

# THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

(NEWSLETTER FOR CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS, RGNUL, PUNJAB)

Vol. II, Issue 8

April 2016



## -EDITORIAL BOARD-

Prof.(Dr.) Paramjit S. Jaswal, Patron-in-Chief  
Prof. (Dr.) G.I.S. Sandhu, Patron

Dr.Shilpa Jain, Editor-in-Chief  
Mr.Dharav Shah, Student Editor  
Ms.Srishti Bharti, Student Editor



## ***POLITICS OF FEAR: GLOBAL IMPLICATIONS ON HUMAN RIGHTS***

### **INTRODUCTION:**

The People's Republic of China became the latest addition to the global phenomenon of 'Politics of Fear', threatening the existence of any peaceful dissent within the civil society. A recently released report of the Chinese Supreme People's Court showed that prosecutions on state security and terrorism charges in China doubled in 2015, reflecting the government's relentless campaign to stifle peaceful dissent. Numerous cases amongst these investigated by Chinese and international organizations include people prosecuted on the sole basis of their peaceful criticism of government officials or policies. This trend of governments engaging in policy-making driven by fear but masked in noble concerns of state security, stifles the very Human Rights which they ought to protect. This year 2015 was marked by governments visibly scaling back rights owing to fear- fear of terror attacks, fear of the potential impact of refugee influx, and fears that new digital communication platforms will invigorate social and political movements.

### **GOVERNMENTAL MEASURES IN RESPONSE**

What is worrying, is the kind of measures that governments undertake in response to these fears. A common strategy involves marginalizing and scapegoating people of a certain religious or social profile and refugees, which is counterproductive to their cause as it alienates populations crucial to remedial efforts. Efforts to impair encryption of communications and to intensify mass surveillance—the knee-jerk response of many governments to terror attacks—injures privacy rights, can imperil critical infrastructure and may divert attention and resources from the investigative work that should be the focus of counterterrorism efforts.. In countries as varied as China, India, Ethiopia, and Russia, a less visible and less recognized but disturbing and destructive global trend has become evident: the adoption by many countries of repressive new laws and policies targeting individuals and non-governmental organization that try to hold governments accountable, including social media users, civil liberty groups, and the funders who back them.

The operations directed by a number of states in the backdrop of the so-called 'war on terrorism' in recent years, such as the 'rendition programmes', the setting up of 'black sites' and mass surveillance, have shown that a vast variety of human rights are interfered with, notably the right to life, the right to liberty and security, the right to a fair trial, the freedom of speech and expression, the prohibition on torture or inhuman or degrading treatment, and respect for private life. Parting with human rights in the fight against terrorism is a grave error and a futile move that may help the cause of the terrorists. On the other hand, policies which comply with human rights standards safeguard the values the terrorists are striving to destroy, weaken support for radicalism among potential adherents, and reinforces public confidence in the rule of law.

### **THE FUTILE BLAME GAME:**

In the Western countries, an unsettling and polarizing us-versus-them rhetoric of the political fringe is now becoming part of the mainstream discourse. Unrestrained Islamophobia and Xenophobia have become the hallmark of the day's politics of intolerance. Recent remarks of the Republican candidate for the US Presidential office, Donald Trump, which have been dubbed as 'despicable race-baiting', are reflective of a growing popular opinion which reeks of prejudice and fanaticism. Trump's proposal to bar Muslims from entering the United States seems to be completely counter to our perceptions of America: inclusion, idealism and *e pluribus unum*.

The shameless demonizing of refugees in numerous European countries in the wake of the Syrian refugee crisis has also been a move of the pointless blame game. In reaction to the Paris attack last November new wire-razor fences were constructed, border restrictions grew rapidly, fear-mongering and Islamophobia intensified, and the EU promised aid worth €3 billion to Turkey with the understanding that Turkey would take steps to curtail the flow. These steps are reflective of the EU's longstanding effort to evade responsibility for refugees and push it onto others, despite the fact that they have ratified the conventions to protect refugee rights, and that Europeans having historically benefited from refugee protection as they fled Nazism and Communism.

### **DEATH OF THE RIGHT TO LIFE:**

The fear of terrorism has been instilled to such a grave degree among the governments that they are now attempting to do everything

possible – but at the cost of the fundamental human rights of their citizens. After the Peshawar school attack in December 2015, Pakistan revealed a national action plan to combat terrorism, including policies that infringed basic freedoms. Terrorism cases were to be heard in military courts instead of in the civilian justice system. An unofficial suspension on the death penalty was terminated and the execution of more than 300 death-row prisoners was carried out. Right after the bombing at Lahore’s Gulshan-i-Iqbal park targeting Christians on Easter Sunday on March 28, 2016, the government detained about 200 people merely on suspicion and apparently without charges. It also considered deploying the Pakistan Rangers, despite the fact that the paramilitary has been time after time accused of serious abuses such as extrajudicial executions in Karachi.

Following the Paris attacks, the sweeping new state of emergency laws in France has created social and economic hardships for those targeted. The police have carried out abusive and discriminatory raids against Muslims and persons of North African descent, and numerous persons, including human rights lawyers and activists working in affected areas, have been placed under house arrests without any judicial authorization.

Such reactions only help the cause of those looking for conditions in which political violence may be fostered. How to resolve these challenges and not who to blame- let alone, how to remedy larger problem of unemployment and inequality which loom over them- should constitute the subject matter of debate in these countries. Vilifying entire communities for the deplorable acts of a fringe are not only counterproductive to problems of terrorism and refugee influx but also detrimental to national harmony and international peace.



#### MASS SURVEILLANCE AND CURTAILMENT OF CIVIL LIBERTIES IN THE AGE OF SOCIAL MEDIA:

Beyond the formidable array of tools that they already employ, governments are using terrorist threats as an opportunity and an excuse to garner greater law-enforcement powers, including mass surveillance and crackdown on traditional and social media. The much celebrated freedom of speech seems to be nearing its demise even in democracies due to the fear of any dissent which might threaten the political seat.

The recent row concerning the arrest of a student leader, who was accused of sedition in New Delhi for allegedly raising ‘anti-national’ slogans at an event at the Jawaharlal Nehru University campus, was an insight into the government’s attempts to strangle the right to freedom of speech and dissent. A true democracy should prosecute

those who break the law, incite violence and make use of violence, but should not lose its capacity to engage with those who dissent.

Motivated by national security concerns, some states have developed vast surveillance measures over online communications, invoking the need to combat terrorism to justify the interception of communications. Secret, massive and indiscriminate surveillance programmes are hardly in conformity with human rights law and cannot be justified merely by the war on terrorism or other threats to national security. Such interventions can only be accepted if they are strictly essential and proportionate to a legitimate object. In recent years, social media has made this struggle of competing interests between the state and the civil society more volatile. Today, the rise of social media, especially when easily available on mobile devices, means that people seeking to communicate with large numbers can evade traditional media without a journalist intermediary. This has greatly enhanced civil society’s ability to communicate, to unite and, ultimately, to demand change..



#### THE WAY FORWARD:

Given the tumult in today’s interconnected globalised world, human rights issues seldom present themselves in the isolated context of a single nation. Governments’ responses to terrorism as well as their efforts to end it, should uphold the human rights that terrorists seek to attack. Regard for human rights, basic freedoms and the rule of law is an indispensable tool in the fight against terrorism and to resolve situations of political unrest — not a privilege to be sacrificed at a time of tension.

Counter-terrorism laws and practice that damage or destroy human rights are self-defeating and unacceptable in a society governed by human rights, the rule of law and democratic values. Combating and ultimately overcoming situations of unrest and conflict will not be successful if the means to secure the society are not in accord with human rights standards. The wisdom enshrined in international human rights laws provides indispensable direction; governments only need to grasp it.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15<sup>th</sup> of every month and it can be mailed on [casihhr@rgnul.ac.in](mailto:casihhr@rgnul.ac.in).

TRIVIA

- Every year, a million girl fetuses are aborted in china because of the country's one child policy
- Boys are nearly five times more likely than girls to have autism.
- 3.4 million people die each year from water related diseases.
- The harmful use of alcohol results in 3.3 million deaths each year.

DAYS OF MONTH

- World autism awareness day- April 2
- World health day- April 7
- Earth day- April 22
- World Intellectual Property Day – April 26
- World Malaria Day – April 25

DID YOU KNOW?

According to WHO, everyday about 800 women die due to complications of pregnancy and childbirth.



**HUMAN RIGHTS**

*Water links us to our neighbour in a way more profound and complex than any other.*

*-John Therson  
Medal of Honour Recipient, US*

**EARTH AND HUMAN RIGHTS**

Each year, Earth Day, i.e., April 22, marks the anniversary of the birth of the Modern Environmental Movement, which was initiated in 1970 in the United States. The first Earth Day was celebrated in 1970, when the Environmental Movement gave voice to an emerging consciousness, channeling the energy of the anti-war protest movement and putting environmental concerns on the front page. By the end of that year, it led to the creation of the United States Environmental Protection Agency and the passage of the Clean Air, Clean Water, and Endangered Species Act.

Although, the environmental and human rights movements may sometimes be perceived as two different things, especially in many developed countries like the United States, in much of the world they are closely intertwined. The idea of Earth Day does not only encompass the concepts of recycling, reducing carbon footprint, and protecting wildlife, but an equal emphasis has also been placed on the struggle for the rights to clean air, water, and a healthy environment, which form an integral part of all the basic human right of individuals. The protection of human rights demands the protection of common resources, for if one person or group takes more than their fair share of these common goods, human rights globally are threatened. This way, the development of human rights and addressing the ecological concerns go hand in hand.

The failure to protect and conserve our environment has dire consequences on the enjoyment of human rights. The government's lack of success in restricting the emissions of greenhouse gases, leading to global climate change, affects the enjoyment of many human rights such as, the rights to life, health, property, development, and self-determination, of people living in vulnerable communities such as those in low-lying coastal areas and in the polar region. All the basic facilities such as removal of toxic waste, protection of environment, health, water and sanitation, food, indigenous peoples, etc. form part of the basic human rights of the individuals, which cannot be taken away even by any secular authority. There is an immediate need to address ozone depletion, the loss of endangered species, marine pollution, and many other environmental threats.

The intrinsic connection between human rights and ecology needs to be appreciated by all the organizations, individuals and secular authority, which will play an important role in safeguarding the human rights. Right to health of the individuals is infringed when toxic wastes are dumped near the residential area, which either leads to the spread of diseases or the death of the people. Right to sanitation is violated as a result of disposal of untreated human waste. The right to dignity and physical integrity of the environmental activists is often violated by harassing them for raising their voice against environmental problems and subsequent breach of human rights. Wasting of resources also violates the human rights of future generations and undermines an international order based on democratic participation and equitable sharing of the planet's wealth. Therefore, together, human rights and ecology give a clearer idea of what the development is expected to achieve, i.e., securing all human rights for the current generation within a sustainable amount of ecological space that does not compromise the human rights of future generations. International solidarity by governments and civil society is required to safeguard the Earth and cooperation of the world community is required to address all the pressing environmental problems that continue to have severe impacts on the enjoyment of human rights.

Today, the fight for a clean environment continues with increasing urgency, as the ravages of climate change become more manifest day by day. Having remained active for a time span of 46 years, the Modern Environmental Movement continues to inspire, challenge ideas, ignite passion, and motivate people to action. The objective i.e., protection and conservation of our natural environment, should not be forgotten and a united action should be taken considering the fundamental link between a clean and healthy environment to the realization of a wide array of fundamental human rights.

## ***HUMAN RIGHTS NEWS...***

### **HIGH COST FOR REPORTING IN CHHATTISGARH**

Amnesty International India has released a 24-page report highlighting the alleged crackdown by the Chhattisgarh Police on human rights activists and the media in Bastar. In a report titled 'Blackout in Bastar: Human Rights Defender Under Threat', Amnesty said that the Chhattisgarh Police and "self-styled vigilante groups" have been targeting those investigating human rights abuses in Bastar. Accusing the state police of arresting local journalists on trumped-up charges, Amnesty has said that the authorities are sending across an ominous message to those defending human rights.

Over the last six months, four journalists were arrested by the police, including one for allegedly posting an "obscene message" about a senior police officer on WhatsApp groups, and another journalist, Malini Subramaniam, was asked to vacate her house after police allegedly put pressure on the landlord. Human rights lawyers of the Jagdalpur Legal Aid Group, which provides free legal aid to Adivasi pre-trial detainees, were also similarly "forced" to leave their home in Jagdalpur.

### **DEBARANJAN SARANGI: ANOTHER ARTIST INCARCERATED**

Debaranjan Sarangi, a documentary film maker, writer and human rights activist was arrested recently in Kshipur, Odisha. He has been involved for more than eight years with the anti-mining movement of the Adivasis in Kshipur. The case is reportedly related to a 2005 protest and agitation against the Utkal Alumina Company in Kshipur block. Utkal Alumina International Limited, initially a joint venture of four MNCs, came to the Kshipur block of Southern Odisha in 1993 to mine bauxite and to set up an alumina plant.

This was after India embarked on economic reforms, inviting more MNCs into the mining sector. Due to people's resistance, all big companies have left the region except for the Aditya Birla group which appears determined to proceed with the original plan. In 2005, following protests against the enterprise, a non-bailable warrant had been issued against Sarangi under section 506 of the Indian Penal Code, which is apparently being executed now after a gap of 11 years.

### **APEX COURT MAKES "GOOD SAMARITAN" GUIDELINES BINDING**

The Supreme Court has made it binding on all states and Union Territories to implement the "Good Samaritan" guidelines, the basic premise of which is that there should be no civil or criminal liability attached to an individual who comes forward to report an accident or help an injured accident victim.

The unwillingness or hesitancy of passers-by could change after the implementation of these guidelines, as India has the largest number of road crashes and deaths, and it has been reported by a survey that three out of four people in the country are hesitant to

help injured accident victims on roads due to fear of police harassment, detention at hospitals and prolonged legal formalities. The survey was conducted by SaveLIFE Foundation, an independent non-profit, non-governmental organisation committed to the cause of improved road safety and emergency care. These guidelines ensure that the "Good Samaritan" is safeguarded from police harassment and is not compelled to reveal personal details unless he wishes to testify.

### **US HUMAN RIGHTS REPORT SLAMS INDIA ON ENCOUNTER KILLINGS**

The US State Department for Human Rights in its report for 2015 has slammed India for its record on encounter killing and has observed that judicial corruption is widespread in the country. The report also mentioned the Malegaon case and the Sohrabuddin Sheikh case. The allegation is that the National Investigation Agency was "going soft" on Hindutva elements over the Malegaon blasts case. The report said there were 555 encounter killings, by security forces and police between 2008 and 2013. The list includes: Uttar Pradesh (138), Jharkhand (50), Manipur (41), Assam (33), Chhattisgarh (29), Odisha (27), Jammu and Kashmir (26), Tamil Nadu (23), and Madhya Pradesh (20). It also mentions the Sohrabuddin Sheikh case.

## ***AROUND THE GLOBE...***

### **CHINA AND SOUTH AFRICA HOLD THE 1ST HUMAN RIGHTS CONSULTATION**

On April 14, 2016, China and South Africa held the 1st human rights consultation in Pretoria, South Africa. Special Representative for Human Rights Affairs of the Ministry of Foreign Affairs Liu Hua and Deputy Director-General of the Global Governance and Continental Agenda of the Department of International Relations and Cooperation, Nozipho Joyce Mxakato-Diseko of South Africa co-chaired the consultation. Officials from the State Council Leading Group Office of Poverty Alleviation and Development, All-China Women's Federation and China Disabled Person's Federation attended the consultation. The consultation was also attended by the Chief Director of Human Rights and Humanitarian Affairs of Department of International Relations and Cooperation Pitso Montwedi of South Africa.

During the consultation, both sides exchanged their respective views and multilateral work on human rights technical cooperation as well as other topics. Both sides agreed that with great significance and fruitful results this time, the consultation will further enhance bilateral coordination and cooperation.

### **WESTMINSTER HUMAN RIGHTS COMMITTEE URGED TO PRIORITISE ENDING NORTHERN IRELAND'S ABORTION BAN**

Shadow justice minister, Jo Stevens has written to Westminster's human rights committee demanding urgent action to stop Northern Ireland prosecuting women under the abortion ban. The

letter, which urges the committee to address the abortion ban as a “priority”, is co-signed by a number of Labour MPs. It came after an incident when a 21-year-old woman was convicted of having an abortion earlier this month and a second where a woman is due to stand trial accused of helping her daughter to have an abortion. The 1967 Abortion Act does not apply to Northern Ireland and it is a criminal offence to have an abortion in the region.

### **DHAKA SEEKS REVIEW OF US REPORT ON HUMAN RIGHTS**

Bangladesh Spokesperson said the government has neither given any authority to any law enforcement agency to carry out extrajudicial killings nor does it support such killings. Information Minister, Hasanul Haq Inu said that the “US 2015 Country Report on Human Rights Practices” does not reflect Bangladesh’s real socio-economic and political conditions it has not been prepared on the basis of facts and should be reviewed. He further added that if any agency gets involved in any incident of extrajudicial killing, then the government conducts an investigation and takes punitive action if it is found guilty.

The information minister also added that the government has already taken action against over 800 Rapid Action Battalion (RAB) members. The RAB is accused by human rights organizations of carrying out such killings. Referring to militant activities, the minister said the government always shows zero tolerance to terrorist, militant and extremist groups in the country. “The government is not creating any pressure on the media of Bangladesh and they are enjoying more freedom than ever before,” Inu added.

### **FIFA HAS WORK TO DO IN HUMAN RIGHTS**

A report by one of the world’s leading experts on human rights said that the world football governing body FIFA has significant work to accomplish to bring the organization up to international standards. The report prepared for FIFA by John G. Ruggie, who teaches human rights and international affairs at Harvard,

concluded that at this time, FIFA doesn’t yet have adequate systems in place enabling it to know and show that it respects human rights in practice. In a statement released along with the report, FIFA president, Gianni Infantino said that this is an ongoing process and of course challenges remain, but FIFA is committed to playing its part in ensuring respect for human rights and to being a leader among international sports organizations in this important area.. FIFA has come under attack in recent years because the organization and the host countries of its marquee event, the World Cup, have conducted businesses in ways that at times do not conform with the United Nations Guiding Principles on Business and Human Rights.

### **NO IMPROVEMENT IN N. KOREAN HUMAN RIGHTS DESPITE GLOBAL EFFORTS: REPORT**

North Korea's dismal human rights situation has not improved in recent years, despite global efforts to push Pyongyang to mend its ways. North Korea's human rights records remain dire even after the U.N. Commission of Inquiry (COI) unveiled a landmark report in 2014 that accused Pyongyang of systematic violations of human rights, according to the report by a Seoul civic group.

The report said that North Koreans' right to life is threatened, as North Korea has extensively violated human rights, with the state torturing or executing the elite and ordinary people alike. The Database Centre for North Korean Human Rights unveiled the report after tracking more cases following the publication of the COI documents. Since North Korean leader, Kim Jong-Un took office in late 2011, he has reportedly ordered the execution of about 100 government and military officials in a bid to beef up his reign of terror. The executions have been seen as a tool used by the relatively young leader to shore up his power base and stamp out any dissent. "Overall, North Korea's human rights records have not improved even after the COI report came out," Yoon Yeo-Sang, Chief Director of the North Korean Human Rights Archives under the centre, said at a press conference. "Public executions on the elite have actually increased under the Kim regime."

### **JALLIAN WALA BAGH MASSACRE**

On 10 April 1919, two nationalist leaders- Dr Saifuddin Kitchlew and Dr Satya Pal were arrested in Punjab. On 13 April 1919, people gathered in a park called Jallianwala Bagh, to protest against these arrests and to witness the Baishakhi celebrations as well. The peaceful gathering attended by men, women and children was declared illegal by General Dyer. He shut the only entrance of the park, and without warning ordered his soldiers to fire. More than a thousand people were killed and over twice that number wounded.

After the massacre, General Dyer said that he had ordered his troops to fire to teach the Indians a lesson. This added fuel to the fire leading to widespread protests. After this massacre, martial law was proclaimed in Punjab and people were submitted to the most inhuman atrocities and humiliating punishments like indiscriminate arrests, confiscation of property, floggings and whippings and cutting off of water and electric supplies. However, all this strengthened people’s determination to fight against oppression.

### **-CASIHR COMMITTEE-**

Ms. Aishwarya Malik Ms. Shubhi Pahwa Ms. Srishti Bose Mr. Mohit Khandelwal Mr. Naveed Mehmood

Mr. Chinmay Surolia Ms. Priyanka Singla Ms. Komal Parakh Ms. Madeeha Majid Mr. Himanshu Rathore

Ms. Bhaavi Agrawal

Ms. Afreen Fazal

Ms. Bhavana Chandak

Ms. Apoorva Agrawal

## NOOR AGA VS. STATE OF PUNJAB



### Facts:

The Appellant, an Afghan national, was arrested and later on prosecuted under Sections 22 and 23 of the NDPS Act for carrying 1 kg 400 grams of heroin concealed in a carton. He made a confession before the customs authorities. During the examination he denied that the carton belonged to him and retracted from his alleged confession. The Additional Sessions Judge convicted the appellant. Later, he filed an appeal before the High Court, which was dismissed. Finally, he appealed to the Supreme Court.

### Issue Raised:

Several issues regarding the legality of abortion statutes in various states were raised such as:

- a) The provisions of Sections 35 and 54 of the Act being draconian in nature imposing reverse burden on an accused.
- b) Independent witnesses having not been examined, the prosecution must be held to have failed to establish actual recovery of the contraband from the appellant.
- c) The purported confessions of the appellant before the customs authorities were wholly inadmissible in evidence being hit by Section 25 of the Indian Evidence Act, as Section 108 of the Customs Act should be read in terms thereof coupled with Sections 53 and 53A of the Act.

### Judgment:

In this case, the Supreme Court held that reverse burdens are constitutional, both policy considerations and social control concerns justifying this extraordinary measure. Although the presumption of innocence was recognised to be an element of personal liberty, Sinha J. held that individual liberty must be subject to social interest to ensure security of the State. In addition, he stated that a penal provision's constitutionality needs to be tested on the anvil of the State's responsibility to protect innocent citizens and hence, the rights of the accused and societal interest need to be balanced. The Court seemed to justify the shift in legal burden on the ground that the shift is not automatic and occurs only once the prosecution has met the threshold of establishing the *actus reus* and foundational facts according to the procedure stipulated.

The Court held that presumption of innocence being a human right cannot be thrown aside, but it has to be applied subject to exceptions. It stated that Superior Courts should not do something that would lead to impairment of basic fundamental and human rights of an accused. However, limited inroad on presumption would be justified. Further, provisions imposing reverse burden must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the statute in question. Only because the burden of proof under certain circumstances is placed on the accused, the same, by itself would not render the impugned provisions unconstitutional.

### Analysis:

Although the Court cautioned that the prosecution needs to strictly comply with a statute's procedural requirements and establish the *actus reus* beyond reasonable doubt, it is alarming that despite acknowledging the importance of presumption of innocence in maintaining public confidence in the legal system, the Court still upheld the constitutionality of reverse burdens.

While it recognised the need to protect innocent citizens and the higher degree of certainty needed to secure convictions in serious offences, it failed to realise the higher likelihood of reverse burdens convicting innocent individuals even when a reasonable doubt subsists. The objective of sufficient importance in the context of reverse burdens is public interest and welfare. It is submitted that attempting to create an intelligible differentia on the basis of this objective renders reverse burdens unconstitutional, as the classification arrived at is highly dubious. There is no clarity as to which offences satisfy this criterion, generating a problem of the over-inclusion and under-inclusion of offences, which creates a realm of uncertainty that cannot exist in the constitutional domain.

Reasonable nexus refers to the existence of a rational connection between the law's intended object and the means used to achieve that end. Firstly, there needs to be an internal rational connection, which refers to a nexus between the proof of the basic fact (i.e., the *actus reus*) and the presumed fact (i.e., the *mens rea*). This is absent in a reverse burden as there is no legitimate link between the two.

The outcome of these two sections has been to presume that the accused is guilty merely on the basis of physical possession and not conscious possession. Once the prosecution has proved the former, the possession is presumed to be conscious and the accused bears the burden of proving the absence of a "culpable mental state." Having noted this, it needs to be emphasized that merely proving an internal rational connection cannot justify the constitutionality of a reverse onus clause. It is an insufficient protection for the accused because a basic fact may tend to prove a presumed fact but not prove it beyond reasonable doubt. Therefore, an accused could be convicted despite the presence of a reasonable doubt if he is unable to satisfy the persuasive burden, which contravenes the presumption of innocence. Therefore a conscious approach is what is required in order to take a road which is against the basic tenets of criminal law.

\*Noor Aga vs. State of Punjab 2008(56) B.L.J.R 22 543"

## ***BUSINESS AND HUMAN RIGHTS: EMERGING CHALLENGES TO CONSENSUS AND COHERENCES***

The process of globalization over the past decades have seen non-state actors such as transnational corporations and play an increasingly important at both inter-national as well as domestic level. The growing reach and impact of business enterprises has given rise to a debate about the roles and responsibilities of such actors with regard to human rights.

Over the past decade, the United Nations Human Rights machinery has been considering the scope of business' human rights responsibilities and exploring ways for corporate actors to be accountable for the impact of their activities on human rights. As a result of this process, there is now greater clarity about the respective roles and responsibilities of governments and business with regard to protection and respect for human rights.

### **THE ROLE OF VARIOUS STAKEHOLDERS**

The state can perform various roles in this arena. It is imperative that States take additional steps to curtail human rights abuses by State owned/controlled business enterprises, or any other such enterprises that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring *human rights due diligence*. They can enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps and provide adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.

The business enterprises also have certain roles to perform. Business Enterprises must avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur. They must seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. This responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.

### **Industrial and labour laws in India**

India's Labour Policy basis itself on the relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings as enshrined in Part-III and IV of the Constitution of India.. Under the Constitution, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result , a large number of labour laws have been enacted catering to different aspects of labour, namely- occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, etc.

In total we have than 44 legislations specifically dedicated to dealing with the rights of labour which includes Minimum Wages Act, Industrial Disputes Act etc.

### **Corporate Social Responsibility**

Corporate social responsibility (CSR) refers to a business practice that involves participating in initiatives that benefit society. CSR has been included under section 135 of the Companies Act, 2013. The Policy recognizes that corporate social responsibility is not merely compliance; it is a commitment to support initiatives that measurably improve the lives of underprivileged by one or more of the following focus areas as notified under section 135 of the Companies Act 2013 and Companies (Corporate Social Responsibility Policy) Rules 2014. The areas included in CSR covers initiative towards

- a) Eradicating hunger, poverty & malnutrition, promoting preventive health care & sanitation & making available safe drinking water;
- b) Promoting education, including special education & livelihood enhancement projects;
- c) Promoting gender equality, empowering women, setting up homes & hostels for women & orphans, setting up old age homes, day care centers & such other facilities for senior citizens & measures for reducing inequalities faced by socially & economically backward groups;
- d) Reducing child mortality and improving maternal health by providing good hospital facilities and low cost medicines;
- e) Providing with hospital and many others.

### **Problems confronted by labours in India and Grievance Mechanism**

Problems like sickness, closures, redundancies, unemployment, and the repeal of the Sick Industrial Companies Act and its replacement by a new tribunal that will do away with the existing provisions regarding revival of sick units and will quicken the liquidation process are faced by the workers. Further there is also a lack of any legal protection for workers of insolvent companies, as a result of which workers are unable to collect their legal dues.

To address such problems states should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available. States should provide effective and appropriate non-judicial grievance mechanisms alongside judicial mechanisms, and should consider ways to facilitate access to effective non-state-based grievance mechanisms dealing with business-related human rights harms.