

# HUMAN RIGHTS COMMUNIQUE

*Your Quarterly Dose of Human Rights*

## CENTER FOR ADVANCED STUDIES IN HUMAN RIGHTS

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## CLIMATE CHANGE: CATASTROPHE IN THE OFFING

### INTRODUCTION

In the year 2000, Nobel laureate Paul Crutzen and scientist Eugene Stoermer popularized the term ‘Anthropocene’, as the name for the new geological epoch recording the impact humans have had on the Earth. It seeks to assess and contextualize the undeniable impact of humans and their activities on this planet. The magnitude of human driven effects on the environment, through industrialization, nuclear technology, large scale agriculture, etc. is such that a new epoch may have begun. Whether we have entered the Anthropocene yet is a question being debated by geologists and strategists on international forums, however the fact that this question is being discussed at all should be a reminder to every one of the detrimental impact humans are having on the environment. As of today, nine national governments across the world have declared a ‘climate emergency’ in the wake of the recent global level protests by climate activists. These governments include the United Kingdom, Canada, France and Argentina among others. The declarations are significant as they illustrate the fact that governments are now ready to make climate protection a priority. A major factor behind these declarations is the pull of climate activists like Greta Thunberg and the British based activist group Extinction Rebellion. The extent of the present climate crisis is evident from the fact that the support from people across the globe for these protests has been unparalleled.

### CLIMATE ACTIVISM

In the month of September 2019, climate activist Greta Thunberg called for worldwide protests, as part of the ‘Fridays for Future’ campaign, ahead of the UN Climate Summit. She was joined by young protesters from 185 countries to make it the largest climate protest in history.

In October 2019, Extinction Rebellion shut down parts of London for the second time in six months. Protests were held not only in London, but also in other places such as Rio de Janeiro, Melbourne, New York, Paris etc. This group uses non-violent mass disruption methods at regional power centers to increase awareness about climate change. The methods used involve blocking roads by forming human chains, protesters tying themselves to cars, protesting in front of major government buildings, blocking bridges by placing plants etc.

The group has announced:

*“To governments of the world: we declared a climate and ecological emergency. You did not do enough. To everybody else: rebel”*

These activists and protests have only had their causes strengthened by a spate of environmental disasters across the world. The Amazon Rainforest fires have recently been in the headlines for all the wrong reasons. The forest located across nine countries but majorly in Brazil was engulfed in fire. The fires in 2019 were some of the worst ever recorded. Over 2400 square kilometers of rich and diverse rainforest was lost in a month. Indigenous tribes as well as prized biodiversity suffered irreparable harm all at the hands of gross human negligence and apathy. The lack of action by the Brazilian Government to enforce measures has been decried lackadaisical. Further, the government has also been criticized for not efficiently tackling burning by farmers and loggers; the primary reason for this fire. So far, the government has not been able to focus on implementing efficient and sustainable long-term measures as its focus was directed towards shoddy post facto measures such as bans.

### THE PICTURE IN INDIA

While the world has its eyes glued to big issues like the Amazon fire, domestic issues like the Aarey deforestation case in Mumbai remain relatively untouched. The trees in Aarey Colony, hailed as Mumbai's green lungs, lie at the edge of Sanjay Gandhi National Park. Over 2400 trees were set to be chopped for the metro project which caused an uproar amongst the local Adivasi groups and

activists.

The situation was aggravated after the Hon'ble Bombay High Court ruled in favor of chopping the trees. The trees in Aarey were not given the status of a forest. The Hon'ble Court opined in favor of development but overlooked the aspect of sustainable development. After the decision of the Hon'ble High Court, Section 144 was imposed in Aarey as the activists alleged that trees were already being cut. The Supreme Court took Suo Motu cognizance and ordered the felling of trees to be stopped but it was too late as the local Adivasi groups estimated that the required number of trees had already been cut down.

Another crucial environmental as well as health disaster has been the poor air quality of most of North India. This poor air quality can be attributed to Diwali crackers, stubble burning across the agricultural states of Punjab and Haryana as well as industrial pollution. New Delhi's air quality dipped to its lowest in three years, such that a public health emergency was declared by the Environment Pollution (Prevention & Control) Authority. An air purifier van was deployed at the Taj Mahal in order to protect the beauty of one of the seven wonders of the world.

## INTERNATIONAL RESPONSE

In order to address environmental concerns, the UN Climate Summit was convened by the UN Secretary General Antonio Guterres in view of urgently addressing climate change, to raise ambitions and to further serious climate actions. This Climate Action Summit involved the participation of several nations, businesses and civil societies which announced ambitious climate actions. The announcements by different entities revolved around the aspects of getting past the use of coal and shifting to renewable energy, climate finance and at reaching net zero emissions by 2050.

Countries like France decided not to enter into any agreements with countries that are counter to the Paris Agreement while Germany committed to carbon neutrality by 2050. Moreover, China announced a global partnership that aims at a reduction of 12 billion tons of global emissions. Also, the Russian Government decided to ratify the Paris Agreement and be bound by the same. On the funding aspect, different actors like business companies and nations decided to contribute to the Green Climate Fund towards for a better and healthier climate. Thus, the Summit so urgently convened proved to be a boon as several countries set certain ambitious goals to achieve Climate change with a boost to the climate fund as well.

Another key summit that took place with regard to climate was the C40 World Mayors Summit which took place in Copenhagen from 9th-12th October 2019 and 96 major cities of the world were a part of this Summit viz. Paris, Delhi, Mumbai, Tokyo among others. The Summit aims at reduction of greenhouse gas emissions and at improving climate resilience. The ultimate aim is to meet the World Health Organization's Air Quality Guidelines in that respect.



This Summit led to the signing of Clean Air Cities Declaration by 35 out of the 96 countries participating in the summit clean air'. The declaration mandates that the parties to this declaration to implement substantive clean air policies by 2025 and achieve certain pollution reduction targets.

This Declaration laid down that breathing clean air is a human right and that it is important for the countries to work in coordination to 'form an unparalleled global coalition for

## THE WAY FORWARD

Efforts at controlling climate adversities are on rise and several more conferences are scheduled in the last month of 2019. Some of which include the 25th Session of Conference of Parties (COP25) under the aegis of United Nations Framework Convention on Climate Change's (UNFCCC) to be held in Madrid after Chile backed out due to civil unrest in Santiago. This Conference would also entail the CMP15 and CMA2 which deal with parties to the Kyoto Protocol and the Paris Agreement respectively.

The Conference shall deal with the previous reports of COP24, CMP14, CMA1 and would also talk about agendas like Green Climate Fund, Global Environment Facility, gender and climate and issues relating to implementation of the recommendations of different conferences and summits. The Conference shall also be covering the outcomes of Africa Climate Week, Latin America and Caribbean Climate Week, and Asia-Pacific Climate Week held in September 2019.

Thus, the efforts are being incessantly taken in conducting conferences and summits, but it is the whole world community that needs to act and act quickly to avert climate adversities as expressed above. The world community needs to achieve their climate goals and honor the targets set by them. If the targets are not honored then, irrespective of the number of conferences, climate change will not be halted.



## INTRODUCTION

In the context of rising income inequality, persistent unemployment, and intractable poverty, the idea of a basic income has recently emerged as a popular and powerful proposal. Basic income is a progressive idea in which everyone in society gets enough money to meet their basic needs. It is more than just economics, as it strikes at the heart of cultural and political ideals as to how society should be, questioning deeply held collective beliefs that money must be earned with conventional 'work ethics. When viewed with a humanitarian approach, this proposal seems to be entwined with principles of equality and a welfare state. But this cannot disregard its other half related with economic prosperity and political integrity of a nation.

The concept of basic income, also commonly known as Universal Basic Income (UBI) can be defined as a framework that advocates the need to impart to all citizens of a nation, state or a particular geographic region with a certain amount of money as a fixed stipulated sum, regardless of their income, race, class, resources or employment status. The main purpose behind its conception is to counteract or diminish poverty or any financial crisis and promote citizens' equality. The fundamental initiative is that all citizens are entitled to have a dignified life, and therefore have a livable income, not considering the fact that they contribute to production, economy and the circumstances into which they are born.

## BACKGROUND

The idea of a minimum guaranteed income by the government far predates the more drastic idea of an unconditional basic income to all. The idea of a minimum income first appeared in the year 1516 in Thomas Moore's book entitled 'Utopia' which was further argued by Johannes Ludovicus Vives on theological grounds. However, it was Marquis de Condorcet and subsequently Thomas Paine, who propagated the idea of an equal basic endowment to all individuals, as they reached adulthood, and justified this on tenets of socialism and the common ownership of the earth. Gradually, these two ideas amalgamated to form the proposition of an unconditional basic income by the 19<sup>th</sup> century, which was accompanied by the world's first, full-blown basic income scheme through the birth of the Alaska Permanent Fund, providing annual dividends to all the inhabitants of Alaska.

## VARIABLES OF IMPLEMENTATION

The implementation of Universal Basic Income (UBI) is mandated by international authorities like the Universal Declaration of Human Rights, 1948 and the International Covenant on Economic, Social and Cultural Rights, 1966. This mandates that apart from being a radically theoretical policy, it also has massive practical implications, if adopted. In an ideal situation, all existing welfare schemes would be rolled back and replaced with UBI. This would be met by robust tax compliance, and all targeted beneficiaries would receive the advantages with full efficiency. However, policy frameworks have to operate in a reality-constrained world.

A critical implementation hurdle is the medium of transfer of benefits, as a successfully implemented UBI scheme is heavily dependent upon a strong digital infrastructure. Analogously, a UBI scheme is bound to fail, absent a robust transfer mechanism. Another practical question that needs to be resolved, is whether all existing social welfare schemes be replaced by UBI? If not,

how would the costs of such a policy be borne? If indeed all schemes are rolled back, who should the basic income be disbursed to? Should the rich and super-rich also be beneficiaries of such a scheme? If not, will the scheme truly remain universal or does a targeted scheme better serve the purpose?

The primary advantage of a targeted scheme is lower burden on the exchequer. Various methods of targeting- including individual, categorical, community-based, and self-targeting- would have to be studied extensively in order to make this decision. However, this begs the question that, in the absence of accurate large-scale data, is such a thorough restructuring even plausible? Moreover, will governments in increasingly volatile political-economic conditions even wish to engage in such a high-risk endeavor, or would safer, more conceivable existing alternatives be re-examined and improved? The bottom line is that various costs and benefits need to be carefully evaluated.

#### **UBI IN PRACTICE**

Multiple schemes and proposals have been implemented worldwide with the sole purpose of bringing UBI in practice successfully. Some have been thriving while others failed. For instance, in June 2016, Switzerland made history by holding a referendum on a policy that could have granted each Swiss citizen a monthly basic income of 2,500 Swiss francs. But the proposal failed at the ballot box as only 23% of people voted in its support, while 77% were against it. In January 2017, the Finnish government began a two-year trial UBI scheme for 2,000 unemployed people that gave each individual €560 a month. The scheme being successful is still in existence.

But one major methodological limitation is that almost all practical experiments with cash payments, including those described as 'unconditional cash payments', have in fact been conditional. For example, in Malawi, unconditional cash transfers and conditional cash transfers were only paid to young women and their parents in the poor district of Zomba. In Netherlands, trials of social assistance of UBI schemes were restricted to only four Dutch municipalities at the end of 2017. The payments were only made to unemployed people and were set at the rate of existing unemployment benefit. Thus, hindering the dream for achieving unconditional basic income for all the people, universally.

One point which needs to be kept in mind is that the outcome of a cash payment scheme in lieu of UBI can be drastic in poor under-developed countries compared to the effect in the developed countries. As small amounts of cash payments can make a poor person's life humane in a poor country, but it cannot develop into a long-term sustainable strategy for economic growth. It can be observed from the

## **INTERNATIONAL NEWS**

### **Syrian Govt. and Opposition delegates meet to draft New Constitution.**

The objective of meeting was to agree on a new constitution for Syria, however it still remains unclear that if this will mean redrafting existing constitution, written in 2012, or starting from beginning. After about 9 years of civil war, the meeting of Syria's archenemies is an historic moment. Moreover, reforming Syrian Constitution is first step towards beginning for a political process that will lead to UN-supervised elections under UN resolution 2254

### **Members of EU meet PM Modi; visit Kashmir.**

28-member delegation from European Union met PM Modi on October 28, 2019. The delegation will visit Kashmir on October 29, 2019. The delegation is to check on the reality of the situation in Kashmir. This is the first trip to the region by a foreign delegation after India revoked Article 370 and integrated Kashmir with the rest of the country. India rejected US 's plea to visit the region earlier in October.

### **Daesh leader Abu Bakr al-Baghdadi killed in a raid by American Forces.**

On October 27, 2019, USA president Donald Trump announced that the Islamic State leader Abu Bakr al-Baghdadi died in a raid conducted by US special forces in north western Syria. According to the announcement, Baghdadi killed himself by detonating a suicide vest. He died running into a dead-end tunnel. He ignited the vest killing himself and his three children. His body was mutilated by the blasts.

### **BASIC Ministerial Meet on climate change.**

The 29<sup>th</sup> ministerial meet of BASIC countries was held at Beijing between October 25-26, 2019. The BASIC countries include Brazil, South Africa, India and China. The ministers emphasized comprehensive implementation of Paris agreement. They also underlined the importance of effective and sustained implementation of United Nations Framework Convention on Climate Change (UNFCCC).

scheme adopted in Madhya Pradesh that cash payments brought improvements in factors contributing to recipients' health and livelihoods, but the long-term impacts after the scheme ended in 2014 were less favorable. On the other hand, in developed countries as the cost of living standards are higher; the amount of cash payments would be more within a well-defined structure of social protection which could lead to long term economic development for the country; such as the Alaska Permanent Fund in U.S.A.

The contrast in the effects of UBI is also affected from the source of funding utilized for providing basic income. In poor countries, usually the funds are generated through international charities, development agencies and financial institutions (the World Bank) for enhancing the livelihood of its residents. However, in the developed countries the source of funding exists due to contribution from payment of taxes, crowd funding and profits of developed enterprises.

exists due to contribution from payment of taxes, crowd funding and profits of developed enterprises.

When UBI is funded through taxes, the government of the country becomes powerful and gives way to political discussions. The citizens have the authority to elect a government willing to raise funds to support cash payments as well as essential social and democratic infrastructures, and they could arguably build up enough power to defend the policy against changes in government. For example, the National Health Service of the United Kingdom is too popular for any elected party to abolish it.

Thus, UBI is a progressive path which is carved with practical, social and economic hindrances.

### **PROBLEMS WITH UBI**

With each passing day however, the concept of UBI or some variation thereof gains ever more traction. In fact, with U.S. Presidential candidate Andrew Yang proposing his own rebranded version of UBI *viz.* the Freedom Dividend, a continuous, unconditional cash handout to all citizens (or residents) above a certain age, has definitively entered mainstream political discourse. However, as tempting as it may seem, it is important that UBI be viewed for what it actually is - a potential tool for social welfare, rather than a panacea for all the world's problems.

The elephant in the room when it comes to UBI is obviously the cost of financing it. While it is true that the exact figure depends upon how much is paid, to whom, how often, and for how long, certain estimates are already available, and these do not make for sound reading. The International Labor Organization, in a study conducted in over 130 countries, concluded that the average cost for

implementing UBI is in the range of 20% - 30% of each country's GDP. (Universal Basic Income Proposals in Light of ILO Standards, 2019)

Quite a daunting proposition on its own, but what is more concerning is that said money will then be unavailable for use in infrastructure projects, public health initiatives or public investment schemes, all of which are essential for sustained development in any country. And while an argument may be raised that the recipients of UBI will contribute to the economy in their own way, the opportunity cost for the same may be too great to forgo.

Even if one were to turn a blind eye to the more practical aspects of UBI, its problems certainly do not go away. For one, there is the question of the ultimate objective of UBI. Answers may vary but usually do not stray too far from, 'to reduce poverty', 'to improve the quality of life' etc. But all these answers fail on account of their undefined thresholds. How does one assess needs such as food, shelter, clothing etc. in relation to others needs such as work-life balance, adequate holidays, personal transportation, etc.? Since UBI is a single, unconditional transfer of money, its recipients will have quite starkly varying needs. This only raises more questions than answers.

Lastly, and perhaps most importantly, there is the threat UBI poses to the very idea of democracy as a form of government. Simply picture the scene: Politicians competing to outdo each other by offering the people more free money (a higher UBI), a rabid electorate intoxicated by successive terms of unconditional cash handouts, a populist-majoritarian government with no room for nay-sayers and conscientious objectors, and an economy that is quietly crumbling under the dual pressures of fiscal irresponsibility and financial largesse.

All in all, at this point of time, an adequate UBI almost surely would be unaffordable and an affordable UBI would most likely be inadequate.

### **CONCLUSION**

Though the concept of UBI dates back centuries, it would be incorrect to say that the idea is anything but nascent. Real world attempts at implementing such a scheme have been few and far between and it has only very recently entered mainstream political discourse. In fact, an observable trend from the available data of UBI trials is that the supposed unconditional transfer of income is, in fact, based on quite of few conditions - income level, age, citizenship *etc.*

And though the idea still fills the hearts and minds of those who strive for noble ideals such as equality and human dignity, its drawbacks and pitfalls remain. As of 2019, UBI remains a zero-sum game in most economies of the world. And when faced consequences such as economic ruin or fiscal collapse, it is no wonder that governments remain skeptical of UBI.

# Abrogation of Article 370

## The Political Implications



### ABROGATION OF ARTICLE 370 AND ITS AFTERMATH

Centre's decision of revoking Article 370 is rather considered as one of the most remarkable initiatives to make a change in our constitutional provision - which was considered sacrosanct for a very long time. The very thread which tied Jammu and Kashmir to India was cut down by the presidential notification of 5<sup>th</sup> August 2019, proposing revocation of Article 370 and Article 35A of the constitution. Home Minister Amit Shah, read out a presidential notification that stated the decision to scrap the contentious Article 370 and to bifurcate the state into two Union territories – Jammu and Kashmir, which will have a legislature, and Ladakh, which will be without a legislature. This move of the Modi government has stirred quite a controversy across the political spectrum. While supporters of the initiative emphasise that the move fulfils a campaign promise of the Bharatiya Janata Party, critics see it as the prelude to a shift to majoritarianism. Additionally, the legitimacy of the entire process of abrogation has witnessed various loopholes especially in terms of constitutionality, as discussed in our previous edition. However, it should be noted that the entire process of revocation, as well as its manner of implementation, has equally been criticised along with its constitutionality. The United Nations on Oct. 29, 2019 expressed its concerns over violations of human rights in Kashmir caused by draconian implementation. Human rights organisation called Amnesty International, also expressed its concerns regarding the same while criticising massive communication blackout imposed by the government in the State of Kashmir. This article aims to shed light on the aftermath of the abrogation of Article 370 and the legitimacy of the actions taken by the Centre to implement the same.

### ARBITRARY DETENTIONS

Section 144 of the Code of Criminal Procedure (CrPC) bans assemblage of more than 4 persons. The government has widely misused this section to prevent the dissemination of any dissenting opinion and thoughts by the journalists as well as the political leaders. Apart from that, many journalists and political leaders were detained, placed under house arrest and arrested without any charge or trial. Few leaders were released after signing bonds which promised they will not indulge in political activities, and therefore reserved their comments. Moreover, the family members of detainees were not informed of the grounds of arrest and the whereabouts of their relatives. Non-sharing of critical information with the detainees' family members constitutes a serious violation of the detainees' Right to a Fair Trial. It effectively prevents them from seeking an independent judicial review on the lawfulness of their detention.

### COMMUNICATION BLOCKADE AND ITS CONSEQUENCES

The Right to Free Speech and Expressions is guaranteed as a Fundamental Right under Article 19 of the Constitution. It is not an absolute right and can be compromised by imposing reasonable restrictions on the grounds of national interest and security. However, such restrictions should be necessary, reasonable and proportionate and cannot extinguish the entire right itself. The government's act of curbing free-flow of information from diverse sources and disseminating state-controlled one-dimensional information was one of the most drastic measures adopted by the government. This was further achieved by shutting down off internet, mobile-networks, broadband services along with landlines and cables. Little or no means were left to reach out to family or friends thereby creating a state of anxiety and uncertainty rather than maintaining 'normalcy' as claimed by the government. In the wake of the shutdown, there have also been reports of a health crisis. Amnesty International reported that adequate

healthcare services were not accessible and available to everyone- there was no public transport to reach hospitals, critical

medicines for advanced stages of many diseases were not available with hospitals or stockists, without functional postal and courier services procurement of aid medicines from Delhi or neighbouring states was also not possible and no means of communication was left to secure appointments with doctors, know of their availability or inform any urgent need for ambulances. This clearly indicates that the communication blockade has more or less lead to the state of medical emergency thereby severely affecting the right to health of people guaranteed under article 21 of the Constitution as the fundamental right.

Moreover, through communication blockade, the government successfully managed to conceal cases of torture and use of excessive force by the deployed security personnel. Cases of use of tear gas, rubber bullets and pellet shotguns were not reported by the government and continued to remain successfully hidden from the national as well as international news with the help of blackout. This is in complete violation of UN Basic Principles on the use of Force and Firearms which states that deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

## INTERNET SHUTDOWN AND ITS LEGALITY

Apart from shutting down mobile and broadband services, the government also resorted to shutting down the internet as well. It has been more than 100 days since the internet is shutdown which has rendered several software engineers and those who developed content for online platforms, jobless. This blackout has forced many among these youngsters to either migrate to other states and look for new job opportunities or ensure their presence online to earn a living. This action of the Centre has been challenged by the journalist

Anuradha Bhasin via Public Interest Litigation, seeking to know the provisions under which internet access has been blocked in the state. The petitioner argued that according to the 2017 government framed the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, internet shutdowns can be ordered only by the secretary in the Home Ministry at the central or state level or an authority nominated by them. The same set of rules was used by the Kashmir government to impose the blackout. But it should be noted that the 2017 rules have various lacunas. According to Apar Gupta, *'The only change brought about by the 2017 rules was to formally institutionalize the internet shutdown regime, but the government did not bring any change to make the system more accountable. The review process does not add any value to the regime as the committee is not vested with powers to take action if the shutdown orders are found to be unreasonable.'* According to Reema Chadda, the 2017 rules are very broad, and the officers empowered to issue directions to shutdown internet services can do so for a wide variety of issues—all in the name of public order.

Senior Advocate Sajjan Poovayya pointed out that the internet shutdown rules derive their power from Section 5(2) of the Telegraph Act which lists situations under which the restrictions on telecommunication services can be imposed.



These include sovereignty and integrity of India, the security of the state, friendly relations with a foreign state, public order and preventing incitement to the commission of an offence. Poovayya points out that the review mechanisms of these grounds are incomplete and have a strange lacuna with respect to the timeline. He pointed out that the decision of the Secretary needs to be forwarded to the review committee within 24 hours. But the rules give the review committee five days to hold a meeting. This is palpably unreasonable, as theoretically it would imply that an invalid and illegal order may technically be in vogue for five days before being set aside.

## CONCLUSION

From the abovementioned paragraphs, it is clear that not only the revocation order but also the manner in which it was implemented is rife with numerous fallacies. The arbitrary manner of implementation has resulted in the gross violation of various human rights. Moreover, the legitimacy of the communication orders stands questionable both in terms of legal as well as constitutional grounds. On one hand the Kerala High Court had declared the right to access to the internet as the fundamental right and on the other hand, the people of Kashmir remain arbitrarily deprived of this right for more than 100 days. A bunch of petitions has been filed in the apex court challenging the very constitutionality of the abrogation order and its manner of implementation calling out the situation in Kashmir as an 'undeclared state of emergency.' The matter still remains pending in the Supreme Court and is adjourned for further hearing.



LINGUISTIC CHAUVANISM  
OF 'ONE NATION, ONE  
LANGUAGE' WILL NOT  
UNITE BUT FRAGMENT  
INDIA

India has a rich cultural and historical diversity, and this is well reflected in its linguistic heterogeneity. But Hindi occupies a significant place in this uniquely diverse linguistic heritage. It is evident from the Constitution itself. Article 351 of the Constitution duty bounds the Central Government to promote the spread of Hindi “as a medium of expression for all the elements of the composite culture of India.” Article 344(1) required the establishment of a Commission comprising members representing all official languages mentioned in Schedule 8, to recommend ways to progressively use Hindi for official purposes of the Union. From the reading of these provisions, Union Government reportedly concluded, contrarily to the general perception, that Eighth Schedule was intended to promote the progressive use and enrichment of Hindi.

On the occasion of *Hindi Divas* this year, Home Minister Amit Shah vociferously expressed his concern over the loss of linguistic identity in India due to the invasion of foreign languages. Though he also talked about preserving regional languages, he emphasized on the need of having Hindi as a “common and uniting” language of India. His idea of “one nation, one language” is extremely problematic, as it is not only against national and international legal norms but also against the spirit of unity and diversity.

#### ‘LINGUISTIC RIGHTS’ AND ‘LANGUAGE RIGHTS’

Language rights are broader than linguistic rights. Language rights are part of numerous other rights like dignity, privacy, liberty, freedom of expression, education, and the right of linguistic minorities to use their own language with others in their group. Linguistic rights, on the other hand, impose obligations on the state to use certain languages for certain purposes, not to interfere in linguistic choices of people, and to promote indigenous and minority languages. Both Indian law and international treaties provide for these language and linguistic rights. At the international level, these rights are enshrined in various international human rights treaties, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and UNESCO’s Three Principles of Language and Education. The Three Principles of Language and Education of UNESCO are:

- a) instruction in mother tongue in education,
- b) bilingual and/or multilingual education at all levels of education as a means of promoting both social and gender equality and as a key element of linguistically diverse societies,
- c) language is an essential component of inter-cultural education in order to encourage understanding between different population groups and ensure respect for fundamental rights.

Language rights in the Indian Constitution can be traced in Article 14 (equality), Article 15 (equality on the basis of place of birth, religion and caste), Article 19 (freedom of speech) and Article 21 (privacy and liberty). On the other hand, provisions like Article 29 (protection of linguistic minorities) and Article 350A (facilities of instruction in mother-tongue at the primary stage) inter alia enshrines linguistic rights.

#### THE TAKE ON TEACHING LANGUAGE BY NATIONAL EDUCATION POLICY, 2019

Language, on most occasions, is a hereditary gift passed to posterity. However, language becomes subjected to popular aspirations and politics when it enters the sphere of formal education, as reflected in the new draft education policy.

In the early months of 2019, the central government released the draft National Education Policy, which was the culmination of the efforts of a committee chaired by Dr. K. Kasturirangan. The draft policy proposed a three-language formula to be followed by the state governments while they formulate a system of schooling. In the proposal, it is envisaged that there shall be implementation of the teaching of a modern language, preferably a South Indian one, besides Hindi and English in Hindi-speaking states, and teaching of a regional language, along with Hindi and English in non-Hindi speaking states. On both the two categories that the

English did not attract a lot of opposition and rage, teaching of Hindi was interpreted as its imposition on non- Hindi speaking population, fueling the long existing fire of linguistic battles in the country.

This draft policy was translated as an attempt to promote the linguistic preference of the majority. What was expected to be an exercise of promotion of integration in the country was met with harsh criticism, forcing Dr. Kasturirangan to comment on the controversy with shades of assurance of a policy that shall not leave any room for concerns.

After the turmoil generated by the controversies, the draft was revised, and it was cleared out that Three- Language System was not a compulsory scheme to be adopted by each state.

### **THE POSSIBLE IMPACT OF LINGUISTIC CHAUVINISM IN INDIA**

History stands as a testament to the downfall of regimes and the corruption of societal functions because of linguistic chauvinism.<sup>1</sup> In ancient India, Sanskrit was used as a tool to create barriers of caste and class, and gender discrimination, in the society, which resulted in supremacy of certain people over others. Therefore, in an attempt to impose Hindi on non-Hindi speaking states, the idea of supremacy would be attached to Hindi speakers, which is against the spirit of democracy.

Another historical proof of the pitfalls of linguistic chauvinism is the rise of the independence movement in Bangladesh after the imposition of Urdu as the compulsory language in a predominantly Bengali speaking province. With Sheikh Mujibur Rahman becoming a popular force against West Pakistan and the subsequent Bangladesh Liberation War of 1971, the regime of domination fell. Here, the reasons behind the war were more political than linguistic tiffs, but domination by soft power, which in this case was language, ignited a great fire.

Taking note from the above-mentioned example, the use of language as a tool to dominate a region gives birth to secessionist behaviours and this is too big a risk to take in a country like India, which blooms with cultural and linguistic diversity.

At present, regional languages face threat not only from English but also from Hindi. As per the 2011 census, Hindi is the most spoken language with 43.63 per cent of Indians having Hindi as their mother tongue. Where the number of Hindi speakers has increased, the number of South Indian Language and Urdu speakers has declined. If Indian society is forcefully and artificially homogenized to project Hindi as the identity of India, then, regional languages and regional identities are likely to dilute. According to The People's Linguistic Survey of India (PSLI), India has lost 250 languages in the past five decades, and we are likely to 400 more languages in the next five decades.

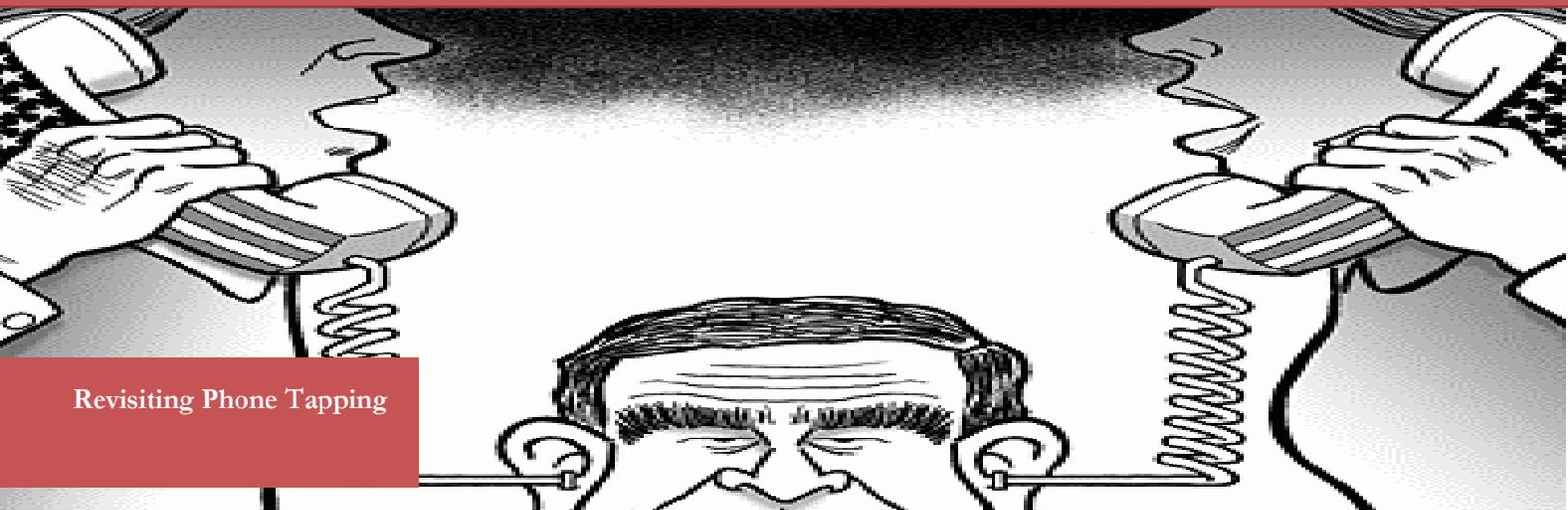
### **CONCLUSION**

As language is an emotive issue for communities, instead of reinforcing unity and national identity, the imposition of Hindi is likely to undermine the unity and cultural richness of India. The growth and promotion of a language should be natural and voluntary. India by this time should have come to

realize that its unity lies in the acceptance of diversity and not in homogenizing. It's high time (rather late) for India to preserve regional languages and dialects instead of politicizing the issue. Indian government shall not read Article 351 and 344 to constitutionally validate the idea of "One Nation, One Language", rather it should strive towards the promotion and preservation of all Indian languages.

However, this promotion is often under threat when people at power make scintillating comments on the promotion of a single language in a country so diverse, as this in common parlance is translated as an advancement of a particular culture to subdue the others. This reflects poorly in a country the constitution of which rests on the idea of equality and promotion of various cultures.

Contributions are invited for the next issue of CASIHR Newsletter. The last day is 25<sup>th</sup> January 2020 which can be mailed on [casihr@rgnul.ac.in](mailto:casihr@rgnul.ac.in)



## Revisiting Phone Tapping

### INTRODUCTION

The legitimacy of the government and the people's trust in it exists as long as it upholds the law, and respects the fundamental rights granted to the citizens by the Constitution. Right to Privacy as the most cherished right protects an individual from the unwanted intrusions in one's life without adhering to the procedure established by law. The Bombay High Court in its recent judgment, *Vinit Kumar v. CBI*, affirms such protection as a Human Right.

### FACTS

Three orders were passed by the Ministry of Home Affairs (Respondent No. 2) dated 29<sup>th</sup> October 2009, 18<sup>th</sup> December, 2009 and 24<sup>th</sup> February, 2010, allowing the Central Bureau of Investigation to intercept the telephonic conversations of the petitioner, businessman Mr. Vinit Kumar. Following this, the CBI registered the case in 2011 against Kumar, accusing him of paying a bribe of Rs. 10 lakhs to a public servant and a bank official to secure credit-related favor. In response, Mr. Kumar filed a petition challenging the three orders which allowed interception of his phone calls.

### ISSUE

The question to be considered in this case was whether the interception of the phone calls of the petitioner by Respondent No. 2 were *ultra vires* of Section 5(2) of the Indian Telegraph Act, 1885 and whether there was any violation of the Fundamental Rights of the petitioner guaranteed under Articles 14 and 21 of Part III of the Constitution of India.

### JUDGMENT

The Honorable High Court of Judicature at Bombay stated that as per Section 5(2) of the Telegraph Act, 1885 an order for interception can be issued on either the occurrence of any public emergency or in the interest of public safety. When either of the two conditions were not in existence, it was impermissible to take resort to telephone tapping. On this basis, it concluded that the three impugned orders of interception neither had the sanction of law nor were issued for any legitimate aim. Consequently, they were quashed and set aside while the court directed the destruction of copies of intercepted messages/ recordings. The intercepted messages/ recordings stood eschewed from the consideration of the trial court. The Petitioner was given the liberty to adopt the remedy available in law for the other reliefs sought in the writ petition.

### ANALYSIS

#### *Application of Constitutional Principle*

The Bombay High Court had directly applied the Statutory Rules and the Constitutional Precedent in reaching its decision. The Statutory Rules includes the rules framed under the Telegraph Act, 1885 with regard to the review committee of the order providing for the interception of telephone. It was based on the Constitutional Precedent set by the Supreme Court in the case of *PUCL v. Union of India*, affirmed by the nine-judge bench in the case of *K S Puttaswamy v. Union of India*. The court refused to uphold the order on the basis of Public Safety and provided direction to objectively determine the issue at hand with the direct application of Statutory Rules and Constitutional Precedent rather than interpreting Public safety. The court did not deliberate much upon the issue of 'public safety' on the basis of facts and circumstances. However, it did not let the government define public safety in the time where government is defining the national security<sup>1</sup>.

### *Due Process Model*

Indian Courts do not follow the Principle of Exclusion as applicable in the USA. The Indian law makes illegally obtained evidence as admissible if the same are relevant for the case irrespective of the method it has been obtained. However, the unconstitutionally obtained evidence would be inadmissible under all circumstances as extraction of such evidence violates the Fundamental Rights of a person. The Supreme Court in *Selvi v State of Karnataka*, tried to differentiate between the two. This distinction lies in the two different models of the Criminal Process - Crime Control Model and the Due Process Model.<sup>1</sup> The Crime Control Model gives due importance to any illegally obtained evidence whereas the latter emphasizes upon the unconstitutionally obtained evidence. The Due Process Model protects Human Rights by ensuring the inadmissibility of the evidence obtained by such violation.

The Bombay High Court has followed the Due Process Model while holding the method of collecting evidence in violation of Fundamental Rights as inadmissible as further admissibility of such evidence dehors Human Rights and ensures arbitrariness at the instance of the state. The impugned orders providing for the interception of the telephone infringes the Right to Privacy of an individual and hence, such evidence is inadmissible.

### *Inclusion of Judicial Mechanism*

Seeing the abuse of the process and non-compliance of the executive body of the rules or the safeguards available there under, it raises a concern for the inclusion of the Judicial Mechanism in obtaining such Interception order. It is so because Courts in the recent times have been inclined to uphold the individual Right to Privacy. The Supreme Court in the case of *Mabua Moitra v. Union of India*, held if social media platforms be monitored then we will be moving towards a surveillance state. The Bombay High Court did not comment upon the inclusion of any such Judicial Mechanism for obtaining the interception order. However, by setting aside the executive order, it affirms the inclination of the court towards the Right to Privacy. Hence, it, indirectly, strengthens the need of inclusion of Judicial Mechanism in such procedural safeguards.

### **CONCLUSION**

The court did not let human rights be swept away in the garb of public safety. This decision reminds us of the existence of balancing test in the Constitutional precedent itself and direct application of the same. The adoption of the Due Process Model furthers Transformative Constitutionalism in the promotion of Human Rights. This era of Transformative Constitutionalism with regard to Right to Privacy was marked by the case of *K S Puttaswamy v. Union of India*, which has been upheld by the Bombay High Court taking a divergent view from the earlier ruling on the issue.

## **NATIONAL NEWS**

### • **Sardar Patel National Unity Award**

Centre government has instituted ‘Sardar Patel National Unity Award’, the highest civilian award in field of contribution to unity and integrity of India, in the name of Sardar Vallabhbhai Patel, most popularly known as Iron Man of India or the founding father of the Republic of India. It will be announced on occasion of *National Unity Day* on the Birth Anniversary of Sardar Patel on 31 October. The institution of award was notified by Union Ministry of Home Affairs on 20 September 2019.

### • **PRAKHAR: Delhi Police’s anti-street crime vans.**

Delhi Police Commissioner Amulya Patnaik flagged off 15 ‘PRAKHAR’ vans from the police headquarters at ITO, New Delhi. The vans are special vehicles to curb street crimes in the national capital. The new vans are in addition to already operational 15 ‘PRAKHAR’ vans launched in September 2019, thus taking the total number of vans plying in New Delhi to 30.

### • **Vice President unveils 15-point reform on Parliament Functioning.**

On October 29, 2019, Vice President Venkaiah Naidu unveiled a 15-point reform charter for a new political normal to enable effective functioning of the Parliament and State Legislatures.

### • **Kartarpur visit: Pakistan to issue tourist visas to non-Indian Sikhs.**

To mark the celebrations of 550th birth anniversary celebrations of Guru Nanak Dev, the Pakistan government will now issue tourist visas to non-Indian Sikhs visiting Kartarpur corridor and other gurdwaras in the country. Under the historic Kartarpur Corridor agreement signed between India and Pakistan on 24 October 2019, the pilgrims coming from India for one day would not require visa

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**VOL VI ISSUE I**

**CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS**

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