

Some important Conventions, Declarations and issues related to Human Rights violations.

By;
B.K.Sinha, IPS(Retd.)
Ex-I.G. of Police, Jharkhand.
24.03.2012

Kinds of Violence Against Women

- **Traditional practices-** physically and psychologically harmful customs are deeply rooted in the tradition and culture of society....FGM defined by WHO as "all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons." practised in 28 Countries of Africa ,middle east...immigrants in Europe, America & Australia
- **Dowry-related violence and early marriage.....**
- Foetal or female infanticide
- Discrimination in family- neglect of the girl child over her brother in terms of such essential needs as nutrition, basic health care and education.
- Son preference affects women in many countries, particularly in Asia.
- In China and India, some women choose to terminate their pregnancies when expecting daughters but carry their pregnancies to term when expecting sons.
- According to reports from India, genetic testing for sex selection has become a booming business, especially in the country's northern regions.
- **Rape-** can occur anywhere, even in the family, where it can take the form of marital rape or incest.
- ✓ It occurs in the community, where a woman can fall prey to any abuser.
- ✓ It also occurs in situations of armed conflict and in refugee camps.
- **Domestic violence's.... Sexual harassment in work places.....**

Convention on the Elimination of All Forms of Discrimination against Women, 1979. (CEDAW)

- UN Declaration in GA dt.7 Nov.1967. Adopted in 1979 by the UN General Assembly.
- described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.
- Opened for Signature, *Ratifications (GAResolution34/180 dt. 18 Dec.1979)*
- *Entry into Force- 3rd Sept.1981 (20 ratifications).*
- *India signed on 30 July 1980 and ratified on 9 July 1993.*
- The six UN member states that have not signed the convention are Iran, Nauru, Palau, Somalia, Sudan, and Tonga. These are either Islamic states (Iran, Somalia, Sudan) or small Pacific Island nations (Nauru, Palau, Tonga). The United States has signed, but not yet ratified.

Gender equality

- By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:
- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises. (**Gender Bias –Gender Block**)

State Parties commitments

- The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.
- It affirms women's rights to acquire, change or retain their nationality and the nationality of their children irrespective of their marriage to a foreigner.(Nationality of husband can't be forced)
- States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.
- Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice.

CEDAW- Affirms voting rights to women

- Limited voting rights were gained by some women in Sweden, Britain, and some western U.S. states in the 1860s.
- In 1893, the British colony of New Zealand became the first self-governing nation to extend the right to vote to all adult women, and the women of the nearby colony of South Australia achieved the same right in 1895 but became the first to obtain also the right to stand (run) for Parliament (women did not win the right to run for the New Zealand legislature until 1919)
- **September,2011- Women in Saudi Arabia are to be given the right to vote and run in future municipal elections, King Abdullah has announced.**

Indian Acts for women

- Child Marriage Restraint Act,1929
- Suppression of Immoral Traffic in Women and Girls Act,1956
- Dowry Prohibition Act,1961
- Medical Termination of Pregnancy Act,1971...no abortion after 20 weeks(unless mother has medical risk).....legal only up to 12 weeks...12-20 weeks...doctors opinion ...Sulekha's case(24 weeks) Mumbai H.C.(2008)
- Indecent Representation of women(Prohibition) Act, 1986
- Commission of Sati(Prevention)Act,1987.
- National Commission for Women Act,1990
- Protection of Women from Domestic Violence Act,2005
- Protection of Women against Sexual Harassment at Work Place Bill,2007
- Important amendments in IPC 1860
 - 1983-498(A), 1986-304(B) & Onus of Proof on accused.
- 50% reservation for Women in Panchyats elections
- Present on going Budget Session- Cabinet clears Hindu Marriage Act (Amendment) Bill,2010...do away with 6 months waiting period....share in husband's earn property after divorce....one time settlement adopted child will have same inheritance right....

Convention on the Rights of the Child (CRC),1989



- Declaration of the Rights of the Child.(1959)
- 1979- International Child Year declared by U.N. G.A. in 1976
- The United Nations General Assembly adopted the Convention and opened it for signature on 20 November 1989.
- It came into force on 2 September 1990, after it was ratified by the required number of nations.
- 191 countries have ratified it, including every member of the United Nations except the United States and Somalia.
- Total no. of Articles - 54

Definition(Art.-1)and other important articles.

- The Convention generally defines a child as any human being under the age of 18, unless an earlier age of majority is recognized by a country's law.
- Registration & Nationality(Art.-7)- The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
- Article-23. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Two Optional Protocols adopted on 25 May 2000

- The first one restricts the involvement of children in military conflicts.
- The Convention forbids capital punishment for children.
 - Entered into force on 12 July 2002.
 - 142 states are party to the protocol and another 23 states have signed but not yet ratified it.
- The second protocol prohibits the sale of children, child prostitution and child pornography.
 - Entered into force on 18 January 2002.
 - 145 states are party to the protocol and another 22 states have signed but not yet ratified it.
- ✓ The US has signed and ratified both the optional protocols to the Convention.

United Nations Convention against Corruption (UNCAC)

- Signed on 9th December 2003 and became effective on 14th December 2005.
- is the first legally binding international anti-corruption instrument. In its 8 Chapters and 71 Articles, the UNCAC obliges its States Parties to implement a wide and detailed range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange, and mechanisms for implementation.
- International Assets Recovery-Bank accounts, real-estate, precious metals.
- 154 countries have ratified by now. (Switzerland-2009)
- India signed in 2005 and finally ratified 12.05. 2011.

Impact of Corruption.

- In Political system- undermines democracy and good governance. Political corruption can be for private and group enrichment, and for power preservation purposes..... Coalition politics...MCP(minimum common programme) has become CP (protecting corrupts)
- In Judiciary- compromises with the Rule of Law....impeachment proceedings...Justices Ramaswamy , Saumitra Sen, P.D.Dinakaran ...ex-law minister Shanti Bhushan's affidavit(2010) about ex-CJI's
- In Public Administration- results in inefficient provision of services....public offices are bought and sold.
- In Private Sector-increases the cost of business through the price of illicit payments.
- In Education system- ruins the future generation of the country.

Corruption-violation of human rights

- The right to a society free of corruption is inherently a basic human right because the right to life, dignity, equality and other important human rights and values depend significantly upon this right.
- Corruption affects governance in a significant manner and it is anti-poor. For instance, a substantial portion of food grains, sugar and kerosene meant for the public distribution system (PDS) and for welfare schemes for the poor, including the Scheduled Castes (S.C.s) and the Scheduled Tribes (S.T.s), goes into the black market.
- Welfare schemes for poor- MANREGA, SMART CARD, Old Age Pension etc. the benefits of which have failed to reach the poor-because of rampant corruption in the system.
- The connection between corruption and transnational organised crime has also become clear, especially in relation to the three crimes-Human trafficking, prostitution and child labour which violate several rights, such as the right to life, the prohibition of slavery and sexual exploitation, and the right to physical security, justice, equality and health, and in the case of children, the right to education .

Transparency international

"the misuse of public power for private gain."

- Corruption Perception Index,2011 (182 countries)
 - New Zealand (1)-9.5
 - Denmark ,Finland(2)-9.4
 - UK (16)-7.8
 - USA (24)-7.1
 - Russia (143)-2.4
 - China (75)- 3.6
 - Pakistan (134)- 2.5
 - India (95)-3.1
 - 2010 (87)- 3.3
 - 2002 (71)- 2.7
 - 1998 (66)

Transparency International India

- Highly Corrupt-Police department
- Least corrupt- primary education department
- High corruption in;
 - ✓ Land records and registration
 - ✓ License and permit
 - ✓ Health
 - ✓ Education
 - ✓ Excise
 - ✓ Public distribution system
 - ✓ Municipal corporations
 - ✓ Block offices etc. etc.....

ipaidabribe.com. (as on 23.3.2012)

- 5 Topmost corrupt cities in India;

	Reports	Amount in Lakhs
▪ Bangalore	4221	1137
▪ Hyderabad	1305	0271
▪ Mumbai	1123	0454
▪ Chennai	1000	0176
▪ Pune	0701	0116
- 5 Topmost corrupt departments in India; Reports | Amount (in Lakhs)

▪ Police	5714	260
▪ Registration	2199	871
▪ Motor vehicles	1334	055
▪ Municipal services	1332	546
▪ Passport	0662	023

 - Reservations- may not be acceptable as it is only based on reaction of internet users.

Corruption in Education

- The UNESCO's International Institute of Educational Planning study on corruption in education released recently says that **25% teacher absenteeism in India is among the highest in the world**, second only after Uganda that has a higher rate. The global average of teacher absenteeism is about 20%.
- Teachers also believe highly in **private tutoring** a practice identified by UNESCO as unethical.
- **Multi-regulatory System:** UGC,AICTE.MCI,NCTE-The presence of such a multi-regulatory system has created many hurdles in the growth of our education system. Various colleges get approved and affiliated easily even if they do not meet the required standards completely.
- Not a single University-not even celebrated IITs and IIMs figure in the Times Higher Education magazine's ranking(2011) of world's top 200 universities.
- India is now lagging behind China in quality of research.

Corruption free society-Basic Human Rights.

- Reform in educational system- Spiritualism and value based education, human rights sensitive approach.
- UNDP report-2011- India at 137thplace(out of 183) with 74.04% literacy. 103 countries have literacy above 90%. China has 95.9% literacy.
- Investigating agencies like CBI, Vigilance and office of CVC should be freed from political interference.
- Corruption cases should be investigated within time frame, no delay in prosecution sanctions and award of punishment....speedy trial.

- Press and Media to take leading role in exposing corruption-deviation after economic reforms in the wave off GLP-corporate culture-yellow journalism-blackmail-corporate lobbyist(Neera Radia case)-highly politicalized rather owned by political parties to project their image only
- Nexus of Politician-Bureaucracy and criminal to be broken as suggested by Vohra(then Home Secretary) Committee report in 1993.
- Politician can not become corrupt alone .He requires the support and connivance of officers. Hence if corruption is checked in bureaucracy, political corruption will automatically checked.
- Transparency in administration-role of RTI activist.

Lok Pal vs. Jan Lok Pal Bill- role of Civil Society. Govt. under pressure;

- Right to Service Act,2011 - in Bihar and Jharkhand other to follow
- Citizens Right to Grievance Redress, 2011-This is a comprehensive rights based bill for the citizens of the country, providing statutory backing for getting timely services and goods specified in citizens charters of public authorities from Gram Panchayat, Block, District, State up to Central Level.
The Grievance Redress Bill seeks to make it mandatory for every ministry and department of the government to address people's complaints within 15 days failing which action will be taken against the officer concerned.
- Judicial Accountability Bill ,2011(Lok Sabha adjourned over voting on the Bill)
- Right to Reject and Right to Recall- under debate.
- Election Commission- Electoral Reforms to stop criminals entry in political system.

Main problem in combating corruption

- Rampant corruption in public life.
- Total departure from ethics and morality.
- Tolerance of people towards corruption.
- No political will power.
- Who will take the lead ?

Human Rights Violations and Police

State Violence-4 levels

- 1.Insurgency situations- Armed forces are involved in tackling terrorists..J&K, North-East.
- 2.Naxal situations- Police have used force to control organized political uprisings of armed groups who believe in armed conflicts with State and select section of society to achieve their goals.
- 3.Political crises-especially in situations of bunds and processions, the state uses force to bring disorderly situations under control.
- 4.Police atrocities in normal times-misbehaviours , torture, custodial violence's including death, rape, illegal detentions, false encounters

Indian Police-British legacy

- 1857- police organization in India formed
- 1860-All India Police Commission appointed
- 1861-British System incorporated as Police Act,1861 - still continues in many states including Jharkhand.
- 1860-Indian Penal Code
- 1872-Indian Evidence Act
- section 25&26 deliberately made police untrustworthy (Confession before or in presence of police was not admissible evidence).
- At the same time section 27 made admissible encouraging police for custodial violence and torture to elicit confession leading to recovery and other admissible evidences.
- ✓ In English law- confession before police is admissible subject to satisfaction of Judge ,that it is independent, voluntary and without any duress.

Dilemma of Police—Violation of Human Rights.➤ **Expectations of Public :**

- **Police an ideal citizen- better than fellow citizen.**
- **Should display best of human values, perform miracle, solve all crimes and to deal with suspects/criminals violently.**
- **Democracy stresses on freedom, police action speaks of curtailing them.....Police-Public conflict.**
- **Police is blamed- bail to criminal by judiciary or for want of evidence due to non-cooperation**

Basic Causes of Custodial Violence

- **People support violence on accused for confessions leading to recovery.**
- **Public are indifferent to the use of force on fellow human beings.**
- **No social stigma is attached to the use of custodial violence by police.**
- **Police Reforms Committee (Home Secretary K.Padannabaiah)–“a large section of people strongly believe that the police cannot deliver function if it does not use strong arms tactics against the criminals and anti-social elements of the society. And these people include India’s political class, the bureaucracy, and a large section of the upper and middle classes.....”**

Main Reasons for maligned image of Police

- **Criminalisation of Politics**
- **Politicisation of Police**

Result: Criminal-Politician-Police nexus

- **Presence of some arrogant, incompetent and corrupt officers and men who are not punished severally**
- **Brutality and rude behavior on the part of some officers and men at grassroots level functionaries-constitutes vast majority of Police forces in the country.**
- **All these eclipses the Supreme sacrifices of thousands of policemen and women every year, fighting extremism, communalism, anti-social elements to preserve law and order in the society and unity & security of nation.**

Steps taken for Police Reforms.

- **National Police Commission-appointed in 1977**
- **4th Report(1980)- “unfortunately several police officers under pressure of work are driven by desire to achieve quick results, leave the path of patient and scientific interrogation and to resort to the use of physical force in different forms to pressurize witnesses/suspects/accused to disclose all the facts known to him.”**
- **Police Reforms-2006-Directions of the Supreme Court to all State Govts. in a PIL filed by an ex-Police Officer (Prakash Singh v. Union of India – WP No. 310 Of 1996) :**

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

- **Torture: - the act of causing severe pain, physical or mental, as a punishment or to make someone do something**
- : - great suffering or anxieties**
- **Torture encompasses all acts of ill-treatment, cruel, inhuman and degrading punishment by police, security forces and jail authorities of the state, that result in severe physical or mental pain or suffering. This includes targeted killings, fake encounters, custodial violence and extrajudicial punishments in the form of rape and even death.**

History of Torture

- **Until the second century AD- torture was used only on slaves later extended to all members of the lower classes.**
 - **During the time of Jesus Christ;**
 - **Romans -crucifixion,**
 - **Jews -stoning**
 - **Egyptians -desert sun death.**
- All these acts of torture were considered necessary (as to deter others) or good (as to punish the immoral) - society’s concept of Justice
- **In India- practice of torture can be traced to early Vedic Periods**
 - ✓ **Kautilya Arthasastra- speaks of cutting limbs and mutilations - Tearing by wild animals -trampling to death by elephants**
 - ✓ **Manu Smriti (Penal laws)-emphasized the necessity of torture to protect the society from the criminals.**
 - ✓ **Muslim Penal Laws.....Sharia laws**

United Nations-International Bill of Human Rights(UDHR 1948,ICESCR&ICCPR,1966)

Basis of Convention

Article.5 of the Universal Declaration of Human Rights(UDHR),1948 and

Article.7 of the International Covenant on Civil and Political Rights(ICCPR),1966;

both of which provide that;

“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

- **India- founder member of UNO and State party to above international treaties.**

Torture defined in Article-1
3 - ingredients of Torture by investigating agencies;

- It constitutes acute suffering (physical or mental)
- It is inflicted for a purpose- confession of guilt
- It is inflicted by public official or other persons acting in an official capacity or at his/her instigation or with his/her consent or acquiescence.
 - ❖ Indian Acts against Torture in society/by society;
 - 1.Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989,
 2. Dowry Prohibition Act, 1961.
 - 3.Protection of Women From Domestic Violence Act, 2005 .

Prevention of Torture Bill,2010

- Introduced in Lok Sabha on 26th April, 2010
- Passed by Lok Sabha on 6th May 2010
- Protests by Human Rights organizations-as weak law.
- Rajya Sabha adopted a motion on 31.8.2010 and referred to a 13 member select committee led by chairman Ashwani Kumar of Congress which submitted its amendment proposals;
 1. Minimum punishment 3 year to make the law more deterrent.
 2. Minimum fine Rs.1,00,000/- payable by torturer.
 - 3.Limitation period of years...after which discretion of court.
 - 4.Conclusion of trial within a year.
 - 5.Protection of victim and witnesses.
 6. Suitable provision for rehabilitation of victim of torture
- Amendments approved by Rajya Sabha panel and presented to R.S. on 6.12.2010 .

Thanks