

The decision to hold a plebiscite in Kashmir is based on the United Nations Resolution No. 47/1948 upon the dispute being submitted by the then Indian Prime Minister Pt. JawaharLal Nehru to the United Nations during the 1948 Indo – Pak war. The said Resolution stipulates that there must be demilitarization of the Kashmir Valley on the part of Pakistan and in the presence of minimum forces of India a plebiscite must be held. However, Pakistan dispute arose as to the procedure which has to be adopted for the fulfilment of the Resolution. Pakistan refused to withdraw its troops from the area of Azad Kashmir and Northern areas of Gilgit and Balitistan constituting approximately 37% of the State. At the same time, India also refused to withdraw its troops and hold plebiscite.

Though the Kashmir conflict is largely an issue of territorial claim of India and Pakistan over the Kashmir valley, a third front of separatist leaders emerged which has demanded an independent dominion of Kashmir not being part of either India or Pakistan. The claim of separatist leaders is based on the right of self-determination, a right well settled and recognized under the International Law. Recently, Sudan was bifurcated into North Sudan and South Sudan after the people decided to vote exercising their right to self-determination.

Historically, the princely State of Jammu and Kashmir was ruled by a Hindu ruler though the majority of population being Muslim. As per the provisions of the Indian Independence Act, 1947 the state of Kashmir was free to join either the dominion of India or dominion of Pakistan or even form a separate sovereign independent state. However, in the wake of Pakistani aggression in 1947, Kashmir Maharaja Hari Singh signed the instrument of accession on 31 October 1947 and agreed to join the Union of India.

In the aftermath of the United Nations Resolution the United Nations Commission for India and Pakistan (UNCIP) was set up by the United Nations Security Council for the proper implementation of the mandate of the Resolution. However, due to continued violence at the border and failure to reach any amicable conclusion the UNCIP was widened to include observers. The Commission in 1949 arrived in India and was renamed as the United Nations Military Observers Group in India and Pakistan (UNMOGIP). The United Nations vide Resolution 91/ 1951 has declared that UNMOGIP shall look after the adherence with cease fire commitments by both the nations. The first team of unarmed military observers, who eventually formed the nucleus of the UNMOGIP, arrived in the mission area in January 1949 to supervise, in the State of Jammu and Kashmir, the ceasefire between India and Pakistan; and to assist the Military Adviser to the United Nations Commission for India and Pakistan (UNCIP), established in 1948 by Security Council resolutions 39/1948 and 47/1948.

Further, the United Nations Security Council also adopted Resolution 307/1971 which demanded that ceasefire shall continue to remain in effect until troops are withdrawn from both sides of LOC. Following the India-Pakistan hostilities at the end of 1971 and a subsequent ceasefire agreement of 17

December of that year, the tasks of UNMOGIP have been to observe, to the extent possible, developments pertaining to the strict observance of the ceasefire of 17 December 1971 and to report thereon to the Secretary-General. Given the disagreement between India and Pakistan about UNMOGIP's mandate and functions, the Secretary-General's position has been that UNMOGIP can only be terminated by a decision of the Security Council. In the absence of such a decision, UNMOGIP has been maintained with those same arrangements since then.

The Kashmir valley has seen a lot of violence and bloodshed. Due to precarious situation and conflicting position of the state, a special status has been given to the state of Jammu and Kashmir under Article 370 of the Constitution of India. The border issue has seen three wars between India and Pakistan. Coupled with this has been the insurgency by terrorist organizations such as Al –Qaeda and Lashkar-e-taiba and violence and strikes by separatist leaders. The valley saw worst violence in 1990s when every measure of the Indian Government was reversed causing riots and bloodshed and protest against the presence of Indian Army and its powers under the Armed Forces (Special Powers) Act, 1958. (AFSPA)

Off late peace has returned to valley, with free and fair elections being conducted in the Indian occupied part of Jammu and Kashmir which also saw an unprecedented voter turnout. Both India and Pakistan have agreed to solve the issues by way of dialogue and adoption of amicable means. However, there is still a long way to go.

The dispute was resurfaced between India and Pakistan due to unprovoked firing by Pakistan Rangers at LOC. Further, the Prime Ministers of Pakistan and India have accused each other for failure in continuance of talks between the two. There cannot be a debate on the issue that the Kashmir conflict is not a multidimensional dispute between India and Pakistan and with China claiming parts of Ladakh and Axai Chin it has become even more complex.

Irrespective of the dispute, one question that always lingers is of the rights of the Kashmiri people. The United Kingdom recognized the rights of the Scottish people. The referendum was recognition of the right of self-determination, a right of expression of their will to continue their accord with the Great Britain. On the other hand, there have been mass violations of rights of the Kashmiri people over the years. The cases of disappearances on mere suspicion of being militant, torture and offences committed by the armed personnel against the civilians cannot be repatriated by either of the Government. There is no account of human rights violation that has occurred over the period in the valley and neither any effort is made to rehabilitate Kashmiri Pandits who were forced out of the valley back into the valley. In the wake of renewed debate on the issue of revocation of Article 370 conundrum still remains that whether the right of Kashmiri people of self-determination will ever be acknowledged?

HUMAN RIGHTS NEWS.....**11 VILLAGERS JUMP IN CANAL OVER 22 YEAR LONG LAND RIGHTS FIGHT**

7 October 2014

11 residents of Nasvadi, Chhota Udepur, Gujarat jumped into Narmada main canal to protest the government's apathy towards the people affected by the construction of the Sardar Sarovar Dam while 3 others were arrested just before attempting the same. The village lands were acquired in early 1990s and the government claims that the residents were rehabilitated in 1992. In reality, however, only 42 out of around 500 families from the village have got their lands. The villages have been struggling for 22 years against clear non-compliance regarding the Narmada Water Dispute Tribunal Award 1979, the Rehabilitation policy of Government of Gujarat, and orders of the Supreme Court of India all of which prohibits any evictions without completely rehabilitating the affected people.

The villagers kept approaching the Grievances Redressal Cell installed as a permanent in-house committee within the Sardar Sarovar Punarvasavat Agency by the Gujarat Rehabilitation Authority but the cell has done little other than forwarding the grievances to the Sardar Sarovar Nigam. This has led to many people affected by the project to be denied of their legitimate rights of rehabilitation as mandated by the Supreme Court.

NHRC ISSUES NOTICE TO DM AND SP, KANPUR DEHAT, UP IN A CASE OF PANCHAYAT ORDERING GIRLS NOT TO GO TO SCHOOL AND COLLEGES TO AVOID EVE-TEASING

26 September 2014

NHRC has taken *suo motu* cognizance of a media report that a Panchayat in Kanpur Dehat ordered around 150 girls in Tyonga Village to stop going to schools and colleges to save them from harassment. According to the report, the diktat from the Panchayat came on 19th September, 2014, after some local goons harassed some girls while they were returning from a coaching institute. When the girls resisted and raised an alarm, the goons not only threatened them with dire consequences but also thrashed a victim's sibling. Although, the parents had allegedly informed the police about the harassment, but no action was taken. The residents, thereafter, staged a protest in front of the local police station.

The Commission has observed that the contents of the press report, if true, raise a serious issue of violation of human rights of the victim girl students. Accordingly, notices have been issued to the District Magistrate and Senior Superintendent of Police, Kanpur Dehat, Uttar Pradesh calling for reports within two weeks.

FAILING TO MEET DEMAND OF BRIBE, MAHOBA JAILOR SEVERELY BEATS AN UNDER TRIAL PRISONER: NHRC ISSUE NOTICES TO SP, MAHOBA AND DG PRISONS, U.P.

26 September 2014

NHRC has taken *suo motu* cognizance of a media report that a Jailor in Mahoba, Uttar Pradesh stamped an under trial prisoner, released by the court on bail, with a hot iron rod and brutally beat him with a whip before throwing him out of the jail in a semi-conscious state. According to the media report, the reason behind the Jailor's ire was that the under trial prisoner, instead of paying a bribe of Rs.5 thousand to him on the occasion of his release on bail, asked him to deduct the amount from his earnings of Rs.10 thousand in the jail by labour.

The Commission has observed that the contents of the press report, if true, raise a serious issue of violation of human rights of the under trial prisoner. Accordingly, notices have been issued to the Director General of Prisons, Uttar Pradesh and Superintendent of Police, Mahoba calling for reports in the matter within two weeks.

Reportedly, the court had ordered release of the victim Halke, Son of Bharati Lal Busore, a Dalit and an accused in a murder case, on bail on the 20 September, 2014. Severely injured Halke was admitted in the District Hospital by some other released prisoners. Reportedly, the Jailor has been accused of other such incidents in the past.

AROUND THE GLOBE...**“BECAUSE I AM OROMO” – SWEEPING REPRESSION IN THE OROMIA REGION OF ETHIOPIA**

A report released by Amnesty International exposes that thousands of members of Ethiopia's largest ethnic group, the Oromo, are being ruthlessly targeted by the state based solely on their perceived opposition to the government.

It details how Oromos are subjected to arbitrary arrest, prolonged detention without charge, enforced disappearances, torture and even unlawful state killings - all as part of the government's "incessant attempts to crush dissent". The testimonies taken reveal how the Ethiopian government's general hostility to dissent has led to widespread human rights violations in Oromia, where the authorities anticipate opposition.

At least 5,000 ethnic Oromos have been arrested between 2011 and 2014 based on their actual or suspected peaceful opposition to the government. The majority of those targeted are accused of supporting the Oromo Liberation Front (OLF) - the armed group in the region.

The report also suggests that there is an urgent need for intervention by regional and international human rights bodies to conduct independent investigations into these allegations of human rights violations in Oromia.

UN AND AMNESTY INTERNATIONAL CONDEMNS AFGHANISTAN ON EXECUTING GANG RAPISTS

14 October 2014

The Human Rights Group, Amnesty International termed the executions by Afghanistan, of a gang of five men in a rape case that mustered national outrage, as a “grave miscarriage of justice”. In late August, a group of men stopped a family convoy of four cars at night on Qargha-Paghman road, returning from a wedding in Paghman district. They beat the men and kidnapped four women, whom they repeatedly raped. While the five perpetrators were hanged, two other assailants received 20 years in prison, and the remaining three, still go absconding; out of which one is suspected to have left the country, said the Kabul police.

David Griffiths, Amnesty International’s Asia-Pacific deputy director, said in a statement that there’s “no question that this was an appalling crime and the outcry and anger this case has caused is of course understandable...But the death penalty is not justice – it only amounts to short-term revenge.” It’s deeply disappointing that new President Ashraf Ghani has allowed the executions to go ahead and regrettably failed his first test on upholding human rights and the rule of law.

While the execution is criticised by UN, the conundrum remains as to whether the perpetrators of as heinous a crime as outraging the modesty of women by raping them, be commuted to lighter punishments or whether they should be punished gravely so that the society can draw out precedents.

ECHR KEEN ON BESLAN MOTHERS CASE

14 October 2014

The Russian Deputy Justice Minister Georgy Matyushkin emphasised on the European Court of Human Rights to unequivocally establish the right balance between public and individual interests in the Beslan Mothers’ case concerning the 2004 school hostage crisis in Beslan, North Ossetia.

The Beslan school hostage crisis, popular as the Beslan school siege or Beslan massacre, started on September 1, 2004 which lasted for three days and involved the capture of over 1,000 people as hostages (including 777 children), ending with the death of 334 people. The crisis commenced in the unfortunate hour when a group of armed Islamic terrorists occupied School Number One (SNO) in the town of Beslan, North Ossetia. On the third day of the standoff, Russian security forces entered the building after several explosions, using other heavy weapons, resulting into the death of at least 334 hostages, among which,

186 were children. Moreover, a significant number of people were injured.

The Relatives of children killed in the 2004 Beslan attack had moved the European Court of Human Rights by way of an application thereby accusing the government of failing to properly investigate the massacre that killed 334 people and of violating the Human Rights treaties on account of denying victims' relatives the right to an objective investigation of the case.

On holding an open hearing of the Beslan Mothers Case, the European Court of Human Rights witnessed the challenge to the acceptability of the several complaint pertaining to the case, raised by the Russian Side. The challenge was overturned by the allegations made by the claimants against the Russian authorities as to having violated their right to life and the right to a fair investigation.

Also, Matyushkin clarified that, “Regrettably, we have enough grounds to assume that many complaints did not meet the acceptability criterion mentioned in article 35 of the European Convention of Human Rights, namely the internal means of protection and the observation of a six-month term,” and called on the ECHR judges to consistently study the complaints and separate the cases, which did not meet the acceptability criterion. If the same circumstances prevail, then the Court is expected to announce the verdict in the next few months.

INDIA RE-ELECTED TO UN HUMAN RIGHTS COUNCIL

23 October 2014

India has been elected to the UN Human Rights Council for the second time running, giving it a place in the global body until 2017. India joined Indonesia, Qatar and Bangladesh to get back into the council. Ashok Mukerji, India's permanent representative in the UN said "It is a significant victory for India because the Human Rights Council is second-most in importance after the security council". India, had given a human rights pledge to the UN before the elections, which includes within the definition of human rights, rights for women, transparent and inclusive development, right to information, etc.

The HRC is increasingly getting involved in existing armed conflict situations, for instance in Syria, Iraq etc. Since the very nature of armed conflict presupposes gross violations of human rights, many countries have found that investigating human rights violations in these situations is redundant. In fact, in her last statement to the UN Security Council before she stepped down as head of the HRC, Navi Pillay chastised the UN's top body for not doing its job. Some countries are also getting into a defensive mode and finding no incentive to correct their human rights deficiencies which has casted serious doubts on the council's ability to bring change largely by gentle persuasion and pressure.

DELHI DOMESTIC WORKING WOMEN'S FORUM

V.

UNION OF INDIA & ORS.**BECAUSE RAPE
IS NEVER THE
VICTIM'S FAULT.**

**Not if she was drunk. Not if she was naked.
Not if she was wearing a miniskirt or a veil. Not if
she was a sex worker. Not if the authorities didn't
believe her. Not if she was queer. Not if she was a
woman of colour. Not if she was seeking asylum.
Not if she was your partner. Not if she was
disabled. Not if the victim was male.**

Facts: The Delhi Domestic Working Women's Forum was pursuing a case in which six girls - belonging to a tribal community - travelling by train from Ranchi to New Delhi were molested and raped by a group of army men in their compartment. Though they were beaten and threatened by the culprits, the girls did register a First Information Report [FIR]. However, because the investigations and trial dragged on for over six months, the girls who worked in New Delhi as domestic help were not able to actively assist in the prosecution of the case, which was being carried out in Aligarh, Uttar Pradesh.

Concerned over unnecessary delays, particularly in the investigation and trial of rape cases, the Forum petitioned the Supreme Court to frame guidelines for ensuring a speedy trial so that rape victims are not needlessly harassed and allowed to get on with their lives.

Judgment: The Court asserted that speedy trial is one of the essential requisites of law. In rape cases, the course of justice cannot be frustrated by prolonged investigations. The Court held that it is important that investigations and trials should be carried out expeditiously; otherwise the guarantee of equal protection of law under Article 14 and the guarantee of life and personal security under Article 21 of the Constitution are meaningless. Supreme Court laid down specific guidelines on how to deal with rape victims, which are given below:

- i. As soon as a rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before

any questions are asked of her. The fact that she was informed of this right must be mentioned in the police report.

- ii. The police should make arrangements to provide the victim with a lawyer if she does not have access to one.
- iii. Every police station must maintain a list of lawyers capable enough to explain the nature of proceedings to the victim; prepare her for the case; assist her in court and in the police station; and provide guidance on agencies and organizations that help in counseling and rehabilitation of rape victims.
- iv. The lawyer so chosen by the police to assist the victim must be approved by the court. However, in order to ensure victims are questioned without undue delay, the lawyer may be authorised to act at the police station before permission of the court is taken.
- v. In all rape trials, anonymity of the victim must be maintained.

Analysis: Noting the seriousness of the crime, the Supreme Court said that rape shakes the very foundations of victims' lives. For many, its effects are long-term and so sustained that they face difficulty in having personal relationships; their behavior and values are altered; and they suffer from constant fear and anxiety.

In addition to the trauma of rape itself, victims have to suffer further agony during legal proceedings as complaints are handled roughly and not given the attention that they deserve. Victims are more often than not humiliated by the police and the experience of giving evidence in court is so distressing, that it puts severe psychological stress on them.

Rape cases require extra sensitivity from the police. Care must be taken to see that the victim is not made to feel small or uncomfortable and her statement is recorded by a woman. Unnecessary references and passing of derogatory remarks that the victim contributed to the crime is not permitted. A rape is a rape no matter what the reputation or profession of the victim is. The law favours protection of the victim. It lays down that inquiry and trial of rape cases should be held in camera and that her identity should not be disclosed to the media.

⁺ Delhi Domestic Working Women's Forum v. Union of India (1995) 1 SCC 14.

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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 casih@rgnul.ac.in.

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