

# THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

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*"To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If non-violence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?"*

*-Mahatma Gandhi*

## **CHOKING THE VOICE OF INDIA'S DAUGHTER - IS THE BLANKET BAN JUSTIFIED?**

British film-maker Leslee Udwin's documentary film 'India's Daughter' has caused uproar in India for showing the interview of one of convicts of the December 16, 2012 gang rape case, Mukesh Singh, which led to the subsequent banning of the film by the Indian Government. India's Daughter tells the story of the horrific Delhi gang rape of December, 2012, from the perspective of the convicts and the victim's parents. The documentary contains condemnable and outrageous comments of the convict Mukesh Singh and interviews with people such as the victim's parents who want their daughter's story to be told. Gopal Subramaniam and Leila Seth, who were part of the Committee that submitted legal reports that formed the basis of the rape laws that followed the incident, were also interviewed.

Owing to the outrage, the Delhi Police filed a First Information Report (FIR) on 3<sup>rd</sup> March against the filmmakers under Sections 505 (Statements conducing to public mischief), 504 (Intentional insult with intent to provoke breach of the peace), 505(1)(b) (With intent to cause, or which is likely to cause, fear or alarm to the public), 509 (Word, gesture or act intended to insult the modesty of a woman) of the Indian Penal Code and Section 66A of the Information Technology Act, 2000 (Punishment for sending offensive messages through communication service)<sup>†</sup>. The Deputy Commissioner of Police (Economic Offences Wing) of New Delhi and the Indian Government blocked the broadcast in India by obtaining a court order on 4<sup>th</sup> March 2015 and BBC agreed to comply with the order in India. However, in the United Kingdom the BBC broadcasted the film on the evening of 4<sup>th</sup> March, 2015. The film was also uploaded to YouTube, and soon went viral with several shares on the social media. On 5<sup>th</sup> March, the Indian government requested YouTube that the video be removed and YouTube complied with the same on that very day.

With the parliamentarians expressing outrage and the Information and Broadcasting Ministry issuing an advisory to television channels to not broadcast it, it is pertinent, at this point, to ask what a ban can achieve in this case.

Firstly, a ban ensures that a film which may have had a limited audience becomes a worldwide cause célèbre for women's rights and freedom of speech. In the early 1980's, Saudi Arabia invited similar international criticism, when it sought to interfere with the telecast of the docudrama 'Death of a Princess', which dealt with the circumstances surrounding the execution of Princess Misha'al bint Fahd of the Saudi ruling family, who, along with her lover, was possibly executed at the instance of her grandfather, for eloping with a commoner.

## COVER STORY

Secondly, the Internet has made telecast bans largely redundant. Banning the broadcast results that the video is either downloaded via torrents or viewed online. What a telecast ban however achieves is that it prevents the target audience of ordinary people from viewing the film. Those without access to the Internet, the technologically challenged, the housewife, those with limited incomes who are most vulnerable to rape and rape threats, will in all probability miss out on the film. The ban, in short, will be ineffective where it is needed and will become an impediment to education of those most likely to benefit from its message.

Thirdly, a ban on telecast is just not legally justifiable after the Supreme Court's judgment of 1994 in *Auto Shankar's case*[(1994) 6 SCC 632]. A temporary stay on telecast may be obtained, but in the final judgment such a ban is unlikely to be upheld. In *R. Rajagopal v. State of Tamil Nadu*[(1994) 6 SCC 632], the Supreme Court held that any publication becomes "unobjectionable" if it was based upon public records, including court records. "Once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the press and media among others," the judgment read.

The government's decision to ban the BBC documentary 'India's Daughter' based on the December 16, 2012 gang rape in Delhi, both in the media and on the Internet, and to file an FIR against unknown persons may not be based on sound principles of law. The ban on the impugned documentary which is based on an injunction order is susceptible to challenge on the ground of violation of right to know, a right which emanates from Article 21 of the Constitution.

The Editors Guild of India also urged the Government to revoke the ban on the film 'India's Daughter' to enable people to view "what is a positive and powerful documentary touching on the freedom, dignity and safety" of women. In a statement, it said, "To raise the issue of *sub judice* now at the stage of final appeal in the Supreme Court and seek to still discussion is absurd. Judges, particularly in the Supreme Court, are by training and temperament immune to the happenings in the public sphere outside the court, and it is an insult to the Supreme Court to suggest that the airing of the convict's perverted views would tend to interfere with the course of justice."

## CHOKING THE VOICE OF INDIA'S DAUGHTER

Pointing out that the Supreme Court itself has advocated "the broadest freedom to express even the most unacceptable of views", the Guild said the message that emerges from the documentary is such that it would make people re-examine their own attitudes and the attitudes of people around them.

The government's action in getting a court order restraining the telecast is a knee-jerk response to the outrage voiced by sections of society against what they call giving undue publicity to a convict's views. The work has been banned from public viewing for the sole reason that it contains some repugnant comments by the convict, blaming the victim for the rape and murder. A moot question is whether it is unethical to disseminate the views of a convict, even those as abhorrent as those of Mukesh Singh; and whether banning the reporting of such views is the right response. True, it will be morally repulsive and abominable to hear the convict justifying his horrific crime by blaming the victim and saying she could have survived had she not resisted rape. But it is equally true that there is some public interest in recording such views and airing them. The objective of the documentary is not to glorify the criminal, but to expose him and his mindset to society. Showing the documentary is all the more important now. "A loosely worded law against rape was hastily passed after the gang rape, but crime against women has increased by 27 per cent after that," said Rajya Sabha member and senior lawyer K.T.S Tulsi.

The documentary, in Ms. Udwin's words, is "an impassioned plea for gender equality". To presume that it will only strengthen the rapist's mind-set may derail any effort to create a sensitive record of what the country needs — a conscious transition from a culture of tolerance towards gender violence to a progressive socio-legal structure that combats the phenomenon. The scope for genuine transformation lies in the larger domain — the attitude and approach of society at large.

Documentaries such as this may help to advance this purpose, and even if they fail to do so, the solution is not to ban such efforts, for they may help confront the culture of rape and the widely seen phenomenon of public figures, officials and politicians conforming to the patriarchal mind-set that is at the core of gender violence in India. The documentary should be seen as holding a mirror to a society that is far from being sensitive to gender issues.

+ It is pertinent to note that hon'ble Supreme Court in **Shreya Singhal v. Union of India W.P. (Cri.) No. 167/2012** has declared Section 66A of the Information Technology Act, 2000 as constitutionally invalid.

TRIVIA

- The United Nations' (UN) annually observes International Women's Day on 8 March to celebrate the achievements of women while calling for greater equality.
- 2015 marks the 10<sup>th</sup> anniversary of the World Down Syndrome Day which is observed to advocate for the rights, inclusion and well being of people with Down syndrome.

DAYS OF MONTH

- Zero Discrimination Day- 1 March
- International Women's Day- 8 March
- International Day for the Elimination of Racial Discrimination- 21 March
- World Down Syndrome Day- 21 March

UPCOMING EVENTS

- National Seminar on Right to Service and Good Governance: Perception, Perspective and Promotion- 18 April 2015

*DID YOU KNOW?*

- The first International Women's Day was celebrated in 1911.
- The theme for Zero Discrimination Day 2015 is *Open Up, Reach Out*, which encourages all members of the international community to unite under the banner of diversity and celebrate each other's difference in an authoritative rejection of discrimination in all its forms.



*“Not all men (and especially the wisest) share the opinion that it is bad for women to be educated. But it is very true that many foolish men have claimed this because it displeased them that women knew more than they did.”*

- Christine de Pizan

**SOCIO-LEGAL ISSUES RELATED TO WOMEN**

The value of a civilization can be judged from the position that it gives to women. Of the several factors that justify the greatness of India's ancient culture, one of the greatest is the stature ascribed to women. According to ancient Hindu scriptures no religious rite can be performed with perfection by a man without the participation of his wife.

But during the course of time, women lost their stature due to social, economic and political factors. They were victims of widespread illiteracy, forced child marriage, female infanticide, violence and various social ill practices such as Sati, leading the complete denial of individuality. At the socio-political plain, women suffered from rigid caste hierarchy and untouchability. With the advent of elementary education and western influence over the society the conditions of the women did improve. However, the old malpractices paved a way for new issues such as, sexual harassment at work place, eve teasing, abduction and female foeticide which has given an inclination of the horrible behaviour patterns prevailing in the society. Majority of women live a life of dependency that does not possess any self-identity. Therefore, the struggle for equality, justice and parity between women and men continues even in the modern era.

As a result of a vibrant women's movement in the last 50 years, the policies to advance human rights for women in India have become substantial and forward-thinking, such as the 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Constitution that provide 33 1/3% reservations for women contesting elections at the Panchayat level. Moreover, the National Commission for Women has been instrumental in creating legislative changes, and has set up Complaint and Investigate Cells at the state level. The Grievance Cells receive complaints of gender-based violence and are mandated to investigate, provide referrals and counselling, and ultimately report on such cases. There has been a continuous demand for better laws, provisions, and accountability for implementation. In the aftermath of the heinous Delhi Gang Rape Case, the Parliament amended the Indian Penal Code, 1860 to give Indian women a new Anti-Rape Law.

To prohibit domestic harassment of women and dignify women within the household, the Parliament enacted The Domestic Violence Act, 2005 providing protection from violence in the household from not only male perpetrators, but also female perpetrators like mothers-in-law and other female members in extended families.

All the aforesaid legislative and administrative changes have been facilitated by the Constitution of India, 1950 which guarantees a whole set of provisions to the women kind. For instance, the Constitution allows special provisions to be made by the State in favour of women and children under Article 15(3). Under the chapter of Fundamental Duties it has been provided that every citizen shall renounce practices derogatory to the dignity of women. The Directive Principles of State Policy which provide guidelines for better governance enshrine principles like equal pay for equal work and state that provisions should be made by the State for securing just and humane conditions of work and for maternity relief.

Over the years women have taken great strides in many areas with notable progress in reducing gender gaps. Yet realities such as 11,332 women and girls getting trafficked every year, and increased practice of dowry, rape and sexual harassment hit hard against all the development that has taken place. Thus, if on one hand women are climbing the ladder of success, on the other hand she is mutely suffering the violence afflicted on her by her own family members. As compared to past, women in modern times have achieved a lot but in reality they still have to travel a long way. Women may have left the secured domains of their home, but a harsh, cruel and exploitative world awaits them, where women have to prove their talent against the world who see them as merely vassals of producing children. The Indian women has to make her way through all the socialized prejudices against her, and the men have to allow and accept the women to be equal participants in the country's way forward.

***HUMAN RIGHTS NEWS...*****SCRUTINISING 'HUMAN RIGHTS' ORGANISATIONS: MADRAS HC**

10 March 2015

The Madras High Court raised few questions, when being aggravated at reports that private associations bearing the word 'human rights' were holding kangaroo courts and manipulating public authorities in Tamil Nadu.

The government in 2010 amended the Tamil Nadu Societies Registration (Amendment) Act, 2010 and directed all associations having the term 'human rights' in their official names to rework it within six months. However, the implementation of the aforementioned Act took shape when the matter was taken to the High Court.

While passing orders on a writ petition that was filed by a private body, Justice N.Kirubakaran issued eight queries and asked the DGP to submit replies by March 16, 2015.

The point that the court wanted to be included: whether or not the human rights organisations are registered in accordance with law; what is the proficiency of those running these forums; are there any cases undecided against the groups and organisers; how resources are raised by these organisations; are there any overseas funds flowing into them and are they succumbing accounts to authorities frequently.

**INDIA WITNESSED RISE IN COMMUNAL VIOLENCE UNDER MODI GOVERNMENT, SAYS AMNESTY**

25 February 2015

Human rights group Amnesty International has criticised the Narendra Modi-led government, expression saying that the new regime India has witnessed an increase in communal violence and its Land Acquisition Ordinance has put thousands of Indians at "risk" of strong-arm eviction.

In its Annual Report 2015, Amnesty highlighted poll-related violence within the lead up to the May 2014 General Elections, communal clashes and failure of consultation on company projects as key considerations.

**COURT ORDERS COMPENSATION TO PROFESSOR COMMAND FOR MAMATA BANERJEE CARTOONS**

10 March, 2015

The Kolkata high court on Tuesday upheld the State Human Rights Commission's recommendation to pay compensation to Jadavpur University Prof. Ambikesh Mahapatra. The professor was arrested in 2012 for circulating e-mails

mocking Chief Minister Mamata Banerjee and former Railway Minister Mukul Roy.

IANS reported that Professor had moved to the bench of Justice Dipankar Datta when the Banerjee government in May 2013, turned down the commission's recommendation to compensate Mahapatra with Rs.50, 000 contending that there wasn't any human rights violation within the case.

The collage of cartoons by Mahapatra had the pictures of Banerjee and Roy with some dialogues of Satyajit Ray's detective masterpiece "Sonar Kella", showing the pair discussing a way to get rid of party leader Dinesh Trivedi, who was forced by the chief minister to give up the railways portfolio.

**OFFENCES AGAINST GIRL, CHILDREN: HC RAPS CENTRE, DELHI GOVERNMENT**

9 March 2015

The High Court in Delhi has questioned the Centre as well as the Delhi government for its "coldness" in generating awareness amongst public regarding laws and punishment for wrongdoings against girls and kids. A division bench comprising of Justices Sunita Gupta and Kailash Gambhir stated that it was completely "aghast and saddened" that both the governments hadn't taken steps to explain the problems to the masses despite the very statistic that there has been a vertical rise in such cases.

"While suspending this matter, we have an inclination to express our hatred and dissatisfaction at the lethargy and insensitiveness of the central and city government for its failure to take steps to supply even one documentary... Or for that matter take the support of the other visual media to communicate to the folks of city regarding the character of sexual offences concerning girls and kids and create awareness regarding prevailing laws and severe punishments provided against such wrongdoings despite many orders by court," it said.

***AROUND THE GLOBE...*****U.S. GOVERNMENT ASKED TO RELEASE THE PHOTOGRAPHS OF DETAINED PRISONERS**

21 March, 2015

U.S. District Judge Alvin Hellerstein's ruled in a long-running debate over letting the world see potentially disturbing images of how the military treated prisoners, that the U.S. must release photographs of detainee abuse in Iraq and Afghanistan. The clash over the photographs goes back to the early years of wars in Iraq and Afghanistan, and invokes images of abuse at the Abu Ghraib prison in Iraq that sparked international outrage after they emerged in 2004 and 2006. Early in the 2004 lawsuit,

the Abu Ghraib photos were cited as priority examples of records the organization was seeking on the treatment of detainees.

Some photographs, taken by service members in Iraq and Afghanistan, were part of criminal investigations of alleged abuse. Some images show “soldiers pointing pistols or rifles at the heads of hooded and handcuffed detainees,” then-Solicitor General now Supreme Court Justice Elena Kagan wrote in an appeal to the High Court earlier in the case, which has taken a long road through the courts and Congress. Amid the lawsuit, Congress passed a 2009 law allowing the Government to keep the photos secret if the secretary of defence certified that unveiling them would endanger U.S. citizens, Government or military personnel.

### **MILITANT ATTACKS LETHAL FOR TUNISIAN TOURISM**

22 March, 2015

Marked as the deadliest attack on civilians in the Tunisian History, the President proclaimed that the young democracy was embroiled in a war with terror. The militants, who wore military-style uniforms and wielded assault rifles, burst from a vehicle and began gunning down tourists climbing out of buses at the National Bardo Museum. The attackers then charged inside to take hostages before being killed in a fire fight with security forces. Now, the Tunisian security forces are looking for a third man suspected in Wednesday’s attack at the National Bardo Museum, in which 20 foreign tourists, a Tunisian police officer and two gunmen were killed. Tunisians have been shaken by the attack, a massacre in the heart of the capital right next to the Parliament. The Islamic State group and a smaller extremist movement, Okba Ibn Nafaa, have claimed responsibility for the rampage..

### **U.S. AND CUBA TO FACE OFF ON HUMAN RIGHTS IN TUESDAY WASHINGTON MEETING.**

28 March, 2015

The latest round in the U.S.-Cuba reconciliation gets under way on Tuesday once the two nations meet in Washington to deliberate the possibly divisive matter of Human Rights.

A State Department representative said the both sides will “discuss the procedure and arrangement of prospect human rights talks,” so no chief expansions are anticipated. But even getting arrangement on the matter for future talks might prove problematic since the two nations have patently different views on what institutes respect for Human Rights.

The United States has long been concerned of Cuba’s strategy of jailing dissenters and campaigners for exercising basic civil rights, such as liberty of speech and assembly, as well as its conduct towards its political prisoners.

Cuba, on the other hand, inclines to view Human Rights more from a prism of class of life and has believed its health activism round the world is an example of its concern for Human Rights. The Cubans also want the chance to argue the United States’ Human Rights record and to take up issues such as unnecessary use of force by American police officers, poverty, and racism in relating the death penalty.

### **US MILITARY ALARMED BY THE ISLAMIC STATE THREAT**

22 March, 2015

The US military called for “vigilance” and overhauling of the security system after an online threat was allegedly made by Islamic State (IS) to about 100 of its personnel. A list of names and addresses was posted on a website linked to the group alongside a call for them to be killed.

The Pentagon proclaimed that the threat was unverified and would be investigated. The IS-linked group said it obtained the information by hacking servers and databases, but US officials said most of the data was in the public domain. The group, which called itself the Islamic State Hacking Division, said the personnel named had participated in US missions against IS. The alleged threat mustered its supporters in the US to “take the final step” and “deal with” those named. A US defence official told US media, that, he couldn’t “confirm the validity of the information, but were looking into it.”

### **MALALA YOUSUFZAI**

Malala Yousufzai was born in Swat Valley, Pakistan on July 12<sup>th</sup> 1997. She has been recently awarded with Nobel Peace Prize and became the youngest person to receive the same. Malala Yousufzai is famous for championing the education for woman and girls. She came into light when she was interviewed in the documentary film made by BBC. In that year itself she got nominated for International Children’s Peace Prize and received Pakistan’s first National Youth Peace Prize (now called the National Malala Peace Prize). However she was shoot and wounded in an attack by two gunmen belonging to Taliban as an outrage against her promoting western ideas, particularly education of women. Seriously injured she was taken to British hospital for her safety and better treatment and after recovering from the injury, she emerged as a global figure promoting education and idea of liberty.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15<sup>th</sup> of every month and it can be mailed to us at [casih@rgnul.ac.in](mailto:casih@rgnul.ac.in). -

## VISHAKA AND OTHERS V. STATE OF RAJASTHAN



### FACTS OF THE CASE:

As a reaction to brutal gang rape of a social worker in Rajasthan during her course of employment, a writ petition was filed by various NGO's for the protection of rights of working women especially against sexual harassment to which they are exposed. The petition focused on finding suitable solution for achieving the true concept of 'gender equality', and to bring out suitable measures to prevent sexual harassment of working women in all work places through judicial process. Under Article 32 of the Indian Constitution, an action can be brought before the Supreme Court for enforcement of Fundamental Right of women at workplace and in particular, Article 14, 21, 19(1)(g) of the Constitution.

### ISSUES RAISED:

To bring out an alternative mechanism, in the absence of legislative measures, to safeguard working women and to fulfil their urgent social need.

### JUDGMENT:

In absence of enacted law to provide effective enforcement of basic rights of women against sexual exploitation at workplace, the Supreme court, exercising its power under Article 32, laid down the guidelines and norms for due observance at all work places or other institutions, until a legislation is enacted for the purpose.

These guidelines included the responsibility upon the employer to prevent or deter the commission. Further the guidelines provide that persons in charge of a workplace whether in the public or private sector should take appropriate steps to prevent sexual abuse, including:

- The prohibition of sexual harassment should be published in the appropriate ways and providing the appropriate penalties against the offender;
- For private employees, the guidelines should be included in the relevant employment guidelines;
- Appropriate working conditions for women that are not hostile;
- The employer should ensure the protection of potential petitioners against victimisation or discrimination during potential proceedings;

- An appropriate complaint & Redressal mechanism should be established in the workplace;
- Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person-in-charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

### ANALYSIS

The judgment sets forth new grounds for judicial activism in Indian legal structure and proposes a new route for 'judicial legislation'. The Supreme Court gave the first authoritative decision on 'sexual harassment' and provided a very precise definition to term "Sexual harassment at workplace". Also, the court acknowledges the international obligations in respect of prevention of acts of sexual harassment and to apply the appropriate settlement and resolutions. A definition of sexual harassment includes unwelcome sexually determined behaviour (whether directly or by implication) as:

- physical contact and advances;
- demand or request for sexual favours;
- sexually-coloured remarks;
- showing pornography;
- any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The Supreme Court's directive explored the deplorable state of women at work and tried to provide a remedy for the malady. Therefore the facts at hand still point towards a worsening scenario.

The Supreme Court directives were transformed into legislation, after the gap of 16 years i.e. the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 making it the country's first legislation dedicated to the problem of sexual harassment at work place. This act will actively contribute to the emancipation of women and will act as a protector of gender equality, life, liberty in their milieu which was legislative intention behind it.

However some lacunae do exist within the Act which escaped the attention of the legislature. These are as follows-

- The Act provides for the constitution of an Internal Complaints Committee which is not practically possible for big employers.
- The act doesn't provide for the maximum number of members which shall form a part of such committee.