower).⁵⁶ Liberty and security, footnoted with religious belief takes relative shapes of perfection and imperfection amidst mass violence in India. Religion imparts far-reaching effects in India. It is capable of determining the success and failure of a business to the micro level of defining relationship between individuals of the same family.⁵⁷

Religious violence is a growing problem in parts of India. According to the International Religious Freedom Report for 2008, there were organized communal attacks against minority religious groups, particularly in states governed by the Hindu nationalist Bharatiya Janata Party (BJP).⁵⁸ In the state of Orissa, governed by a coalition government that includes the BJP, Hindu extremists attacked Dalit Christian villagers and churches in the Kandhamal district over the Christmas holiday 2007.

53 *India Country Risk Assessment - Human Rights and Business, Danish Institute for Human Rights, 2005 [Executive Summary]*

54 *Articles 25 - 28*

55 *Please see Article 21 of the Constitution of India*

56 *Collective Violence as Social Control : Roberta Senechal de la Roche , Sociological Forum, Vol. 11, No. 1 (Mar., 1996), pp. 97-128*

57 *Community Social Context and Individualistic Attitudes toward Marriage : Jennifer S. Barber, Social Psychology Quarterly, Vol. 67, No. 3 (Sep., 2004), pp. 236-256; American Sociological Association*

58 *International Religious Freedom Report 2008, United States Bureau of Democracy, Human Rights and Labour*



Approximately, 100 churches and Christian institutions were damaged, and 700 Dalit Christian homes were destroyed causing villagers to flee to nearby forests. More violence followed in August 2007 after the murder of a prominent Vishwa Hindu Parishad (VHP) leader. Led by a militant wing of the VHP, mobs torched churches and homes, displacing tens of thousands of Dalit Christians, many of whom are still in relief camps.

Since then, anti-Dalit Christian attacks have spread in the central state of Madhya Pradesh, Karnataka and Kerala in the south, and to Uttar Pradesh in the north. Some of the worst cases have occurred in Karnataka, which earlier this year voted in the Hindu nationalist party, BJP. Unfortunately, convictions over religious violence in India are rare. In March, the UN Special Rapporteur on freedom of religion warned that the minimal prosecutions and “political exploitation of communal tensions” put India at risk for more violence.⁵⁹

In fact it did. In a two-month long operation spreading through September and October this year, there was a state sponsored nation-wide arrest of 'suspected' Muslims in India. The terrorist attacks and bomb blasts sponsored by Islamic fundamentalist groups operating from inside and outside India that killed an estimated total of 400 persons in Uttar Pradesh, New Delhi, Rajasthan, Gujarat and Assam prompted the state governments in these states to detain and quarantine about 1800 Muslims.

The state administrations claimed that in the absence of any documentary proof to show their Indian citizenship, these are persons suspected to be overstaying with malicious intent in India after arriving from Bangladesh or Pakistan. In a country where an estimated 30 percent of the population lacks any form of identity document, most of those who were arrested found it impossible to prove to which country they belonged.

To further deteriorate matters in Assam, the home-grown Assam for Assamese groups started attacking Muslims who had long settled in that state. Most of their forefathers had arrived in Assam prior to 1947 as estate managers and plantation labourers for the British. Lynching and looting of Muslims still continue in Assam, though it is rarely reported in the media. The state administration sensing the popular sentiment against non-Assamese has done practically nothing to prevent the violence. This prompted the Muslims to form self-help groups to prevent destruction to their property and to save themselves from predominantly VHP-sponsored Assamese fundamentalists.

Members of a particular religion staying in separate and segregated parts in cities and rural areas in India, is not a rare phenomenon. Every city in India has an identifiable Muslim, Christian and Hindu sector. In some cities in north India there are even Sikh, Buddhist and Jewish sectors. Of the different groups, the Hindu-Muslim divide is the strongest. In all these self-created separate entities, the Dalits are further isolated, as in India there are Dalit Muslims and Dalit Christians.⁶⁰

It is common knowledge that Islamic fundamentalist forces are active in India. So are their counterparts from the Hindu religion. Hindu fundamentalist forces are operative, with much impunity compared to their Islamic brethren. Even a relatively peaceful state like Kerala in the south of India is not immune to them.

⁵⁹ Press release dated 20 March 2008 by Ms. Asma Jahangir, UN Special Rapporteur on Freedom of Religion and Belief after her visit to India

⁶⁰ *Collective and Elective Ethnicity: Caste among Urban Muslims in India* : Syed Ali , *Sociological Forum*, Vol. 17, No. 4 (Dec., 2002), pp. 593-620



On 23 November this year the state police uncovered some 20 home-made bombs at the residence of a politician in Kerala. The bombs were found wrapped in plastic bags, placed in a bucket and buried in a hole on the property of Mr. Vipin Das, a leader of the Hindu nationalist organisation, the Rashtriya Swayamsevak Sangh (RSS). The RSS is one of India's mainstream Hindu fundamentalist political parties. It claims a humanist platform aimed at revitalizing the spiritual and moral traditions of India. It requires only basic common sense to understand that humanism and home-made bombs have nothing in common. In the Indian context, however, what is common is the unholy nexus between violence, religion and politics. Mainstream religions in India – Hindus, Christians and Muslims – are all equally responsible for advocating violence, conniving with politicians and playing politics in India.

Mainstream politics of this country however has played the religion card for their exclusive benefit. One classical example is that of Jammu and Kashmir. The Hindu fundamentalist opinion about Kashmir is of such nature that its chief, Mr. Jaswant Singh questioned Government of India's intention of permitting a Muslim like Ms. Asma Jahangir that too from Pakistan to visit Kashmir during her visit to India in March this year. To the BJP - the party Singh represents, Ms. Asma Jahangir was not the UN Special Rapporteur on freedom of religion and belief.⁶¹ For the BJP the issue in Kashmir is not a right to self determination of the Kashmiris, but is that of Hindu domination of Muslims, which according to them must be the rule in a 'Hindu' state.

Given the extent of religious violence in India, which amounts to at least 30 high intensity incidents in this year alone where more than one person has lost life in each of these incidents, what stands out is the intolerance of the Hindu upper caste against the rest. This caste based intolerance, which has spiralled out of control, dominates the social and political spectrum in India.

Examining the violent events in Orissa provides alarming insight into how the state administration failed to prevent the violence and once it started failed in curbing it. Even the National Human Rights Commission and the Government of India acknowledge that the response of the state government apparatus, the police in particular was intentionally slow.⁶² There are confirmed reports that a Catholic Nun was raped by a VHP mob while police officers were looking on.⁶³ It is also widely acknowledged that had certain criminal elements in the VHP been booked and punished for the violence they had committed in the past, the 2008 violence in Orissa might not have happened.⁶⁴

Contrary to the popularly mooted opinion about the cause of violence, a deeper insight of the violence suggests that what is being witnessed in India is an uprising of fundamentalist Hindu forces against all challenges upon traditional Hindu practices, particularly the caste system.

It is natural for a system that exploited millions of people for more than 3,000 years to find means to regain dominance. The caste system that exclusively benefited the upper caste Hindus – the Brahmins, Kshatriyas and the Vaishyas – might not have faced such an onslaught upon its status quo other than during the four hundred years that followed immediately after the life of Buddha. Since time immemorial the three Hindu upper castes have benefited from the caste structure. The caste and its mandates have deprived the lower castes, particularly the Dalits, from land, education and a better living. In short, the caste system maintains an enforced social order where the upper castes enjoys all privileges while the lower castes such as Sudras and Dalits are expected to keep their distance from claiming equality of any form in society.

61 *Times of India*, 5 March 2008

62 *Report - Alert Net & Reuters* 28 October 2008

63 *Five cops suspended in the nun rape case*, *Indian Express*, 31 October 2008

64 *Id.* 58



Any attempt to challenge this status quo faces stiff resistance from the upper caste. Instances of Sudra and Dalit children forced out from schools and crimes committed against educated Sudra and Dalit individuals by the upper caste count into thousands in India. There are at least a few hundred cases reported where the Sudra and Dalit individuals were either murdered or permanently disabled by the upper caste to prevent them benefiting from education. There have been at least three-dozen cases reported from various parts of India in the past ten years where Dalits were blinded by the upper caste. More than an immediate message to the individual Dalit or Sudra who has challenged the status quo by gaining education, these instances of violence are a louder message to the community the person belongs that those who dare to get enlightened will suffer.

Caste is a denominator that associates an individual from his cradle to his grave. On these grounds the caste system is even worse than slavery. Once born into a particular caste there is no escape from it. However the lower caste, particularly the Dalits who found that the way to liberation from this servitude is education, did not waste a single opportunity. For this they were willing to change their religion. A change in the religion was also yet another modus for an escape into freedom and a permanent way to change one's caste identity.

4.2. CONCLUSION

It is natural for those who get educated, often better in standard and knowledge than their upper caste counterparts, to first claim their equality in status in society and further protest against any form of discrimination. It is equally natural for upper caste communities who for years exploited the Dalits, to find such challenges most provocative. The result of this provocation is what is being witnessed in India.

Unfortunately this aspect of violence is less articulated in the Indian media. Driven by political and business interests the Indian media has reduced itself to the role of an online camera that only documents and shows the most obvious – Hindus attacking Christians and Christian interests. Beneath the skin of communal unrest lives the beast of caste domination.

The Hindu fundamentalist political parties operating in India are engaged in nothing other than making use of the frustration of the upper caste Hindu for political gains. A divided society willing to kill and injure each other on the basis of religion or its beliefs is the best possible environment a fundamentalist political force can expect to exploit.

5.1. RIGHT TO FAIR TRIAL WITHOUT DELAY

The right to speedy trial has been endorsed in almost all relevant international conventions, most notably the ICCPR, which India ratified on 10 April 1979. The ICCPR provides explicitly for the right to speedy trial. Article 9(3) declares that “anyone arrested or detained on a criminal charge shall be brought promptly



before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Right to fair trial without delay, though is not mentioned in the Constitution, it is a fundamental right in India.⁶⁵

In the Indian context however, it is a well settled proposition that the international conventions and norms are to be read into domestic law in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.

The Supreme Court of India in Nilabati Behera case took a view that in the absence of any specific domestic law an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right as a public law remedy under article 32, as distinct from the private law remedy in torts.⁶⁶ One of the questions that the Court had to decide was concerning compensation. The court said that there was no reason why international conventions and norms could not be used for construing the fundamental rights expressly guaranteed in the Constitution of India.

In India, neither the constitution nor any existing laws or statutes specifically confer the right to speedy trial on the accused. Most of the existing laws also do not provide any time frame in which a trial must be concluded; in cases where some time frames have been provided, the courts have held them to be "directory" and not "mandatory". In procedural law, for example the Code of Criminal Procedure (Cr. P. C), 1973, provides a statutory time limit to complete an investigation. Section 167 further provides that a failure to complete investigation within the statutory time frame shall lead to release of the accused in custody on bail. However, this in actual practice never occurs.

In a real life scenario delay is synonymous with litigation in India.⁶⁷ A decade of waiting is not much time in deciding a case in India. It is equally applicable to civil and criminal trials. The legal process in India is always protracted, with parties being made to spend an unlimited amount of money and to run from one place to another in pursuing their claims in court. There are numerous reasons for this protracted process, which in fact could be eliminated by conscious efforts. In civil cases one such delay is primarily caused by technical snags and delaying tactics by the lawyers. The attitude of the judges once the case has finally been heard, resulting in the reservation of any open pronouncement of the judgement for years is another contributing factor. In criminal cases the delay starts from the very inability and often refusal of the investigating agency to submit a charge sheet in time after the proper completion of an investigation.

Even if the charge sheet is submitted, the prosecutors' office also plays a role in delaying the process. Often many courts do not have sufficient prosecutors to represent cases as and when they are taken up. In the Sessions Court, Thrissur, Kerala State for instance, prosecutions were stalled for years due to the fact that the only prosecutor available was on deputation from another court. By the end of one year the number of

⁶⁵ In *Hussainara Khatoon v. State of Bihar* [1980 (1) SCC 98] the Court explicitly held speedy trial as part of Article 21 of the constitution guaranteeing right to life and liberty. In this case the Court said "...We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release."

⁶⁶ *Nilabati Behera v. State of Orissa* [1993 (2) SCC 746]

⁶⁷ *Judicial Delays to Criminal Trials in Delhi* : Article 2, Vol. 07 - No. 02 June 2008



criminal cases pending disposal before the court was so large that it will take several years to dispose these cases, given the fact that every year the number accumulates to the existing backlog. It is shocking to note that when the backlog of cases increases, judges connive with police officers and force people to plead guilty on charges so that cases can be summarily tried.

Another element causing delay in proceedings is the lack of infrastructure to deal with evidence. The police in India are neither trained to gather evidence scientifically nor understand the importance of forensic evidence. It is common for material objects to be wrapped in newspapers and bound by jute threads and then produced in court. The safety of the contents depends upon the quality of newsprint. Given the climatic conditions in India, this evidence can be easily damaged within a few months, which is often well before any preliminary hearing takes place.

In cases where there is a need for forensic examination, the situation is even worse. The objects requiring forensic examination will be detained at the central or state forensic lab for anywhere up to 15 years. This reflects the facilities provided for these labs and also the work habits of the forensic technicians. The handling of human remains and dead bodies is equally bad. In cases where there is a requirement of finger print examination or handwriting examination, the minimum period required for the result to be sent back to the referral court from the forensic lab is ten years, only to the benefit of 'government recognised' private experts.

These technical hindrances that cause delay in court proceedings furthermore affect the quality of evidence given by witnesses. When a witness is required to testify for an incident she saw a decade earlier, her recollection of events will often be tempered by time. This may affect the quality of her testimony, as well as the entire trial. Evidence can also be affected due to the lack of witness protection provided to those willing to testify. More susceptible to threats and intimidation the longer a case is drawn out, chances are that witnesses may alter their evidence out of fear or even withdraw from the case.

The lack of basic infrastructure within the entire justice system is another crucial issue that causes delays and inefficiency. India has fewer than 15 judges per million people, a figure that compares very poorly with countries such as Canada (about 75 per million) and the United States (104 per million). In 2002, the Supreme Court had directed the government of India to raise the judge-population ratio to 50 per million in a phased manner. Indefensibly, successive governments have not done enough to address this issue; in the Tenth Plan, the judiciary was allocated a mere 0.078 per cent of the total expenditure, a small crumb more than the 0.071 per cent assigned in the Ninth Plan.

Inadequate physical infrastructure, the failure or inability to streamline procedures in the Civil and Criminal Procedure Codes, the tardiness in computerising courtrooms, and the inadequate effort that has gone into developing alternative dispute resolution mechanisms such as the Lok Adalats, arbitration and mediation are a few more causes for court delays. The backlog problem is most acute at the level of the subordinate judiciary. As former Chief Justice of India M. N. Venkatachaliah pointed out the disillusionment with the judicial system has led to a dangerous increase in Jan Adalats or kangaroo courts in many parts of the country. It is time the nation took a serious and comprehensive look at the entire legal system with special attention to tackling the problem of backlog. Too much time has gone by and too little has been done to sort out a problem that undermines the rights of litigants and accused, damages the credibility of the judiciary, and weakens the very basis of the democratic order.



The Human Rights Committee in its review on India as early as 1997 has expressed concern about delays in Indian courts.⁶⁸ Similar sentiments were expressed by the CERD Committee after reviewing India's State Party Report during its seventieth session held in February-March 2007.⁶⁹

Paragraph 13 of the General Recommendations and Comments of the ECOSOC Committee also make similar concern.⁷⁰ During the Universal Periodic Review of India by the Human Rights Council the same issue was brought to the Council's attention.⁷¹ However, the Government of India failed to respond to this.

5.2. CONCLUSION

The delay in the Indian justice delivery system and the impact it has is summarised in the Supreme Court's own observation. The Court said "[t]he State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State.

It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial..."⁷²

6.1. RIGHT TO FOOD, HEALTH, EDUCATION & CASTE BASED DISCRIMINATION IN INDIA

From a nation dependent on food imports to feed its population, India today is not only self-sufficient in grain production, but also has a substantial reserve. The progress made in agriculture in the last four decades has been one of the biggest success stories of free India. Agriculture and allied activities constitute the single largest contributor to the Gross Domestic Product, almost 33 percent of it. Agriculture is the means of livelihood of about two-thirds of the work force in the country.⁷³ Yet an estimated 22 percent of the population live in acute poverty.⁷⁴ An equally alarming percentage of the population, particularly

68 *Concluding observations of the Human Rights Committee : India, CCPR/C/79/Add.81 para. 22*

69 *Concluding observations of the Committee on the Elimination of Racial Discrimination : India, CERD/C/IND/CO/19, 5 May 2007 para. 26*

70 *Concluding Observations of the Committee on Economic, Social and Cultural Rights, E/C.12/IND/CO/5 para. 13*

71 *Id. 31*

72 *Hussainara Khatoon v. State of Bihar [1980 (1) SCC 98]*

73 *Economy Watch, 2007 report on India - Summary*

74 *Poverty and India's Changing Image : C. P. Ravindran, The Hindu, 17 February 2007*



children, suffer from acute malnutrition.⁷⁵ Almost 80 percent of this 'underprivileged' population belong to the Dalit community.

The cases documented by the AHRC show a consistent and widespread pattern of administrative neglect that results in acute starvation, death from malnutrition and malnutrition induced diseases in India. Each case documented by the AHRC was immediately brought to the attention of the Government of India and the respective State/Provincial government. In each case, the response by the government was absolute denial. In spite of specific calls for administrative actions to address the issue of starvation and malnutrition, the Government of India has done nothing credible thus far to address the situation.

Most deaths from starvation are reported from the Dalit communities in the country. Discrimination within society owing to caste-based prejudices and poverty means that the benefits of government welfare programmes do not reach this community.⁷⁶ In order to guarantee food security, which is a fundamental right in India, the government has constituted a public distribution network under the Ministry of Food and Public Distribution. However, this public distribution system (PDS) is plagued by rampant corruption, causing it to malfunction.

Corruption in the PDS system promotes starvation. Coupled with the discriminatory practices in the government health service sector, the poor often die from malnutrition and malnutrition-induced sicknesses. Khusbuddin died of malnutrition on 6 February 2008. Khusbuddin was four years old and the son of late Mr. Mohammad Matin. Khusbuddin was suffering from Grade IV malnutrition.⁷⁷ He was living with his father Mohammad Matin, mother Jaharun Nisha and elder sister in Mirzapur district. After his father's death, Khusbuddin's family moved to his maternal grand parents' home in Harpalpur village, Kashi Vidyapith Block, Varanasi district.

Khusbuddin was diagnosed as suffering from Grade IV malnutrition, weighing 6.5 kilogram at the St. Mary's hospital in Kourata. Khusbuddin's mother Jaharun was too poor to get Khusbuddin treated at the private hospital. On 5 December 2007, Jaharun took Khusbuddin to the Primary Health Centre (PHC) of Kanai Sarai in Kashi Vidyapith Block which is about 12 kilometres away from Khusbuddin's house. Jaharun had to walk to the PHC since she could not manage the bus fare. However, the officer at the PHC did not provide any medical attention for malnourished Khusbuddin saying that there was no medicine at the centre at that time. Neither did Khusbuddin receive any food at the PHC. Jaharun could only give Khusbuddin some water and sugar on that day.

After Khusbuddin's death, Dr. A.K. Sahaye of the PHC and Mr. Manish Srivastava, Block Officer in charge of UNICEF programme visited Khusbuddin's house and tried to obtain Jaharun's signature forcibly on a paper certifying that Khusbuddin did not die of malnutrition and was not ill-treated at the PHC. Since they failed to obtain Jaharun's signature, they asked her neighbour to write her name on the blank paper.

It was reported that the Auxiliary Nursing Mother (ANM) of Anganwadi Centre (child care centre) of Harpalpur village who is supposed to be responsible for the health care of the children has never visited Khusbuddin's house and has denied any support to the family so far. It was also reported that after Khusbuddin's death, the village head Mr. Salim delivered 1000 Indian Rupees (USD 25) to the victim's

75 *An estimated 60 million children in India suffer from malnutrition. India - Undernourished Children : A Call for Reform and Action, World Bank India Malnutrition Report August 2005*

76 *'A Fist Is Stronger than Five Fingers': Caste and Dominance in Rural North India : Craig Jeffrey Transactions of the Institute of British Geographers, New Series, Vol. 26, No. 2 (2001), pp. 217-236*

77 AHRC-HAC-003-2008 <<http://www.ahrchk.net/ua/mainfile.php/2008/2761/>>



family under the order by Chief Secretary of Uttar Pradesh. This is the only support Khusbuiddin's family has received from the government so far.

The health workers of the Anganwadi centre have important and direct roles to prevent the poor children and women from starvation and ailments related to starvation and malnutrition at the village level. All the ICDS services are provided through the Anganwadi workers in an integrated manner to enhance its impact on child care.

Under the ICDS, the Anganwadi workers should visit the village regularly to carry out health check-up for the children. Once they identify a malnourished child, the child has to be registered at the Anganwadi centre in order to provide nutrition and health care for the child until the child's condition is safe. However, like the case of Khusbuiddin, the negligence of the Anganwadi staff at Harpalpur village is one of the main reasons that result in starvation deaths in India.

The case of Khusbuiddin explains that the negligence of the medical officers at the PHC accelerates not only infant mortality in India but also facilitates corrupt practices to hide data regarding infant mortality. In addition, it is a common practice in India to conceal deaths from starvation as was sought to be done both by the doctor at the PHC and the Block Officer. This fact is noted in the report of the UN Special Rapporteur on the Right to Food. This report was prepared by the Rapporteur immediately after his visit to India.⁷⁸

Whenever a case of starvation is reported, the Indian authorities try to silence the local organisation that reported the case. The condemnable practice of the Indian authorities is to threaten and intimidate the local organisation. Registering false cases against the organisation or the persons involved with such an organisation is a common practice.⁷⁹

The continuation of feudal practices in India is one more reason for starvation and food insecurity in India. The landlords, often from the upper caste, force members of the lower caste to work for them. Bonded labour is a common practice in the country. Most States in India are yet to legislate and implement land reforms laws. Left with no cultivable land or work, the villagers are often forced to work for the local landlords for practically nothing. The wages are often provided in the form of a daily meal. Entire families are forced to work in conditions equivalent to slavery.

The correlation between bonded labour, the absence of land reform policies, caste based discrimination and starvation is proven by the simple fact that in States where land reforms have been implemented, cases of starvation and malnutrition are far less frequently reported. In the past three years, not a single case of starvation death has been reported from the State of Kerala. The nation-wide implementation of land reforms is yet to materialise owing to strong political opposition. Many legislators in India are feudal lords.

Even the Indian judiciary has tried and failed to address the issue of food security. The Supreme Court of India, through a series of interim orders, has tried to address this issue. The court, finding that the Government is clueless and non-responsive regarding the issue, mandated its own Commissioners to investigate and report to the court on the situation of starvation and malnutrition. The Commissioners appointed by the court were also tasked with receiving and investigating complaints of starvation, malnutrition and corruption in the PDS system. Even after six years of this exercise, the situation of food security in India has not improved.

78 *Report of the Special Rapporteur on the Right to Food, Jean Ziegler, E/CN.4/2006/44/Add.2 dated 20 March 2006*

79 *Id. para 24*



The Government of India has also tried several indirect means to ensure a day's meal for the poor. Schemes like the National Rural Employment Guarantee Act, 2005 (NREGA), the midday meal scheme and the Targeted Public Food Distribution System are examples. It is true that the NREGA has generated rural employment. However, the payment for the employment failed to reach the poor, due to corruption. Those who challenged the system either lost their lives, or, as reported from States like Chhattisgarh, were accused of being Naxalites.

The corrupt caucus between the law enforcement agencies, landlords and their mafia, the local politicians and an inept, negligent and corrupt administrative set-up, together smother food security in India. India's accession to the International Covenant on Economic, Social and Cultural Rights took place on July 10, 1979. Most of the rights enshrined in the Covenant have been included in domestic law in India. Like the right to food, many of these rights are justiciable, yet people starve to death in India. The failure of the Government of India to protect, promote and fulfil this fundamental human right is a blight on India's human rights record.

India is one of the world's fastest developing economies and has a reasonably functioning justice system. India's courts have made commendable contributions to the development of domestic and international human rights jurisprudence. Indians have attained and continue to occupy enviable positions in international organisations, including the UN. India has offered assistance and developmental aid to other developing nations. Yet, an estimated 22 percent of Indians in the country face malnutrition or even starvation.

The continuation of caste-based discrimination is yet another factor that perpetuates poverty and deprivation of food, as was briefly mentioned in the Special Rapporteur's report.⁸⁰ 60 years after independence, the prevention of caste-based discrimination remains on paper rather than being enforced in practice. Due to this, caste-based discrimination is widely practised and discrimination prevents the lower castes from accessing food. Additionally, the lower castes are deprived of landed property and those who have titles to particular pieces of land are frequently prevented from actual possession by local feudal lords.

Caste based discrimination also contributes to large scale denial of the right to education and health. While the 83rd constitutional amendment recognizes education as a fundamental right of all Indian citizens, disparities continue to be pronounced between the various castes. People from the Scheduled Castes, previously referred to as the "untouchables", make up 16% of the population and consistently fare poorer across various indicators related to primary education.

As per the Census 2001, the total population of the Scheduled Castes (SC) in India is 166,635,700, which is 16.3 per cent of the total population.⁸¹ The population of SCs is unevenly distributed among the states in India, with nearly 60 percent of all SC children of primary school-going age (6-10 years) residing in the following six states: Andhra Pradesh, Bihar, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh. The latter five states are among the most disadvantaged states in India across most social indicators.⁸²

Dalit students are routinely humiliated and harassed at school. Many drop out because of this. They are seated separately in the classroom and at mid-day meals in countless schools across the country.⁸³

80 *Id. p. 6*

81 *2005 Report of the Registrar General of India*

82 *Social Exclusion of Scheduled Caste Children from Primary Education in India, UNICEF India Report, October 2006*

83 *Concluding observations of the Committee on the Elimination of Racial Discrimination CERD/C/IND/CO/19 dated 5 May 2007, para. 13*



Students from the upper castes do not get abused by the teacher for drinking water from the common pitcher whereas the Dalit students often do get assaulted. Nor is there much chance of acid being thrown on their faces in the village if they do well in studies. Nor are they segregated in hostels and in the dining rooms of the colleges they go to. Discrimination dogs Dalit students at every turn, every level. As it does Dalits at workplace.⁸⁴

Caste discrimination is worse than slavery.⁸⁵ The avenues for those who are born into the lower caste are many in theory, however, in practice, none of these mechanisms work, especially if the person is poor.⁸⁶ Caste follows a person from cradle to grave. Theoretical framework like a prohibition in law or a policy on paper will not prevent caste based discrimination or starvation.

62 years after independence and after scores of policies and legislative frameworks, a considerable section of Indians still suffer from discrimination based on caste. For the real India to derive benefit from its Constitutional guarantees the Government of India must ensure that the Constitutional promises concerning the right to food, education and health are in fact reaching the rural population. For this caste based discrimination poses a formidable hindrance. To remove this, the administration requires a political will. This sadly is in fact what is least found in India.

6.2. CONCLUSION

In the voluntary promise made by India during the formation of the Human Rights Council, India has painted a self portrait of a nation that is striving to progressively achieve the universal guarantees to its entire population. However, in the domestic parlance these promises remain a mirage. The true development of a country has to be measured by taking into account of how far the fruits of development are in fact reaching the entire population. In this aspect India fails miserably, since growth and development is polarised in India.⁸⁷ The fruits of development and growth are harvested by a meagre 20 percent of the estimated 1.2 billion population in India. This disparity invariably means instability.

Mere casting of a vote once in five years does not mean democracy.⁸⁸ On a minimalistic footing democracy means the guarantee to equal participation. Rapid economic growth of a selected group in a society/state does not mean democracy.⁸⁹ Corruption in public services, widespread practice of torture, a demoralised law enforcement agency and societal serration on the basis of caste and religion are impediments that can fail a state.⁹⁰ India cannot be an exception to this universal rule.

84 *Discrimination for Dummies V. 2008* : P. Sainath, *India Together* 19 January 2008

85 *Annihilation of Caste* : Dr. B. R. Ambedkar

86 *Cast Away by Caste: Bijo Francis, Human Rights Solidarity* Vol.14 No.5, September 2004

87 *Politics of Economic Reforms in India* : ed. Jose E Moij, Sage publication 2005

88 *Democratic Dominoes Revisited: The Hazards of Governmental Transitions, 1974-1996* : Harvey Starr and Christina Lindborg, *The Journal of Conflict Resolution*, Vol. 47, No. 4 (Aug., 2003), pp. 490-519

89 *Economic Development in China* : Francis Josep, *Yale Law Review*, October 2007 pp. 23

90 *Political Economy of Growth : Democracy and Human Capital* : Mathew A Baum & David A Lake, *American Journal of Political Science*, Vol. 47 No. 2 April 2003 p. 333 - 347