

Human Rights in Changing Times

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Edited by

Gyan P. Agarwal, Sunil K. Choudhary
and Reenu Gupta

**CAMBRIDGE
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P U B L I S H I N G

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FOREWORD

YOGESH ATAL

FORMERLY UNESCO PRINCIPAL DIRECTOR
OF SOCIAL AND HUMAN SCIENCES

I laud the effort of the Shyam Lal College [Evening] of Delhi University in taking the initiative to organize an international conference, with participation also from some scholars from abroad to highlight the significance of human rights in a democratic polity.

I regard this initiative on the part of the Shyam Lal College (Evening) as a contribution to the international community to promote human rights.

There is a personal reason for my enthusiasm for this effort. While at UNESCO, it was my task to promote, among others, teaching and research relative to human rights in tertiary education in the vast Asia-Pacific region; I see the effort as a response to UNESCO's initiative in this regard, and hence of personal satisfaction to me. In particular, I laud the contribution of Dr Sunil K. Choudhary and his team in organizing so successfully the conference and in carefully editing this volume.

I was happy when the College invited me to deliver the Keynote Address at the conference, and that, too, in the presence of the Chairman of the Indian National Commission for Human Rights, retired Chief Justice of the Supreme Court, Shri K. G. Balakrishnan.

The **Universal Declaration of Human Rights (UDHR)** is a non-binding declaration adopted by the United Nations General Assembly in December 1948. Although the idea of human rights is as old as humanity and is endorsed in their own ways by the various religions, it was the barbarism of World War II that prompted the world community to reassert its significance and make it the central task of the newly found United Nations to promote them in the member-states to ensure that the world shall never again experience the terrible consequences of human massacre. The UDHR urges member-nations to promote a number of human, civil,

economic, and social rights, asserting that these rights are part of the “foundation of freedom, justice, and peace in the world”. The Preamble to the Universal Declaration of Human Rights says that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”.

The Universal Declaration represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966, the General Assembly adopted two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

The post-war era saw human rights movements for special interest groups such as feminism and civil rights. Even the members of the former Soviet Bloc joined the movement. The movement then became part of social activism and political rhetoric in many nations. In fact, in many countries where democracy was still taking its roots, the governing elites regarded human rights activists as anti-establishment. Such countries engaged in double-talk: in the international fora, they eulogized and espoused human rights; back home, they penalized human rights activists.

Of late, human rights are at the centre in the agenda of several NGOs, and the official agencies engaged in the task of maintaining law and order are seen as violators of human rights. One must, however, sympathize with the governmental agencies which had to take tougher actions against those who violate human rights. Sadly enough, NGOs become active when a culprit is under police custody to protect his human right; the fact that such a person had engaged in a criminal activity that violated the victim's human rights is conveniently ignored. This remains a constant dilemma.

It is indeed heartening that the human rights movement has grown beyond its original anti-totalitarianism to include causes involving humanitarianism and social and economic development in the developing world.

A proper orientation to human rights is still lacking in many sections of the society in several countries; and India is no exception.

In the 21st century, human rights are likely to receive even greater attention. But it is not sufficient to increase awareness of the issue. The research component continues to be very weak. Merely cataloguing the instances of human rights violations is not enough. Nor is it satisfactory to find out the percentage of people in a given sample possessing knowledge about specific human rights. There is a need to dig deeper.

The papers reproduced in this compilation will certainly serve the purpose of putting in one place relevant material in all the areas that are affected by violation of human rights. The discussion record of the two-day conference does indicate awareness about many grey areas which warrant systematic and scientific research. I wish and hope that Shyam Lal College (Evening) will encourage its faculty to undertake research and develop specialism in human rights with a proper social science orientation.

September 2013

INTRODUCTION

GYAN P. AGARWAL
SUNIL K. CHOUHDARY
REENU GUPTA

The Background

The 21st century can be described as the century of human rights as the idea has now become pervasive in the current global political reality. The concept has been in vogue for a long time and perhaps all the modern nation-states have tried to formulate their own institutional rights directly or indirectly related to human rights. Despite such political concern on the issue of human rights there has been a lack of consensus among nations resulting in the resurgence of many controversies surrounding human rights today. Though the concept of human rights is related to global politics, it has acquired only a marginal position in social sciences.

The phenomenon of human rights is connected not only with the protection of the individual from the excesses of the state but is also directed towards the creation of societal conditions by the state in which individuals may develop to their fullest extent. However, one finds an interesting paradox in human rights discourse today, viz., while no one actually rejects the principle of defending human rights, these rights are violated virtually everywhere. Notwithstanding the inherent paradox one sees rising concerns of human rights at all levels – national, international and transnational.

Despite its historical genesis and long evolutionary process, the concept of human rights has assumed great significance in the 21st century. Shifting trends and generational transformation have added new perspectives and challenges to human rights across the globe.

It was to examine these multifaceted challenges and changing perspectives that Shyam Lal College (Evening), University of Delhi, India organized a two-day *International Conference on Human Rights* on February 14–15, 2012 at India International Centre, New Delhi, India. The conference was designed to gauge the opinion of scholars and social scientists, pundits and politicians, public officials and civil functionaries on the issue of human rights.

Theme and Participation

The theme of the international conference was: *Human Rights in the 21st Century: Global Perspective, National Challenges*. The conference attracted participants from seven countries including South Africa, France, Hungary, Hong Kong, Iran, and Tibet and from almost all corners of India. The two-day deliberation of the presentations by 28 selected scholars tried to highlight various new issues of human rights at local, national and transnational levels.

The conference was inaugurated by Hon. Justice K. G. Balakrishnan, Chairman, National Human Rights Commission. Justice Balakrishnan highlighted the essence of human rights and regarded this as an essential feature of all democratic countries. He stressed the need for accepting and respecting the rights of others. He also emphasized that “one should know one’s worth and respect the rights of others”. He appreciated the role played by National Human Rights Commission, India in upholding the human rights of downtrodden strata of society and advocated the need of introducing modules on human rights in schools.

Dr Ms Krisztina Morvai, Member of the European Parliament, was the Guest of Honour in the conference. Dr Ms Morvai tried to present a paradox of the world community in which one world is focusing on human rights whereas the other world is looking at profits.

The Keynote Address was delivered by Professor Yogesh Atal, Former, Principal Director of Social and Human Sciences, UNESCO. Professor Atal focused on two major issues in his address – poverty and corruption – as illustrations of the violation of human rights. He argued that there is a direct connection between corruption and the violation of human rights. He concluded by emphasizing the need to create better awareness about human rights which require much deeper efforts not only by the government but by all stake holders in order to transform these rights into reality.

The inaugural session was also addressed by Shrimati Nirmala Gupta, Chairperson, Shyam Lal College, Governing Body and Dr Gyan P. Agarwal, Principal of Shyam Lal College (Evening). The address by the college dignitaries presented an overview of the previous seminars and conferences organized by college since 2005 and highlighted the growing importance of human rights both in developed and developing countries.

The valedictory address to the conference was given by Dr Kavita Sharma, Director, India International Centre, New Delhi, who brilliantly summed up the crux of the human rights debate from the Western as well as Eastern perspectives.

Transforming the Conference Discourse into Academic Volume

The publication of the conference proceedings sought to transform the academic discourse into an academic volume that could be beneficial for all. The initiation of interest in our conference proceedings by Cambridge Scholars Publishing, U.K. and its proposal of publishing the same even before the holding of the conference galvanized the “Team Conference” towards its splendid culmination. After the completion of the conference in February 2012, we took almost a year in seeking revision of the papers of our contributors based on the feed back of the conference and comments of the editorial board. Our efforts have finally produced results and with the kind cooperation and support of most of our contributors, we are now able to reproduce the manuscript within the given time limit.

For the purpose of analyzing various aspects and perspectives of human rights in global world, the book is divided into four parts – politico-legal, socio-economic, gender and ecological, and the transnational. The classification of the book into four key parts and clubbing of the papers into each of the parts does not necessarily follow strict parameters as the concept of human rights is cross-national, cross-cultural and cross-sectional.

Part I of the book analyses politico-legal aspects of human rights. It comprises four leading papers by Fatemeh Eslami, Basant Singh and Sandeep Kaur, Sonal Pandey, Hare Ram Tewari and Pradip Kumar Bhowmick, and Ved Pal Singh Deswal. These papers examine the politico-legal perspectives of human rights. The first paper in the sequence discusses the impact of World Trade Organization on Intellectual Property

Rights in developing countries from a human rights perspective. Other important contributions in this section highlighted the issues of defence and security, human trafficking and terrorism. While one of the papers in this part throws light on the Armed Forces Special Power's Act vis á vis human rights, the other papers brilliantly cite the growing concern of human trafficking and terrorism as violators of human rights in the contemporary world.

Part II of the book is an attempt to coalesce the papers underlining the importance of socio-economic orientation of human rights and their growing relevance to humanity. Written by four young and dynamic social scientists – Astha Dewan, Archana Dassi and Sanghamitra Dhar, Amarjit S. Narang, and Dipti Tripathi – all the papers of this part tend to focus on new emerging issues like safe drinking water and reproductive tourism as well as the plight of the street children and minorities which require special attention from all the stake holders – state, civil society and the citizens.

Part III of the book delves into the ecological and gender issues of human rights. It comprises four lead papers by Prakash Chand, Neha Gupta and Sumbul Tahir, Pravin Singh, and J Anuja and Sara Neena T. T. All these papers examine the issues of industrialization and ecological development, environment and development, climate change, and domestic violence and women's rights. While the first half of this section analyses the issue of industrialization, ecological development and climate change; the other half highlights the balancing of life, environment and development besides underlining the issue of domestic violence in the context of a southern state of India, viz., Kerala.

Part IV of the book discusses human rights from a transnational perspective and comprises papers by national and international scholars, viz., Pui-yan Flora Lau, Sunil K. Choudhary, Ramesh Kumar and Alix Loubeyre. All the chapters of this part seek to locate the phenomenon of human rights in three important continents – Asia, Africa and Europe besides focusing on the growing problem of human rights in the context of state-citizenship debates in the politics of West Asian countries, especially Israel.

ACKNOWLEDGEMENTS

We would like to record our sincere thanks to all the guests, delegates, organizers, members of the Team Conference, faculty and staff of Shyam Lal College (Evening), University of Delhi without whose warm association and kind cooperation the event could not have seen the light of its splendid success.

We express our warm gratitude to our language editors, especially Christopher Pipe, for taking great pains in editing the entire manuscript with utmost devotion and sincerity.

We are equally grateful to Cambridge Scholars Publishing, U.K., particularly its Commissioning Editor, Carol Koulikourdi, and manuscript editor, Amanda Millar, whose consistent support and encouragement always helped us in editing, revising and finally submitting the manuscript within the stipulated time frame.

Finally, we would like to thank all our contributors for showing great patience and perseverance in revising and redrafting their papers as desired by the editorial board and language editors from time to time.

Gyan P. Agarwal
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2 October 2013

KEYNOTE ADDRESS

INTRODUCING HUMAN RIGHTS IN THE TWENTY FIRST CENTURY

YOGESH ATAL

FORMERLY UNESCO PRINCIPAL DIRECTOR
OF SOCIAL AND HUMAN SCIENCES

I thank the organizers for this honour.

My participation in this event revives the memories of my association with UNESCO. During my long career with UNESCO, particularly when I served it as its first Regional Adviser for Social and Human Sciences in Asia and the Pacific, one of my responsibilities was to promote teaching and research in the area of human rights.

The public image of UNESCO being that of an agency engaged in the task of education, any task assigned to it by the international community was seen as a task in the area of teaching, and that too at the level of primary and secondary education. Quite naturally, UNESCO took up the challenge of teaching of human rights via its Education Sector. The Sector did a commendable job of developing teaching materials, booklets and brochures, and cartoon books, of issuing posters, organising children's events like exhibitions, and plays and skits to spread the message and enlarge awareness of human rights amongst the school-going population.

Human rights received added emphasis after the 1983 Vienna International Conference on Human Rights. It became the responsibility of UNESCO to develop a follow-up programme to implement the resolutions and recommendations of the conference relative to the teaching and research in human rights. The scope of teaching human rights needed an extension to cover education at higher levels of learning. Vienna Declaration's acknowledgment of the need for research served as an invitation to carry

out scientific research in institutions of higher learning. The Sector for Social and Human Sciences in UNESCO was given the responsibility for this task, which created a separate Division of Human Rights and Peace.

As UNESCO's Regional Adviser for the vast Asia and the Pacific region, the responsibility fell on me to promote teaching and research in Human Rights in Higher Education. This promotional work, however, remained confined mainly to university departments of Law – particularly International Law – and of Political Science. But in these departments, such teaching was mainly normative, and very little by way of research was done. The celebration of the Human Rights Day on 10th December¹ was the most important activity. The celebrations took the form of a seminar or a guest lecture on the importance of human rights. The funding support sought by the university departments related to the translation of various documents – Universal Declaration, Conventions and Covenants, organization of special lectures for the general public, and arranging competitions – essay writing, poetry, or cartoons and paintings relative to human rights. My office did all this, besides bringing out a *Newsletter on International Law*.²

It was a strange realization that while in the international fora member-states proudly endorsed human rights and became signatories of the various instruments, back home they paid only lip service to them. It is a reality that most work in the area of human rights was, and is, done by the NGOs. Interestingly enough, such NGOs are seen mostly in negative terms, as those opposed to the government. Of course, there is reason behind such a confrontationist interaction between the two agencies. The NGOs generally target the governments and their law enforcing agencies for the violation of human rights. The reports produced by organizations such as Amnesty International, or by the United States Government, related to the compilation of cases of human rights violations by state agencies. No doubt, these reports attract media attention, but they also generate political debates and show the governments in poor light. NGOs do serve the purpose of spreading awareness among the reading public but sadly contribute little by way of solid research. Compilation of cases of human rights violations does fall in the category of data collection; but that does not cover the full scope of research on human rights. These reports are also one-sided because they do not tell about human rights violations by agencies and individuals outside the government.

I always had a feeling of discomfort while treating human rights as a social science specialty. The question is that of orientation – how to approach the subject as a social scientist? What questions to ask? Whom to ask? How to go beyond macro statistics of human rights violations to solid empirical research? I must confess that much of what I read as research material is more in the nature of commentaries and explications, or laudatory of human rights.

Under the UNESCO auspices, I did organize an international seminar in Bangkok to discuss the place of human rights in various religious traditions. That was an exercise, I realized while conducting the seminar, to provide a counter argument to the general criticism of human rights as a “Western conceptualization”. The papers on various religions presented at the seminar tried to show that the idea of human rights is universal and is commonly shared by all religions. Again, this exercise was based on the analysis of religious scriptures and did not provide any explanation for the violation of human rights by the religious fanatics and fundamentalists who were promoting *Jehad* and indulging in bloody communal violence.

Social sciences would have to develop a paradigm to handle the issue of human rights if they really wished to go beyond “journalistic” reportage or “political” commentaries. If social scientists as social scientists dealt with human rights in the same manner as NGO leaders, or politicians, or social activists, they might promote the cause of human rights but would not demonstrate the role of social sciences in this area. We need to ask how social sciences can contribute to the promotion of human rights.

When we discuss the question of human rights in the beginning of the second decade of the twenty-first century and in a gathering of university teachers and researchers it becomes necessary for us to rethink our role in the area of human rights so that we develop an agenda for research and a protocol for teaching this subject in the arena of the social sciences.

Human rights are universally acknowledged and all member-states of the United Nations have endorsed them. It is the task of the governments to protect the rights of its people. When such rights are violated the people seek redress from the government. Thus human rights are seen as a deal between the government and the people. However, it is the government which is generally alleged to violate human rights. That is the reason that agencies such as Amnesty International come out with yearly reports on cases of human rights violations and rank the governments on a scale.

Interestingly enough, it is not only the dictatorial regimes that figure in the list of violators, although it is these regimes which curb freedom of expression and censor all information about them. Demand for a democratic regime ensuring people's participation is one significant expression of the assertion of human rights. However, it is to be realized that it is the State that has the responsibility to maintain law and order, and in the exercise of this responsibility it has also to use, or at least to demonstrate, its force. In such actions it is the government that remains at the receiving end of all criticism. What gets highlighted is the violence committed by those who have the onerous task of maintaining law and order. There remains the dilemma as to how to ensure peace and stability when some elements from the general public turn violent and violate human rights of others. When underground armies threaten peace and challenge the stability of the prevailing system what option does the agency in charge of maintaining order have other than using force to combat force? It is always the police or the military that is criticized for violation of human rights and the sympathies are generally extended to the perpetrators of crime. While protests remain one single and effective means to express dissent, it may become a bloody struggle. When a group like Naxalite disturbs the peace of a region and results in killing several innocent people, whose side should human rights protagonists take? This is an issue not easy to resolve, but needs careful investigation. By definition, a human rights activist is a person with commitment with value biases. A researcher of human rights is expected to be value-free to be objective. A social scientist can become an activist, but then he loses the objectivity that is required of a social scientist. It is in this sense that one can argue that every thing that a social scientist says is not social science.

Since we are talking in the context of tomorrow, we must acknowledge that our societies are in the throes of change. Information revolution has changed the contours of our communication highways, and improved our awareness profiles. With rising literacy rates and exposure to the wider world more and more people are claiming their rights, taking to the streets, and asserting demands for change. Many have found their voices via the internet. With the use of instant messaging human rights activists are informing, inspiring, and mobilizing supporters to seek their basic rights. The recent events in India's history relative to protests against corruption are a case in point. Team Anna's *India Against Corruption* attained huge success in making corruption a common issue, thanks to the availability of modern means of communication. People expressed their support and views through text messages in large numbers – a strategy that was not

available to Mahatma Gandhi when he fought against the British *Raj*. In the context of tomorrow we must stress the point that there will be a larger number of informed and aware people, and that this would strengthen their resolve to exercise their rights and make legitimate demands on the system. The explanation offered today for the state atrocities in terms of an ill-informed populace would not hold viable in the context of tomorrow.

We must also accept the point that Social Science work relative to human rights does not stop at mere collection of statistics about the violation of such rights, certainly not only to those cases where criminal cases are tackled by the police. It has to be understood in broader terms. Human rights relate to practically all spheres of social life. In recent years, this movement has focussed on freedom of assembly, death penalty, minority rights, migration, racism, and women's rights particularly in conflict areas, problems of lesbianism and homosexuality, and even corporate responsibility. Religious intolerance is, likewise, another source of the violation of human rights. The new area of concern relates to bioethics. There are now Universal Declarations relative to Human Genome and Human genetic data. The rising cases of medical negligence and sale and administration of spurious drugs also belong to this territory. About the latter, there is now a need to carry out empirical researches in the area of Medical Sociology and Sociology of Health. In fact, one can prepare a whole list of topics from several areas of socio-sphere where research with a human rights perspective can be carried out. This is a huge challenge for the social sciences in terms of systematic and scientific research to investigate and report on the structural and functional deficiencies that facilitate violation of human rights.

As an illustration, I propose to focus on two issues that need to be seen in the perspective of human rights, namely poverty and corruption.

Poverty

Persistence of poverty is now regarded as violation of human rights. Since discrimination is declared unacceptable by the by Article 2 of the Universal Declaration of Human Rights, and since the two international Covenants explicitly condemn discrimination based on social origin or property, people living in conditions of extreme poverty are seen as deprived of their human rights.

While pleading for the elimination of poverty, the human rights activists invoke the fundamental principles of human rights, namely (i) equal dignity of all human beings; and (ii) the principle of equality and non-discrimination. They also recall that the Universal Declaration of Human Rights begins with the words: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .” Similarly, Article 1 of the Universal Declaration affirms that “All human beings are born free and equal in dignity and rights”.

It is rightly contended that people living in absolute poverty are victims of *de facto* or *de jure* discrimination that, in a way, violates the principle of equality. Poverty leads, it is argued, to all kinds of discrimination, including racial discrimination and apartheid.

Because of poverty the poor are, in particular, deprived of the following specific rights:

1. *The right to a decent standard of living* (Article 25 of the Universal Declaration that says: “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”).
2. *The right to housing* (Article 11 of the International Covenant on Economic, Social and Cultural Rights).
3. *The right to health* (Article 25 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Economic, Social and Cultural Rights. The latter says: “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”).
4. *The right to education* (Article 26 of the Universal Declaration and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights). Guided by this, the world community adopted the famous 1990 Jomtien Declaration on Education for All (EFA).
5. *The right to work* (Article 23 of the Universal Declaration; and Articles 6 to 9 of the International Covenant on Economic, Social and Cultural Rights).
6. *The right to protection of the family* (Article 16 of the Universal Declaration says: “the family is the natural and fundamental group unit of society and is entitled to protection by society and the state”).

It also figures in articles 7 and 10 of the International Covenant on Economic, Social and Cultural Rights).

7. *The right to life and the right to physical integrity* (Article 3 of the Universal Declaration and Articles 6 and 9 of the International Covenant on Economic, Social and Cultural Rights).
8. *The right to justice* (Articles 10 and 11 of Universal Declaration, and Articles 14 and 15 of the International Covenant on Economic, Social and Cultural Rights). Apart from other obstacles such as illiteracy, complexity of the procedures, and mistrust of the judicial system, it is the indigent condition that prevents the poor from taking recourse to law.
9. *The right to take part in political affairs* (Article 21 of the Universal Declaration and Article 25 of the International Covenant on Economic, Social and Cultural Rights refer to this right).
10. *The right to participate in social and cultural life* (Article 22 of Universal Declaration and Article 15 of the International Covenant on Economic, Social and Cultural Rights).

The listing of the rights that are violated in the context of the poor suggests that poverty is a denial not of this or that right but of human rights as a whole. It is not only the economic rights of the poor that are violated when they suffer from absolute poverty, but the entire gamut of civil, political, and cultural rights is violated. Absolute poverty is “an accumulation of mutually reinforcing misfortunes: poor living conditions, insalubrious housing, unemployment, ill health, lack of education, marginalization, etc., a veritable ‘horizontal vicious circle of poverty’”.

Approaching poverty as a human rights issue makes it more than a social problem and gets it linked to the question of basic social and economic rights as also civil and political rights. Such an approach would require new instrumentalities to ensure elimination of poverty. It would necessitate not only vigorous efforts on the part of the states but also involvement of the civil society, non-state actors, and multinational corporations. It is now recognized that mere passage of legislation, and government expenditure on the social sector, is not enough to mitigate this scourge. To the extent the non-poor are held responsible for causing poverty, or aggravating it, one may talk of violation of human rights by the non-poor. In this perspective, the poor may appear as victims.

Conceptually, it is important to distinguish between various types of poverty. If poverty is caused by denial of human rights its remedy would

lie in the restoration of such rights. But if poverty prevents one from the exercise of certain human rights then efforts would be needed to obliterate those factors which create such obstacles. Seen this way, providing education to the poor should be differentiated from the fight against poverty. Education is a fundamental right, and the poor children should not be denied access to education, but provision of education may not always lead to the elimination of poverty. There is ample statistical evidence to indicate poverty among the educated; similarly, the poor could be found among those who are in jobs or who are normally healthy. A devastating earthquake, or any other natural calamity, can render many homeless and jobless, and even penniless. For such kind of poor one cannot offer the usual recipes of education or employment.

It remains to be seen how the poor can assert their human rights and seek repairs to the social damage to their lives. The attitude of charity among the non-poor cannot help build self-confidence among the poor. They will continue to be parasites and may even see advantage in appearing to be poor and down-trodden. This would go against the philosophy of empowerment.

There is merit in the allegation that while the non-poor speak the socially correct language decrying poverty and sympathizing with the poor, they need the poor to maintain their non-poor status.

Combating poverty requires fresh thinking away from stereotypical recipes. Charity does not seem to work. With all the post-independence years focussing on the poor, particularly the rural poor, we still talk of this scourge. The success of government efforts cannot be measured in terms of how much money is spent. Everybody talks of MNREGA (Mahatma Gandhi National Rural Employment Guarantee Act) and the government takes pride in reporting several crores of rupees on this programme. Researchers are hired to give certification of success. Recent exposures in the states that are going to polls of the diversion of funds from this scheme as well as from the National Rural Health Mission remind us that mere allocation of funds, and not even reports of their utilization are enough. These schemes have opened new doors for corruption. The money meant for the poor and the sick has not reached where it should have. The result: the poor remain poor, and the sick remain sick.

Corruption

The problem of corruption is also seen as a violation of the principles of equality and non-discrimination. At first sight this may appear far-fetched, but a close examination would suggest that there is a direct connection between corruption and human rights.

Note the following examples:

1. When a person obtains privileged treatment by means of a bribe it affects the right to equality in the sense that compared to the people who do not give a bribe, the bribe-givers are given precedence. Non-bribe-givers face delay in getting their work done and thus their right to equality may be hurt. In other words, corrupt practices commonly produce unequal and discriminatory outcomes with regard to human rights.
2. When administration of justice is influenced by acts of omissions that constitute the use of public authority for the private benefit of court personnel, it results in the improper and unfair delivery of judicial decisions. The acts of omission include: bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain. For example, a judge may be paid a bribe to exclude evidence that would otherwise lead to the conviction of a criminal. A court official may be paid a bribe to allocate a case to a sympathetic judge, to lose a case file, or to speed up the hearing of a case. Police can be bribed to tamper with criminal evidence. Prosecutors can be paid to avoid bringing a case forward or to assess the evidence in an unfair manner. Any actor within the judicial system is acting corruptly if he or she applies inappropriate influence affecting the impartiality of the judicial process.
3. When the rights of political participation are violated? In a democratic system, people have the right to vote and stand for elections; in other words, the citizen has the right to be involved in the conduct of public affairs. The fact that only a limited percentage of eligible voters partake in voting, and that their choices are limited to those who contest the election, is indicative of disguised violation of this important right. This happens because of people's apathy and their helplessness. It is the muscle power and money power that influences the pattern of voting. While in theory any person can contest an election, in practice the contestants enter the fray because of their muscle power or money power, or because they belong to a political lineage. Political

analysts generally take the easy path of interpreting election results in terms of percentage of votes polled, or the officially declared party affiliation of the candidate. But certification of public support based on such superficial data hides the reality of corrupt practices. For example, even in the early years of Indian independence when there was one dominant party, the single party never got even half the votes from the electorate that went to vote. A 40 or 45 per cent of vote from 60 to 70 per cent of the total electorate is hardly majority support. The act of deliberate abstinence from voting is also a form of political participation, but it is generally ignored in analyses. In the present-day coalition politics, the situation is more serious. When none of the parties gets a clear majority, and a party leading with the largest number of seats but less than 51 per cent of seats succeeds in forming the government, it is fallacious to assume that it has received a *mandate* to rule. It is easy to guess as to what transpires between the coalition alliance partners behind the curtain; the give and take in such negotiations is part of the corrupt practices that includes purchase of support, offering of ministerial posts – that helps the incumbents make tainted money, and granting of any other privileges. If a candidate is expected to spend several million rupees to win an election, such money is only an investment for the business of politics to earn greater dividends while in office. Electoral politics may be an indicator of democratic practice but it is also a source of political corruption that violates human rights.

Over the years, corruption in public places has assumed unimaginable proportions. What in the 1950s was the total budget size appears now a drop in the ocean of embezzled money. It is this enormity of corrupt practices that has earned the wrath of the people and drawn them towards a massive protest movement that has characterized the year 2011 for India.

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Human rights are seen today in the context of state obligations. The state has an obligation to respect, protect, and fulfil human rights. The reports on the performance of human rights by various states focus on state actions in regard to the three obligations, and highlight violations by the state or its functionaries. But research on human rights has to go beyond collation of mere statistics. It must dig deeper to find out the key causes that lead to, or facilitate, the violation of human rights. It is not the

function of the social scientist to give certificate to the government, or to criticize and castigate its actions. That task is better left to NGOs and the media. Social science research should attend to core issues and objectively investigate and analyse the prevailing practices.

Let me briefly explain. Corruption, for example, is a form of social deviance. It occurs when the societal controls get weaker, or when the deviants are able to locate the vulnerable arenas in the system that allow them to indulge in deviant behaviour without the fear of detection. It is the task of good research on deviance to identify such vulnerable points and to suggest how these can be fortified, and also to suggest strategies that would not let fresh avenues for corruption to open up in the system. When schemes such as MNREGA or NRHM were launched most social science research supported by government funding focussed on the known indicators and either showered praise on the ruling coalition or engaged in superficial criticism of the known practices. Relying on the manifest objectives of the scheme, researchers do not care to unearth the latent intentions of the policy makers. If it is known that out of every rupee allocated for rural development only a fraction reaches the ultimate beneficiary, it should not have been hard to hypothesise that the money allocated for the schemes was latently targeted to the people in the middle range – the bureaucracy and the grass roots political machinery. Under the shroud of charity and the pious aim of eradication of poverty or provision of guaranteed employment the money can make hidden movements in other channels to the advantage of the ruling coalition.

Corruption, understood as bribery, involves at least two parties: the corruptor and the corruptible. These roles are transferable. The corrupter is one who is guilty of offering a bribe; but he may also be the person who demands the bribe for doing the job. Offering of bribes is governed by the criteria of affordability, exigency, and what I like to call a Willing Suspension of Grievance – or WSG. When the client is unable to afford, is not in a hurry to expedite, and when his limits of tolerance are crossed – that is, when his WSG is surpassed he ceases to be corruptor and the corruptible. An officer is corruptible when he is offered the bribe much higher than his expectation and when he is sure of its non-detection. How these roles interchange and what kind of people fall prey to such allurements are the questions that need to be studied. It is also important to study as to why a movement against corruption has received such a massive support only in the year 2011 – several years after independence.

The factors that facilitated the movement and the factors that are operating to hurdle it need to be investigated.

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This is not the occasion to go beyond raising some seminal issues. My task in this keynote is to make an appeal to fellow social scientists that human rights is a field that awaits serious social science research. Mere organization of awareness campaigns or showering praises on the ideals enshrined in the UN Declaration of Human Rights or even compiling statistics on human rights violations is just not enough. There are other agencies doing this job. Social sciences will have to create a niche to situate itself and contribute to the cause by way of not only teaching but doing serious and scientific research.

The time for this is here and now. I wish and hope that this academic meeting will move in that direction.

Notes

¹ The General Conference of the United Nations adopted the Universal Declaration of Human Rights on 10 December 1948. Every year this day is celebrated as the Human Rights Day.

² Edited by me in collaboration with Professor Vitit Muntarabhorn of Chulalongkorn University, Bangkok. Professor Vitit also developed a children's game on Human Rights with UNESCO's help.

PART I:

POLITICO-LEGAL ANALYSIS OF HUMAN RIGHTS

The first part of the book analyses politico-legal perspectives of human rights. Comprising four leading papers of the section, the part attempts to examine the working of both formal and informal institutions as growing concerns of human rights in contemporary world society.

The first paper in the sequence is written by a young Iranian scholar from the Faculty of Law, University of Delhi, Fatemeh Eslami. Fatemeh Eslami's paper analyses the impact of the World Trade Organization (WTO) on Intellectual Property Rights in developing countries from a human rights perspective. The paper focuses on the empowerment of the WTO by bringing many new issues under its ambit, e.g., TRIPS (Trade Related Intellectual Property Rights). Such a move, argues the scholar, has left a great impact on the human rights of common citizens across the world. The author in her findings highlights the need for greater representation of poor countries in the WTO and more pro-active and people-sensitive governance voicing the opinion of the people.

Other important contributions in the politico-legal section of the book have projected the issues of defence and security, human trafficking and terrorism. One of the papers in this part throws light on the Armed Force Special Powers vis à vis human rights. Written jointly by Basant Singh and Sandeep Kaur of Panjab University, India the paper has cited many acts of commission and omission by security forces under the rubric of security. The key provisions of the Armed Force Special Powers Act (AFSPA) contravene both national and international human rights law and have led to gross and systematic violations of human rights of local people, particularly in one of the north-eastern states of Manipur. There is a need to review such acts in order to make them more humane, argued the authors.

Viewing human trafficking as one of the “extreme forms of exploitation” and the “modern-day slavery” of the 21st century, the third paper of this section presents a critical overview of various popular interception and

intervention strategies to human trafficking and attempts to develop an alternative framework by bringing family to the centre of the trafficking debate. Written jointly by a young social scientist and her academic mentors of IIT Kharagpur – Sonal Pandey, Hare Ram Tewari and Pradip Kumar Bhowmick – the paper critically analyses various existing approaches and models of human trafficking by underlining their merits and demerits. However, none of the popular models of human trafficking actually addresses the issue in totality, felt the authors. Hence, by according an important role to the institution of family in socializing and re-integrating the individuals as trafficking victims, the authors attempted to justify the family-centric approach to address the menace of human trafficking in contemporary world.

The last paper of the politico-legal section underlining the problem of terrorism is written by Ved Pal Singh Deswal. The author argues that terrorism seeks to make illegitimate use of force to achieve political objective by targeting innocent people. The innocent killing of the civilians by terrorists invariably results into human rights violation across the world. Reiterating the role of the United Nations in containing international terrorism, the author also cites different laws as preventive measures initiated by the Government of India to root out terrorism in the country. However, these laws are not sufficient and they must be followed both in letter and spirit, claims the author.

All the four papers of the section present the politico-legal aspects of human rights' concerns from global perspective and advocate corrective measures to redress them through democratic mechanism.