

# THE HUMAN RIGHTS COMMUNIQUE

YOUR MONTHLY DOSE ON HUMAN RIGHTS

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## *INSIDE*

- *Decriminalizing Attempt to Suicide*
- *Right to Internet: Basic Human Right or Enabler?*
- *Forced Sterilisation: A Serious Violation of Human Rights*
- *Case Analysis – National Legal Service Authority v. Union of India*
- *Activities @ CASIHR*



*“Without exaggeration or pessimism, I may sum up my long period in this world as the ‘home of lost causes, forsaken beliefs, unpopular names and impossible loyalties.’ What redeems my mind and mood is the satisfaction that I have dedicated my capacities not for making money but for wiping the tears of others — this being my tryst with destiny”*

- Justice V.R. Krishna Iyer  
Extract from preface of *Wandering in many Worlds*

## **JUSTICE V.R. KRISHNA IYER: THE BHISHMA PITAMAH OF INDIAN JUDICIARY @ 100**

The nation plunged into grief and sorrow when one of the legal luminaries of the Indian judiciary Justice V.R. Krishna Iyer passed away at the age of 100 due to multiple organ failure. He was the star of the Indian judiciary who had made invaluable contribution to the development of law in India. He was pioneer in realizing the goal of ‘social justice’ by laying down, along with Justice P.N. Bhagwati, the principles of Public Interest Litigation (PIL.) Justice Iyer, former judge of the Supreme Court and Minister was crusader for social justice and Human Rights champion who stood up for the rights of the poor and the underprivileged.

### **BIRTH AND EARLY LIFE**

Justice Vidyannathapuram Rama Ayyar Krishna Iyer was born on 15 November 1914 in Palakkad, Kerala. He studied law from Madras University and practised law at Thalassery, Kerala. Before being appointed as the judge of the hon’ble Supreme Court of India, Justice Iyer contested elections as an independent candidate and was elected in 1952. He even became a minister of law, justice, irrigation, power, prison and social welfare when Mr. E.M.S. Nambodiripad was the Chief Minister of Kerala. However, he resumed practice after he lost election in 1962.

### **STINT AT HIGH COURT AND LAW COMMISSION**

He was appointed the judge of Kerala High Court in 1968 and occupied the position till 1971. In the year 1971, he became the member of Law Commission of India where he served for period of two years. It was during his tenure as the member of the Law Commission that his idea of securing social justice took shape. Justice Iyer drafted first comprehensive report on legal aid. It was this report that which later on, formed the strategic arm of the legal aid movement in India. After a three year stint at the Kerala High Court and another short run of two years at the Law Commission of India, Justice V.R. Krishna Iyer was elevated as the Judge of Hon’ble Supreme Court of India in 1973.

### **JUSTICE V.R. KRISHNA IYER: JUDGE, SUPREME COURT OF INDIA**

Appointed as a judge of the Supreme Court on 17 July 1973, Justice Iyer’s career as a judge of the Apex Court spanned for approximately 7 years wherein innumerable landmark judgments were delivered by the Supreme Court falling from his bench. He formed the part of the bench during turbulent times when the Constitution was under attack via amendments and there existed a direct tussle between the Government and the judiciary at the highest level of governance. During his tenure as a judge, Justice Iyer delivered the landmark judgment regarding the validity of election of Ms. Indira Gandhi, the then Prime Minister of India, and his interpretation of fundamental rights especially

the concept liberalizing *locus standi* and hence, the introduction of Public Interest Litigation which brought justice within the access of all. Justice Iyer's illustrious service at the bench came to an end when he retired on 14 November 1980.

### NATIONAL EMERGENCY OF 1975

During the general elections of 1975 the election decision of Ms. Indira Gandhi, incumbent Prime Minister of India who was seeking second term and was contesting elections from Allahabad was challenged. The matter was before the hon'ble Supreme Court. It was the judgment of Justice Iyer which though declared her election as invalid but granted conditional stay.

Ms. Indira Gandhi declared national emergency under Article 352 of the Indian Constitution the very next day which allowed her government especially her to continue as the Prime Minister. It is often alleged that it was the judgment of Justice Iyer which triggered national emergency in the country.

### MANEKA GANDHI. UNION OF INDIA

This was another contribution of Justice Iyer to the development of Indian constitutional jurisprudence. In the instant matter, passport of Ms. Maneka Gandhi was impounded by the Passport Authorities without furnishing any opportunity to oppose the same.

Interpreting the Part III of the Constitution Justice Iyer held that fundamental rights cannot be read in isolation. He extended the scope of fundamental rights, especially right to life under Article 21 equating the concept of 'procedure established by law' with American 'due process.' He further held that Article 14, Article 19 and Article 21 of the Constitution constitute grand flow of stream under the Constitution which have to be read together to make it one grand river.

### PUBLIC INTEREST LITIGATION (PIL)

Justice Iyer throughout his life was a Human Rights crusader. He worked tremendously and untiringly for the welfare of poor and needy. Even as minister in the Kerala Government, he introduced prison reforms and started legal aid in Kerala.

However, it was during his stint as Supreme Court judge that his experiment turned out to be the greatest innovation throughout the globe in law. In *Ratlam Municipal Corporation v. Vardichand* he

coerced the bench to move out of the Court and see the real scenarios.

It was Justice Iyer's idea that technical nuance of law should not act as bar in access to justice especially if a person is poor and needy. According to him, Supreme Court is the highest court of the land whose duty is to ensure justice for all and at all cost. Injustice must not prevail due to technicalities of law.

Thereby, he gave to Indian masses a weapon against injustice, unlawfulness and arbitrariness, i.e. the concept of Public Interest Litigation. In his idea of ensuring justice, he went to such an extent that he even treated a letter addressed to a judge by a prisoner of Tihar Jail as a Petition in the case of *Sunil Batra v. Delhi Administration*.

### THE DISTINGUISHED JURIST

Justice Iyer was revered as a great judge and jurist not only during his service as Supreme Court judge but also post retirement. He was an avid writer who has authored 21 books to his credit including 4 travelogues. Supreme Court Senior Advocate Fali S Nariman once remarked, "When Iyer speaks, the entire nation listens." Justice Iyer was not a traditional judge who examines evidences and studies law based on which the verdict was delivered but was more of a social scientist who had law as his tool. His sole focus was to look for justice within the four corners of law.

### CONCLUSION

Often referred to as the *Bhishma pitamah* of the Indian judiciary, Justice Iyer's non – conventional approach at the bench and even thereafter has contributed immensely towards the development of Indian legal system. He authored his autobiography titled "Wandering in Many Worlds" which was published in the year 2009.

To conclude, it would not be wrong to refer to Justice Iyer's letter to Dr. L.M. Singhvi, then President of Supreme Court Bar Association at the time of his retirement wherein he said, "It is possible that during my years on the bench, unwittingly maybe—wittingly, never—I might have caused a jar or jolt in the minds of those at the bar which wiser prudence might have forbidden. Imprudent, creativity of untrained minds like mine may claim its price in the shape of crudity of art, the *alibi* of purpose apart. The most basic human right is access to justice. If the orthodox regard my ways as bizarre my defence is Bernard Shaw: All great truths begin as blasphemies."

### EDITORIAL NOTE

The Centre for Advanced Studies in Human Rights in this issue has dealt with an insight into the trending Human Rights issues with special focus on India. It is pertinent to note that 10 December annually is celebrated as World Human Rights Day globally. It is with this pursuit that the CASIHR has made the current issue as the Human Rights Day issue. Human rights are the basic and elementary rights available to all without any discrimination in every country of the world. However, sometimes these rights are violated, infringed and in certain cases trampled upon by people of same state, foreign state and even the government of the country. Thus, a right without a remedy is meaningless. This ideal finds its place in the maxim *ubi jus ibi remedium*. Justice V.R. Krishna Iyer, one of the Indian legal luminaries also championed in securing Human Rights and ensured access of justice for all. This issue focuses on the same and appeals to all its readers to protect and respect Human Rights of all.

TRIVIA

- 20 June annually from 2014 will be observed as UN Day for Yoga
- The UN Human Rights Day is celebrated on 10 December annually in commemoration of the adoption of Universal Declaration of Human Rights which was adopted in 1948
- The theme for 2014 UN Human Rights Day is: Celebrating 20 years of changing lives through Human Rights

DAYS OF MONTH

- World AIDS awareness Day – 1 December
- Bhopal Gas Leak Disaster Day – 3 December
- UN Human Rights Day – 10 December
- International Children's Day – 14 December
- Bill of Rights Day – 15 December

UPCOMING EVENTS

- RGNUL's National Seminar on Human Rights: Indian and International Perspective in 21<sup>st</sup> Century – 7 February 2015
- RGNUL's National Seminar on Global Consumerism: Challenges and Possibilities – 21 February 2015
- 3<sup>rd</sup> NHRC – Law Centre – 1 National Moot Court Competition, 2015 – 20 February to 22 February 2015

DID YOU KNOW?

2014 marks the 30<sup>th</sup> anniversary of Convention Against torture and 25<sup>th</sup> anniversary of Convention for Child Rights



*Instead of the society handing its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide, compounds its inadequacy by treating the boy as a criminal; Instead of sending the young boy to psychiatric clinic it gleefully sends him to mingle with Criminals....*

- Sachar J.

**DECRIMINALIZING ATTEMPT TO SUICIDE**

The Central government took a landmark step forward to decriminalise “attempt to suicide” by declaring in Lok Sabha to introduce a Bill to repeal section 309 of the Indian Penal Code, 1860. This step has been taken in pursuance of the recommendation of 210<sup>th</sup> Law Commission Report titled “Humanization and Decriminalization of Attempt to Suicide.” The recommendation is supported by 18 states and 4 union Territories. However, this is not the first time this issue has been raised. In its 42<sup>nd</sup> Report submitted in June, 1971 the Law Commission had undertaken revision of the Indian Penal Code, 1860 as part of its function of revising Central Acts of general application and importance and it recommended repeal of section 309.

Suicide means deliberate termination of one's own physical existence or self-murder, where a man of age of discretion and compos mentis voluntarily kills himself. According to Encyclopaedia of Crime and Justice, Volume IV, 1983, suicide means intentional taking of one's life. But repealing of suicide validates indirectly euthanasia; thereby directing debate on the issue whether Article 21 of the Constitution includes Right to Die or not?

The Indian Penal Code (Amendment) Bill, 1978, as passed by the Rajya Sabha, accordingly provided for omission of section 309. Unfortunately, before it could be passed by the Lok Sabha, the Lok Sabha was dissolved and the Bill lapsed. Even judiciary has given conflicting opinion on this issue. The Division Bench of the Supreme Court in *P. Rathinam v. Union of India* AIR 1994 SC 1844 held that the right to life of which Article 21 speaks of can be said to bring in its trail the right not to live a forced life as well, and therefore, section 309 violates Article 21. This decision was, however, subsequently overruled in *Gian Kaur v. State of Punjab* AIR 1996 SC 946 by the Constitution Bench, holding that Article 21 cannot be construed to include within it the ‘right to die’ as a part of the fundamental right guaranteed therein. However, post *Gian Kaur*, the Commission submitted its 156<sup>th</sup> Report in 1997 giving a reverse opinion to 42<sup>nd</sup> Report recommending retention of section 309.

The discriminatory nature of section 309 has also been raised amidst all this. Hunger strikes which are aimed at protest and not to kill one has been covered within the broad net of attempt to suicide under section 309. A number of eminent social, religious and political leaders who have resorted to hunger strikes have been framed under this section latest being Ms. Irom Sharmila. Contrastingly, when Anna Hazare fasted unto death demanding the passage of Lokpal Bill the government agencies criticised this act, but did not arrest him. The prosecution under section 309 has only been initiated against those who are helpless, poor, economically, mentally and socially depressed or working against the government.

The scrapping of this provision is based on the premise that it would be monstrous and rather more unjust to a man to inflict further suffering to a man who has already found his life so unbearable and chances of happiness so slender that he decides to incur pain and death in order to end his life. Inflicting of further pain and punishment would be unjust, if such a man fails in his endeavour. In the light of the decriminalisation, the question that prevails is what shall be the fate of suicide bombers who fail to blow themselves up or terrorists who consume cyanide pills to wipe out evidence or intransigent agitators or even honour killings which are often labelled as suicide given the fact that only closed ones are involved and there is always lack of evidence in such cases?

The recommendation would be to look into such matters of suicide from social perspective. The primary object of the omitting the section is that a man who attempts a suicide needs mental support and not a punishment for the same however, it is pertinent to note that the suicide bombers who fail in their attempts or the terrorists who consume cyanide to destroy evidence with them are certainly not needful of mental support.

\* The aforesaid article has been authored by Ms. Srishti Bharti, IV year, B.A. LL.B. (Hons.) (Constitutional Law Specialization) student at Rajiv Gandhi National University of Law, Punjab.





## FORCED STERILIZATION: A SERIOUS VIOLATION OF HUMAN RIGHTS

Whether it is the 11 deaths which occurred in the Chhattisgarh Sterilisation camps, or the women of Namibia being forced into signing sterilization forms, or sterilizing Chilean women living with HIV, or the non-consensual genital “normalisation” of people with disability in Australia; Forced sterilization as a measure for family planning or eugenics program is a gross violation of individual’s right to life and privacy. It not only questions the freedom of choice but also the reproductive rights of the couples. Sterilization without full, free and informed consent has been variously described by international, regional and national Human Rights bodies as an involuntary, coercive and/or forced practice and as a violation of fundamental Human Rights.

India has been a witness to this mass violation of reproductive rights during the emergency and post emergency times in 1970’s. The emergency included a family planning initiative that began in April 1976 through which the government hoped to lower India’s ever increasing population. This program used propaganda and monetary incentives to convince citizens to get sterilized and thousands of men received vasectomies and even more women received tubal ligations. However, mass sterilization efforts resulted in botched surgeries and complications because of lack of cleanliness and careful techniques. The sterilization drives had become a virtual terror for the people. The worst sufferers were the lower sections of the society who were simply taken to Family Planning clinics and sterilized regardless of their age or marital status. Forced sterilization by the government sounds like a ghastly practice that ought to be safely locked away in the distant past. But for some states, it’s an issue that’s very much in the present. In India, programmes aided by U.K., USAID and UNFPA lead to many involuntary sterilisations so as to control population explosion. Most of the time, the women who give consent to sterilise their bodies largely do so to earn more and fetch their poor families.

According to a report of Ministry of Health for the year 2011-12, in Mizoram (1713 tubectomies) and Lakshadweep (47 tubectomies) only women are sterilized. Despite the fact that sterilizing men is a simpler procedure, the government still chose to focus on sterilizing women instead. No money was spent on male sterilizations in 2011-12 in Mizoram, Andaman and Nicobar, Andhra Pradesh, Arunachal Pradesh and Lakshadweep. Unfortunately, sterilisations in India are largely barbaric and so as to meet “sterilisation quotas” during the “sterilisation season”, medical practitioners use rusty scalpels, used needles and weaker sedatives, increasing the chances of infection. This is also regarded as the major reason for recent deaths of women from Chhattisgarh sterilization camps.

### INTERNATIONAL PERSPECTIVE:

California has a long history with sterilization. According to the Centre for Investigative Reporting, around 20,000 men and women were sterilized in the state from 1909 to 1964. Often, those who were targeted with sterilization were minority groups, the poor, the disabled, the mentally ill and criminals. When the state formally apologized in 2003 for its history of forcing sterilization on prisoners and the mentally ill, most people thought the practice had died out. But this past June, a state auditor’s report found that 39 female inmates out of 144 had received tubal ligations without lawful consent between 2005 and 2013.

In Australia, the forced sterilisation of people with disability and the nonconsensual genital “normalisation” of intersex babies and children were being brought to the United Nations torture committee. People with Disability in Australia (PWDA) are campaigning for a royal commission into the incidence, forms and circumstances of exploitation, violence and abuse of people with a disability in the community in Australia. A submission to the UN details legislative failures in Australia which it says make forms of torture legal. Legislation varies from state to state and though there are some protections in certain states against the forced sterilisation of

there is no law in Australia which explicitly prohibits it. The ongoing practice of nontherapeutic sterilisation has been identified as a form of torture by the UN special rapporteur on torture and as a form of violence by the UN Committee on the Rights of the Child (CRC).

Uzbekistan is another country ensnared in the clasps of this vile practice. Since the late 1990s, reports from Uzbek healthcare workers, victimized women, and third party organizations operating in the state have repeatedly claimed the existence of a government-run policy of forced sterilization, rendering tens of thousands of Uzbek women infertile.

In International standards, UNFPA upholds that, a woman must have free prior and informed choices between at least three forms of modern contraception. Anything less than this risks being coercive, or can be seen as created to induce her. There must be assurance of quality and accountability. The choice must be for quality sterilisation not lifethreatening sterilisation. Accountability, on part of those who offer the service, plan the service and pay for the service, has to include legal accountability; there cannot be impunity for those who have conducted the service at low standards.

The International Conference on Population and Development in 1994 and the Fourth World Conference on Women in 1995 brought a significant shift towards a rights-based approach to population policies and the provision of comprehensive sexual and reproductive health policies and programmes.

#### THE WAY FORWARD:

There is an ardent need of sex education largely in developing nations of the world where both adolescents and adults must be counselled and informed on the use of contraceptives and sterilisation measures. There is a dire need to understand the ground realities of voluntary submission to sterilisation, i.e. any voluntary agreement by a prisoner or economically backward person on the guarantee of social welfare cannot be free of duress.

Forced sterilisation and social welfare cannot be complementary as forced sterilisation itself aims at reducing the human dignity by taking away his/ her reproductive choice and only the callousness and insensitivity of the governments and international organisations can allow this egregious offence to penetrate.

It is very important to ensure that people are informed of their choices, their reproductive rights and give free and informed consent. The decision must rest with the person alone and should not be taken by any third party including, spouse. It must be ensured that a person undergoing sterilisation must be properly counselled and told about the alternatives and the end result.

Population control is not unheard of as a government strategy- China's one-child policy being one of the most notable examples. However, forced sterilisation is a revolting violation of human rights and medical ethics, and its increasingly global practice is terrorizing thousands of women a year. If governments value the principles of informed consent, bodily autonomy, and beneficence within their own borders, this negligence is unacceptable.

#### OBITUARY

The Centre for Advanced Studies in Human Rights along with the entire family of Rajiv Gandhi National University of Law, Punjab has plunged into deep grief and sorrow on the demise of hon'ble Justice V.R. Krishna Iyer, Former Judge Supreme Court of India. Justice Iyer was a great human right activist who played a vital role in legal aid movement in India and started the innovative concept of Public Interest Litigation along with Justice P.N. Bhagwati. Born on 14 November 1914 in Kerala, Justice Iyer celebrated his 100<sup>th</sup> Birth Anniversary this year. He was ill for quite a time and passed away due to multiple organ failure in Kochi on 4 December 2014. He is survived by 2 sons. A champion Human Rights activist, his sad demise has left huge lacunae in the Indian legal system which will always be hard to fill. Justice Iyer would always be a role model and serve as an inspiration for all the judges and lawyers for time to come.



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

### **NHRC VOWS TO STRENGTHEN HUMAN RIGHTS DEFENDERS**

10 December 2014

The National Human Rights Commission (NHRC), on the eve of Human Rights, appealed to state governments to come forward on the occasion to endorse publicly the importance of this special day through various forums in order to help usher in a culture of Human Rights in the country. It has also pledged to stand up for Human Rights defenders (HRDs) whether in India or globally.

The slogan of this year's Human Rights Day – 'Human Rights 365', encompasses the idea that every day is Human Rights Day. In a statement issued by the commission, its chairperson Justice K G Balakrishnan said "Today, on 9th December, the day when the Declaration on Human Rights Defenders (HRDs) was adopted in 1998 by the UN General Assembly, the NHRC, India reiterates its resolve to strengthen the Human Rights defenders (HRDs) as an integral part in its strategy to strengthen the Human Rights culture in India and across the globe."

### **HUMAN RIGHTS CONDITION IN BENGAL DEPLORABLE, WORSE THAN EMERGENCY**

10 December 2014

Even as the world observes the Human Rights Day, West Bengal Human Rights Commission's former chief Justice AK Ganguly Wednesday regretted the deplorable condition of rights in the state and blamed the Mamata Banerjee government for the prevalent lawlessness. "Human rights condition in West Bengal is deplorable to say the least. The state has been constantly hitting the headlines for rapes, acid throwing, murders, and political clashes. The most unfortunate part is, the state government which is entrusted with protecting the rights of the people, has been acting in the most partisan way. The state is going through a phase worse than the times during the Emergency (imposed in 1975)" Ganguly told Indian Asian News Service. "Not a single day passes when you don't come across incidents where people's rights have been violated. The hapless people here don't know whom to approach for redressal. This government has made the police such inept that they are finding it difficult to secure themselves," said Ganguly.

### **INDIA: WOMEN WITH DISABILITIES LOCKED AWAY AND ABUSED**

3 December 2014

In a new report released by the Human Rights Watch, it was reported that women and girls with disabilities are forcibly admitted to government institutions and mental hospitals suffer grave abuses and called for the government to take prompt

steps to shift from forced institutional care to voluntary community-based services and support for people with disabilities.

The report, "Treated Worse than Animals": Abuses against Women and Girls with Psychosocial or Intellectual Disabilities in Institutions in India," documents involuntary admission and arbitrary detention in mental hospitals and residential care institutions across India, where women and girls with psychosocial or intellectual disabilities experience overcrowding and lack of hygiene, inadequate access to general healthcare, forced treatment- including electroconvulsive therapy- as well as physical, verbal, and sexual violence.

If found wandering in the streets, they may also be picked up by the police and admitted to these institutions through court orders. For instance, as of November 2014, close to 900 people live in Asha Kiran, a government institution for people with intellectual disabilities in Delhi – nearly three times the hospital's capacity.

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

### **FAILURE TO EFFECTIVELY INVESTIGATE WAR CRIMES FUELS FURTHER ATROCITIES AND FEAR**

10 December 2014

'Power corrupts and Absolute power corrupts absolutely' is a saying that is appropriate to this situation where rebel groups of the Central African Region (CAR) are vying to take the post of the government. They are not mindful of the torture or deaths that may occur to make their dream come true. There were even instances of people who preferred to remain aloof but were burnt alive like medieval witches. There were also instances of massacres committed in October 2014 by both Seleka and Anti-Balaka in and around the towns of Dekoa and Bambari, in the central region of the country. Amnesty International needs to put a stop to these horrendous crimes that are occurring in our world despite the new age and era.

### **ISIS SEX SLAVES GUIDE MARS INTERNATIONAL HUMAN RIGHTS DAY**

11 December 2014

Militant group ISIS's recently released rules about how female sex slaves should be treated on Human Rights day. The rules allow ISIS members to have sexual intercourse with, beat and trade non-Muslim slaves, including Yazidi women and girls. The pamphlet is titled Su'alwa-Jawab fi al-Sabiwa-Riqab - "Questions and Answers on Taking Captives and Slaves" and in it ISIS justifies capturing the women due to their status as non-Muslims, they say "Unbelieving [women] who were captured and brought into the abode of Islam are permissible to us." Human Rights have been blatantly violated and there is an



urgent need to protect these women and children from such inhuman practices.

## UN LAUNCHES NEW TOOL TO HELP TO STOP ATROCITY CRIMES

11 December 2014

The need to protect the population from the increasing crimes of genocide made the UN form a new route named Framework of Analysis for Atrocity Crimes to make the disposal of crimes easier. It promoted a systematic approach to assessing the risks of atrocity crimes as well as opportunities for preventive action. 2014 has been a turbulent year with large scale riots and uprisings happening in places like Iraq, Syria, the Central African Republic and South Sudan and many other places,” The UN stands for resolving these crimes and therefore has decided to take concrete action in the form of this new Framework.

## UN EXPERTS URGE SWEDEN: INTENSIFY FIGHT AGAINST DISCRIMINATION OF PEOPLE OF AFRICAN DESCENT

8 December 2014

We think the world has become more tolerant in cases of discrimination but in actuality the situation is getting worse. Educated nations like Sweden have started having discrimination crimes being committed against the African people. The Working Group of Experts of People of African Descent was started amid a heightened prevalence of xenophobic and racist attitudes against migrants and refugee communities despite the Government’s best efforts to counter racial hate. There have been a series of ‘Afrophobic’ hate crimes which the Government has tried to counter by planning to develop a Human Rights Strategy as well as a policy to accord priority to addressing “Afrophobia” and awareness raising programmes on combating xenophobia and racism.

### **RIGHT TO INTERNET ACCESS: BASIC HUMAN RIGHT OR ENABLER?**

In a recent turn of events, Facebook CEO, Mark Zuckerberg made an intriguing statement during his visit to India that access to internet connectivity is a human right. This comes as a stimulating assertion in the wake of Prime Minister Narendra Modi’s “Digital India” vision. However, Zuckerberg is not the first to suggest access to the Internet should be a human right. Right to Internet access as a human right has been a much-debated issue since Syria and Egypt tried to control the flow of information from citizens by blocking internet access and other forms of communication, the worldwide perception of these acts was that they were sinister and cruel. In a follow up to the said event the UN declared that disconnecting people from internet access is a violation of basic Human Rights.

Over the past ten years, several UN summits and special reports have put forward the idea of connectivity to the internet as a human right as part of the rights to freedom of expression and opinion. Delivering a keynote address at the Internet.org summit, an initiative aimed at connecting the world through partnership with telecom companies and other enterprises, to make Internet access affordable to all, Zuckerberg said, “When people are connected, accomplishments are easy... Connected people have better access to technology, education and jobs... We Want to build an internet that works for all. Internet.org is an effort to bring basic Internet services to all.”

However, Mr. Zukerburg’s statements have been criticized as mere publicity and commercial stunts, a convenient way for him to increase Facebook's audience numbers for advertising and thus increase Facebook's stock value. But this sure has re-sparked the debate that can internet access be considered a basic human right probing a question whether in a developing country like India, can Internet connectivity be given the same status as more pressing problems like drinking water, food, sanitation, clean toilets and shelter?

Also calling 'connectivity a basic human right' is essentially just a redefinition of what humans have always done - communicate, share and socialize. It cannot be denied that Internet has become a fundamental requirement to stay in the loop of information. Connected people have better access to technology, education and jobs. In today’s world, the dividing lines for opportunity and wealth-creating potential are increasingly being drawn based on who is connected and who is not.

The proposition that connectivity is an enabler for right to education, which is a universally recognized human right, and other rights, is correct to a large extent. There is no doubt that cell phones and internet have worked wonders for previously remote and unconnected communities in developing countries, enabling people to leapfrog a generation of technology, in turn enabling them to receive health and education information through text messages and in classrooms, access online education programs, negotiate market prices up-front for their produce, and so on. Another proposition put forth by web evangelists, is that wider and cheaper access to the Internet will improve economic performance, political engagement and good governance

In the roaring debate between putting right to Internet access on the same stature as right to food, water, shelter and sanitation, the latter decisively wins. It is submitted that the correct approach would be to consider it as an assist to achieve goals of providing access to these basic amenities round the world.

## NATIONAL LEGAL SERVICE AUTHORITY V. UNION OF INDIA



*"I would have been transgender no matter what body I'd been born with. Tell the doctors that we exist for the health of humanity, which needs to find wholeness and belief in complexity."*

- Kate Bornstein S. Bear Bergman

**Facts:** A Public Interest Litigation was filed by the National Legal Services Authority (NALSA) representing Transgender Community demanding a legal declaration about their gender identity other than the one assigned to them, male or female, at the time of their birth. They pleaded that non-recognition of their gender identity infringes Articles 14 and 21 of the Constitution of India and further their reasoning was based on two broad aspects of Human Rights: freedom and equality. They demanded to declare transgender community as "third gender" for safeguarding and enforcing their rights guaranteed under Constitution.

**Issues Raised:** These petitions essentially called into question the issue of "Gender Identity," which is the core issue. It has two aspects which included:

- That whether a person who is born as a male with predominantly female orientation (or vice-versa), has a right to get himself recognized as a female as per his choice?
- That whether transgender (TG), who are neither males nor females, have a right to be recognized and categorized as a "third gender"?

**Judgment:** In reaching its decision, the Court stated that gender identity is an integral part of the personality and one of the most basic aspects of self-determination, dignity and freedom. The Court took into consideration various International treaties, covenants, judgments, laws of foreign countries particularly Yogyakarta Principles concerned with Human Rights standards and their application to matters of sexual orientation and gender identity.

The Supreme Court granted:

- Transgender persons apart from binary gender, shall be treated as "third gender" in order to safeguard their rights conferred under Constitution and are given right to choose their self-identified gender.
- Government should take adequate steps to provide transgender with proper medical care, separate public toilet facilities, and Social welfare schemes for their betterment. Further consider their problems including fear, social pressure, depression, social stigma, etc. and declare forced S.R.S. illegal.

**Analysis:** The case involved the issue of rights of transgender minority community and the constitutional court cannot be a mute spectator. The Hon'ble Court considered and realized that there is a clear violation of Human Rights of Transgender and concept of equality is utterly neglected for a reasons which are beyond their control and are biological in nature and took a much awaited step in making India more comprehensive and humanitarian, by according legal recognition for the first time to the 'third' gender.

The ambiguous sexuality of transgender has resulted in long history of social and official neglect to welcome them as equal citizens or human beings. They are treated in terrible manner often laughed at, ignored, rejected by their families, deprived of jobs, ration cards and passports, and exploited by others in the professions they are indulged into (for illustration, seeking alms and sex work). The discrimination faced by transgender in all aspects of their life, as well as their vulnerability to exploitation and violence are in direct contravention to their right to equality.

This decision does much to reinstate one's belief in the Supreme Court's duty to care, and to take progressive stances in the face of glaring injustice and reinstated the concept of Natural Justice and Human Rights. NALSA's clear and strong articulation of self-determination is remarkable and has the potential of working for advancement of rights of other marginalized groups like sex workers. However in the Judgment while the benefits for the named groups are clear (recognized as a socially and educationally backward community in order to receive affirmative action) but for the rest of the transgender community, the position is still ambiguous. Hon'ble Justice Sikri, in his opinion, states that the decision is restricted to the communities identified in the judgment (that is, the Hijras, Kothis, Shiva-Shaktis, Aravanis and Jogappas), and any reference to 'transgender' is thus restricted to these communities in the instant case.

<sup>+</sup>National Legal Service Authority v. Union of India (2014) 1 SCC 1.

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 to us at [casihr@rgnul.ac.in](mailto:casihr@rgnul.ac.in).



## *ACTIVITIES AT CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS: A GLIMPSE*



Centre for Advanced Studies in Human Rights (CASIHR) is a centre of excellence at Rajiv Gandhi National University of Law, Punjab. The centre undertakes research and study on national and international Human Rights issue. The primary objective of CASIHR is to promote multi – disciplinary research in Human Rights, with the principle of human dignity at its core. CASIHR seeks to disseminate awareness on varied Human Rights issues through conferences, seminars, debates and other modes of spreading awareness within the society. The ultimate vision of CASIHR is to emerge as a think tank for national and international issues relevant for promotion and protection of Human Rights.

CASIHR has organized a National Seminar on Gender Sensitization in 2012. The one day national seminar dealt with wide arrays of issues relating with gender awareness. The seminar received a huge response with approximately 200 papers being presented at the seminar. The proceedings of the seminar were published in a book with an ISBN No.



Apart from the above, CASIHR publishes a monthly newsletter titled “The Human Rights Communique.” The newsletter covers a wide range of issue on Human Rights and keeps the readers updated with the latest news on Human Rights, both national and international. The 4 issues of the newsletter have been published until now with November Issue (Issue 4) being a special issue on child rights.







Recently, the Centre also organized a One Day Training Programme on Human Rights in association with National Human Rights Commission on 22 November 2014. The training programme was attended almost 150 people from across the country. Training programme included topics on Human Rights

and the constitution and the working of National Human Rights Commission and various State Human Rights Commission. Apart from this, the training programme also dealt with women and child rights and rights of the indigenous people.

The centre works actively towards realizing its goal of emerging a think tank for national and international Human Rights issues. In its upcoming initiative, CASIHR is organizing a National Seminar on Human Rights: Indian and International Perspective in 21<sup>st</sup> Century. The said National Seminar will be organized on 7 February 2015 which includes wide arrays of national and international Human Rights issue. Similar to the previous seminar, this seminar will also publish select papers in a book with an ISBNNo. Apart from above, the Centre will publish a book of abstracts with an ISBN No.



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