

HUMAN RIGHTS COMMUNIQUE

Your Quarterly Dose of Human Rights

Centre for Advanced Studies in Human Rights (CASIHR)

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THE 'ROHINGYA' QUESTION



On the 25th of August, 2017, the Arakan Rohingya Salvation Army, a militant group with links to Al-Qaeda, attacked 24 police posts and an army base in Myanmar's troubled Rakhine state killing several insurgents and security personnel. Rohingya muslims, a religious and ethnic minority in the Buddhist majority state of Myanmar have long been the object of great scorn and public ire and the attacks in August seem to have ended any hopes of a peaceful coexistence between the two communities.

Within three weeks of the attacks, satellite imagery revealed that at least 200 Rohingya villages in the Rakhine state had been burned down as the military initiated retaliatory measures. Six hundred thousand people have been forced to flee into neighbouring Bangladesh with several thousand dying en route. A United Nations investigation into these events produced "credible information that Myanmar security forces purposely destroyed the property of the Rohingya, scorched their dwellings and entire villages in the northern Rakhine state, not only to drive the population out in droves, but to prevent them from returning."

Indeed, such is the nature of these events that the United Nations High Commissioner for Human Rights took the unprecedented step of labeling Myanmar's actions as 'a textbook example of ethnic cleansing.' While there has been widespread condemnation from world leaders, no coordinated international response has yet emerged to mitigate this unfolding disaster in the Rakhine state. Though Nobel Laureate and Myanmar's de-facto leader, Aung San Suu Kyi has been roundly criticized by world governments for her handling of the crisis, (she refuses to even acknowledge the existence of a crisis) her stature at home has not been affected. And herein lays the problem, where world leaders and Human Rights activists see perhaps the world's most persecuted minority and a people who have been stateless for over thirty years, an overwhelming majority of the Buddhist Myanmarese see an immigrant population with a separatist agenda, fuelled by radical Islam with massive funding from overseas.

BUDDHIST - ISLAMIC HISTORY

Under the veneer of spontaneous violence and religious zeal lies an inconvenient truth concerning the clash of two cultures and more importantly, two ways of life. The Rohingya crisis, at its core, is the result of long-standing tensions between Myanmar's Buddhists and the country's Bengali speaking Rohingya Muslim minority. This conflict is historically, geographically and ideologically complex with points of interest varying from economic control of land assets, mining potential, foreign investment and private sector enterprises and public sentiment. For many of the Buddhist majority in Myanmar, Rohingya Muslims are simply intruders with no intention of assimilating into traditional society and are widely despised. Their exclusion from the mainstream of civic and political life stems from the belief that they are "Bengalis"- migrants from Bangladesh - that illegally immigrated to Myanmar during the period of British colonial rule in the nineteenth and early twentieth century. Nationalist movements led by Buddhist monks have been another cause for rising Islamophobia in Myanmar. Groups such as the 969 movement have been instrumental in rallying public opinion against the Rohingya in particular and Muslims in general. Their actions range from calls to boycott Muslim stores to burning down entire villages.

However, the crux of this conflict is, in essence, quite simple. Simmering beneath all this chaos is a primordial fear; a fear, that has gripped multitudes of the Buddhist population and blinded them from the carnage that has ensued. At the heart of the 'Rohingya' question is the fear of a Muslim invasion. A fear that, historically speaking, is not too far from the truth. When the Buddhists look at modern-day Central Asia, at places like Xinjiang, Afghanistan and, Pakistan, they do not see a harmonious amalgamation of ancient Buddhist traditions with those of latter-day Islamic empires. They see a transformation that has all but stripped those lands of their Buddhist history. Centuries of culture and learning brought to naught by the onslaught of Islam in the 7-11th centuries.

To either a casual onlooker or perhaps even a neutral observer this apprehension may seem rather tedious given that believers of Islam make up just 4% of Myanmar's population. However, if all the Rohingya refugees were to be repatriated to the Rakhine state, they would outnumber the local Buddhists, themselves a minority in Myanmar. This sense of unease felt by the Buddhists is very real and any attempt to understand the Rohingya crisis with accounting for this fact would be incomplete.



THE TATMADAW

For those of us around the world who are on the outside looking in, what is most incredulous about this violence is the profile of those in power in Myanmar. Indeed, the silence of Aung San Suu Kyi, a Nobel Laureate and human rights champion, is deafening. When she has appeared in public, her refusal to acknowledge the plight of the Rohingya has been well documented and the civilian government as a whole does not seem to want to engage with the Rohingya muslims in any meaningful way. However, one must not overlook the role played by the Tatmadaw, Myanmar's armed forces, in shaping the current situation.

The Tatmadaw, which ruled Myanmar with an iron fist from the early 1960s, took the first steps towards reforming the authoritarian state by accepting the country's new constitution in 2008. However, this constitution is still heavily skewed in favour of the military. It not only reserves 25% of the seats in parliament for the military but also empowers the Commander in Chief to declare a state of Emergency. Many of the previous military regime's most important leaders still remain in positions of power. Three ministries of the government - defense, home affairs, and border affairs - are directly controlled by the military, and many military generals hold positions in other ministries. This being the case, efforts from the representative government to push through further democratic reforms may be met with strong opposition and as such, any ruling party with hopes of long-term sustainability must tread with caution. Confronting the Tatmadaw is a risk that, at least for the time being, Aung Suu Kyi is not willing to take.

Although nearly ninety percent of the Tatmadaw are Buddhists, the decision to persecute the Rohingya lies not only in religion but also in politics. By labelling the Rohingya as illegal immigrants and foreign invaders, the military not only hopes to distract the population from the massive shortcomings of their decades-long rule but also garner the support of Buddhist nationalists who also happen to be the biggest threat to the military's power. This possibility of a double victory is what drives the military to push the Rohingya issue so forcefully. According to a February 2017 report by the UN, soldiers and officers of the Tatmadaw regularly attempt to provoke Rohingya Muslims stating that Islam is not the religion of Myanmar; that Rohingyas are Bengali Muslims and that the Rohingya, as a people, would eventually be eliminated. Dehumanising the Rohingya in the eyes of its soldiers and citizens seems to be a prime objective for the military-nationalist complex in Myanmar.

In this light, one cannot help but conclude that any hope for sustained democracy in Myanmar depends on Aung Suu Kyi's cooperation with the military. And though this is in no way a consolation to the Rohingya people, it does provide some justification for Suu Kyi's infamous silence on the Rohingya Crisis.

STATEHOOD AND CITIZENSHIP

The current persecution of the Rohingya is by no means an isolated incident. Ever since the 1962 military coup ended Myanmar's brief stint as a democracy, the Rohingyas have been systematically victimised. Nothing embodies this persecution more than the Citizenship Act of 1982 which, in one fell swoop, stripped them of their citizenship and barred them from the civil service.



The 1982 law identified eight ethnicities entitled to citizenship. The Rohingyas were not among these selected groups though they had enjoyed equal rights since Myanmar gained independence from British rule in 1948. Later in 1990s, under the rule of military Junta, the Rohingyas could register themselves as temporary citizens through identification cards, known as White cards. This move did ignite a ray of hope, as white card holders were entitled to voting rights. Sadly however, the goal of universal franchise was not realised or rather, to put it quite bluntly, it was defeated by the Buddhist nationalists. This obsession of viewing the Rohingya as an outsider was on full display when in 2014, after sustained international pressure, the government agreed to grant them a reduced form of citizenship provided they register themselves as ‘bengali’ rather than as Rohingya. And for a people who had been living in apartheid-like conditions for so long, such a deal was unpalatable.

“Because of that law, today more than 1.3 million Rohingya are not citizens of Burma and are denied the right to have food, denied the right to have medical treatment, denied the right to have movement, denied the right to have children, denied the right to have education and [it leads to] state-sponsored violence against them, and burning down their houses and pushing them the camps”, says Tum Khin, president of Burmese Rohingya Organisation.

The irony in all of this is that the 1982 law possibly offers the Rohingya people their best hope for a better future. According to the Act, if the government of Myanmar was to acknowledge the muslims of Rakhine state as members of the Rohingya ethnic minority, they would then be entitled to an autonomous area within the country. And for a people who have been constantly targeted even after seeking refuge in countries such as India and

Bangladesh, the offer of an autonomous homeland is simply too good to turn down.

However, what may seem a fair deal to those of us with nothing at stake in the matter is easily outweighed by that aforementioned fear in the minds of the locals. In the Buddhist psyche, the calls for an autonomous homeland for the Rohingya harks back to the 1940s and 50s when the forebears of the Rohingya appealed to the newly independent state of Pakistan to annex their territory into what was then East Pakistan and now, independent Bangladesh. And when Pakistan refused to do so, some of the Rohingyas took up arms and started a rebellion which eventually lasted another two decades. “So when the Rakhine and others in Myanmar look at whats going on with the name Rohingya, the desire for recognition as an accepted ethnicity... and calls by some for international intervention, including a safe zone, they see that as a separatist agenda by other means”, says Derek Mitchell, U.S. Ambassador to Myanmar from 2012 to 2016.

And such is the plight of the Rohingya people. The historical weight of their identity, the key to their dreams of a homeland, is also what drives the anger and fuels the fear amongst their ordinary Buddhist countrymen. Their desperate call for international aid is slandered as a separatist agenda. Their simply being Muslim attracts the label of ‘invader’ and the ghosts of their forebears haunt them ceaselessly. They are, and have been, since World War 2, stuck between the proverbial rock and a hard place.

TRIVIA

- In 2011, the United Nations declared internet access as a basic human right.
- Right to sleep is a fundamental right under the Right to life.
- 105 countries around the world have abolished the death penalty for all crimes
- The UDHR has inspired more than 80 international human rights treatise and declarations, numerous regional human rights and constitutional provisions.
- Everyone has a right to leisure and holiday, with pay.



ARTICLE 35-A

RIGHTS OF KASHMIRI WOMEN AND CONSTITUTIONAL VALIDITY

INTRODUCTION

Article 370 of the Indian constitution provides the state of Jammu & Kashmir with a separate constitution for itself. This article also provides that other provisions of the constitution of India shall apply to Jammu & Kashmir “subject to such exceptions and modifications as the President may by order specify”, with the concurrence of the state government and the endorsement of the J&K Constituent Assembly.

Before independence, Jammu & Kashmir was a princely state under British colonial rule. The state of Jammu and Kashmir acceded to India on 26th October, 1947 through a Presidential order, by which the Maharaja ceded control over defence, external affairs and communications. A Presidential Order was promulgated in 1954 (known as the mother order), which applied several provisions of the Indian constitution to the state of J&K. This order led to the inclusion of a new article (article 35A) into the Constitution, which provided special status to the permanent residents of the State of Jammu & Kashmir by protecting the laws passed by the legislature of the state from any challenge on the ground that is in contravention of fundamental rights as enshrined in the Constitution of India.

CONSTITUTIONAL VALIDITY OF THE ARTICLE

The then President of India, Mr. Rajendra Prasad, on advice of the Prime Minister, Mr. Jawaharlal Nehru, exercised his legislative power without informing the Parliament in this case and passed a Presidential order to include a new Article in the Constitution, Article 35 A. Under the scheme of our Constitution, the President is the head of the executive and has only a minimal legislative role, except under Article 123. A five-judge Bench of the Supreme Court held in the case of *Puranlal Lakhanpal v. The President of India* that the President of India has power to ‘modify’ the constitution under Article 370. However, the Court did not declare that the President had the power to introduce a new Article in the Constitution. The only way to amend the Constitution is through Article 368, by the consent of the Parliament, which was not done in the instant case. Therefore, the Presidential Order of 1954 is also a violation of Article 368 of the Constitution.

Article 35A grants special status to the permanent residents of Jammu & Kashmir. The special privileges are in respect of immovable property, residency, government jobs and different policies. The article discriminates between the permanent and non-permanent citizen of the state of Jammu & Kashmir.

The non-permanent citizens are not entitled to purchase any immovable property in the state, not eligible for employment by state government, and can neither contest nor vote in the local body elections. This Article also violates the rights of women, as they are not free to marry the person of their own choice. Such a marriage between a Kashmiri woman (permanent resident) and a man who is not a permanent resident would result in their children losing inheritance rights in property situated in the state of Jammu and Kashmir.

The article is in direct conflict with article 14 and 16 of the Indian Constitution, as it violates the Right to Equality of the citizens of India as it creates two classes in the State: One class has access to special privileges, while the other doesn't. Moreover, the article is also in violation of many international conventions of which India is a signatory.

A writ petition has been filed by the NGO, 'We the Citizens', challenging the validity of both the Articles 35A and Article 370. It is argued by the Petitioners that the Article 370 was only a 'temporary provision' to help bring normality in Jammu and Kashmir and strengthen democracy in the State, therefore, the Constitution-makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution.



KASHMIRI WOMEN AND ARTICLE 35 A

The propounder of the Social contract theory, John Locke, declared that property is an inalienable right of every individual. The holding of property by an individual is necessary for his/her well being in society. The lopsided nature of the rule of law in J&K is highlighted by the fact that men (permanent residents) who choose to marry from outside the State are granted with citizenship for their spouse and children, and thereby are also vested with the rights pertaining to ancestral property. The same is not the case for Kashmiri women. A petition was filed in May, 2017 by Charu Wali Khanna, lawyer and former member of the National Commission for Women, and Seema Razdan Bhargava, a Kashmiri woman who chose to marry a person not a resident

of Kashmir, claiming the right in the parental property. However, the Court had already held in the case, *State of Jammu and Kashmir v. Dr Sushila Sawhney and Ors (2002)*, that the daughter of a permanent resident marrying a person outside the state would not lose the status of permanent resident of Jammu and Kashmir.



CONCLUSION

The argument given in support of the Article is that by striking down Article 35A, it would allow people from outside Jammu-Kashmir to settle in the state, acquire land and property, and grant them the right to vote, thus altering the demography of the Muslim-majority state. However, in a country like India where there is rule of law, this Article provides special treatment to the inhabitants of J&K which is in violation of the principle of equality which has been recognized nationally and internationally. The Article should be abrogated as it creates discrimination and violates the principle of equality. Moreover, the legal infirmity of the Article is accentuated by its manner of incorporation into the Constitution of India. Therefore, a possible solution is better coordination between the State Government of Jammu and Kashmir and the Centre and the gradual abrogation of the Article. However, certain features such as not allowing residents other than from J&K to buy land in the State can be saved through new local land laws. Such provisions, found in other States in the country too, may be used to protect the much vaunted history and tradition of the state.

CREATIVE CORNER

IMPORTANT DAYS RELATED TO HUMAN RIGHTS

- 19 November- World Toilet Day
- 25 November- International Day for Elimination of Violence Against Women
- 29 November- International Day of Solidarity with the Palestinian People
- 2 December- International Day for the Abolition of Slavery
- 3 December- International Day for Persons with Disabilities
- 10 December- Human Rights Day
- 27 January- International Day of Commemoration in Memory of the Victims of the Holocaust

ANTI CONVERSION LAW OF JHARKHAND AND RELIGIOUS FREEDOM IN INDIA

‘Secularism’ has an innovative ‘Asian connotation’ that differs from its ‘Western counterpart’. It stresses not on the separation of the State and religion, but rather the equal treatment of all religions by the State and its machinery. This principle, along with the Fundamental Freedom of Religion is embodied in the Constitution of India (Articles 25-28) making ‘Secularism’ and the ‘Right to Religion’ complementary rights.

Article 25 of the Constitution of India reads as follows:

‘Freedom of conscience and free profession, practice and propagation of religion:

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion’

Article 25, thus, clearly guarantees to all individuals and religious groups the right to not only practice but also profess and propagate their religion. During the Constituent Assembly Debates, members had taken great care to uphold the freedom of religious belief as the concept of secularism had not yet been made a part of the Constitution. After extensive debate, it was decided that this freedom should not just be to practice and profess one’s faith, but also to propagate it. K.M.Munshi, member of the Drafting and Fundamental Rights Committee declared, “Under freedom of speech, which the Constitution guarantees, it will be open to any religious community to persuade other people to join their faith”.

Chief Justice A.N. Ray, interpreted the word “propagate,” to mean “to transmit or spread one’s religion by an exposition of its tenets,” but to not include the right to convert another person to one’s own religion. “It has to be remembered that Article 25(1) of the Constitution guarantees ‘freedom of conscience’ to every citizen, and not merely to the followers of one particular religion,” wrote Justice Ray, “and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the ‘freedom of conscience’ guaranteed to all the people of the country alike.”¹

However, the Indian Penal Code, 1860, under Sections 295A and 298 ensures that those who seek to convert members of a particular religion by uttering words of deliberate malicious intent toward another religion and/or intend to insult the religion or religious belief of a class would either face up to three

years or one year in prison and/or fine. Keeping these provisions of law in mind the anti conversion laws of our country have had a controversial journey. With the State of Jharkhand having recently enacted an anti conversion law, what follows is a brief account of the history of such legislations.

ANTI CONVERSION LAWS IN INDIA

The first state to adopt and pass an anti conversion law was Odisha in 1967 under Swatantra Party government, followed by Madhya Pradesh in 1968 under the Samyukta Vidhayak Dal coalition (which included the Jan Sangh); and Gujarat in 2003 and Chhattisgarh in 2006 under BJP governments. The Jayalalitha government in Tamil Nadu passed the law in 2002 but repealed it two years later. The Congress ruled government passed such a law in Himachal Pradesh in 2006. The State of Rajasthan passed an anti-conversion law in 2006, but the Governor has since refused to sign it into force. Arunachal Pradesh passed such a law in 1978 under the People's Party of Arunachal, but it was never enforced, as rules have not been framed till date.

It may be noted that the question has always been of anti-conversion laws embroiled in politics and controversial religious connotations. It was as early as 1955 when Jawaharlal Nehru spoke against the wisdom of passing such conversion laws:

"I fear this Bill will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters; you cannot find really proper phraseology for them. The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference."

While Nehru contemplated the practical aspects of passing such a law as well as its effect on the power dynamics between the State, state machineries and religious groups; scholars have also emphasised the economic repercussions of passing such a law. Carmel U. Chiswick, a research professor of economics at George Washington University, points out that religious freedom is necessary to create an adaptive economic environment where entrepreneurs can be successful. "Economic freedom and religious freedom are thus mutually complementary, suggesting that countries with religious freedom have a comparative advantage for adapting to new economic opportunities,"

JHARKHAND'S RELIGIOUS FREEDOM BILL, 2017

The religious minority community in Jharkhand consists of 4.3% Christians. This percentage of Christians also overlaps with the tribal population of the state living in harmony with all other demographics. However, with the tabling of this Bill, the rights of Christians are being threatened by ultra-right wing groups consider them to be "foreign" religions. However, these same groups have also forged alliances with them in certain states to advance their political objectives. The stringent law consists of severe jail sentence and fine for converting people through "allurement" or "coercion". Stephen Marandi, a senior MLA of Opposition Jharkhand Mukti Morcha (JMM), requested that the Bill be referred to the Select Committee. "The Constitution gives freedom to practice and profess one's religion. There are already penal provisions in IPC for those indulging in coercive conversion or using allurement. So what is the need for a separate Bill," he asked.

Section 5 of the Draft Bill also makes prior permission mandatory for conversion and demands that the person who converts any other person from one religion / religious faith to another, either by performing the ceremony himself for such conversion as a religious priest or takes part directly or indirectly in such ceremony, take prior permission for such proposed conversion from the District Magistrate by applying in such form as may be prescribed by rules. The draft also demands that the convert intimates the District Magistrate of the District in which the conversion ceremony has taken place of the fact of such conversion "within such period and such form as may be prescribed by the rule." Failure to comply with the provisions of Section 5 of the draft Bill will invite imprisonment for a term, which may extend to one year or with fine, which may extend to five thousand rupees or both.

While such a provision is present in most other anti-conversion laws, this Bill comes in the background of a promise made by the ruling Bhartiya Janata Party to bring a National level anti-conversion law.

This law is seen to be an attack against the right to freedom of the minority communities, including Tribals and Dalits. Even in "The Price of Freedom Denied," authors Brian, J. Grim and Roger Finke note, "The higher the degree to which governments and societies ensure religious freedoms for all, the less violent religious persecution and conflict along religious lines there will be."

This Bill is being seen as Anti-Christian, Anti-economic and Anti-Constitutional.

JADHAV CASE

(INDIA VS PAKISTAN)



INTRODUCTION

Human rights are considered as basic entitlements which are bestowed upon each individual by virtue of birth. They can be defined as a number of basic rights that people from around the world have agreed are essential. These are also referred to as 'natural rights'. In cases of detention of foreign nationals, these rights must be respected by the concerned State who has detained the foreign national. Such detention is allowed, provided that it does not contain chances of abuse of power and is based on sound grounds of procedures established by law. It must be publicly registered and subject to fair and effective judicial review. It must not be arbitrary, discriminatory, or disproportionate. Detainees must not be mistreated and must be compensated for any unlawful detention.

FACTS

Kulbhushan Sudhir Jadhav is a 47-year-old retired Indian Naval Officer who was arrested by Pakistan in the Balochistan area on the charges of alleged terrorism and spying for the Research and Analysis Wing (R&AW) of India. The government of Pakistan alleges that he is still serving as a naval officer and is responsible for terrorist activities in Balochistan on behalf of the Indian Government. But the Indian Government denies any allegations made by Pakistan and claims Jadhav to be only an Indian naval officer who retired in 2003, who was abducted from Iran where he had established a small business.

ISSUE:

- Whether Kulbhushan Jadhav has the right to consular assistance or not under the provisions of the Vienna Convention on Consular Relations?
- Whether there is a risk of irreparable prejudice and urgency if provisional measures are not taken?
-

JUDGEMENT

The Court held that the rights alleged by India are plausible. The Court further went on to observe that it is an obligation of the detaining state to inform the state to which the detained person belongs without much unreasonable delay in the process as according to Article 36, paragraph 1 of the Vienna Convention. As in the present case, appeal against Mr. Jadhav's death sentence is still ongoing, therefore rights to consular access plausibly apply. Therefore, after considering arguments from both sides, the Court went on to observe that Mr. Jadhav has been awarded a death sentence and therefore the execution is sufficient to illustrate the existence of a risk of irreparable prejudice to the rights stated by India. Also, there is a failure on the part of Pakistan, to give assurance that Mr. Jadhav will not be executed before the Court renders its final decision. In such grave circumstances, there exists sufficient cause in the present case to pass a provisional measure giving regard to Article 41 of the Vienna Convention. Further, Judge Bhandari made keen observations by stating that there exists a clear case which is indicative of a remedy provided under Article 41 of the Vienna Convention.

He further held that during the pendency of the proceeding Mr Jadhav cannot be executed. Keeping in consideration the issues, on preliminary examination of the facts it establishes that the basic human rights of Mr. Jadhav have been violated by denying India to have consular access in the event of his arrest and during the pendency of the criminal proceedings against him in Pakistan.

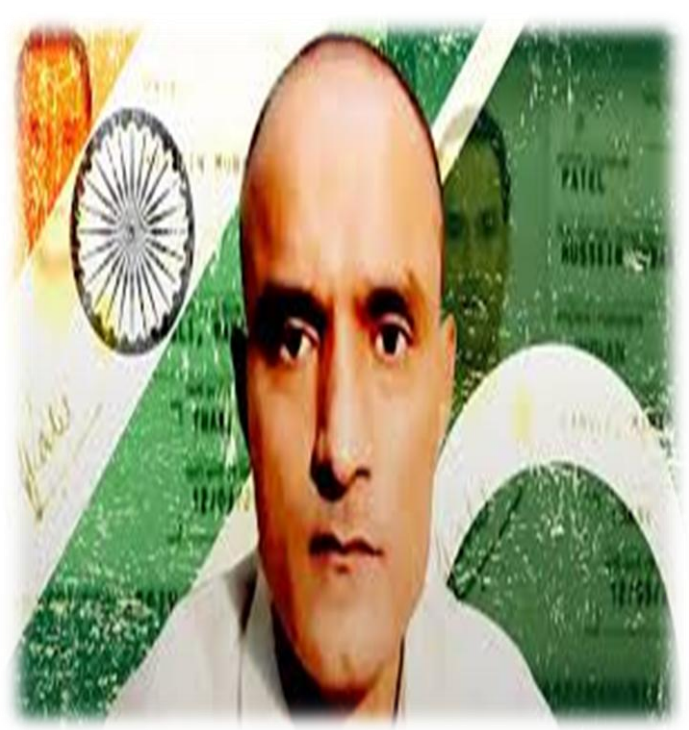
CASE ANALYSIS:

The Field General Court Marshal of Pakistan on 10th April sentenced a retired Indian Naval Officer Kulbhushan Jadhav to death. For many it is just an order of execution of an Indian defence officer who was alleged to be a spy, but for India and Pakistan the implementation of this order can lead to serious consequences, especially when their political relationship has gone sour over the last few years. It could act as another impediment in ensuring smooth bilateral ties between both the nations. Under the United Nations regime, the ICJ otherwise known as the ‘world court’ is the “Principal Organ” charged with two primary functions, namely, to assist in the resolution of disputes between states and to provide advisory opinion to specified international organisation. Established under the UN Charter, the court is governed by the Charter.

In the case of Kulbhushan Jadhav the ICJ being prima facie satisfied about the merits of India’s case and the availability of its jurisdiction over the dispute has granted interim relief/provisional measures. It is a matter of record that both India and Pakistan are signatories to the Vienna Convention on Consular Relations, 1963 providing for consular assistance to their nationals who are facing trial in other countries and unequivocally and compulsorily conferring jurisdiction in the ICJ. Additionally, the doctrine of “pacta sunt servanda” which is a well-recognized doctrine in international law requires that treaties entered into in good faith have to be carried out in good faith and any breach thereof amounts to violation of international law.

Examined from this back drop there is no doubt that consular access to India has been denied even though it is well known that military tribunals in Pakistan are opaque and operate in violation of national and international fair trial standards and fail to provide justice, truth and even proper remedies to under trials.

No doubt in the present case according to Article 36 of the ICJ statute the court has jurisdiction which has been recognized as compulsory ipsofacto and without special agreement. The case of Kulbhushan Jadhav is a test case for the ICJ to dispel the impression that international law is the vanishing point of jurisprudence



CONCLUSION

The situation regarding Jadhav’s pending execution is a matter of grave importance as this would affect the bilateral ties between both the countries. The Indian Government has already warned Pakistan that if this execution is carried out, it would have to take some serious steps which can range from stopping the movement of goods between the countries to blocking visas of Pakistani Nationals. The Indian Community is outraged by this death sentence especially after what happened to Sarabjit Singh in 2013. The implementation of this death sentence would create problems and lead to further complications.

One can only pray that the situation gets resolved and both the governments come to an agreement as a human being’s life is dependent on it and probably the future of India and Pakistan’s international relations which are already strained and hanging by a thin thread.

THE TRANSGENDER PERSONS

(PROTECTION OF RIGHTS BILL), 2016



*"We are not what other people say we are.
We are who we know ourselves to be, and we are what we love."*

-A Transgender

The segment of society called transgender is regularly ignored or is viewed as forbidden in many social orders. Upon being ostracized by the family, the society and the shame appended with being unique, most "Trans" individuals choose to live in isolation so as to carry on with a normal life. But the non-acceptance by society does not warrant the state to ignore on their part, efforts to safeguard the interest and work for the empowerment of yet another downtrodden section of the society. In an effort to secure rights for this community and in addition, to give support for the knitting of welfare legislation for transgender persons, the Supreme Court's historic judgment in *National Legal Services Authority (NALSA) v. Union of India*¹ has laid down the groundwork. This verdict grants them the legal status of third gender, paving the way for their official recognition. The apex court held that people had the right of self-recognition of their sexual orientation unconstrained by the paired ideas of male and female. It reiterated that the rights provided by the Constitution are similarly available to transgender that constitute the 'third gender'. The judgment also talked about other concessions outlined for transgender persons apart from discussing dynamic changes for the transgender group which were cheerfully acknowledged by the community as a whole.

In such an effort, the Indian Legislature introduced Transgender Persons (Protection of Rights) Bill, 2016 which seeks to define the term 'transgender' in addition to putting prohibitions on discrimination. The same was presented in the Lok Sabha by Thaawarchand Gehlot, the Minister for Social Justice and Empowerment in August 2016 and was referred to the Standing Committee on Social Justice and Empowerment for examination on September 8, 2016. The Bill was conceived with a view to concretize the verdict set down in the NALSA judgment apart from striving for other welfare provisions.

The segment of society called transgender is regularly ignored or is viewed as forbidden in many social orders. Upon being ostracized by the family, the society and the shame appended with being unique, most "Trans" individuals choose to live in isolation so as to carry on with a normal life. But the non-acceptance by society does not warrant the state to ignore on their part, efforts to safeguard their interest and work for the empowerment of yet another downtrodden section of the society. In an effort to secure rights for this community and in addition, to give support for the knitting of welfare legislation for transgender persons, the Supreme Court's historic judgment in *National Legal Services Authority (NALSA) v. Union of India*¹ has laid down the groundwork. This verdict grants them the legal status of third gender, paving the way for their official recognition. The apex court held that people had the right of self-recognition of their sexual orientation unconstrained by the paired ideas of male and female. It reiterated that the rights provided by the Constitution are similarly available to transgender that constitute the 'third gender'. The judgment also talked about other concessions outlined for transgender persons apart from discussing dynamic changes for the transgender group which were cheerfully acknowledged by the community as a whole. In such an effort, the Indian Legislature introduced Transgender Persons (Protection of Rights) Bill, 2016 which seeks to define the term 'transgender' in addition to putting prohibitions on discrimination. The Bill was conceived with a view to concretize the verdict set down in the NALSA judgment apart from striving for other welfare provisions.

SELF-IDENTIFICATION AND OBTAINING A CERTIFICATE OF IDENTITY

The bill provides that transgender people can apply to District Magistrate for an endorsement of personality or certification, which demonstrates or indicates them as transgender. District Magistrate would then issue this declaration based on proposals of a regional screening board of trustees which will include Chief Medical Officer, District Social Welfare Officer, a psychologist or psychiatrist, a delegate of the transgender group and an officer of the government. Disturbing the circumstance further is Section 6, which requires transgender individuals to "ensure" their sexual orientation at a District Screening Committee, containing a Chief Medical Officer, District Social Welfare Officer, an analyst or specialist, a delegate of the transgender group and a Government official.

OFFENCES AND PENALTIES

The Bill determines certain offences which include: (I) convincing transgender people to ask or do constrained or fortified work, and (ii) physical, sexual, verbal, passionate or monetary manhandle. These offences will attract imprisonment between a half year and two years, notwithstanding a fine. Further the Bill criminalizes begging by transgender individuals and punishes anybody forcing them to do so. Such an arrangement appears to be detached from the reality of everyday life for the transgender community, as begging constitutes one of their few avenues for earning money, with others including activities such as sex work

ANALYSIS

The bill has included some measures to empower the transgender community but has been under constant criticism by the transgender community itself. Following are the points of criticisms:

Definition is biased

The final legislation of the enactment distinguishes Transgenders as being "somewhat female or male; or a blend of female and male; or neither female nor male". This definition which draws a clinical cartoon is a departure from the expectation of the first Bill to rinse society of the shame it set on transgender.

Right to Self-Identity

To be perceived as transgender, people need to submit themselves to a medical examination by a District Screening Committee including a Chief Medical Officer, a specialist, a social worker, and an individual from the transgender group. This glaring difference is an unmistakable difference to the 2014 Bill and the NALSA verdict which gives people the right to self-distinguish their sex.

Criminalization of begging

This version of the bill criminalizes begging even as the Standing Committee clearly reports that "the trans-gender community does not enjoy parity with other genders when it comes to alternative modes of employment". The clause also ignores the fact that most transgender persons and Hijra communities are harassed or booked under the begging prohibition laws making them susceptible to physical and sexual violence. The Bill neglects to characterize the key term 'Discrimination.' Without an unequivocal meaning of what really constitutes 'discrimination,' it is extremely hard to demonstrate it.

Non-Recognition of Transgender Families

Another dangerous arrangement is Section 13, which stipulates that transgender individuals cannot be expelled from their family the essential wellspring of discrimination and harassment against them. Also, it doesn't give recognition to transgender families which essentially are the main social structures concerning the community and their place of solace when being ostracized by the traditional family in particular and society in general.

The Bill additionally does not endeavour to convey existing laws relating to marriage, appropriation and progression that are particularly worded in paired terms, in accordance with the NALSA judgment. There is no reservation provided for the community, which was commanded by the Supreme Court in the NALSA's judgement. The blatant rejection of the recommendations of the standing committee which was a result of various deliberations including with members of the transgender community, shows the lack of intent on part of the legislature to address the issue of welfare provisions which are core to any legislation. For similar reasons, the bill has not been supported by any particular transgender group or the community as a whole. The bill in its current form is not based on the NALSA judgment and does not serve the purpose of addressing the concerns of the community. Hence, this bill will serve the needs of the transgender community only to a very limited extent and should thereby be unequivocally rejected.

NATIONAL NEWS

• DELAYING PAROLE VIOLATES RIGHTS

The Kerala High Court said that delaying action on applications filed by prisoners for parole amounts to a violation of their fundamental rights. A single bench of the Court directed that the Police and district probation officers should submit reports on applications to the jail superintendent without any delay and that they should forward the reports to the jail DGP immediately.

• SC UPHOLDS FREEDOM OF EXPRESSION BY ALLOWING PADMAVAAT'S RELEASE

The Supreme Court cleared the decks for a nationwide release of the Bollywood film, Padmaavat, citing freedom of expression as being a crucial fundamental right. The Court rejected the pleas of six states arguing that the release of the film will cause law and order issues, by reminding the states that it is their duty to maintain peace.

• SUPREME COURT TO RE-EXAMINE SECTION 377

The Supreme Court will re-visit its 2013 verdict that upheld Section 377 of the Indian Penal Code, a section which criminalizes gay sex. The Supreme Court bench headed by CJI Dipak Misra said that a larger group of judges would revisit and examine the Constitutional validity of Section 377.

• HC PAVES WAY FOR RECRUITMENT OF WOMEN IN TERRITORIAL ARMY

A Delhi High Court bench comprising Acting Chief Justice Gita Mittal and Justice Hari Shankar said that the words "any person" in the Territorial Army Act includes both men and women. The Court said that any provision of the Act which bans the recruitment of women in the Territorial Army would be ultra vires the right to equality, thus paving the way for the recruitment of women in the army.

• J&K GOVT. REFUSES TO COMPENSATE HUMAN SHIELD

The Jammu & Kashmir Chief Minister Mehbooba Mufti said that the State Human Rights Commission lacks the jurisdiction to probe the matter of Farooq Ahmad Dar, a man used as a human shield, against stone pelters, by the Army. She has also said that the recommendation of the SHRC to compensate the victim with 10 lakh rupees is unacceptable as the case is still going on and that the state government should not be compensating for human rights violations conducted by the Army.

INTERNATIONAL NEWS

• THOUSANDS DISPLACED IN COLOMBIA WITHIN DAYS

Between 17 and 20 January 2018, more than 1000 people have been forcibly displaced and many more are at risk of displacement due to clashes between different armed groups in the areas of Bajo Cauca, Southern Cordoba and the boundaries between Boyacá and Casanare.

• IRANIAN AUTHORITIES AMPUTATE MAN'S HAND AS PUNISHMENT

A 34-year-old man, convicted of theft, was sentenced to hand amputation six years ago for stealing livestock and other valuables from several villages in a province, and the amputation was performed. The amputation was conducted by a guillotine in the central prison in Mashhad city in north-eastern Razavi Khorasan province.

• HUMAN RIGHTS DEFENDERS SENTENCED IN SAUDI ARABIA

Two human rights activists Mohammad al-Otaibi and Abdullah al-Attawi were sentenced to fourteen and seven years in prison respectively, for a list of charges including dividing national unity and spreading chaos. This harsh sentencing follows the unabated attempts of the Crown Prince Mohamed bin Salman to silence civil society, with most human rights defenders now behind bars.

• SAUDI ARABIA OPENS SPORTS STADIUMS TO WOMEN

Saudi Arabia allowed women, for the first time, to watch football matches. The first such match was held at Riyadh, the national capital and it was between the Al-Ahli and the Al-Batin. This is a small step towards gender parity in the country.

• DISPLACED BENGHAZI FAMILIES PREVENTED FROM RETURN IN LIBYA

Armed groups in the Eastern Libyan city of Benghazi are preventing at least 3700 internally displaced families from returning to their homes. These families left the city in 2014, when Operation Dignity was announced to weed out "terrorists" from the city. Most of these armed groups are linked to the Libyan National Army, are accuse these families of terrorism or for supporting terrorism. The families are pleading that their homes and property have been seized and that those family members who remained in the city have been tortured, arrested or are missing.



HUMAN RIGHTS AWARDS

FREEDOM AWARD

The International Rescue Committee bestows its Freedom Award for extraordinary contributions to the cause of refugees and human freedom. The first award was presented in 1957. The recipients include Winston Churchill, Aung San Suu Kyi, Hamid Karzai, Kofi Annan and Antonio Guterres.

AMBASSADOR OF CONSCIENCE AWARD

This award has been instituted by Amnesty International to honour those who have furthered the cause of human rights by showing exceptional courage by standing up to injustice and those who have used their talent to inspire others. The recipients of the award include Nelson Mandela, Peter Gabriel, Aung San Suu Kyi, Malala Yousafzai and Alicia Keys.

UNITED NATIONS PRIZE IN THE FIELD OF HUMAN RIGHTS

The United Nations Prize in the Field of Human Rights were instituted by the United Nations General Assembly in 1966. They are intended to "honour and commend people and organizations which have made an outstanding contribution to the promotion and protection of the human rights embodied in the Universal Declaration of Human Rights and in other United Nations human rights instruments". They were first awarded in 1968, and are awarded at an interval of 5 years. The awardees include Eleanor Roosevelt, Martin Luther King, Baba Amte, Nelson Mandela, Benazir Bhutto and Malala Yousafzai.

GOLDEN PEN OF FREEDOM AWARD

This is annual journalism award given by the World Association of Newspapers. It was established in 1961, and seeks to honour and recognize the outstanding action of an individual, group or institution in cause of freedom of the press. The awardees include Dmitry Murotav, Najam Sethi and the Belarusian Association of Journalism.



Contributions are invited for the May issue of the CASIHR newsletter. The last date of submission is 30th April and it can be mailed on casibr@rgnul.ac.in