

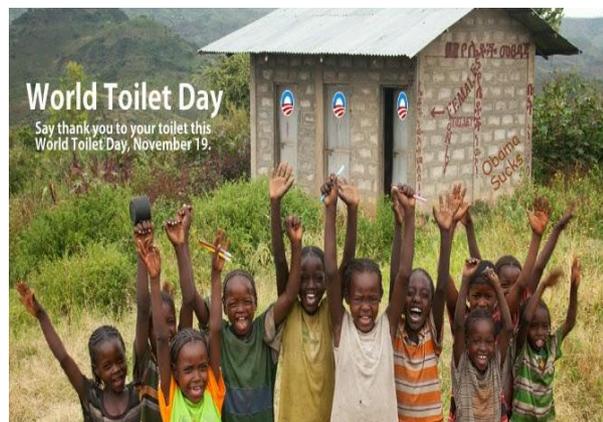
THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

(NEWSLETTER FOR CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS, RGNUL, PUNJAB)

Vol. II, Issue 4

November 2015



-EDITORIAL BOARD-

Prof.(Dr.) Paramjit S. Jaswal, Patron-in-Chief
Prof. (Dr.) G.I.S. Sandhu, Patron

Dr. Shilpa Jain, Editor-in-Chief
Mr. Dharav Shah, Student Editor
Ms. Srishti Bharti, Student Editor



ARSH CAMPAIGN: PRESERVING THE RIGHT TO SANITATION

INTRODUCTION:

India has a population of 1.2 billion people and is considered to be one of the most swiftly developing economies of the world. Yet, around 55% of the population has no access to toilet and other sanitary conditions. A large populace in the rural areas still defecates in the open. Slum dwellers in major metropolitan cities reside along railway tracks and have no access to toilets or a running supply of water. In light of these demoralizing events, the recent Arsh Campaign provides a hope for the betterment of the prevailing conditions.

ABOUT THE CAMPAIGN:

Arsh Campaign is an initiative started by Arsh Mogre, a 16 year old Mumbai student to improve sanitation conditions in India. With India's new Prime Minister Narendra Modi launching the 'Clean India Campaign' or the popularly known 'Swachh Bharat Abhiyan', Arsh started the Campaign to encourage the citizens to take action towards improving sanitation in India. The campaign is working to bring politicians, celebrities, and citizens together to raise awareness about the importance of sanitation. Using the slogan 'I Love Toa – pimp your toilet' campaign, which was previously used by Water Aid Sweden, Arsh has been working with his community to motivate the citizens to adopt a cleaner and healthier lifestyle. The campaign aims to end open defecation and bring safe toilets to all.

World Toilet Day which is celebrated on November 19 is about the 2.4 billion people who lack access to improved sanitation and 1 billion people who have to defecate in the open. Arsh Campaign works on similar lines to improve sanitation conditions of the country. The participants in the campaign feel that sanitation is a basic necessity, yet many people in India need to defecate openly. In many schools, toilets are broken or don't exist, which mostly impacts girls who end up not going to school. The participants feel that every individual needs to come together to clean India, otherwise nothing will change.

Swachhhalay, a Sanitation Drive to 2019 supports the UN sanitation campaign working to meet the Millennium Development Goal sanitation target and end open defecation. Arsh Campaign intends to take actions towards achieving sanitation and hygiene for all by targeting the poorest and most vulnerable people. In the first phase of this, Swachhhalay is an initiative to make Mumbai more sustainable and hygienic. A local Slum, known as the Perry Nagar Slum colony in one of Mumbai's suburb, has been adopted and efforts to optimise the sanitary conditions have already started showing results. Besides this, several campaigns in public schools helping the Ministry of Human Resource Development achieve 100% basic sanitation in these schools have been launched. Arsh has also conducted awareness drives in societies to promote the segregation of wet and dry garbage.

This year Arsh Campaign has also been supported by the United Nation under their flag of World Toilet Day which aims to provide proper toilet and sanitary facilities around the world for larger benefit of all.

NATIONAL PERSPECTIVE:

The Arsh Campaign brings out the less frequently talked about right to sanitation into our attention span. But before analyzing the initiative taken, it is necessary to understand the efforts taken by the Constitution, the courts and the government to preserve this right.

Article 21 of the Indian Constitution states that "*No person shall be deprived of his life or personal liberty except according to procedure established by law*". The object of this right is to prevent encroachment of personal liberty and deprivation of life except according to procedure established by law. This right to life involve right to live a meaningful and dignified life. The right to life has been bountifully interpreted by Supreme Court to include all facets of life. Right to Sanitation is one of those facets. Supreme Court in the landmark case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* stated that the right to life included the right to live with human dignity.

It also made a passing observation that it also includes the bare necessities of life and Right to sanitation is one of those bare necessities which cannot be denied to anyone. Arsh Campaign also promulgates the same view that proper sanitation is the right of every human and can't be denied to anyone. Proper facilities of sanitation include portable water, proper toilet facilities and other basic necessities which should be available for all.

Supreme court in the case of *A.P. Pollution Control Board II v. Prof. M.V. Naidu and Others* recognised that the Rights to Sanitation and water are fundamental and thus part of article 21 of constitution of India. They thus form essential part of life with dignity where every individual gets its basic right.

Securing the Right to Sanitation to all means insuring improvement in the quality of life by safer access to clean water, proper toilets and other sanitary sources. According to a study under World Sanitation program the cost of inadequate sanitation for the country's economy is estimated at \$53.8 billion a year, a figure equivalent to 6.4% of GDP. The importance of proper sanitation to disaster preparedness can hardly be exaggerated, given the vulnerability of affected populations to waterborne diseases. Clearly, universal coverage must remain the main objective, at least at the level of basic offering of sanitation service.



INTERNATIONAL POLICY FRAMEWORK:

Lack of sanitation and hygiene remains one of the most urgent issues around the world. Worldwide, 748 million people remain without access to an improved source of water and 2.5 billion remain without access to improved sanitation. The human right to safe drinking water and sanitation is explicitly recognized in a number of international conventions and treaties and affirmed by resolutions of the UN General Assembly and the UN Human Rights Council.

The International Covenant on Economic Social and Cultural Rights provides for every state to overlook the need for proper sanitation and water for all individuals. Convention on Elimination of All forms of Discrimination against Women (CEDAW) draws our attention especially to the sanitary needs of the women. It obliges the states to take appropriate measures to ensure adequate living conditions to women in relation to water and sanitation.

Convention of Rights to Child (CRC) brings out the duty of the states to cater to the need of the children as well. CRC provisions underline the importance of proper sanitary environment and access to the same as essential to the development of a young child. The ILO in its convention on Occupational Health Services makes every employer mandatorily responsible for the health and safety of the employees. These duties inculcate surveillance of the sanitary instalments, health maintenance practices etc.

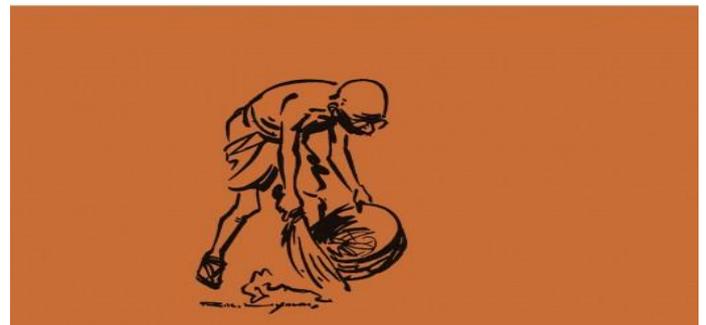
The United Nations policy framework has also ensured that the prisoners and juveniles under detention are also provided with the basic human right of sanitation. The Standard Minimum Rules for the Treatment of Prisoners require that the prisoners should be provided with the water and other toiletry articles which are necessary for them to keep their persons clean. The United Nation

Rules for the Protection of Juveniles Deprived of their Liberty ensure that clean water, food and effective sanitary instalments should be provided and be within the access of such detained juveniles.

Apart from the conventions, the need for sanitation is also highlighted in the Millennium Developmental Goals. MDG Target 7C aims at cutting the proportion of population without sustainable access to water and basic sanitation by half. According to the MDG reports, a whopping 2.4 billion people are still using unimproved sanitation facilities including 946 people who are still practicing open defecation.

Considerable progress has been achieved due to codification of this basic need of sanitation, however, there is still a long way to go. The WHO and UNICEF have identified that to achieve the targets related to sanitation certain actions like elimination of practice of open defecation, universal access to basic sanitation and hygiene in households and schools, elimination of inequality in access to sanitation services, have to be taken.

Evidently, Right to sanitation is now recognised by all the members of United Nations and thus made part of International Campaign for Portable Sanitation and World Toilet day. On the similar lines Arsh campaign which has played a major role in India by spreading awareness about importance of Sanitation to people and educating them that how right to life involve right to sanitation, has been selected by United Nation as part of their campaign to promote world sanitation.



CONCLUSION:

Poor sanitary conditions can lead to several diseases which again is violation of the very fundamental right to life. Therefore, improving sanitation can play a big role in improving the nutritional status of children and women, who are affected most by the poor sanitary conditions. Hence, by safely separating faces from human contact and environment by providing proper toilets and other sanitary facilities, women and children can be more protected from disease and malnutrition, children can realise their full potential and women and their babies can live healthier and more fulfilled lives thus, attaining the main objective of right to sanitation in providing right to life with dignity.

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 on casih@rgnul.ac.in.

TRIVIA

- Worldwide, soil-transmitted Helminths infects more than one billion people due to a lack of adequate sanitation.
- Globally one third of all the schools lack access to safe drinking water and adequate sanitation.
- 80% of the used water is not collected or treated.
- Diarrhoea is the second biggest killer of children under 5 in the world.
- 2.7 million people die every year due to lack of sanitation.

DAYS OF MONTH

- World Toilet Day – 19 November
- Transgender Day of Remembrance – 20 November
- Universal Children's Day – 20 November
- International day for Elimination of Violence against Women – 25 November

DID YOU KNOW?

Unsafe drinking water, inadequate availability of water for hygiene, and lack of access to sanitation together contribute to about 88% of deaths from diarrheal diseases. Further, 90% of the 30,000 deaths that occur every week from unsafe water and unhygienic living conditions are children under five years old.



Sanitation should not be seen as a political tool, but should only be connected to patriotism and commitment to public health.

*-Narendra Modi
Prime Minister of India*

WOMEN'S RIGHT TO SANITATION AND REPRODUCTIVE HEALTH**THE MATERNITY DEATH ROAD**

For centuries, we have glorified motherhood as a noble goal and an inherent societal obligation. Humankind considers maternity a boon; after all, it is the means by which the human species propagates. However, every year, about 350,000 women die of almost completely preventable illnesses and injuries related to pregnancy and childbirth around the world. Doesn't the society have an obligation to prevent maternal deaths? Why then, are the means to ensure a healthy motherhood continued to be denied to the majority of women around the world?

The United Nations estimated in 2005 that 99% of the estimated 536,000 maternal deaths that year (all but 3,000) took place in developing countries, a proportion that has remained about the same over the years. Of the 120 million women who give birth every year, half experience complications, with fifteen to twenty million developing long-term disabilities. In richer countries, some, though certainly not all, receive appropriate services and help, but in poorer countries, women continue to die at alarming rates. The immediate causes of 80% of the more than half a million preventable maternal deaths each year are reported to be obstetric complications such as severe bleeding (25%), infection (15%), hypertensive disorders (12%), obstructed labour (8%), and unsafe abortion (13%).

A lack of trained personnel at hospitals and clinics, of equipment and facilities adds to the dangers for women, lack of antenatal care and quality health services ensure that women at greatest risk of maternal death have the least resources to seek medical help.

WOMEN'S ACCESS TO PROPER SANITATION

Despite their strategic importance in matters of sanitation and water resources, women have been considerably ignored. Most of the global commitments are silent about the equitable distributions of power, work, access to and control of water resources between men and women.

The Johannesburg Plan of Implementation defines the term 'access to basic sanitation' as a sanitary means of excreta disposal. Access to sanitation is proving to be a hurdle in achievement of women's optimum health in Latin America, India, African and Middle Eastern countries. In India, more than 122 million households do not have toilets. This gives a blow to women's safety and security as well. Due to circumstances, they are forced to take recourse to the wilderness for this basic function which results in kidney and urinary tract problems and also sexual health problems. Access to sanitation becomes even more complicated for a woman due to various social and biological factors. In a country of 623 million females, menstruation is still considered a taboo subject and has negative connotations. In this particular context, there is a higher need for privacy. The situation isn't any better in the urban areas. They have to stand in long queues just to get a bucketful of water in the slum areas. Due to high pollution in metro cities, the water supplied is seldom fresh. The women are therefore more susceptible to infections because they are in contact with the polluted water on the first-hand.

CONCLUSION

Maternal deaths and the lack of provisions for women's sanitation have been dealt with an attitude of submissive fatalism and it's time that it changed. The neglect that women's health and nutrition can suffer in comparison to men's becomes evident when the body is taxed to its limits during pregnancy. Poor sanitation throughout a lifetime results in anemia in half of all women's lifetimes, worldwide. It is time to tackle the tragedy of maternal mortality in developing countries.

HUMAN RIGHTS NEWS...

CID REPORT: CHILD TRAFFICKING ON RISE IN ASSAM

CID reports state that at least 4,754 children have gone missing in the past three years in Assam as poor parents are sending their children away with traffickers, who promise them lucrative jobs. Maximum cases of missing children have been reported from Baksa, Lakhimpur, Sonitpur, Kamrup and Kokrajhar districts. The trend revealed in the report is that the number of girls missing in the recorded time frame is almost double than that of boys. Those missing in the past three years include 2,753 girls and 2,001 boys. A total of 718 children were reported to be missing in the state in the last 365 days, with 23 in the last 30 days.

The CID reports also revealed that over 422 victims of human trafficking, mostly minors, have been rescued since 2011. According to the chairperson of the Assam State Commission for Protection of Child Rights (ASCPCR), the laxity of the authorities to respond faster in such cases is the reason behind so many missing children not being traced before they are transported to other parts of the country. And these numbers are only official figures, the actual ones could be more.

NHRC SUMMONS DM AND SSP IN JUVENILE BEATING CASE

The National Human Rights Commission (NHRC) has issued summons to the District Magistrate and the senior Superintendent of Police (SSP) for failing to produce medical reports of a juvenile inmate, who was allegedly beaten up at a reformatory home earlier this year. The commission asked them to appear in person on December 14th. Taking suo-motu cognizance of the juvenile being beaten up in January earlier this year, the commission had sought medical reports but the administration failed to produce the same even after the NHRC's reminder. As per the report, the juvenile was assaulted, tortured and physically abused. The victim was reported to have been admitted to the medical college hospital following the protest by his family members. The victim disclosed to his family that he was forced to administer drugs and when he refused to do so, he was assaulted by the other inmates of the home. The NHRC, earlier this year, has issued a notice to the chief secretary of UP government to submit a detailed report in the matter within four weeks. The commission later on directed the SSP and DM to forward the injured inmate's medical report, which they failed to do despite a reminder.

GREENPEACE TOLD TO DISSOLVE IN A MONTH

The Tamil Nadu government has scrapped Greenpeace India Society's registration and ordered the environmental group to shut down its operations in the country. Greenpeace India responded by accusing the state's Registrar of Society for acting at the behest of the Ministry of Home Affairs (MHA) that has targeted the Green NGO over the past two years. Vinuta Gopal, Greenpeace India's executive director stated that the MHA's clumsy tactics to suppress free speech and dissenting voices are turning into a major national and international embarrassment for this government.

After the order, the government gave Greenpeace India one month to pass a special resolution to dissolve itself. It said if this wasn't done, the Registrar of Societies would appoint an official liquidator to wind up the society. In September, the home ministry had told the Delhi High Court that the government had cancelled its license to get foreign funding.

NEFIS CONDEMNS RECOMMENDATIONS BY MEGHALAYAHA TO IMPOSE AFSPA IN GARO HILLS

North-East Forum for International Solidarity (NEFIS) organized a candle light vigil on 5th November '15 to mark the 15th year of Irom Sharmila's formal commencing of her hunger strike against Armed Forces Special Powers Act (AFSPA). The organization also condemned the recent Meghalaya High Court's recommendation to implement this Act in the Garo hills area. The candle light vigil was organized at Vishwavidyalaya Metro station, Delhi University to express solidarity with Sharmila's struggle and saw large number of North East people as well as students from other parts of the country. On 2nd November, 2000, ten civilians were shot dead by paramilitary forces at a local bus-stop in Malom, Manipur.

The incident triggered angry protests across Manipur and led to Sharmila going on her epic fast a few days later. NEFIS pledged to take forward the nation-wide struggle against the "draconian and anti-people" AFSPA. AFSPA has been enforced in parts of Jammu and Kashmir, as well as in the North East states. Since armed soldiers trained in combat and in war have no training in civilian law or policing procedures, atrocities under AFSPA are inevitable and are growing. Hence, NEFIS demanded that AFSPA should be repealed at the earliest from all states, thereby ending the miseries of the people.

AROUND THE GLOBE...

PRESIDENT BARACK OBAMA PRESSES FOR HUMAN RIGHTS AND GOVERNMENT ACCOUNTABILITY IN MALAYSIA

Mr. Obama, while speaking at an event organized by the Young Southeast Asian Leaders Initiative pressed for human rights protections and government accountability in Malaysia. He advocated for what he regards as basic shared values though not singling out specific issues. He said nations should encourage accountability and personal freedom has prospered over time. At a town hall event, before a meeting with Malaysia's embattled prime minister, Mr. Obama didn't directly refer to alleged human rights abuses in Malaysia or the scandal enveloping a government investment fund that has drawn attention around the globe. But Mr. Obama said he never hesitates to broach tough subjects with fellow leaders

U.N. PANEL CONDEMNS NORTH KOREA FOR GROSS HUMAN RIGHTS ABUSE

The United Nations General Assembly Humanitarian Committee during its proceedings voted 112 - 19 in favor of a resolution

condemning North Korea for gross violations of human rights and backed the recommendation forwarded by the independent commission in relation to referring North Korea (the Democratic Republic of North Korea or DPRK) and its leaders to the International Criminal Court, Hague.

This year's resolution was sponsored by European Union and Japan. The report points out issues which include torture and other cruel, inhuman or degrading treatment or punishment, including inhuman conditions of detention, rape, public executions etc. It was strongly urged to North Korea to immediately close the political prison camps and to release all political prisoners unconditionally and without any delay.

PAKISTAN LOSES UNITED NATIONS HUMAN RIGHTS COUNCIL ELECTION

Pakistan failed to win a re-election to the top UN Human Rights body, garnering just 105 votes in the 193-member General Assembly. The General Assembly on Wednesday elected 18 members of the UN Human Rights Council through a secret ballot. Pakistan's current term at the Council is set to expire on 31st December, 2015, and it was seeking re-election to the 47-member Human Rights Council. Sources said the loss came as a setback to the Pakistani delegation that had appeared confident of winning the seat.

The sources attributed the loss to the way the Pakistani delegation fought the election, adding that it could not lobby effectively for the vote. The new members, who will start their three-year terms beginning January 1 next year, are Belgium, Burundi, Côte d'Ivoire, Ecuador, Ethiopia, Georgia, Germany, Kenya, Panama, Kyrgyzstan, Mongolia, Philippines, Republic of Korea, Togo, Slovenia, Switzerland, United Arab Emirates and Venezuela. India is also a member of the Council and its term will end in 2017.

SAUDI COURT SENTENCES POET TO DEATH FOR RENOUNCING ISLAM

Ashraf Fayadh, Palestinian poet and leading member of Saudi Arabia's nascent contemporary art scene, has been sentenced to death for renouncing Islam. A Saudi court on Tuesday ordered the execution of Ashraf Fayadh, who has curated art shows in Jeddah and at the Venice Biennale.

Fayadh, was originally sentenced to four years in prison and 800 lashes by the general court in May 2014 but in appeal judges ruled that his repentance could not prevent his execution. Fayadh's supporters believe he is being punished by hardliners for posting a video online showing the religious police (*mutaween*) in Abha lashing a man in public.

NATIONAL CONSTITUTIONAL DAY

National Law Day in India is celebrated on 26th November and was declared as the National Constitutional Day by Prime Minister Narendra Modi. It first transpired to the Supreme Court Bar Association in 1979, under the vibrant leadership of Dr L.M. Singhvi, to select 26th November to commemorate that day as "Law Day". It marks the anniversary of the adoption of our Constitution, the day on which our founding fathers subscribed to this document by signing the same and thereby unfolding the philosophy - social, economic and political, for the governance of free India.

The fact is that it was on this day in the year 1949, the drafting of the Constitution by the Constituent Assembly was completed after a span of 2 years, 11 months and 17 days. Subsequently, it was signed on 24th January 1950 and enacted on 26th January 1950 on which date the Constituent Assembly also ceased to exist transforming to the birth of the provisional Parliament of India. The sevenfold objects of celebrating "Law Day" as stated by Dr. Singhvi converge on one single objective in final analysis viz.: to be a cohesive democracy governed by the Rule of Law. The socio-economic transformation – a welfare State and an egalitarian society as its objective – must also be through the process of law.

-CASIHR COMMITTEE-

Ms. Aishwarya Malik Ms. Shubhi Pahwa Ms. Srishti Bose Mr. Mohit Khandelwal Mr. Naveed Mehmood
 Mr. Chinmay Surolia Ms. Priyanka Singla Ms. Komal Parakh Ms. Madeeha Majid Mr. Himanshu Rathore
 Ms. Bhaavi Agrawal Ms. Afreen Fazal Ms. Bhavana Chandak Ms. Apoorva Agrawal

A.P. POLLUTION CONTROL BOARD V. PROF. M.V. NAYUDU**Facts:**

The Ministry of Forests and Environment, Union of India issued a Notification dated 27.9.88 listing various industries as hazardous and included them in a 'Red' list. Item 37 of the said list of hazardous industries is the industry which produces 'Vegetable oils including solvent extracted oils'. Consequent to the directive of the Union Government the State of Andhra Pradesh initially issued notification dated 31.3.94 (Municipal Administration). Therein, the State Government relied upon the interim report of an Expert Committee of the Hyderabad Metropolitan Water Supply and Sewerage Board and prohibited industries being located within 10 km of the two reservoirs. In spite of the prohibition, the respondent industry purchased land of 12 acres on 26.9.95 in Peddashpur village situated on the outskirts of Hyderabad, within 10 km of the reservoirs.

Issue Raised:

The issues which were raised before the hon'ble court in this case included that:

- a) Whether, in view of Sub-section 2(b), 3(2) and 5 of the Environment (Protection) Act, 1986 was it permissible for the State Government to issue an exemption for an individual hazardous industry within the area, even if it be by way of asking the industry to provide safeguards?
- b) Whether, in view of Sub-sections 2(e), 2(k), 17, 18 and 19 of the Water (Prevention and Control of Pollution) Act, 1974, was it permissible for the Government to grant exemption for a single industry within the prohibited area?
- c) Whether in the light of the present Reports the industry could claim exemption from the 10 km prohibition and whether it could have been granted?

Judgment:

Since the fundamental objective of The Water Act is to provide clean drinking water to the citizens, the State could not have granted such exemption. Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21 of the Constitution of India. Such an order of exemption carelessly passed, ignoring the 'precautionary principle', could be catastrophic.

Therefore, the granting exemption must be held to be without statutory backing and also wholly arbitrary and violative of Article 21.

In the light of the three reports, it cannot be said that the two lakes will not be endangered. This is where the 'precautionary principle' comes into play. The chance of an accident, within such close proximity of the reservoirs cannot be ruled out. Hence, this is certainly not a fit case for directing grant of NOC by the Pollution Control Board. The Board could not be directed to suggest safeguards and there is every likelihood that safeguards could fail either due to accident or due to human error.

There is a for constitution of Environmental Courts with experts in environmental law, in addition to-judicial members, in the light of experience in other countries. Thus, the judgment of the High Court and the order of the appellate authority under Section 28 of the Water Act, 1974 were set aside and the order of the appellant Board refusing permission to the seventh respondent under Section 25 of the Water Act was restored

Analysis:

In this case, it was asserted that in today's emerging jurisprudence, environmental rights are described as 3rd generation rights. The Supreme Court weighed the claims of development against the claims of sustainability of the supply of pure water for drinking purposes. It gave precedence to the human need for drinking water over and above the possible economic advantage which could be generated by the industry for the state. By raising the right to access to clean water to the stature of a fundamental right under the ambit of Article 21, the Court has made it obligatory for the authorities to ensure the availability of the same to the citizens and has also ensured that no citizen is deprived of this right.

This case is a clear example of the benefit of extensive scientific investigation. If this scientific investigation was not done, the life of millions of citizens in the two cities could have been endangered. The precautionary principle has been clearly applied here. The Supreme Court could not rely upon a bare assurance that care will be taken in the storage of hazardous material

There is a need to improve the adjudicatory machinery under various environmental laws essential for a proper and fair adjudication of the disputes relating to environmental protection. The Supreme Court, through this judgement, pointed out that except in one State where the appellate authority was manned by a retired High Court Judge, in other States they were manned only by bureaucrats. The Court opined that the Law Commission could therefore examine the disparities in the constitution of these quasi-judicial bodies and suggest a new scheme so that there could be uniformity in the structure of the quasi-judicial bodies which supervise the orders passed by administrative or public authorities, including orders of the Government.

*A.P. Pollution Control Board v. Prof. M.V. Nayudu 2000(3) SCALE 354"

IN CONVERSATION WITH...

In the backdrop of controversies related the striking down of the 99th Constitutional Amendment which restored the two-decade old collegium system of appointment of judges in the higher judiciary; we, at CASIHR, invited opinions on:

Has the judiciary rightly asserted its independence through the NJAC?

Dr. Manoj Sharma, Assistant Professor of Law, RGNUL, Punjab analyzed the issue and said the following:

I strongly disagree with the view point of the Supreme Court. The Constitution mentions the word “consultation” which has been misinterpreted to “concurrence” by the judiciary so as to make its own ends meet. Right from the Third Judges case the judiciary has tried to create a monopoly as far as the question of appointments in concerned. What we need to keep in mind is that with independence comes accountability and there is strong need for the same in the present time as nobody should go unchecked. It is very evident from the *Subhash Aggarwal’s* case that the Supreme Court has always tried to evade the question relating to its own accountability. The whole procedure adopted in this case was in derogation to the established rules of law.

And as far as this judgment i.e. the NJAC judgment is concerned it is also in total violation of the principles of natural justice as the judges are being a judge in their own cause. This is leading to a total chaotic situation. I agree to the point that the Law Minister cannot be allowed to be a member of the commission as he is the spokesperson of the government which is the largest litigant in the Supreme Court. So the Supreme Court should have struck down this particular part as the remaining part was totally justified but the judiciary instead struck down the whole act. The Judges always had the power to veto on name of any person whom they did not want in the apex court so there is no point in striking down the whole act. We should keep in mind the fact that this Amendment Bill was not only ratified by both the houses of the Parliament but also by all the state legislatures. Therefore it was a reflection of the will of the people. Therefore by declaring the said amendment as unconstitutional the judges have transgressed upon the will of the people of this country i.e. 30 people declaring as wrong what is roughly the viewpoint of the whole of this country. This is total tyranny.

Harshvardhan from the first year of B.A. LL.B (Hons.), was of the opinion:

The Supreme Court in a recent case upheld the validity of *Collegium System* and struck down 99TH *Constitutional Amendment* on whose basis NJAC was constituted thus making a right decision. It remarked that while every legal system has the tenacity to have flaws, the impact created by the very existence of the flaw has to be focused upon. In this situation NJAC scores over Collegium System with regard to negative impact as its existence would infringe upon the independence of the Judiciary. It has highlighted the need of the Judicial System to shed its opaqueness, and also to pivot to meritocracy over pedigree. It has also invited suggestions for improving the collegium system. This type of decision is what every highest court of land of every sovereign nation should do so it can

resolve to communal problem which can lead to loss of life as it has happened in this case.

Ehsaan Bansal, a 1st year student of B.A.LL.B (Hons.), opined:

I am a strong votary of a very independent and strong judiciary but to my mind the question before us is whether the current system of higher judicial appointments is fair and transparent, ensuring selection of competent and honest judicial officers. An affirmative response to this question would also mean that the *raison d’être* of the Hon'ble Supreme Court in striking down NJAC is quite correct. However if the general opinion of the stake-holders of our judicial system which includes civil societies, legislature, executive and public at large is that the current system of higher judicial appointments is opaque and unfair to a certain extent then Supreme court needs to work out a solution to the problem of appointments while ensuring participation of the civil society and legislature without compromising its independence and superiority in the selection process.

Akash Mishra, another student studying in the 1st Year of B.A.LL.B (Hons.), was of the view:

The idea of a body that has some members of the government in the selection procedure of the judges is not that bad. If the Supreme Court had apprehensions regarding government’s monopoly in the NJAC, it could have rightly so pointed that out and asked the government to make changes or proposed the required changes itself. As a concerned citizen of India, I can’t help but question as to why a body like the Supreme Court, which has in many a case strived for transparency in government bodies, would not agree to an idea that involves its own transparency? In a democracy and a democracy like India, nothing can be called ‘sacrosanct’ or be kept above questioning. If that happens, we’ll see more cases like what happened in the Calcutta High Court where a kin of a legal provost was elevated to the position of a judge and no one questioned the incompetency of that person.

Dhruv Negi from the first year of B.A. LL.B (Hons.), was of the opinion:

The NJAC Act which provides for the composition of the National Judicial Appointment Commission under Article 124A gives the legislature the power to participate in choosing the highest members of the Judiciary which is very risky and requires careful thought before being brought into action. The Supreme Court has deemed this act unconstitutional as it believes the Act to be against fundamental rights. Although it is unanimously agreed that the old collegium system lacks the necessary transparency, it is nonetheless too great a risk to try and make the system more transparent by giving the legislature greater power. A better system is certainly needed but the NJAC would encroach on the freedom of the judiciary which can result in greater harm than good so it would be correct to say that the Judiciary has acted in a justifiable manner when it declared the act unconstitutional. For, if a country is to maintain the freedom of its people, it must first maintain the freedom of its Judiciary from external influence.

ACTIVITES @ CASIHR

The Centre for Advanced Studies in Human Rights (CASIHR) at Rajiv Gandhi National University of Law, Punjab in association with Institute of Correctional Administration, Chandigarh organised the International Conference on “Victim Compensation And Restorative Justice And National Bill Drafting Competition on Victim Compensation, 2015” on 23rd November, 2015.

The inauguration of the event was graced by the benign presence of honourable dignitaries including Hon’ble Justice S.N. Aggarwal, Punjab and Haryana High Court; Ms. Meeran Chadha Borwankar, Legal and Technical Head, Home Department, Maharashtra Government; Professor (Dr.) Nishtha Jaswal, Professor of Law, Panjab University; Dr. Upmeet Lalli, Deputy Director of Institute of Correctional Administration, Chandigarh; Professor (Dr.) Paramjit S. Jaswal Hon’ble Vice Chancellor, RGNUL; Professor (Dr.) G.I.S. Sandhu, Registrar, RGNUL. The dignitaries illuminated the significance of the discourse on victim compensation and the importance of moving towards a system that envisages and ensures restorative justice to the victim as well as to the offender in its truest form.



Academicians, practitioners, research scholars and students from all over India as well as from other parts of the world presented their research papers in this conference. A few participants also availed the option of web conferencing which was provided to them. Research papers were invited on sub themes including Compensating and Rehabilitating Rape Victims, Plea Bargaining, Restorative Justice and Weaker Sections, Punishments and Restorative Justice, etc.



The inaugural was followed by presentations of the finalists of the National Bill Drafting Competition on Victim Compensation, 2015. The presenters who given a chance to discuss the proposed bill in detail were met with difficult questions from the judges who engaged in close scrutiny and critical analysis of the bills. The Conference saw enthusiastic response from the academic community. There were about 150 abstract submissions out of which about 120 papers were presented either through web conferencing or during the Conference.

Issues such as the Liability of the state, the problems faced by the victims and whether or not victim compensation as it exists today is

adequate in rehabilitating the victim into mainstream society were discussed. The selected papers from the Conference shall be published in a special volume in the form of an edited book with ISBN Number.

The sessions were chaired by learned dignitaries who inspired the participants put their knowledge to the benefit of the community they come from. The Conference was successful in its effort to reflect and examine all issues relating to provisions for Victim Compensation and Restorative Justice and finally to come up with solutions to these issues.

