THE HUMAN RIGHTS COMMUNIQUÉ

YOUR QUARTERLY DOSE ON HUMAN RIGHTS

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

VOLUME III ISSUE I

#EU4HumanRights

QUICK LOOK…

SYRIAN CRISIS AND THE EUROPEAN UNION

Syria has been a land of conflict for about five years now. A large number of Syrians have lost their lives and an even larger number faces gross human rights violations in view of the political uprisings that led to a full-blown civil war in the country. More than 11 million people have been displaced from their own homes as forces opposing the rule of Bashar-Al-Assad and his supporters battle each other and create tumultuous and unsafe conditions in the country. By June 2013, the United Nations said that 90,000 people had been killed in the conflict. By August 2015, that figure had climbed to 250,000.

The conflict is now more than just a battle between those for or against the Assad Regime. It has acquired sectarian overtones, pitching the country's Sunni majority against the President's Shia Alawite sect, and drawn in regional and world powers. The rise of the jihadist group Islamic State (IS) has added a further dimension.

A UN commission for enquiry stated that it has evidence that all parties to the conflict have committed war crimes like murder, torture, rape and enforced disappearances, all of which are in contravention of the Article 8 of the Rome Statute of the ICC. Along with this, nefarious acts like blocking access to food, water and health services have been done to elevate the level of human suffering. Hundreds of people were killed in August 2013 after rockets filled with the nerve agent sarin were fired at several suburbs of Damascus. Western powers said that it could only have been carried out by Syria's government, but the government blamed rebel forces. The Organisation for the Prohibition of Chemical Weapons (OPCW) has continued to document the use of toxic chemicals in the conflict. Investigators found that chlorine was used "systematically and repeatedly" in deadly attacks on rebel-held areas between April and July, 2014. The hostile conditions created by the war and taking over of large portions of Syria and Iraq by the ISIS to further the creation of the 'caliphate' have forced people to flee Syria and seek shelter in safer and more secure regions. This is the largest refugee exodus in the recent history and the European Union is faced with the daunting task of accommodating and dealing with the spillage of people into its borders while also ensuring that a dignified and secure life is led by them.

1. THE EUROPEAN UNION

In September, 2015, Angela Merkel, the Chancellor of Germany, announced that the German federal government would accept as many refugees as will be 'manageable' without setting a ceiling over the number of asylum seekers. To this, the response of the German people was encouraging. A dichotomy presents itself wherein the right of the refugees to live with dignity is adjudged against the rights of the citizens of the nations who are bound by directives to accept refugees. Moreover, the EU Directives on Refugees mete out the minimum requirement to accept asylum seekers which is taken as antithetical to the sovereignty of member states.The conflict has resulted in the forced movement of half of the Syrian population, most of them (around 7.5 million) inside Syria ('displaced persons'), while over one million Syrians are currently registered as refugees in Lebanon, 630,000 are registered in Jordan, 2.7 million in Turkey, 118,000 in Egypt and 246,000 in Iraq. What is pertinent to note is the fact that only after the neighbouring countries of Syria were overwhelmed by the refugee influx in 2015 did the migration began towards Europe. The refugee influx in Europe does not only comprise of Syrians but also of nations of Middle East and Africa thereby increasing the number manifold. The latest *Frontex*, European Border Agency, figures show a 149 % increase in the migrant arrivals in 2015 compared to the same period in 2014. The massive scale at which volumes of people have entered the frontline countries of Europe, particularly Italy and Greece, has overwhelmed their asylum systems at a time when their economies are particularly weak.

The routes that are taken by the refugees have become increasingly perilous, using land routes through Greece and Bulgaria, sea routes across the Mediterranean Greece, Cyprus, Malta or Italy (and possibly France and Spain) and air routes directly to any EU member states. The sea route in particular has been the most in public view since around 2,373 migrants and refugees have perished attempting to reach Europe by sea in 2015 alone.

2. INTERNATIONAL LEGAL FRAMEWORKS ON REFUGEES: A DUTY TO RESPOND

The EU continues to manage the Human Rights emergency of refugees. However, with the ever-increasing and unevenly distributed burden, the duty increases in complexity and is getting tougher by the day. The framework of laws comprising the UN Conventions and EU Directives have placed a mandatory responsibility on nations to act despite being burdened with economic crisis themselves.

2.1 U.N. Convention Relating to the Status of Refugees, 1951

Internationally, the 1951 Refugee Convention and its 1967 Protocol is the most basic and widely recognized source of legal obligations concerning asylum to which all EU member states are party. The defining aspect of the Convention is its prohibition on refoulement, i.e., the forcible returning of refugee to areas where his life or freedom is threatened due to any reason.

Although the Convention does not explicitly require the states to grant protection to refugees or outline specific procedural obligations with which they must comply, the UNHCR and asylum law experts argue that Article 33 implicitly requires certain procedural safeguards, including "ready access to an asylum procedure" guaranteeing "both confidentiality and an objective and independent analysis of the human rights situation in other countries."

2.2 EUROPEAN CONVENTION ON HUMAN RIGHTS

The Convention for the Protection of Human Rights and Fundamental Freedoms of 1953 guarantees a degree of human rights protection of citizens with respect to the governing Member States with the European Court of Human Rights having jurisdiction to try these matters directly. Article 3 of the Convention provides a safeguard in addition to the UN Convention reinstating the prohibition of refoulement, which has been obliquely construed to mean a 'de facto right to asylum'. As per the Secretariat of the Council of Europe, all member states are required to accede to this Convention and hence, all actions of members, most particularly of Frontex, are subject to review by the Human Rights Court.

2.3 *CHARTER OF FUNDAMENTAL RIGHTS*

Charter of Fundamental Rights of the European Union, 2000 is a primary law of the EU and it enumerates the fundamental rights guaranteed to its member citizens. Unlike the 1951 Refugee Convention or the European Convention on Human Rights, the Charter explicitly guarantees a right to asylum, creating greater obligations for EU member states than the other two instruments alone.

2.4 *THE DUBLIN REGULATION*

Dublin II regulation was established in accordance with the Treaty on the European Union and the Tampere Conclusions binding on all EU member states and a few non-member states. The regulation states that preference for family unity and prior issuing of entry documents are the most important factors for assigning that responsibility, but where neither of these is applicable, responsibility falls on the state where the asylum seeker first entered the EU.

Under Dublin II, the State of First Arrival must process the applications not only of those asylum seekers who file with them first, but also those of "Dublin transferees".

3. RESPONSE OF THE EU: THE COMMON EUROPEAN ASYLUM SYSTEM

The Common European Asylum System (CEAS) is composed of the key directives on the conditions for receiving asylum seekers (the Reception Conditions Directive), the processing of their claim (the Asylum Procedure Directive), and setting the standards for subsidiary protection (Qualification Directive) for genuine asylum seekers and those who do not qualify as refugees but face a risk of suffering or harm if returned to their countries.

The CEAS is a brainchild of the 'State of First Arrival' and has placed a grossly disproportionate burden on the southern states such as Greece, Italy, and Malta. The northern states that have been saved from the crisis due to non-proximity of territory, and the lack of aid on their part in accepting refugees has created an atmosphere of distrust and umbrage amongst nations calling to question the solidarity amongst the nations. This uneven allocation of responsibility has also created incentives for southern member states to employ controversial migrant interception measures that defy their human rights obligations under EU and international law.

The present CEAS framework limits the ability of Frontex to build solidarity between states. Although, its mandate focuses primarily on protecting the EU's visa-free Schengen zone, its ability to do so has been limited by the agency's lack of independence from state-level politics.

4. CONCLUSION

There have been repeated claims that the present predicament can be equated to the dire impasse during World War II. It is imperative to highlight that the crisis is not from the perspective of refugees as it is in the manner of handling the crisis. The omnipresent fear of the increased 'Islamic Radicalism' has caused most countries to shy away from their responsibility. The two-pronged approach of the developed nations, such as France and USA, who have been funding the continuation of conflict and yet have refused to be burdened with its consequences, cannot be concealed under the garb of legal loop holes. Undoubtedly, the best solution to this crisis is to rehabilitate the refugees in Syria, yet in the present circumstances, human rights obligations must prevail. The need of the day is for each country in the whirlwind to manage as best as they can with the resources available, not by disregarding safety norms but by giving preference to those in need of assistance. As has been stated potently by Sarah Palin,

'If we were to strive to reach absolute safety, we would not have freedom.'

INDIA'S POSITION VIS-A-VIS EUROPEAN UNION

European Union, basically an economic and political union of different European Countries, was formed in the aftermath of the Second World War to foster the economic cooperation among signing states and become an independent power. Initially formed as European Economic Community (EEC), it evolved from being an economic organization to a political union, named as European Union in 1993. Based on rule of Law, everything in the European Union is based on treaties voluntarily and democratically agreed to by the party states.

Working in various fields, one of the main concerns of EU has been the protection of Human Rights, not just in Europe but across the world. Human dignity, freedom, democracy, equality, rule of law and respect for human rights are the core values of the EU since the Lisbon Treaty. The EU's institutions are legally bound to uphold them, as are EU governments, whenever they apply EU law. In order to ensure safety of human rights at the international platform, the 2012 strategic framework on Human Rights and democracy was designed to make EU human rights policy more effective and consistent. Since then, EU has continuously put efforts for safeguarding the Human Rights of individuals at international level. On the similar lines, the Action Plan on Human Rights and Democracy (2015-2020) is an initiative, an agreed basis for a truly collective effort by both EU countries and the EU institutions. In 2012, EU further appointed its first EU Special Representative for Human Rights, Mr Stavros Lambrinidis whose role is to make the EU policy on Human Rights in non-EU countries more effective and to bring it to public attention. From then onwards, EU has been continuously taking initiatives in the pursuance of its goals which include:

- Working to promote rights of women, children, minorities and displaced person;
- Fighting the evils of human trafficking , discrimination among people;
- Defending civil, political , social, economic and cultural rights;
- Defending the universal and indivisible nature of human rights through full and active partnership with partner countries, international and regional organizations, and groups and associations at all levels of society;
- Protecting Human Rights to the extent of supporting ban towards death penalty.

In pursuance of same, EU has been continuously holding dialogues with different countries at the international platform, including various organizations. Also, through the European Instrument for Democracy and Human Rights (EIDHR), EU supports groups and associations or individual groups which defend fundamental freedom, human rights, democracy and rule of law.

This is how the Union has made a tremendous contribution towards the protection and promotion of Human Rights, not only at the national level of its member states, but also at the world level. India considers European Union as its 'global partner' and the economy of India is hugely influenced by the policy decisions of EU. The ties between India and EU have underwent a change from being social, cultural and political in nature to focusing more on the economic aspects of this global partnership. EU has established a strong regional mechanism for protecting human rights and EU recognizes India as a significant regional player, which will help EU to enforce its policies. In the 13th European Union-India Summit which was conducted in March 2016, the leaders adopted a Joint Declaration on Counter-terrorism and water and clean energy partnership, which will aid in securing the basic Human Rights, such as, right to life, right to live with safety and dignity without any fear, right to live and express oneself freely, right to water, and many others.

The values of human dignity, freedom, democracy, equality, rule of law and respect for human rights are embedded in the EU treaties. Human Rights are also addressed in the EU-India Human Rights Dialogue**.** The EU is the only partner with which India has a bilateral human rights dialogue, and this provides an opportunity to both the sides to discuss a broad range of human rights' issues, including gender issues, religious and minority rights, decent work, death penalty, etc., as well as cooperation in multilateral fora.

Despite the consistent efforts being made by the Indian Government, not much has been achieved in the area of Human Rights as a result of log-jammed judicial system, brutality and abuse of detainees by police and security forces, human trafficking and illegal trade of organs, crackdown on sexual and hate crimes, and gender inequality. EU-India relations have witnessed certain impediments which include the European Parliament's allegations of Human Rights' violation of the two Italian Navy marines by India. EU is also facing a downfall in this context, for the United Nations has expressed its concern regarding the treatment of migrants and asylum seekers, shelving of cases of brutality by law and order officers, human trafficking, instances of racial profiling, opacity regarding enquiries at detention centers and of child abuse by the EU. However, India is striving to broaden and strengthen its relations with EU by working in consonance with the European Commission. The Commission's Humanitarian Aid and Civil Protection Department (ECHO) maintains an ongoing dialogue with India for the delivery of humanitarian relief supplies and assistance during natural disasters (floods, cyclones and earthquakes) and man-made crisis to the affected areas.

The EU views human rights as universal and indivisible. The existence of sustainable peace, development and prosperity is not possible without respect for human rights. So, constant efforts should be made to deepen the political dimension of the EU-India relationship through enhanced cooperation on foreign policy, security and human rights. India should aim at establishing a strong and determined mechanism for the protection of human rights, which is at par with the EU's mechanism in order to ensure that amicable relations flourish between the two parties.

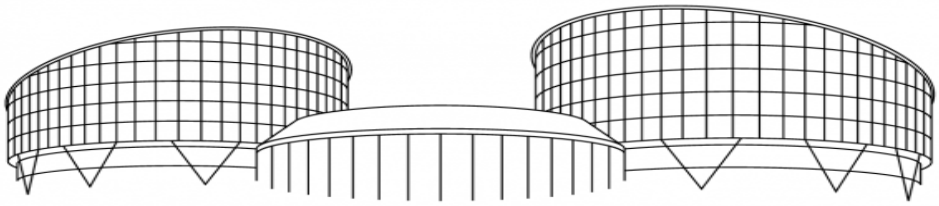
CONCLUSION

The EU-India Partnership for the protection of Human Rights is quite evident from the humanitarian aid provided by EU to India and the further unending dialogue held by them. The establishment of new government under Modi Rule and the changes at the Headquarters of EU look towards a new dynamism to the EU-INDIA dialogue with better policies and implementation schemes. To sum up, these are the goals we look upto from the new dialogues:

- Safeguarding India's territorial integrity, its economic and trade interests and nurturing its civilizational heritage and enhancing its strategic space
- Creating conditions in our immediate neighbourhood so as to facilitate channelizing a large part of our resources to health, education, environment and other vital social areas;
- Developing our international political relationships to extend our interests in ever widening concentric circles, thus enabling the full harnessing of our political, economic and technical resources.

As we know that nation's foreign policy is strongly influenced by the imperatives of its strategic environment, its perception of its own neighborhood and the perception of its own status in the international community. India seeks to engage and build bridges with European Union. The policy has brought rich dividends and should be further strengthened by the new team and leaders of the Indian Government and the European Union.

HUMAN RIGHT PROTECTION BY EU AND ITS INSTITUTIONS



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

The European Union is a unique economic and political union between 28 European countries. The prime reason for the establishment of such an organization was to bring economic cooperation, with the underlying idea being that the countries which trade with each other should be economically interdependent and should avoid conflict. This resulted in the creation of the European Economic Community (EEC) in 1958. Initially economic cooperation existed between six countries: Belgium, Germany, France, Italy, Luxembourg and the Netherlands. It first began as an economic union but slowly expanded its horizons to areas like policy making, climate, environment, health, justice, migration etc. In 1993, the name was changed to European Union because of its changing agendas.

The European Union (EU), currently, is committed to promoting human rights, democratization and development, and with its founding principles of liberty, democracy and respect for human rights, it aims to bring efficient system of democracy and work in the field of human rights. However, there was silence in the EU's founding treaties on the subject of Human Rights. It was in the *1992 Maastricht Treaty on European Union* that formal treaty recognition was finally given to human rights as a part of EU law. That treaty was followed in 1997 by the *Treaty of Amsterdam*, which granted treaty status to the "Copenhagen Criteria" for EU accession and which also conferred power on the EU to adopt legislation to combat discrimination across a range of grounds within the fields of existing community competences.

The Member States of the EU are subject to a wide range of obligations derived from the UN Charter and UN Human Rights treaties. Article 2 of the Treaty on European Union (TEU) states that EU's founding values are 'human dignity, freedom, democracy, equality, the rule of law and respect for Human Rights, including the rights of persons belonging to minorities'.The EU seeks to mainstream Human Rights concerns into all its policies and programs, and it has different human rights policy instruments for specific actions, including financing specific projects through the EU financial instruments.

EU member states have, in recent times, sought to restrict the development of a robust role for human rights protection and promotion within EU law and policy. They have shaped an EU whose engagement with human rights is qualified and limited in various ways, in an effort to ensure that they are as free as possible from EU monitoring and scrutiny, that the EU's autonomy is not constrained by external and international institutions and norms, and that the EU's human rights activities are focused mainly outwardly rather than inwardly. For the enforcement of human rights and conducting all other functions, European Union has established 7 institutions. The Council of Ministers is the most powerful body of the European Union and has foreign ministers of all the member states as it members. It formulates the human rights policies and decides upon their implementation. The European Parliament, which is based in Strasburg, consists of elected members. The Parliament can influence changes but cannot introduce them.

EUROPEAN COURT OF JUSTICE

Established in 1952, European Court of Justice ensures that law is applied in the same manner in every member state and checks Human Rights violations. It can interpret, enforce and annul any law or impose sanctions. One of the remarkable features of the European Court is that if any individual or a company has suffered any damage because of the acts of the European Union or its staff, an action can be taken against them in the European court itself. Since 1989, there has been a Court of First Instance attached to the Court of Justice, with jurisdiction to hear direct actions including cases brought by individuals, which may also concern human rights. The Court of Justice has consistently recognized that fundamental rights form an integral part of the Community legal order, thereby ensuring that Human Rights are fully taken into account in the administration of justice. The principles of law of the European Union, known as Community Law or European Union Law, also have direct effect in national courts, as European Union Law takes precedence over national law in EU member States. For these reasons, individuals and groups alleging violations of human rights provisions are required to first exhaust domestic remedies before a case can be considered admissible by a European tribunal.

The court is divided into three bodies, which are General Court, Court of Justice and Civil Service Tribunal. The Council of European Union, deals with the general interests of the member states of European Union. It can also give its views in relation of any law to the Parliament. The European Commission can be considered as the central administrative machinery of the European Union; it executes the policies and keeps a check on their implementation. It also represents the interest of European Union on a worldwide basis. The European Central Bank is the central bank of all the member states of European Union which have collectively adopted the Euro as their currency. The main task is to maintain price stability within the member countries and ensure availability of funds to all of the member nations. To check the proper management, utilization of funds and work for the benefit of EU taxpayers, the European Court of Auditor acts as an independent external auditor. It does not have legal powers but works for the better management of budget and finances. It undertakes Financial, Performance and Compliance audits.

The European Court of Human Rights, which opened in 1959, upholds the European Convention on Human Rights among individuals against the 47 European countries - not just the 28 member countries of the EU. It is the longest standing international human rights court. Since the entering into force of Lisbon Treaty in 2009, the EU's Charter of Fundamental Rights brings all these rights together in a single document. The EU's institutions are legally bound to uphold them, as are EU governments whenever they apply EU law. It is not directly an EU institution but the ECHR's rulings often become case law for countries. It has helped in the freedom of press, child protection, while working against homophobia, torture etc. in a remarkable way. The jurisprudence of the Court has been highly influential in the development of Human Rights' norms, even beyond the Council of Europe system. Although the Court has been careful not to infringe upon the authority of national tribunals, it also examines domestic law and policies. For this reason, some consider the European Court of Human Rights to perform the function of a constitutional court for Europe.

Further, the United Nations has time and again reiterated that gender discrimination and racial discrimination often intersect and have an adverse impact on the enjoyment of human rights and fundamental freedoms by women. This consideration has been incorporated into the efforts undertaken at the European level to combat racism.

European Union remains focused on making its governing institutions more transparent and democratic along with giving increased powers to directly elected European Parliament. In turn, European citizens have an ever-increasing number of channels for taking part in the political process and remedies in case of violation of their rights. The EU and its member states today value their own exemption from external control and scrutiny above the development of a strong EU human rights policy.

CONCLUSION

Human rights claims before EU courts are no longer concerned mainly with staff complaints or with procedural rights in EU competition cases. Instead, a variety of human rights claims are regularly invoked in relation to all kinds of subject matter, ranging from criminal justice to data privacy, family reunification, and asset freezing to combat terrorism. This calls for a fresh look at the mechanism in force. Hence, a Framework on Human Rights and Democracy, accompanied by an 'action plan' for its implementation was started by the European Council in 2012. The framework defines the principles, objectives and priorities for improving the effectiveness and consistency of EU policy over the next 10 years. A new action plan for the period 2015-2019, based on the assessment of the first plan and on the political guidance of the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, was adopted in July 2015.

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COSTA v. ENEL: THE SUPREMACY CLAUSE

"This World of ours… must avoid becoming a community of dreadful fear and hate, and be, instead, a proud confederation of mutual trust and respect"
- Dwight D. Eisenhower

INTRODUCTION

The European Case of Costa v. Enel holds a very important position in the political jurisprudence, as it laid down the principle of 'Supremacy of Community laws' over national laws. The European Union, a community of 28 nations, frames rules and laws for all the member states and all the member states, in pursuance to this, ratify their laws in consonance with it. But the legal question arises, as to how far these community laws prevail over the national laws and how far a nation can be regarded as sovereign, if its laws stand subjugated to the community laws. Similar was the question raised in this case. And, similar are the perplexities faced by a modern confederation of nations, whether it be European Union or the United Nations. This always leaves the space for complexities as to which of the two laws shall gain supremacy over the other, the national law or the law of the confederation. In this regard, paraphrasing Niccolo Machiavelli will be apt, who, in his celestial work 'The Prince' said, '*There shall I say is no more powerful force than the force of the king, mightier than the sword of the king, more potent than the words of the King*'.

Ever since the evolution of the modern human society and development of the post-World War II union of nations, the question of supremacy has haunted the most brilliant of minds because of the perplexities involved. However, often the tussle between the municipal law and the international law has concluded in the establishment of supremacy of the former over the latter. But as the human society is becoming increasingly dependent on each other, it is becoming harder for a nation to seclude itself within a definite boundary and therefore, the concept of community welfare or universal brotherhood comes in. And therefore, it is the stage when the community law should be gaining supremacy over the municipal law and the case of Costa v. Enel is just a step towards that.

FACTS

In the year 1962 nationalization of production and distribution of electric energy took place in Italy. The Ente Nazionale per Energia Eletrica (ENEL) was established in the same year. Mr. Costa, a shareholder of a company Edison Volta, refused to pay his electricity bill in protest of the nationalization as a result of which he was sued for non-payment of dues. In the written statement filed by Mr. Costa requesting the application Article 177 of the European Economic Community Treaty, he asked the court for an interpretation of Articles 102, 93, 53 and 37 of the EEC Treaty. The case was referred to the ECJ, while the Italian Government submitted that the application for a preliminary ruling was inadmissible.

ISSUES

The issues before the Court were:
a) Whether or not the preliminary reference was admissible?
b) Was the nationalization of production and distribution of electricity against EU Law?

JUDGMENT

The court addressed all the questions involved in the case and ruled, with regard to the plea of inadmissibility that, "As a subsequent unilateral measure cannot take precedence over Community law, the questions put by the Giudice Conciliatore, Milan, are admissible in so far as they relate in this case to the interpretation of provisions of the EEC Treaty". It was also pointed out that Article 177 is based upon a clear separation of functions between national courts and the Court of Justice, it cannot empower the latter either to investigate the facts of the case or to criticize the grounds and purpose of the request for interpretation.

While addressing the concern of primacy of community law over the national law, the Court held that "The precedence of Community law is confirmed by Article 189, whereby a regulation shall be binding and directly applicable to all member states. This provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law." The court also went on to express that the EEC Treaty created its own legal system which has become a part of the national legal systems of the member states.
The court ruled that:

"Article 53 constitutes a Community rule capable of creating individual rights which national courts must protect. It prohibits any new measure which subjects the establishment of nationals of other Member States to more severe rules than those prescribed for nationals of the country of establishment, whatever the legal system governing the undertakings."

ANALYSIS

This judgment elucidates the core ideas behind having the European Union and the position of EU Law in Europe. It explains the stand of the European Court of Justice on a very important point of law, i.e., "preliminary reference". But, what stands out in the judgment is the invention of the "Doctrine of Supremacy." The judgment puts forth that the European law holds a position which is above the national laws, at least in certain situations. This principle of supremacy is not expressly mentioned in any of the treaties and thus, it becomes a landmark judgment as it addresses one of the core issues of conflict between community law and national law.

The judgment illuminates the character of the European Union as a community of states wherein the member states surrender or limit some of their sovereign rights in furtherance of creating a "community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane". The Court further provided that the states have limited their sovereignty and have thus, created a body of law which binds both the nationals as well as the states.

By way of this decision, the ECJ has laid down that any member state cannot legislate contrary to the law laid down by the Union, but it also points out that that the member states can legislate or act unilaterally in certain circumstances which the treaty provides for.

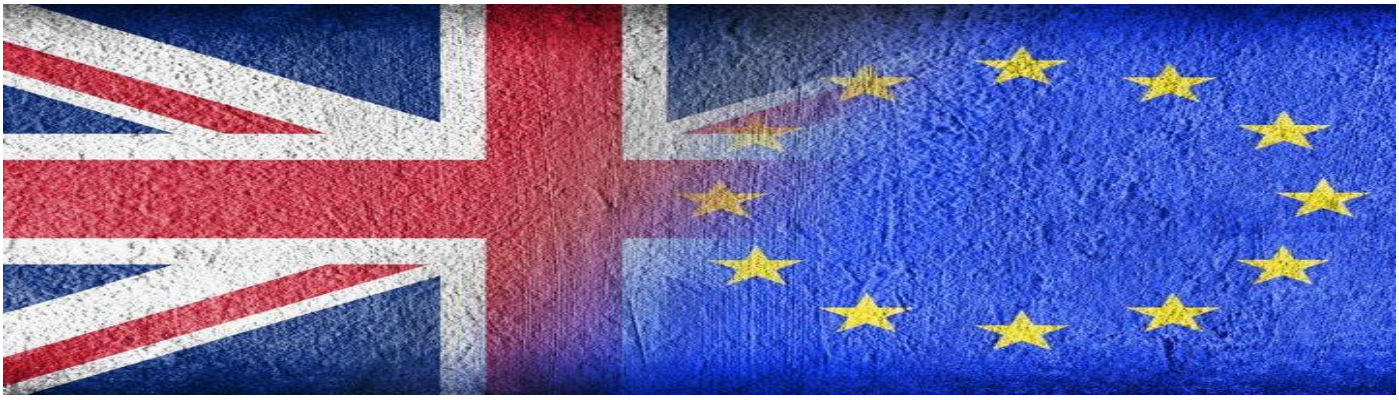
This clearly explains the position of the member states vis-a-vis the European Union, and further points out the intent of integrating the whole of Europe into one single entity. This has had a great impact on the legal systems of most of the nations in Europe, for instance France which accepted the doctrine of supremacy in the year 1975. Similarly, the Czech Republic upholds this principle of supremacy and makes it a part of its constitution. In the United Kingdom, the decision in the case of *R* v. *Secretary of State for Transport*, [1990] E.C.R. I-2433, is important to note, the House of Lords ruled that the European Union law will supersede the acts of parliament if in conflict, because it is the parliament itself which has decided to limit its sovereignty. What becomes pertinent to note here is that this judgment is a classic example of how the European Court of Justice has contributed to the unification of Europe politically.

INFO BOX

On June 23, the world witnessed a historic event where Britain, by means of a referendum, voted for an exit from the EU. The outcomes sent shockwaves throughout the continents and jolted the world economy. It was put forth by the Prime Minister Theresa May that she will trigger Article 50 - the step that starts the timer on two years of Brexit talks - by the end of March 2017. According to this plan, Britain would be scheduled to finally leave the EU by 2019.

However, the schedule has been disturbed by a recent High Court ruling that there must be a Parliamentary vote before triggering Article 50. It is said that this ruling might delay Brexit by another year. Ministers are preparing plans for an Act of Parliament to be brought before the House of Commons and the House of Lords following the judgment, despite plans for a Supreme Court appeal. David Davis, Secretary of State for Exiting the European Union, has confirmed that the government may have to wait until January for a Supreme Court ruling on the matter.

He told the House of Commons that the Supreme Court would hear the government's appeal against last week's high court decision early next month; but a judgment might not come until the New Year. A January ruling would leave very little room for the government to win a parliamentary vote – particularly if it means passing a bill through both houses.



IN CONVERSATION WITH QUILL FOUNDATION…

1. **Please tell us something about your organisation. (History, objective, people)**

   Founded in 2015, Quill Foundation is an autonomous institution engaging in research and advocacy in India. Quill's core work revolves around pertinent issues of human rights, justice, and equity, faced by the underprivileged sections of the people of India, especially Adivasis, Dalits, Muslims, women, sexual minorities and differently-abled persons. Presently, the Delhi based Law and Human Rights Cell (LHRC), under Quill, seeks to examine the many ways in which legal and judicial processes form the context of everyday injustices. And how the interface between law and the social world, constitutes citizens differently in terms of access to rights and justice. The underlying philosophy is the preamble and the fundamental rights of the constitution of India. Our slogan is "Back to the Constitution".

   With a firm belief in an egalitarian and just world, Quill Foundation's intervention will be oriented towards change both on the ground as well as at the level of policy.

2. **Please tell us about your *modus operandi*, or how does your centre work to achieve its objectives.**

   The LHRC Centre is a platform which promotes Participatory Research Work. We are currently focusing on Auditing of Terror Prosecution cases in India. We have a core Research Team which frames the Objective, Research Questions and formulates methodology to conduct the research work. While auditing the Terror prosecution, methodologically, we look into series of questions to understand individual terror prosecution both legally and socially. In the Legal Aspect part we primarily look into legal documents which provides us basic data about how has case preceded legally, what is the case status, what has been the prosecution story, what has been the evidence against the accused, how the evidence has been adjudicated in the court of law, what are defence argument, what is the final order and the grounds for conviction and acquittal etc.

   In the social audit section, researchers meet the accused or their family and try to understand the social location, causality of the entire episode, entire process and events that took place after the arrest, human rights violations, tortures etc and consequences on the life of individual and on her family.

   There is another aspect of the audit where we study in depth all major cases of terror attacks that have received a lot of public attention to bring together a summarized, critical and alternate picture about the episode. The main aim is to demystify the complex reality which the popular media often chooses to ignore. The methodology involves critical summarization of legal documents, media's report, academic work along with adequate representation to the voice of the accused or their family.

3. **As a centre that has taken up a dual task of researching and advocating for the downtrodden in general, could you shed light on how legislative enactments have been misused, or in other cases taken to their proper conclusion, wherein the government has actively or covertly disregarded human rights of certain groups while always being within the prism of lawful state action?**

   Laws govern the society and state. It can be used and misused for various purpose. However, there are certain laws where misuse is wrought into the very structure of the legislation . The notorious use of draconian laws like, TADA, POTA, UAPA, AFSPA are examples of the same. A system that can sometimes work unjustly is bound to misuse law to serve the political interest of those who are powerful or dominant. It has been observed by many political commentator that laws have been designed for the ruling classes and can be used as a tool for oppression.

   Although it can be debated whether the laws are designed for misuse or whether injustice is a failure of execution, there is enough evidences to show that the enforcement of law in India has been extremely discriminatory, biased against the power-less and favours those who are privileged- sometimes in ways that are in direct contradiction to the constitutional values.

   The core Research question here is how state resolves the tension between Democratic Rights of the citizens and security of the state or what is the extent of Human Rights and Democratic Rights violation which can be justified in the name of National Security and Sovereignty. In this process we are attempting to critically understand the nuances of how Criminal Justice System works, whether there is discriminatory practice in the system and if yes, what are the loopholes in the system.

   Along with research work, we are working closely with the Criminal Justice System and engaging with various stake holders including, Judges, Advocates, Academicians, Film Makers, National and International Institutions and Human Rights Organisation, Policy Makers, etc, in order to discuss the possibility of reform in the Criminal Justice system towards a more accessible, functional, equitable and effective Justice System.

4. **In the scope of your field, particularly criminal law, have you seen any initiation by police officers/jailers/ reputed lawyers/politicians towards your work?**

   Yes, there are many within the above group of public servants who have a human rights bent of mind, and deeply care about the constitutional values of the country.

We have a large community of such people taking great interest in our work, and sometimes providing us critical help and guidance. Please take a look at our website for a small list of those who have been crucial in this work.

5. **Most recently, Quill Foundation gave a platform for various under trials to express their angst. Could you tell us something about the 'People's Tribunal'?**

The innocence network is an all India collective of individuals and organizations working for the rights of those who have been wrongfully prosecuted or convicted, especially under charges of terrorism. Led by exonerees themselves, the Network will be facilitated by senior members of the legal fraternity, policy practitioners, as well civil liberties' groups. The Network seeks reform at the criminal justice level to prevent the practice of unjust incarceration. It also aims to establish support mechanisms for exonerees to help rebuild their lives post release.

Our Work

Reform- Innocent Network seeks to work with the system in order to minimize the instances of miscarriage of justice. Improving the system benefits everyone. Innocent people avoid wrongful arrests and convictions, police and prosecutors are given better tools to catch the real assailants, victims receive justice, and the public has greater confidence in the system.

Through strategic legal work, policy advocacy, and public campaigns, the innocence network will seek a comprehensive legislative framework for compensation & rehabilitation of those who have been wrongfully prosecuted. It will also seek to improve case law through targeted legal work.

The Network will also attempt to seek reforms for each of the contributors to wrongful convictions – extraordinary laws that do not comply with international human rights standards, false confessions and torture, non functioning legal aid, invalidated and improper forensic science, informants, government misconduct and inadequate defence, and post release surveillance.

Support: with the best years of their life behind bars and with little or no social or economic capital, coupled with the stigma attached to those who have been prosecuted on charges of terrorism, exonerees face the formidable task of rebuilding their lives as well as re-integrating in society.

Our support department will assist exonerees in various aspects including educational, economic, and psycho-social rehabilitation. The network will also help them negotiate the intense pressures of post-release media attention as well as state surveillance through community integration and counselling services.

THE INNOCENCE NETWORK TRIBUNAL

Peoples' Tribunals are one of the most effective means of calling attention to unrepresented and unheard voices of those wronged by the system.

Towards this end, we are going to conduct the first Innocence Network Tribunal on 2nd October at the Constitution Club of India from 11 pm onwards. The Tribunal will consist of a Jury headed by a retired judge along with other distinguished members from the legal fraternity as well as the larger civil society.

While survivors of innocent exonerees have bravely led individual struggle(s), their effort would be meaningless without larger societal participation in the process of undoing injustice done to them. The public tribunal aims to ensure that the question of justice in these cases does not remain merely legal or policy oriented, but also a moral one. The purpose of the Innocence Network Tribunal is to articulate and address the grievances of the exonerees and also ensure effective reparation so that justice is seen to be done.

6. **As a member of the foundation, has there been any experience that you would like to share with us that has helped you be more hopeful/positive in your endeavour?**

While we were struggling to organise an event in Delhi and were fighting against deadlines, we received amazing support from a large group of people- especially young law students and interns. We were particularly moved by gesture of one of our Associate/ Ex-Intern who came all the way from Patiala to volunteer for the event. Another Associate studying in NLU, Odisha was also ready to volunteer for the event. These small but spirited efforts of young people makes us extremely optimistic about future.

7. **What can we, as students, do to better the situation? Or, how will awareness of such atrocities amongst students help your cause?**

Education can be an emancipatory tool in making our system more just. Students with compassionate heart and critical minds are future to tomorrow's India. We at Quill Foundation have worked with more than two hundred interns in one year of our work, where, they have not just engaged deeply with the issue but have contributed immensely to the core Research, Advocacy and Networking work. We take great pride in sharing the fact, that, most of interns volunteered to continue association with our work even after their Internship Period due to sheer conviction and commitment towards the issue. Some of our interns have taken to leadership in some of the initiatives. In fact, fresh and dynamic approach and conviction to the cause led the management to designate ten of our interns as a Research Associate who help us in the core Research and Advocacy work. There is scope for lots of learning for both us and students. After-all, it is lights in the eyes of young people who keeps the spirit of hoe and justice alive and keeps us moving.

NATIONAL FOOD SECURITY ACT, 2013

It has been widely accepted that survival of man at all times depended on food and therefore, it can be said that this right has been recognised as soon as "man began to indulge in the luxury of philosophical thought and reflections on law".[1] An evaluation of India's history clearly provides that during British rule, the availability of food declined and the scarcity led to a series of famines. The lack of food security and corresponding provisions in the policies of the British government resulted in chronic hunger and malnutrition. While the constituent Assembly did not enact a fundamental right to food, there are several other provisions that guarantee such right by implication.[2]

Article 25 of the UDHR stipulates the right to an adequate standard of living and enlists food as one of the components.[3] It is the 1965 amendment of the FAO constitution[4] that provides for an obligation to promote "the common welfare by furthering separate and collective action on their part for the purpose of raising levels of nutrition and, standard of living and thus ensuring humanity's freedom from hunger". This laid down the foundation of the modern concept of right to food.

In order to comply with the national and international obligations, the government had to lay emphasis on Food Security through its planning and policy. Food security can be considered as the availability of sufficient food grains to meet the domestic demands as well as access, at the individual level, to adequate quantities of food at affordable prices.[5] Therefore, the Government enacted The National Food Security Act, 2013 with the objective of providing for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity.

RIGHT TO FOOD

The Supreme Court adopts a very expansive view of the Right to Life contained in Article 21 of the Constitution. Bhagwati J. while asserting that the right to life includes "right to live with human dignity and all that goes along with it"[6] emphasised that "everyone has a right to basic necessities of life".[7] Further, the court stated that "the right to life is guaranteed in any civilised society that would take within its sweep the right to food".

The directive contained in Article 47 contains an obligation of such nature for the state. It is to this end that the National Food Security Act, 2013 was enacted by the Parliament. The NFSA is a significant step towards establishing a justiciable right to food in India. It consists of several provisions that can be considered to be ingenious to the Act and therefore, it has immense potential for eradicating hunger, a millennium development goal, and ensuring food security.

IMPORTANCE TO WOMEN AND CHILDREN

Women are vulnerable to malnutrition, for social and biological reasons, throughout their life-cycle. As children, in some parts of the world, girls are discriminated against in access to health care, to food and education, and in other ways. As teenagers, they risk early pregnancy and suffer more risk from retarded growth than boys. Indeed, risks of motherhood including mortality are severe, and intergenerational effects perpetuate growth and developmental failure. But women's malnutrition is also an issue of human rights in itself.[8] The NFSA has rightly given important to such a thing.

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[1] J.P. Dobbert, "Right to Food", Part-II, (1980) 184.
[2] Article 21 of the Constitution of India.
[3] UDHR, 1948, Art. 25 "*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services…", Also See :* ICESCR, 1966, Art. 11 *"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions…"*
[4] FAO, Preamble to the Constitution, "*The Nations accepting this Constitution, being determined to promote the common welfare by furthering separate and collective action on their part for the purposes of raising levels of nutrition and standards of living…"*
[5] The National Food Security Bill ,Twenty Seventh Report, Standing Committee on Food, Consumer Affairs and Public Distribution, Ministry of Consumer Affairs, Food and Public Distribution, p. 8
[6] Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608
[7] *Ibid.*
[8] Chapter 4– Women's Nutritional Status, Available at http://www.unsystem.org/scn/archives/rwns02vol1/ch07.htm..

Through the provisions of the Act, women are provided with free meals during pregnancy and 6 months post pregnancy through an Anganwadi and also a maternity benefit of not less than 6 thousand rupees in instalments.[9]

When it comes to children, it is estimated by the World Health Organisation (WHO that about 49 per cent of the world's underweight children, 34 per cent of the world's stunted children and 46 per cent of the world's wasted children live in India.[10]

In case of children belonging to the age group of six months to 6 years, they will be given age appropriate meal free of charge. For children between six years to fourteen years, they will be provided one free mid-day meal at the school except on school holidays.[11] The state government is also obligated to identify and provide free meals to malnourished children.[12] This will be done in order to meet the nutritional standards provided in Schedule II of the Act.

WOMEN EMPOWERMENT

The question of what changes one needs to empower women and achieve food security has been asked repeatedly. But transformational changes in both public policy and practice have been few and far between. Women and girls all around India have faced food insecurity, inequality and malnourishment due to the orthodox social norms, their constrained roles in domestic work, limited access to resources and inadequate opportunities of employment. One of the ways to curb the problem of gender and food insecurity is by promoting different modes of women empowerment by the government which may ensure better access of food and nutrition to women.

Some of the changes made in the National Food Security Act, 2013 have led to the promotion of women empowerment in India. Section 13(1) of the National Food Security Act, 2013 states that

"*the eldest woman who is not less than eighteen years of age, in every eligible household, shall be head of the household for the purpose of issue of ration cards*".

The Act makes a provision for a male member becoming the head only and only in case where there is no female member above the age of 18.[13] This Act has thus, radically altered the definition of 'head of the house hold' with long term implications for social reform and women's empowerment. It has further provided females with a major platform to increase their role and status in the society while empowering them towards food security and nourishment.

Discrimination in pattern of food consumption at home is the main cause of malnutrition among women. This Act further helps in reducing such discrimination which is mostly prevalent in rural households. While much progress has been made on the food production and availability front, adequate nutrition outcomes cannot be assured without unravelling the complexities of the gender food security link. Ensuring equity in women's rights to land, property, capital assets, wages and livelihood opportunities would undoubtedly impact positively on the issue, but underlying the deep inequity in woman's access to nutrition is her own unquestioning acceptance of her status as an unequal member of the family and society. Eventually, gender empowerment alone is likely to be the key to the resolution of the hunger challenge in India which can only be achieved through such legislations.

This legislation is a huge step taken by the government in trying to provide for food security in the country. It has made access to food a right rather than being just a welfare provision. Special rights have been conferred on women and children which is very encouraging. Effective implementation of the Act coupled with the people making good use of the facilities provided will go long way in eradicating malnutrition and hunger from India.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of the next month of every publication and it can be mailed on casihr@rgnul.ac.in.

[9] Section 4 of the NFSA, 2013.
[10] Nutritional Status for India's Women and Children, Available at http://newsdawn.blogspot.in/2009/04/status-for-indias-women-and-children.html , Last accessed on 25th October, 2016.
[11] Section 5 of the NFSA, 2013.
[12] Section 6 of the NFSA, 2013.
[13] Section 13(2) of the NFSA, 2013.

AROUND THE GLOBE…

UNITED NATIONS HUMAN RIGHTS COUNCIL: SAUDI ARABIA REELECTED BUT NOT RUSSIA

On 28th October 2016, the United Nations General Assembly elected, by secret ballot, 14 new states to serve on the 47-seat UN Human Rights Council. The body is responsible for the promotion and protection of all human rights around the globe. Newly elected to the Geneva-based body are Brazil, Croatia, Egypt, Hungary, Iraq, Japan, Rwanda, Tunisia and United States. Re-elected for an additional term are China, Cuba, Saudi Arabia, South Africa and the United Kingdom. All will serve three-year terms beginning on 1 January 2017.

VENEZUELAN GOVT'S MASSIVE COVER-UP

The Venezuelan government has, as of October 2016 begun targeting critics of its ineffective efforts to alleviate severe shortages of food and essential medicines in the country. These actions come at a time of a profound humanitarian crisis. Documents show that shortages have made it extremely difficult for ordinary citizens to obtain food or medicines to meet even their most basic needs. The government has severely downplayed the severity of the crisis. And although it's own efforts to alleviate these shortages have not succeeded, it has made only limited efforts to obtain international humanitarian assistance that might be readily available. Meanwhile, it has intimidated and punished critics, including health professionals, human rights defenders, and ordinary Venezuelans who have spoken out about the shortages.

CHILDREN SUFFER MOST AS CALAIS IS DISMANTLED

French authorities have successfully dismantled their most infamous migrant camp, Calais. Often referred to as 'The jungle', the camp was home to around 7000 migrants who lived in entirely squalid conditions. By the 26th of October, police had evacuated all the residents of the camp. However, on the same day, the local prefecture announced it would be accepting no further registration for relocation of adults or unaccompanied children. The decision left hundreds of children and adults in a limbo.

SOUTH AFRICA, BURUNDI, AND GAMBIA WITHDRAW FROM THE INTERNATIONAL CRIMINAL COURT

Till October 2016, no country had ever withdrawn from the International Criminal Court. By the end of the month, however, three African countries *viz.* South Africa, Gambia, and Burundi had made the decision. Concerns are high that more African countries now will act on years of threats to pull out amid accusations that the court unfairly focuses on the continent. Only Africans have been charged in the six ICC cases that are ongoing or about to begin, though preliminary ICC investigations have been opened elsewhere in the world, in places like Colombia and Afghanistan. The ICC has no power to compel countries to arrest people and can only tell them they have a legal obligation to do it. Burundi kicked off the ICC departures when lawmakers overwhelmingly voted to leave the tribunal, just months after the court announced it would investigate recent political violence there. South Africa announced it would leave as well, saying that the demands of the ICC would amount to interference in another country's affairs. And Gambia followed soon after.

HURRICANE MATTHEW WREAKS HAVOC, HAITI WORST HIT

The full scale of the devastation in rural parts of storm-hit Haiti became clear as the death toll soared to nearly 900 three days after Hurricane Matthew levelled huge swaths of the country's south. The storm made landfall in Haiti and eastern Cuba on October 4 as a Category 4. From there, Matthew hammered the Bahamas on October 5-6 as a Category 3 and 4 hurricane. Of the 2.1 million people affected throughout the country, 1.4 million need humanitarian aid, half of them urgently.

US SUPREME COURT TO HEAR TRANSGENDER RIGHTS CASE

On the November 3rd, the United States Supreme Court announced it will hear a case in its upcoming term that could help secure the rights of transgender students in schools. At the center of the case is Gavin Grimm, a 17-year-old transgender boy in Virginia. When Grimm transitioned at school, administrators allowed him to use the boys' restroom. After some parents and local residents learned of the arrangement and objected, however, the Gloucester County School Board enacted a policy that barred transgender boys from accessing boys' facilities in the school. In response, Grimm went to court for an order that would allow him to use a bathroom consistent with his gender identity.

NATION INSIGHT…

TIME TO DECONGEST OUR PRISONS

The overcrowding of prisons in the country is a long-standing problem that is seldom addressed effectively. Even though the Supreme Court has, from time to time, raised the issue of prison reforms in general, and that of overcrowding in particular, measures to decongest jails have been sporadic and half-hearted. The issue is once again in the news, with the Supreme Court bemoaning that prisons in Delhi and nine States have an occupancy rate of 150 per cent of their capacity. The average occupancy in all jails in the country was 117.4 per cent, as of December 31, 2014. What makes the picture bleaker is that there is little change even though the court has passed a series of interim orders to the States on measures to decongest prisons.

CLOSURE OF FREE SPEECH A SETBACK TO FREE SPEECH

Authorities in Jammu and Kashmir recently passed an order to stop the printing and publication of Kashmir Reader, a Srinagar-based English daily. The order, passed by the District Magistrate of Srinagar and served to the publication on 2 October, states that the newspaper "contains such material and content which tends to incite acts of violence and disturb public peace and tranquillity". The newspaper has extensively covered the violence in Kashmir in recent months, and reports of human rights violations by security forces. The District Magistrate's order does not specifically mention any news items in the newspaper which incited violence. This vaguely-worded shutdown order suggests that the newspaper is being targeted for its reporting. The media plays a crucial role in reporting human rights abuses. The government has a duty to respect the freedom of the press, and the right of people to receive information. It cannot shut down a newspaper simply for being critical of the government. Under international human rights law, any restrictions on the right to freedom of expression on the ground of public order must be demonstrably necessary and proportionate.

WRONGFUL DETENTIONS IN JAMMU AND KASHMIR

Between July 9 when protests and violent clashes broke out in the state following the killing of a leader of the armed group Hizbul Mujahideen – and October 6, authorities have detained over 400 people, including children, under the Public Safety Act. The PSA is an administrative detention law that allows detention without charge or trial for up to two years in some cases.

Following an amendment in 2012, the PSA expressly prohibits the detention of anyone under 18. The use of the PSA to detain people, particularly children, violates a range of human rights, and its increasing use in recent weeks undermines the rule of law and further entrenches impunity in Kashmir. Police should end the use of the PSA; if people are suspected of committing offences, they should be properly charged and given fair trials. In a number of cases the families have not been informed about the grounds of detention. Arresting minors and booking them under PSA is definitely going to have an effect on their psyche. From schools and colleges, these boys end up in jails where they will be kept together with adults. It is definitely going to have an adverse effect on them. The government has a responsibility to address violence during protests, but indefinitely detaining people without charge only adds to the lawlessness.

AMBIGUITY SURROUNDS BHOPAL ENCOUNTER KILLINGS

A recent armed encounter on October 31 is alleged to have been an extrajudicial execution of eight under trial prisoners by the state police of Madhya Pradesh. The police say that the eight prisoners - all members of a banned group, the Students' Islamic Movement of India - killed a guard at the high-security Bhopal central jail and escaped on the morning of 31 October. The police say that the men were killed in an armed encounter in the outskirts of Bhopal some hours later. The contradictory statements issued by authorities on the killings raise deeply disturbing questions. The prisoners had been charged with offences including murder, robbery and terrorism-related offences. A lawyer who had been representing some of them said, "Why would they want to escape a high security prison when their court judgement was expected to come out in the next few weeks? There was no evidence against them and we were sure that the court would release them." On 1 November, India's National Human Rights Commission asked senior Madhya Pradesh police and government officials to submit detailed reports on the incident within six weeks.

GETTING REAL ON OROP

The suicide of Subedar Ram Kishen Grewal, allegedly over a delay in receiving arrears under the One Rank, One Pension scheme (OROP), has set off a political storm. In a related move, the ex-servicemen groups demanding unconditional OROP have resumed their protest at Delhi's Jantar Mantar; it had been called off six months ago after assurances from Defence Minister Manohar Parrikar. Amidst all this, the real issues in the implementation of OROP have been lost sight of.

DID YOU KNOW

A minimum of one million citizens from at least one-quarter of the EU Member States can launch a citizens' initiative (CI) in the EU that invites the European Commission to propose legislation on matters within its jurisdiction.

By: Derick Haokip

TRIVIA

In 2012, the EU received the Nobel Peace Prize for advancing the causes of peace, reconciliation, democracy and human rights in Europe, making it the 21st organisation to win the peace prize, the first one being the Institute of International Law.

The first International Youth Day was observed on 12 August, 2000. According to reports, of the 1.8 billion youth in the world today, half survive on less than $2 per day.

According to the UN, there are an estimated 370 million indigenous people living in more than 70 countries around the world. There are approximately 5000 different indigenous groups in the world.

August was named in the honour of Augustus Caesar. It has 31 days because Augustus wanted as many days as Julius Caesar's month of July had. They took that extra day from February.

IMPORTANT DATES

August 19- World Humanitarian Day

September 8- International Literacy Day

October 2- International Day of Non-Violence

November 14- Children's Day/ World Diabetics Day