

THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

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“Moral Codes are ordinarily founded on emotional instincts and intuitions that were selected in the past because they aided survival and reproduction. When we speak for morality or moral values, we become conscious to some unforeseen restriction likely to be imposed in the form of moral policing.”

- *Vasudev Gupta v. State of Uttar Pradesh*
2011 SCC Online All 798

THE CASE OF LOVE: A PROTEST AGAINST MORAL POLICING

The old age social norms like choosing the right place for display of love and controlling a woman’s sexuality are getting a big blow due to democracy, modernity and urbanisation. There have been continuous political attempts to use the tension between these conservative social norms and concepts of liberty to mobilise public on communal lines. The country recently witnessed a widespread movement in the form of “Kiss of Love” against the rudimentary concepts of Love Jihad and moral policing.

BACKGROUND

The Kiss of Love campaign was initially a non-violent movement against moral policing. This protest was initially started in Kochi and it later spread to other metropolitan cities of India such as Kolkata, Delhi, Mumbai and Hyderabad. Having its humble beginning as a Facebook page made by a filmmaker from Kerela, Rahul Pasupalan, the movement soon transformed into a widespread protest staged in various cities of India. The protest has ever since gained tremendous ground, with almost 2,600 persons agreeing to be a part it.

A key trigger for this movement was the practise of Love Jihad or Romeo Jihad was started in which young Muslim men reportedly target young girls belonging to non-Muslim communities to convert them to Islam by feigning love. The concept first caught national attention in 2009, with claims of widespread conversions in Kerala and Mangalore. These claims have now spread not just throughout the nation but also beyond, into Pakistan and the United Kingdom. This misuse of religion to cheat young girls was met with widespread disapproval. It led to the perception that they were using Hindu girls to breed children in order to raise the population of Muslims in India. However, one cannot say how correct this perception is.

Apart from Love Jihad, India also witnessed rampant acts of moral policing committed by various religious-political groups. Many incidents were reported in Kerela where violence was committed on innocent people in the name of preserving Indian culture and values from falling prey to western influence.

A series of incidents has led to the current agitation. In 2011, a 26-year-old youth was killed by a mob in Kodiyathur, Kerala, for allegedly having an affair with a married woman. In June 2012, a mob of men brutally beat up heavily pregnant women for sitting alone at a bus stop in Kannur. It was later revealed that her husband had gone to a nearby ATM and had asked her to rest. In April 2013, a female was harassed by members of a political group for taking a stroll with her male friend on Marine Drive, Kochi. In another incident a couple was detained by the Police in Alappuzha for allegedly doing immoral activities as the woman was not wearing any accessories that could reveal that she was married. Another incident emerged where a female and her male colleague were arrested for travelling together at night. However, it was only after a local café was vandalised by a religious-political group on the ground of suspected immoral activity, that the Kiss of love campaign was born.

CONSTITUTIONAL PERSPECTIVE

It has to be realised that India is a democratic nation. So the question arises as to what extent, this sort of moral policing is correct. In this era of becoming liberal, democratic and secular, is it acceptable for people to propagate conservatism in the wake of cultural values?

The Constitution guarantees Freedom of Speech & Expression under Article 19 (1) (a), which beautifully encompasses the freedom of pursuing any activity falling within the scope of reasonable restrictions by the Government, for instance, the right to show one's feelings by way of hugging or pecking on the cheek as a gesture of affection for someone. The youth of the country is responsible enough to know of their rights and respect moral decency and therefore they do not go out of their way to cause indecency. Precisely what the political activists must keep in mind is that, the Constitutional freedom conferred upon the citizens has to be respected and simple gestures of love and affection should not come in way of Article 19 (1) (a).

It is pertinent to mention here that, the moral policing feeds on the Section 294(a) of Indian Penal Code which states that "whoever, to the annoyance of others, does any obscene act in any public place shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both. But "obscenity" is a matter of interpretation and finds no explicit mention in the Indian Penal Code. In this regard, the Supreme Court, in the case of *S. Khushboo v. Kanniammal & Anr.* [AIR 2010 SC 3196], opined that, "obscenity has to be gauged from contemporary community standards" alongwith the sobering remark that, "The notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy". In the same light, the Supreme Court has made it clear that, "no case can be made out of two people consensually hugging and/or kissing", which came in response to a petition filed by actor Richard Gere to quash the arrest warrant issued by a Jaipur Court. Also, the Delhi High Court, in the case of *A & B v. State through NCT of Delhi* [CrI M.C. 283/2009], made it clear that, kissing in public has to be seen as an expression of love and compassion, and its artistic representation as defensible. Moreover, in the case of *S. Khushboo v. Kanniammal* [AIR 2010 SC 3196] it was held that "Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy".



A feeling of respite comes from the fact that Courts have acknowledged the fact that the standards of morality have not

stayed the same, which the Supreme Court pointed out in the case of *Chandrakant Kalyandas Kakodar v. The State of Maharashtra* [AIR 1970 SC 1390], way back in 1969, that, the "standards of contemporary society in India are...fast changing", and how the Order of the Central Administrative Tribunal in the year 2012 of had put that, "They [the lower courts] should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 of IPC on today's society and its standards, and its changing view of morality". In this manner, part of the difficulty is resolved from the fact, that "a standard of a group of susceptible or sensitive persons" was not held to be the standard of the community by the Hon'ble Apex Court, in *Aveek Sarkar v. State of West Bengal* [(2014) 4 SCC 257]. This rule out the accumulation of "Kiss of Love" protestors assuming the status of a moral police and their subjective definition of morality.

The Central Administrative Tribunal (Principal Bench, New Delhi) has made a similar point. Commenting on the invocation of the Section 294 of IPC, the Hon'ble Chairman maintained: "They [the lower courts] should have been sensitive to the changing perspectives and concepts of morality to appreciate the effect of Section 294 of IPC on today's society and its standards, and its changing view of morality". This shows us that the Courts are receptive to changing circumstances and there is a wave of change that has been accepted by the legal fraternity and is about time that the rest of the political groups respect and adhere to this change in the Indian society.

Gaining inspiration from such decisions, the youth has arisen in protests at various social networking sites, like the a "Pink Chadi Campaign", a non-violent protest against conservatism and perceived violations of Indian culture by women. Many small-scaled uprisings in different parts of the country joined hands to prove to the society that, kiss was the symbol of love." In Kolkata, about 100 university students proclaimed that, "Right to love was their democratic right".

CONCLUSION

The campaigns like Kiss of Love stand for the right to love in all forms and are a symbolic resistance to the rise of moral policing. Having the slogan of "My body, my right", this protest also highlighted that health and happiness of a society depends on the freedom accorded to people to love freely, and choose their partners freely. The activists shouted slogans against Prime Minister Narendra Modi, RSS chief Mohan Bhagwat and affiliated Hindu groups seen as self-appointed moral guardians forcing traditional mores on people with a Western outlook and took the task of challenging a deeply conservative society.

India is known for its all-embracing culture and each new culture is not all negative. This aspect is inspired from the West and we must trust that our cultural values are strong enough to withstand all foreign invasions and accept only those that are good for us. Almost all problems arise from the narrow mindedness of a few people who do not accept love to be a beautiful gift rather considering it an immoral act done by two people. As long as such a mindset prevails in our nation, we need to keep holding such campaigns to make them aware that they are at fault and that they must accept change rather than fight against it.

TRIVIA

- The United Nations (UN) annually observes World Day of Social Justice on 20th February to encourage people to look at how social justice affects poverty eradication. It also focuses on the goal of achieving full employment and support for social integration.

DAYS OF MONTH

- World Cancer Day- 4 February
- International Day of Zero Tolerance to Female Genital Mutilation- 6 February
- World Valentine Day- 14 February
- World Day of Social Justice- 20 February
- International Mother Language Day- 21 February
- International Human Rights Commission Constitution Day- 21 February

UPCOMING EVENTS

- Third RGNUL Multidisciplinary Congress On "Human Rights: Afro-Asian Perspectives"- 28 February 2015
- UGC Sponsored National Conference on "Human Rights Challenges: Issues and Perspectives"- 13 March - 14 March 2015
- RGNUL's One day Seminar on Minorities and the Law in India: Issues and Challenges- 22 March 2015

DID YOU KNOW?

In 2015, the United Nations will adopt new Sustainable Development Goals (SDGs) to chart the course for the international development agenda to 2030



Another characteristic feature of the ICESCR is that it imposes on the state the duty to 'progressively realise' the rights, which means the state must make use of the maximum available resources to fulfil its obligations on a progressive rate. To bring the debate to a resolve, a three-pronged framework was devised to help identify states' obligations: to 'respect', 'protect' and 'fulfil' the ESC rights of the people.

DEVELOPMENT OF ECONOMIC, SOCIAL & CULTURAL RIGHTS

When one talks of human rights, topics like torture, arrest, liberty, fair trial are the ones that come to mind. However, there are another set of human rights which have been historically ignored, the economic, social and cultural rights, i.e. right to food, water, health, shelter. Traditionally, human rights were introduced on a global platform through the Universal Declaration of Human Rights in 1948, which embodied all types of rights, civil and political and economic social and cultural rights alike. However, due to the ideological differences in the West, the rights began to get divided into compartments, these were the civil and political rights which were embodied in the International Covenant on Civil and Political Rights (1966), and the economic, social and cultural rights embodied in the International Covenant on Economic, Social and Cultural Rights (1966). Under the two covenant frameworks, Committees are established to perform a quasi-judicial and recommendatory function for protection and promotion of these human rights. The optional protocol to ICESCR establishes the Committee on Economic, Social and Cultural Rights.

Establishing ESC rights on par with the other rights has been a long journey stretching over decades. At its inception they were criticised based on the fact whether they should be categorised as 'rights' due to their content. It was argued that these are not rights but merely goals which states wish to achieve, for example, availability of food to all was not a right, but an aim of the state having no legal connotation as a 'right.' This debate gradually subsided with the introduction of the two covenants dealing with the two sets of rights separately. However, on careful reading of the two covenants, one can still identify the stark differences in the treatment of the two documents.

Subsequent to answering this debate, the second question arose, regarding the nature of the obligations of the state. There were objections raised as to the 'practicality' of the provision of these rights in terms of the state's obligations, for example, how far does the obligation of the state extend in case of provision of right to the highest attainable standard of health? Is establishing hospitals by the government enough to fulfil the obligation of the state, or is there more? The Committee on ESCR distinguishes the most important obligations as 'core' obligations which are of immediate effect and must be fulfilled on a priority basis. Another characteristic feature of the ICESCR is that it imposes on the state the duty to 'progressively realise' the rights, which means the state must make use of the maximum available resources to fulfil its obligations on a progressive rate. To bring the debate to a resolve, a three-pronged framework was devised to help identify states' obligations: to 'respect', 'protect' and 'fulfil' the ESC rights of the people.

After establishing that these rights are justiciable and the state owes a duty to protect them, the current debate is around the nature of remedy to be awarded by a body on account of violation. The answer to this question can be interpreted by deducing and reading into the Comments given by the Committee on the Covenant. However, this debate is still ongoing and it is on the current human rights and legal fraternity to come up with a satisfactory answer to these issues.

Nevertheless, it can be said that the ESC rights are now gaining momentum and are being mainstreamed into many fields where civil and political rights could never have reached due to their 'political' nature. For example, the Millennium Development Goals and the post 2015 agenda talk about nutrition, education, health, which are all essentially ESC rights. The World Bank Group works for the aid of developing countries to provide for their infrastructure and monetary needs to establish better living conditions which are technically ESC rights. Moreover, attributing human rights liability on non-state actors like multinational corporations is also possible by the enforcement of ESC rights like healthy environment, labour rights etc. After the Vienna Declaration and Programme of Action (1995), the international community has agreed that all human rights are universal, interrelated, indivisible and interdependent; however, there is still a long gap to be filled between the human rights in practise.

+ The Article has been authored by Ms. Bhumika Modh, B.A. LL.B (Hons.) (RGNUL, Punjab) LL.M. (Economic, Social and Cultural Rights) (University of Essex)

HUMAN RIGHTS NEWS...**HUMAN RIGHTS WATCH URGES MODI, OBAMA TO DISCUSS RANGE OF COMMON ISSUES**

24 January 2015

Human Rights Watch, an influential human rights group in New York, has stepped up its lobbying in both Washington and Delhi. It urged the US to raise issues of attacks on civil society groups and insecurity of religious minorities with India, and India to raise the Senate Committee Report on Torture with the US. HRW is concerned about the stifling of civil society space in India, including the most recent instance where a Greenpeace activist was not allowed to leave the country.

HUMAN RIGHTS GROUP SLAMS INDIA'S RECORD

30 January 2015

In its 25th annual World Report on human rights, New York-headquartered Human Rights Watch has criticised the Indian government for its treatment of minorities, lack of protection for women and child rights, restrictions on free speech and it noted that there was a spike in incidents of violence against religious minorities in 2013 in the run-up to the national elections where 133 people were killed and 2,269 injured in 823 incidents. It stated that there was insufficient support extended for human rights via New Delhi's foreign policy engagements.

HUMAN RIGHTS GROUP IN KASHMIR CRITICISES GOVERNMENT FOR NOT INITIATING PROBE OVER MASS GRAVES

4 February 2015

As the Manipur state government ordered an investigation after finding human skulls inside a school premise that used to house the security forces, a human rights group in Kashmir has lashed out on the state and central governments for not initiating a similar probe over the mass grave found in the Valley. The group highlighted the issue of unmarked mass graves in two successive reports in 2008 and 2009, which, even though received international attention and made the Human Rights Commissions to issue statements, failed to do anything concrete.

CEASE UNHRC MEMBERSHIP TO INDIA: NAQASH URGES UN

23 February 2015

On the 24th anniversary of infamous Kunan-Poshpora mass rape, Senior Member Hurriyat Conference Jammu Kashmir (HCJK) and chairman Islamic Political Party-JK Muhammad Yousuf Naqash while attending the party at party head office

has urged United Nations to cease United Nations Human Rights Council (UNHRC) membership to India till it stop committing heinous crimes in Kashmir.

In a statement issued here, Naqash said, that "Indian troops involved in mass rape of Kashmiri women in Kunan Poshpora and thousands other such brutal acts deserved severe punishment." However, he deplored that instead of being punished, they had been enjoying freedom and getting rewards from the Indian government.

IPPJK chairman maintained that the Kashmiri people would never get justice from India and its judiciary. He said that the supreme sacrifices of Kashmiri people would not go waste and they would achieve freedom from Indian bondage sooner.

KERALA POLICE TARGETS SOCIAL WORKERS, HUMAN RIGHTS ACTIVISTS FOR MAOIST LINK

4 February 2015

The Kerala police are targeting social workers, human rights activists and ultra Left sympathizers for their role in suspected Maoist attacks in last few days.

Kochi police arrested civil rights activists Advocate Thushar Nirmal Sarathy and Jaison Cooper, an employee with state insurance department, allegedly in connection with the Maoist attack on NHAI project office in Kochi. Both were charged under section 13 B of the Unlawful Activities Prevention Act (UAPA).

Besides, there have been several incidents of raids at the houses of human rights activists and leaders of ultra Left sympathizers in Kochi and Wayanad.

AROUND THE GLOBE...**SOUTH SUDAN: CHILD SOLDIERS RELEASED FOLLOWING DEAL WITH STATE AND REBELS**

27 January 2015

Three thousand South Sudanese children who were recruited as soldiers during the violence that has beset the young country in recent years, are to hand over their guns and return home as part of one of the largest ever demobilisations of children. Some of the children, who are aged between 11 and 17 years of age, have been fighting for four years and many have never been to school. On January 27, 2015, 280 boys were released from the ranks of the South Sudan Democratic Army (SSDA) Cobra Faction and handed over to the UN children's agency, UNICEF, in the village of Gumuruk in Jonglei state, eastern South Sudan.

The rebel faction, who is led by David Yau Yau and based on the Murle ethnic group, has been in revolt against the

government of president Salva Kiir since 2010. In a ceremony overseen by the South Sudan National Disarmament, Demobilisation And Reintegration Commission and the SSDA, and supported by UNICEF, the boys gave up their weapons and uniforms. The rest of the children will be released in batches over the next few weeks.

HUMAN RIGHTS INVESTIGATOR STEPS DOWN OVER ALLEGED ISRAEL BIAS

3 February 2015

Canadian law professor and genocide expert William Schabas told Israel Radio that he was resigning as head of a United Nations commission investigating alleged human rights violations during last summer's war in Gaza because he "was becoming an obstacle and a distraction." Israel had strongly criticized the selection of Schabas to head the three-member team, claiming that both he and the UN Human Rights Council, which set up the commission, were biased against Israel.

Schabas had been a vocal critic of Israel and had offered his services to the Palestine Liberation Organization. After his appointment last year he assured his critics he would not allow his previous comments to influence investigations. There has been shifting of blame during this whole investigation. Throughout the duration of the inquiry Israel has refused to cooperate, calling the investigation "hostile" to Israel and having nothing to do with human rights. Schabas' resignation comes just under a week after the UN High Commissioner for Human Rights accused both Israel and Palestine of failing to fully investigate apparent human rights violations committed during the war.

BANGLADESH MUST END DEADLY CYCLE OF CRIMES: HUMAN RIGHTS WATCH

7 February 2015

With no end in sight to politically motivated violence and other abuses in Bangladesh, state authorities need to ensure their response respects the rights of all and avoids arbitrary use of force, arrests, and disappearances, Human Rights Watch said on Saturday.

Over the past month, nearly 60 people have been killed, hundreds injured, and thousands arrested across the country. All political leaders should give clear statements that their supporters should not use unlawful violence.

The violence and clampdown by government security forces began in early January 2015, with protests to mark one year since the controversial 2014 elections which saw the ruling Awami League party win a landslide victory after an opposition boycott of the polls. The government's tactics to contain the violence, echo previous violations including arbitrary arrests and killings, and enforced disappearances.

ISIS RELEASES VIDEO SHOWING BEHEADING OF 21 EGYPTIAN COPTIC CHRISTIANS HOSTAGES

16 February 2015

A video purporting to show the mass beheading of Coptic Christian hostages has been released by militants in Libya affiliated with the Islamic State group. The killings raise the possibility that the Islamic militant group, which controls about a third of Syria and Iraq in a self-declared caliphate, has established a direct affiliate less than 500 miles from the southern tip of Italy. One of the militants in the video makes direct reference to that possibility, saying the group now plans to "conquer Rome." The militants had been holding 21 Egyptian Coptic Christians hostage for weeks, all laborers rounded up from the city of Sirte in December and January. It was not clear from the video whether all 21 hostages were killed. It was one of the first such beheading videos from an Islamic State group affiliate to come from outside the group's core territory in Syria and Iraq. The Egyptian government and the Coptic Church, which is based in Egypt, both declared it authentic. ISIS are murderers and rapists, have to be condemned: Asaduddin Owaisi.

CRIMES AGAINST HUMANITY, BUT NOT GENOCIDE, IN NORTH KOREA – UN COMMISSION HEAD

17 February 2015

The head of a UN inquiry into rights violations in North Korea said on February 17 that Pyongyang's actions, while constituting a crime against humanity, fell short of genocide. Michael Kirby, the Australian former judge who headed the UN Commission of Inquiry into North Korea's human rights violations that concluded last year, reiterated the panel's finding that "crimes against humanity have been committed" by the North Korean government in its mistreatment of thousands of prison detainees. Kirby has stressed this to be a serious finding and said that the UN human rights body has made North Korea's leader aware of their findings. The UN inquiry, which wrapped up last year, found that North Korea's human rights violations were "without parallel in the contemporary world." The chairman said he was disappointed that the panel was constrained by a "narrow definition" of what constitutes genocide as they drafted their findings. According to him, the definition is of 1948, which was not wide enough to find genocide in the current scenario. The panel nevertheless urged the UN Security Council to refer Pyongyang to the International Criminal Court (ICC), and made its finding known to North Korean leader Kim Jong-Un.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of every month and it can be mailed to us at casahr@rgnul.ac.in.

IN RE: INDIAN WOMAN SAYS GANG- RAPED ON ORDERS OF VILLAGE COURT

The real remedy for breaking Caste is inter-marriage. Nothing else will serve as the solvent of Caste.

B.R Ambedkar

Facts: On 23rd January 2014, a news item was published in the Business and Financial News bringing to light the orders issued by community panchayat of Subalpur Village, District Birbhum, West Bengal to gang rape a 20 year old woman as punishment for having relationship with a man from a different community. Hon'ble Apex court of the country by order dated 24th January 2014 took suo moto action and directed the District Judge to inspect and submit a report. The District Judge along with CJM submitted a Report after inspection. However, the report failed to provide information regarding steps taken by the police against the persons concerned and hence chief secretary of West Bengal was directed to submit a detailed report.

Issues Raised: On perusing and scrutinizing the submissions, the following major issues were taken into consideration by the Hon'ble Court in this *suo moto* petition:

- a) Issues concerning the investigation.
- b) Prevention of recurring of such crime
- c) Victim compensation; and invited this Court to consider the same.

Judgment: Hon'ble Supreme Court directed the West Bengal government to pay Rs. 5 lakh compensation in addition to already sanctioned Rs. 50,000 to the gang rape victim within one month. Further court also touched following aspects in its decision:

- State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens.
- All hospitals are statutorily obligated to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC.
- State machinery and police should work in harmony with each other to safeguard the rights of women in our country as such crimes could be certainly prevented with a better organizational structure of Police.

Analysis: The case in hand depicts two crucial problems which our society is facing, on one hand inter caste marriage are still considered unacceptable by society. In India, marriage is not considered as a relationship between two couples loving each other but much more emphasis is put on their caste and this narrow mind-set of people is dragging back our rapidly developing country. On the other hand, violence against women is a repetitive crime across the globe and India is no exception. This case is a harsh instance of the situation of women in our country which is moving in the phase of rapid modernization and brings into light, the narrow ideology of Indian society. Code of Criminal Procedure was amended on 3rd February 2013 to effectively safeguard interest of women in such circumstances, taking into view serious increase of such crimes. Such crimes are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law.

The Hon'ble Court took into consideration the recurring nature of such crimes and condemned them in ensuing manner. Further court emphasized on the role of police officials in effective implementation of provisions of existing law and to be vigilant in protecting rights of victims of crimes. However, the judgments failed to consider several important aspects and have some lacunas.

The Court did not consider that there is need for legislation to protect the liberty of the couple marrying or intending to marry and to keep a check on unjustified interference by the caste assemblies hampering peaceful enjoyment of right to life and liberty by individuals. It is to be considered necessary to have a bar against the assembly for the purpose of not approving such marriage and the conduct of the young couple. The members gathering for such purpose need to be treated as members of unlawful assembly for which a mandatory minimum punishment has been prescribed. Further the Hon'ble court though discussed role of state police machinery but failed to issue any guidelines or to take any strict action in this regard.

At the end it is efficacious to mention that the court has awarded compensation to victim but mere compensation is not the adequate relief for the victims of such heinous crimes. It is the duty of the State to rehabilitate them and idea of compulsory rehabilitation should be taken into consideration in the cases involving such heinous crime and bring their life back to normalcy.

⁺In Re: Indian Woman Says Gang Raped on Orders of Village Court,(2014) 4 SCC 78.