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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

In this issue we publish the remarkably candid speech of India's Prime Minister P V Narasimha Rao at the inauguration of the Chief Ministers' Conference on Human Rights held at New Delhi last year, followed by a discussion on some aspects relating to the establishment of a Human Rights Commission in India by Madhava Menon. We also publish a contribution on border problems, the scourge of the SAARC region, in this case related to rivers and refugees. Lastly we pay tribute to Rigoberta Menchu, winner of the Nobel Prize for Peace, for her fight for the rights of indigenous peoples.

INDIA BANGLADESH GUATEMALA

INDIVIDUAL

and

GROUP RIGHTS

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HUMAN RIGHTS: A REAFFIRMATION

By

P V Narasimha Rao

(Speech of the Prime Minister, Shri P V Narasimha Rao,
while inaugurating the Chief Ministers' Conference on
Human Rights, New Delhi, 14 September 1992).

I am happy to be with you today at this Conference on Human Rights. Since issues relating to Human Rights have been engaging considerable attention both within the country and abroad, discussions on this important subject are not only timely but also reflect our concern and sensitivity in this regard.

Indian culture and human rights are almost synonymous. India is a signatory to the universal declaration of Human Rights and also to the two International Covenants on this subject. Our respect for the rights of the individual and for human dignity is a cornerstone of our Constitution which provides the basis for our democratic polity and for the framework of governance in our country.

Constitutional Provisions

The chapter on Fundamental Rights in our Constitution encompasses the entire gamut of civil and political rights, including the right to judicial enforceability. But our Constitution makers did not stop with the Fundamental Rights. A chapter on Directive Principles of State Policy was also included, requiring the State to promote and protect the rights of the most vulnerable sections of our society. These Directive Principles are meant to give a direction to the policy and actions of Government so as to progressively realise the objective of improvement in the standard of living and the quality of life of all sections of our society. The Fundamental Rights and the Directive Principles taken together substantially capture the essence of human rights and the mode of their realisation, as stated in the International Covenants on Human Rights.

Consistent with the constitutional provisions, the Central and State Governments have enacted a number of laws to preserve and safeguard basic human rights. Specific provisions towards this end exist in a number of important laws like the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act.

National Institutions

Government have also set up separate national institutions for the promotion and protection of the interests of the most vulnerable sections of society. These are the National Commission for Scheduled Castes and the Scheduled Tribes, the National Commission for Women and the Minorities Commission. These Commissions are continuously reviewing the socio-economic conditions of these groups and related Government policies and enactments to ensure that their status in society can be progressively strengthened through developmental programmes and by strengthening and proper implementation of the safeguards provided for them under the law. The National Police Commission and the Law Commission have also made a large number of very valuable suggestions regarding the legal system and operational matters pertaining to the protection of the rights and freedom of all citizens, particularly in the context of their interaction with the law enforcement agencies.

In furtherance of our commitment and respect for the rights of all sections of our society and for human dignity, Government have been continuously reviewing the various statutes insofar as they relate to the rights of the individual. For example, to deal with offences against members of the Scheduled Castes and

Scheduled Tribes, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 was enacted. Among other provisions it also lays down that if a public servant wilfully neglects his duties under the Act he will be liable to prosecution and imprisonment. Similarly, provisions have been made in the IPC defining the offence of rape in custody and introducing a presumption against the accused. A number of other special laws like the Civil Rights Act 1976, the Dowry Prohibition (Amendment) Act 1986, the Probation of Offenders Act and the Juvenile Justice Act have also been enacted to protect the rights of the most vulnerable sections. Deterrent punishment is provided for violation of these laws, particularly for those who are appointed in trust to protect such rights.

Public Interest Litigation

Our Judiciary has the constitutional mandate to be the custodian of the Fundamental Rights of the individual and has consistently acted zealously to protect these Rights. Apart from the constitutional and legal provisions under which it exercises this jurisdiction, the Indian Judiciary has evolved a unique legal process known as "Public Interest Litigation". It is no longer necessary for a victim of any excesses alone to initiate legal proceedings for redressal. Any individual or group can bring to the attention of the Judiciary cases of violation of human rights, and the High Courts and the Supreme Court take cognisance of such cases and set into motion the judicial process to provide remedial measures. Parliament and the State Legislatures have also been conspicuously vigilant regarding violations of human rights. This has helped immensely in creating a public awareness on the subject, apart from ensuring that prompt action is taken against those who are guilty of committing such excesses. We also have an independent, vigilant and vigorous Press which has always acted as a watchdog for the protection of individual rights and freedom, particularly when they are seen to be violated by the acts of omission or commission on the part of governmental functionaries. Discussions on violations of human rights are primarily based on the pronouncements of the Judiciary, and reports in the Press. These public discussions are convincing proof of the strength and vitality of our institutions.

Complex Problems

Having said all this, I would like to remind you that it is necessary to take note of the complex problems created by insurgency, terrorism and extremism in certain parts of the country. We cannot have a situation in which human rights are seen to be the preserve of the practitioners of terrorism and secessionism while those dealing with the menace courageously in extremely difficult circumstances are falsely condemned for violations of human rights. Of course, we are conscious of our obligations in this matter. Even while dealing with terrorist and secessionist elements who are bent on killing innocent citizens with impunity and indulging in wanton death and destruction, our attempts must be not to use excessive force or to take recourse to unlawful or illegal means. Strict instructions have been repeatedly given to mete out exemplary punishment to those who exceed their authority deliberately. Even in the terrorist and insurgency affected States of Punjab and Jammu and Kashmir, action, including imprisonment in a number of cases, has been taken against over 230 officers and men of the security forces, and investigations and prosecutions are in progress against several others. Statistics by themselves are not important. What is important is that we should all be convinced that the steps that have been taken reflect the commitment and sensitivity of the Government and of the society at large to human rights.

If, despite all this, there is a feeling within the country or abroad that Government is not serious about infringements of Human Rights then it is a matter of serious concern and needs to be dispelled with all the emphasis at our command. We have to identify where and why there are weaknesses. We have to identify the gaps between pronouncements and action, between legislation and its implementation, and resolve to act firmly to bridge these gaps. We must give a clear message that we do not tolerate violations of human rights.

Human Rights Commission

In this context there is also a need to review the existing institutional arrangements and to see how they can be further strengthened. The establishment of a Human Rights Commission can be a step to bring into sharper focus the whole question of human rights. Such a Commission, independent of the Government and with transparency in its work, can go a long way in creating a sense of public confidence. Today we have before the conference a proposal in this regard. I am sure this would receive your most serious consideration. As the agenda note has brought out, there are several issues involved in setting up such a commission. A Human Rights Commission would cut across various other institutions established under the Constitution and the law. It would be concerned intimately with areas of activity which are within the jurisdiction of the State Governments.

The Human Rights that could be brought within the ambit of the Commission and the modalities for dealing with them will have to be considered. The role and functions of the Commission will have to be clearly demarcated vis-a-vis the existing three National Commissions that I mentioned earlier. These and several other issues involved in the setting up of such an institution at the national level would need careful consideration. It would be important to arrive at a consensus on these matters as the strong and willing support of the State Governments will impart strength to the proposed Commission in addressing the tasks which are to be entrusted to it.

Other Important Issues

Apart from the Human Rights Commission, some other important issues have been posed for discussion in this Conference. Chavanji has already referred to them. The enactment of new Central legislation to deal with custodial crimes is particularly important. There can be nothing more revolting and reprehensible than the betrayal of custodial trust by the guardians of law and those appointed to protect the individual. We have to deal with such cases with alacrity and in an exemplary manner and also ensure that the victims obtain positive and quick redress. Other areas of our policy and procedures may also need to be looked into. A number of suggestions have also been made for further streamlining of the system established to deal with atrocities on the most vulnerable sections of the society. These will require detailed deliberations. There is an evident need for prison reforms, and for improvement in the working of the police, prison and correctional administration.

It is of great importance and urgency that effective measures are taken to sensitise persons working at the cutting edge level of administration on the importance of human rights. Carefully designed training and orientation programmes at various levels will, therefore, have to be devised and implemented.

I would like to request the State Governments to review their existing arrangements for monitoring cases of alleged human rights violations. It is important that all such cases are looked into expeditiously and guilty persons are brought to book. It is only through prompt and exemplary action that public confidence can be created, and the earnestness of Government in safeguarding human rights recognised.

I compliment the Home Minister for placing a comprehensive agenda for action before this Conference. I hope that your deliberations will serve as a catalyst for enhancing public awareness, which could help to promote greater respect for human rights among all sections of society and at all levels of administration. I trust that the deliberations of the Conference will lead to the adoption of a time-bound programme of action to further underline our deep and abiding commitment to this cause.

SOME THOUGHTS ON THE NATIONAL COMMISSION ON HUMAN RIGHTS
(A Discussion Note)

By

By Dr. N.R. Madhava Menon

1. The Case For A Human Rights Commission

The note circulated by the Ministry of Home Affairs, Government of India on the subject stated that the proposed Commission was intended:

- (a) to strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner, and
- (b) that allegations of excesses could be looked into independently of the Government, in a manner that would serve to underline the commitment of the Government to protect human rights, and
- (c) to complement, and further strengthen the efforts that have already been made in this direction.

India has, no doubt, recognized an impressive list of human rights most of which are guaranteed as Fundamental Rights in the Constitution. The right for enforcing these rights is itself a Fundamental Right (Article 30). A progressive expansion of the scope of these rights both by the Legislatures and by the Judiciary does make the Indian Statute Book rich with human rights concerns unparalleled among the countries which became independent since the Second World War. The problem on the human rights front, however, is with enforcement and their accessibility to the vast masses of people who are mostly poor and illiterate. Despite having a strong and independent judiciary, an active and vibrant Parliamentary system of government, a vigilant press, and a growing front of social activism through non-government organizations, there has been increasing violation of human rights. The regrettable fact is that many of these violations are perpetrated by the State and its agencies. It is not necessary for the present purpose to identify the causes for such "governmental lawlessness", or the nature, type and extent of violations which take place at different levels of governance. It is a fact that it does take place on an increasing scale. It is also a fact that the victims are generally the weaker sections of society including the Scheduled Castes, Scheduled Tribes, Women, Children and the so-called "extremists, militants or terrorists". It is also a fact that neither the vigilant press, nor the strong, independent judiciary, nor the active parliamentary system could really check to any effective degree the growing incidence of 'atrocities' and human rights violations. The violators often go unpunished and their victims are left without adequate remedies. The situation definitely calls for serious consideration by all those concerned with rule of law and constitutional government.

Can we call this a system failure? Can it be corrected by measures such as we take with the economy, by a process of structural re-adjustment of our institutions of governance? Or is it a failure of character and humanism on the part of those who exercise public power? Or is it a manifestation of what criminologists call "anomie" or normlessness caused as a result of major changes taking place in Society? In whatever way one looks at it, it is imperative for our democratic survival that some serious attempts are made by the government to curb violence and restore decency in public life through rule of law and constitutional government. In this context, the initiative of the Government of India to set up a Human Rights Commission, to make laws aimed to prevent custodial deaths and to streamline criminal justice administration are welcome steps which, if implemented with political will and sustained enthusiasm, can make a difference in the lives of millions of poor and weaker sections of Indian humanity. The Amnesty International's report on custodial deaths did in a way serve to shock the conscience of right-thinking Indians and to necessitate a hard look at their systems and their functioning.

Would a Human Rights Commission (HRC) succeed in arresting excesses, in investigating violations independently of government and in securing justice to victims of excesses throughout the length and breadth of this vast country? The answer, it is submitted, depends on the rôle, status, functions, powers and resources the Commission would command when it is set up. Without revamping the judicial system and providing better access to it at all levels, the situation is unlikely to improve in the near future. A new administrative culture with an effective Panchayat raj system is a necessary concomitant to the protection of human rights at the grassroot level.

Finally, politics and public life have to be saved from criminalisation, if human rights are to be given due protection in social and political intercourse. These are tall orders which the proposed Commission cannot undertake by itself. In other words, what the HRC in the present context can effectively do is to –

- (a) receive complaints of human rights violations,
- (b) get them investigated without undue delay,
- (c) direct administrative relief through respective departments wherever appropriate,
- (d) grant interim relief in appropriate cases,
- (e) order prosecutions in extreme cases,
- (f) advise policy changes or administrative reforms to avoid future violations,
- (g) provide for human rights education, and
- (h) help co-ordinate policy and action in relation to human rights protection.

The capacity of the HRC to discharge even these limited functions will depend on its status vis-a-vis the Union and State Governments and the credibility it commands with the people, particularly those belonging to the vulnerable sections.

2. The Status and functions of the HRC

For the tasks proposed, the Commission has to have a Constitutional status. Preferably it has to have judicial functions sharing the Articles 32 and 226 jurisdictions of the Supreme Court and High Courts respectively. In fact this jurisdiction may be slightly enlarged for HRC making non-governmental organizations also subject to its jurisdiction. Such a role alone would allow it to function effectively in all the States and Union Territories. If the HRC could have regional centres or if it can have a circuit bench, it would help improve access, information, co-ordination and supervision which the High Courts as presently constituted lack in respect of human rights enforcement. The citizen may have the right to go either to the High Court or to the HRC and once he has taken up the matter with one or the other, the jurisdiction of the other may be ousted in that regard.

The idea of giving limited writ jurisdiction to Designated District Courts (designated by the High Court) in different regions for protecting the right to personal liberty may also be considered to prevent gross violations of the right to life and personal liberty.

Human rights are fairly well understood and they are legally articulated in Indian jurisprudence. As such, it is not necessary to spell out the rights on which HRC will have jurisdiction or to declare that it will examine only violations by State agencies. The HRC has to have a holistic approach and a humane standard particularly in a society where the victims are mostly poor, illiterate, and ill-informed persons. The HRC

will have to assume the role which High Courts and Supreme Court came to assume under what is known as "public interest litigation". In doing so, it will prefer the co-operative rather than the adversarial approach in litigation, it will adopt flexible and humane procedures, it will co-opt public-spirited individuals and institutions (including NGOs) in ascertaining facts, it will extend free legal aid support to deserving applicants, it will tend to democratise reliefs and remedies and it will monitor the effective implementation of its orders and directions.

HRC, if it were to have a status and role comparable to that of the High Court, would not pose any problem in relation to other Commissions now existing. Furthermore, it can co-ordinate with those Commissions for the purposes of maximising opportunities for human rights enjoyment by vulnerable sections in society. HRC may have a small investigative unit like that available to Lok Ayukta in some States. The bulk of its investigative and fact-finding functions will have to be accomplished in association with NGOs, professional bodies, institutions of higher learning, the C.B.I. and the State investigation agencies.

HRC should not just be a court in the conventional sense. It should serve an educational role for the parties coming before it; it must perform a reform function in legislative and administrative matters affecting human rights; it is to act as a people's tribunal, a human rights Lok Adalat with people always in focus and human dignity as its main concern.

3. Composition and Constitution of the Commission

An HRC as proposed above, will have to command the status and independence as enjoyed by the Supreme Court, the vision and legitimacy attributed to Parliament, and the authority and respect which the office of President supposedly possesses. With the type of powers and functions it is endowed with, HRC can create a variety of problems in governance or it can help humanise the system as a whole, making government in a realistic sense one of the people and for the people. If it is made a great body with 'small men', it will dig its own grave and bring human rights into greater jeopardy than at present. Hence, the importance of selecting the right persons for the hard and challenging tasks involved.

For a country of India's size and complexity, the HRC can well have a membership of eleven persons of whom one may be elected as Chairman by the membership of the body. The practice of appointing a Chairman first and leaving a decisive say on membership to him is positively unwelcome for responsible discharge by all members of the complex functions of HRC. It has to work as a collegium with collective responsibility. The advantage of having eleven members is the possibility of constituting circuit benches of three each for local visits and adjudication with expedition. HRC can then function even if some members are not available for any reason for some length of time. It can then be representative of different interest groups and can be fairly conversant with human rights problems which are not necessarily uniform throughout the country. The collective wisdom of such eminent persons can carry weight even in the policy planning process. It can have continuity with half the membership retiring after every three or four years.

The qualifications for membership of HRC shall include the following:

1. The personal shall be a citizen of India having completed the age of fifty, enjoying good health which allows extensive travelling and long hours of work, having proficiency in at least two Indian languages other than English and with experience in unblemished public service. Knowledge of law may be considered a desirable qualification for membership of the HRC;
2. The character and integrity of the person should be above reproach. This has to be demonstrated if necessary by public hearing to be organised under the directions of the Selection Committee.

The process of selection is very important and the government shall not have the power to decide whom to appoint though it can have the power to oppose, for stated reasons, who shall not be appointed among

the proposed candidates. The appointment has to be made by the President from among a list of sixteen names proposed by a Selection Committee, consisting of the Chief Justice of India, the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha. The list will be made public at least thirty days before actual appointment so that professional bodies and NGOs may oppose, for reasons given in writing, any of the names given in the list. The Committee shall consider such objections making discreet inquiries wherever necessary and may announce its decision to drop or retain the names concerned. The Committee shall ensure that at least one third of the members in the recommended list are persons qualified to be appointed to the High Court or the Supreme Court. Thereafter, the President may choose eleven persons out of the list for appointment and may consider the rest for possible appointment when one half vacate their membership at the end of three or four years.

Though there is to be no reservation for any group of interests, the Selection Committee shall endeavour to identify persons from among the disadvantaged sections, the protection of whose rights is the major concern of HRC.

It is desirable not to have the headquarters of the Commission in New Delhi. Perhaps it can be located in a more central place like Pune or Nagpur with circuit bench centres at Bangalore, Calcutta, Jaipur and New Delhi. The staff of the Commission may also be selected from social workers, academics or retired persons with integrity and experience in social work. They may be employed on contract for five years at a time extendable for another term. The office work may be planned from the beginning in consultation with management experts and all operations should be computerised to increase efficiency and to avoid bureaucratic delay and manipulations. A Victim Compensation Fund should be created and placed at the disposal of the Commission to which erring departments, agencies or governments may be asked to contribute funds through penalties proportionate to the gravity of their human rights violations.

4. Some Issues for Discussion

There are many issues which deserve consideration if the attempt in setting up HRC is to make a difference in human rights enforcement of the vast millions of disadvantaged people. Among these issues, the following are particularly proposed:

- (a) In the present situation, an HRC without constitutional status will not serve any useful purpose. Furthermore, it has to have a jurisdiction comparable to that of High Courts under Article 226 of the Constitution.
- (b) Limited constitutional jurisdiction to designated District Courts for providing relief to prevent violation of Article 21 right may be granted to make access to justice meaningful to people in far-flung areas.
- (c) HRC ought to have a humane and flexible procedure comparable to the steps adopted by higher judiciary in public interest litigation cases.
- (d) Legal aid by staff counsel of HRC should be provided free of charge to every petitioner to process his complaint before the HRC.
- (e) All operations of the HRC should be computerised and the system should be managed with efficiency, speed and accountability.
- (f) HRC should work through professional bodies, NGOs, Universities etc. in its fact-finding processes as well as in its relief administration mechanisms. This will help reduce expenses, increase public participation and avoid unnecessary bureaucratisation and government control.

- (g) HRC members are to be appointed by the President from among a list of names to be prepared by a Selection Committee consisting of the Chief Justice of India, the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha.
- (h) HRC should have a membership of eleven persons, half of whom should retire every four years.
- (i) HRC should have regional centres as well as circuit benches for performing its functions.
- (j) HRC should have powers to advise on legislative changes, direct prosecution of human rights violators and to suggest administrative reforms for better human rights protection.
- (k) HRC should have at its disposal a Victim Rehabilitation Fund for providing interim relief to human rights victims.

**RIVERS AND REFUGEES AS CROSS-BORDER PROBLEMS :
THE BANGLADESH EXPERIENCE**

(Paper presented at the Second South Asian Dialogue 1992
at
The International Centre for Ethnic Studies, Kandy)

By

Meghna Guhathakurta

The geopolitical existence of Bangladesh hinges on the fact that together with West Bengal, it constitutes one of the largest deltas in the world, and that its political boundaries with the neighbouring states of India and Myanmar are almost porous, i.e. not having any natural barriers such as insurmountable mountain ranges or non-navigable rivers. From this geo-political reality stem two of the most crucial problems which arise between Bangladesh and its neighbouring countries : the sharing of river waters and the influx of refugees.

I wish to discuss the above issues with a view to focus specifically on problem-solving and conflict-resolution. As such I wish to emphasise the need for a change of perspective of all parties concerned. Firstly, it has become necessary to think of the South Asian subcontinent as a single geographical unit where ecological concerns should receive priority. Secondly, the subcontinent should be treated as the homeland of many nations and multi-ethnic people, who not only have kin and relatives living across state borders, but share common cultures and languages with people on the 'other side'. Thirdly, it must be recognized that the subcontinent has had a history of continuity and ruptures, out of which the current South Asian state system has emerged. Finally, there is a need to inject the above vision into the multilateralism of SAARC as opposed to the prevailing practice of bilateralism in currency today.

From this perspective, the sharing of river water needs to be viewed from the dual concerns of ecology and integrated river basin development. The refugee problems (the Rohingas, the ethnic people of the Hill Tracts, the case of the stranded Pakistanis, and the 'push back' operation of India), need to be viewed from the perspective of peoples' right of self-determination rather than the official position adopted on the basis of the principle of national integration and sovereignty. First, the issue of mutual sharing of river waters.

River Disputes

As mentioned earlier, Bangladesh together with part of West Bengal constitutes the largest delta in the world. The average annual discharge for the riverine system of Bangladesh (the Ganga, Brahmaputra, Meghna basin), is second only to the Amazon. They also carry the highest sediment load in the world. These rivers have a drainage area of 1,733,200 sq. km. 7.5% of which lies within Bangladesh. Most of the area falls within India, Nepal and China. As such if development projects are conceived in one region, it has to affect other regions. Bangladesh as a lower co-riparian state is particularly affected in this respect (Bari, 1992).

Disputes arose after Partition on almost all rivers of Bangladesh: on the Karnafuli River over the Kaptai Hydro-electric project, on the Brahmaputra river over India's extensive flood embankments in Assam; on the Ganges river over India's Farakka Barrage project and Bangladesh's Ganges-Kobadak project; on the Teesta river over the barrage projects of the two countries and on a large number of border rivers over anti-erosion works (Abbas, 1982). Out of these, it is the Farakka dispute which has received the most political attention and which is still very much an emotive issue for Bangladeshis. To many Bangladeshis Farakka is synonymous with India intransigence and unilateralism.

The technicalities of the dispute centre on the allocation of the dry season flow of the Ganges which is not considered adequate for both the needs of the Calcutta port and the requirements of Bangladesh. The Joint Rivers Commission was asked to study and research the best means of augmenting the dry season flow of the Ganges. But when the Commission (JRC) submitted its report in 1975, each side rejected the other's proposal. Bangladesh had proposed conservation of the excess monsoon flow through storages in the Ganges basin in India and Nepal. India had proposed transferring Brahmaputra water to the Ganges above Farakka to augment the dry season flow of the latter (Abbas, 1982).

But political changes within Bangladesh (the assassination of Sheikh Mujibur Rahman) led to strained relations between the two countries which in turn led to border skirmishes and massive diversion of the Ganges water at Farakka, unilaterally by India. This led to a crisis situation in 1976. To resolve the issue, Bangladesh tried to internationalise the issue by taking it to the UN as well as mobilise national public opinion (Bhasani's long march). India on the other hand was bent on solving it through bilateral negotiations. A breakthrough was achieved in the form of an Agreement in Nov. 1977. But political changes again overtook technical solutions. President Ziaur Rahman was assassinated on 30th May, 1981 and after a few months, a military regime led by General Ershad came to power. The 1977 Ganges water Agreement whose validity expired on 4th November 1982 was not renewed. From then on stop-gap measures were agreed on by the two countries but in these agreements the clause guaranteeing 80% of shares to Bangladesh in case of exceptionally low flows was deleted. This virtually gave India the scope for unilateral withdrawal of water. The effect of this on Bangladeshi agriculture, especially in the western border districts was disastrous. The damage was caused by the increase in sea water intrusion in the open estuaries and led to the lowering of the river water levels. The results were damage to agriculture, industry, drinking water supply, fisheries, forestry, navigation and livestock. In short the ecological balance of the area was at stake. But instead of a long-term agreement, another Memorandum was signed for three more years starting from 1986.

Towards the end of this period, political problems again overtook technical ones. The movement for democracy gained ground until Ershad's government was on the verge of reaching an agreement, when it was overthrown. But even under the current government an agreement is still in the offing. What is to be learnt from this long and torturous process of negotiations and bargaining?

1. The last 34 years of negotiating the sharing of Ganges water demonstrate the futility of trying to solve a problem bilaterally, when (a) the parties are unequally matched and (b) where the problem is essentially a multinational one. Bangladesh has lost the bulk of the dry season flow of the Ganges, as well as of other rivers. While Bangladesh has been kept engaged in a never-ending dialogue with India, India had gone ahead with her schemes of building barrages and irrigation projects on the Ganges, withdrawing waters progressively so that flows to Bangladesh are reduced. As a consequence the threat of desertification has become very real in some areas.
2. Political problems and turmoil within Bangladesh has prevented Bangladesh from drawing up a total plan of water management (though some home-work has been done in the Task Force Report, 1991). A lot of political energy has been devoted to dealing with Indian intransigence, and in many cases the issue has been used by politicians to foster internal cohesion and thereby legitimise the regime in power.
3. The key to solving the problem would be an integrated river basin development. Many successful international efforts to regulate and develop international river basins have been undertaken throughout the world (B.G. Verghese 1991). The only thing which stops this vital issue from becoming part of the larger SAARC forum is the clause which prevents discussion of bilateral issues. If regional cooperation is to make any headway at all, then perhaps it should not be made to subserve bilateralism.
4. If the concern of South Asian Regionalism is to become more people oriented, then focusing on

the fundamental rights of people is a must. It is a fundamental right of all people living in the Gangetic plain, stretching from the Himalayas to the Delta region, to be assured of their livelihood and subsistence. Yet whereas development projects on the Ganges are providing benefit for some, they are causing misery to farmers and fishermen in other areas; and causing ecological problems in the lower riparian state. This process has to be arrested, or as we have seen in Africa, it won't be one country which suffers but the region. Thus the time has come for us to solve the 'water dispute' not through stop-gap solutions, but multi-lateral integrated river basin development, with the environmental issue receiving priority.

Given the existing set of power relationships within the region, such proposals may be seen as being idealistic, but it would be well for us to remember that the future survival of 250 million people living in the flood plains and delta of the Ganges, Brahmaputra and Meghna basin may well depend on this effort.

Refugees

The refugee problem too is conceived by Governments as being a threat to national security and national integration, and not as a problem which really has to do with the sharing of power with the people. I will try to look at the Chittagong Hill Tracts (CHT) problem, the Rohingas problem, the case of the stranded Pakistanis and the Indian strategy of 'push back' from this viewpoint.

The Chittagong Hill Tract (CHT) covering 10% of the total area of Bangladesh, and lying to the south-east of the country, borders the Indian states of Tripura and Mizoram as well as part of the Arakanese border of Myanmar. It is the home of 13 different ethnic people, of which the Chakmas, the Marmas and Tripuras (Tipperas) approximately total 90%. In a predominantly Muslim country, they mostly belong to religious minority groups as well: Buddhists, Hindus, Christians and animists.

Most of the CHT people migrated to the south between the 16th - 19th centuries. When in the 17th century, Bengali settlers started to inhabit the coastal areas, the original settlers were driven to the Hills. It is recorded that the British gave the CHT people the right of self-rule in internal matters though whether that was the real intention may be questioned (Prashanta Tripura, 1992). The Chittagong Hill Tracts Regulation of 1990 delineated categories of land, notably *khas* (government) land and specifically excluded 'non-tribals' from settling in 'tribal' areas (Father Timm, 1992).

It was quite surprising to note that the Partition of the sub-continent in 1947 along religious lines should result in the Chittagong Hill Tracts with its majority population of non-Muslims, falling to the Pakistani side. The people of CHT at first defied this decision and even after the declaration of Independence they left the Indian flag hoisted in Rangamati (the Headquarters) until the Pakistani army came and brought it down. From then started the first outflow of refugees towards the bordering Indian states of Tripura and Mizoram. Many of the first refugees left their homes with the intention of settling down in India, as did many Hindus from the plainland. But whereas the Bengalis were allowed to intermingle with the population, the ethnic refugees in Tripura were cordoned off from the rest of the populace and many were resettled in the erstwhile NEFA province (present Arunachal) on the Sino-Indian border during the Sino-Indian dispute in 1962. The purpose was to repopulate the area in order to deter possible Chinese infiltration. It may be noted that until this day many of these people are still living in isolation from the general populace and have not been given Indian citizenship. They live in clustered settlements under the supervision of District Councils (Bhumitra Chakma, personal communication).

But after the independence of Bangladesh, the flow of refugees to India increased, instigated by direct state violence. The Mujib regime denied the autonomous status of the Hill Tracts, but it was the Zia regime which aggravated the issue by resettling Bengali landless peasants, especially from the coastal areas in the land previously occupied by the original inhabitants (A. Mohsin & B. Chakma, 1992). The CHT was looked upon by the Government as empty land on which to resettle landless peasants and thereby release pressure on land as well as political tensions. The people of the Hill Tracts resented this policy and as a

consequence violence erupted. The Jana Samhati Samiti (JSS) with its military wing the Shanti Bahini were formed by the people of the Hill Tracts to resist government forces and give shape to the movement for autonomy. The Government instead of trying to solve the problem politically, chose military intervention. From then on the history of CHT has been a series of killings, violation of human rights and displacement of people from their homes and land. Not only have people fled to India, but because of military brutality they have been forced further into the hills, having to live a life of abject poverty and extreme insecurity. It is perhaps interesting to note that from the perspective of the indigenous people of the Hill Tracts, it is the settlers from the plainland who are called refugees or swaranarthis (Prashanta Tripura, personal communication).

The Ershad government made the matter worse by initiating his plan of clustered settlements, where plainland people were brought to live, protected by an arc of military camps. Later such 'villages' were also built for returning refugees from India. The inhabitants of these villages are virtually cut-off from the rest of the population and not allowed to move about freely. Incidentally, a dusk to dawn curfew is clamped on the whole area. Conditions within these villages are miserable since people cannot freely earn their livelihood, for example cultivate their land or harvest the crop, and rations too are sparse. The Government does not allow monitoring by UNCHR and the operations of NGOs in the area are banned. Amnesty has been offered to Shanti Bahini leaders who are given the benefit of some kind of rehabilitation programme. The rest are left to fend for themselves.

Talks were underway between the Ershad Government and the JSS in order to settle the issue, but instead of responding to the demands of the JSS, Ershad set up three District councils to administer what was once known as Parbatya Chattogram or the Chittagong Hill Tracts.

Currently a dialogue is going on between the JSS and the Government of Begum Khaleda Zia to settle the issue politically. The demands include withdrawal of all Bangladesh military forces, disbanding the District Councils, dismantling of the clustered villages, prohibition of further settlement by people from the plainland, retention of the CHT Regulation of 1900, economic development aimed at the ethnic people, release of JSS prisoners and the involvement of UNCHR or ICRC in the implementation of such an agreement.

It is doubtful whether all these demands will be met but the Chakmas, Marmas, Tripuras and other ethnic people both within CHT and outside in the refugee camps in India are keenly looking forward to the time when peace will reign again in this war torn land of theirs.

The Rohingas are Arakanese Muslims who inhabit the Myanmar state bordering south-east Bangladesh. From March 1991, refugees started fleeing into Bangladesh, persecuted by the junta troops and the Myanmar police. From the reports of these refugees it was known that the reason for this persecution was that they had voted for NDL led by Aung San Suu Kyi during the last elections and had supported the democratization of Myanmar.

Incidentally this was not the first wave of Rohingas flocking into Bangladesh. In the late seventies there was a similar influx which was resolved through flag meetings between the two countries. It is also true to say that the Muslims of the Arakan have had close historical ties with Bengal, and even now border trade and migration are not uncommon, though perhaps not legal! Due to these reasons the Government of Myanmar tends to come up with the response that these so-called refugees are actually Bangladeshi citizens, while the Bangladesh Government rightly points out that most of these refugees possess identity cards of the Myanmar Government. After a visit by the Bangladesh Foreign Minister on November 1991, Myanmar agreed to take back the refugees, but did not follow up the matter. Two incidents further complicated the issue: (1) The Lunthan troops of Myanmar attacked the border area of Bangladesh near Rejupara, and this set alarm bells ringing in official circles. (2) Since the Rohingas were Muslims, the fundamentalist Jamaat-e-Islam party took a keen interest in the housing and feeding of the refugees. It was reported in the media that they were also giving them armed training for a prospective Rohingya

Liberation War and that funds for such activities were liberally pouring in from Saudi Arabia and Pakistan! (The Daily Shongbad, Sept. 1992) The Government of Bangladesh was visibly more worried about the first event than the second. The first was solved through a flag meeting where Myanmar's assurance of non-aggression was considered more important than the return of the refugees. As for the latter issue, the Bangladesh Government reeling under the blow of a cyclonic disaster, realised rather belatedly that it could not possibly undertake the burden of clothing, housing and feeding a 100,000 extra mouths. Noticing a lukewarm attitude on the part of world public opinion to condemn the Myanmar Government, Prime Minister Begum Khaleda Zia had to take the issue to the United States, and to the Security Council. Under-Secretary General Mr. John Eliassen, special envoy to the General Secretary, started talks with the Myanmar Government and this paved the way for Bangladesh and Myanmar bilateral talks. In the meantime, the Myanmar Government was also showing some signs of liberalization due to international pressure, and they agreed to take back the refugees on the modalities agreed to bilaterally, provided this was portrayed as a humanitarian issue.

The return of the refugees is currently under way, under the supervision of the UNHCR; but not without resistance! It seems that parties with vested interests have emerged who want to keep the Rohingya issue alive. They are the NGOs who are receiving liberal doses of aid in the form of humanitarian relief, the profiteers who are benefiting from selling the relief (there were even reports of racketeers bent on illegal trafficking of women from these camps) and parties like the Jamaat-e-Islam and the Freedom Party who are keen to back a movement for a Muslim Rohingya state on the soil of Bangladesh. The role of the Government on this particular problem has been far from decisive. While officially advocating the quick return of refugees, the Rohingya problem has been used as an issue to divert the attention of the public from the anti-fundamentalist movement gaining ground in the country. It was pointed out time and again, that demanding the trial of the Jamaat leader, Golam Azam as a war criminal was dividing the country, at a time when the country needed to be united in the face of the Rohingya problem. Recently the Government has been more serious about sending them back.

The most recent dispute between Bangladesh and her neighbour India is of course India's 'push back' strategy, or as the Bangladesh Govt. prefers to call it the 'push in' problem. The particular characteristic of this issue is that neither Government is acknowledging their citizenship nor giving them refugee status! India claims that they are illegal immigrants from Bangladesh; Bangladesh claims that they are Indian citizens, since they have with them ration cards and the experience of having voted in the Indian elections! Public opinion in Bangladesh is one in thinking that India has been violating human rights and international law in sending them back in the way that they have done or are still doing; using threats, physical violence and keeping them in sub-human conditions. But whereas the Government blames it wholly on the Indians, the opposition has criticised the weak foreign policy of the Khaleda Zia Government. They trace the root of the problem to the concessions made in Clause 11 of the Joint Communique signed by the Prime Minister on her recent visit to India. This clause specifically refers to 'illegal immigrants' of each country, without defining who they are, and the length of their residence in the country concerned. Some of the people sent back to Bangladesh were reported to have resided in India for 10 years. More recent migrants have said that they were given assurances by the BJP and Congress that they are now citizens of India.

However, as the Bangladesh experience shows, the refugee problem occurs not only between contiguous countries or regions, but also between far flung areas, as in the case of the repatriation of stranded Pakistanis in Bangladesh. In brief, the story is that when Bangladesh achieved its independence in 1971, there had been 10 lakhs of non-Bengalis stranded in Bangladesh. Since most of them were Muslims originating from the Indian state of Bihar, they were also called Biharis. A large portion of them gave allegiance to Pakistan and claimed their repatriation to Pakistan. "About half of them chose Bangladesh to be their homeland. Those seeking repatriation listed their names in the list prepared by the International Red Cross Society during 1972 - 73. At the initial stage of repatriation, about 1 lakh 70 thousand non-Bengalis returned to Pakistan. After a few months of repatriation the Red Cross Society stopped the work temporarily for reasons of financial constraints. Since then Pakistan has become evasive". (A.T. Salahuddin Ahmed, 1992).

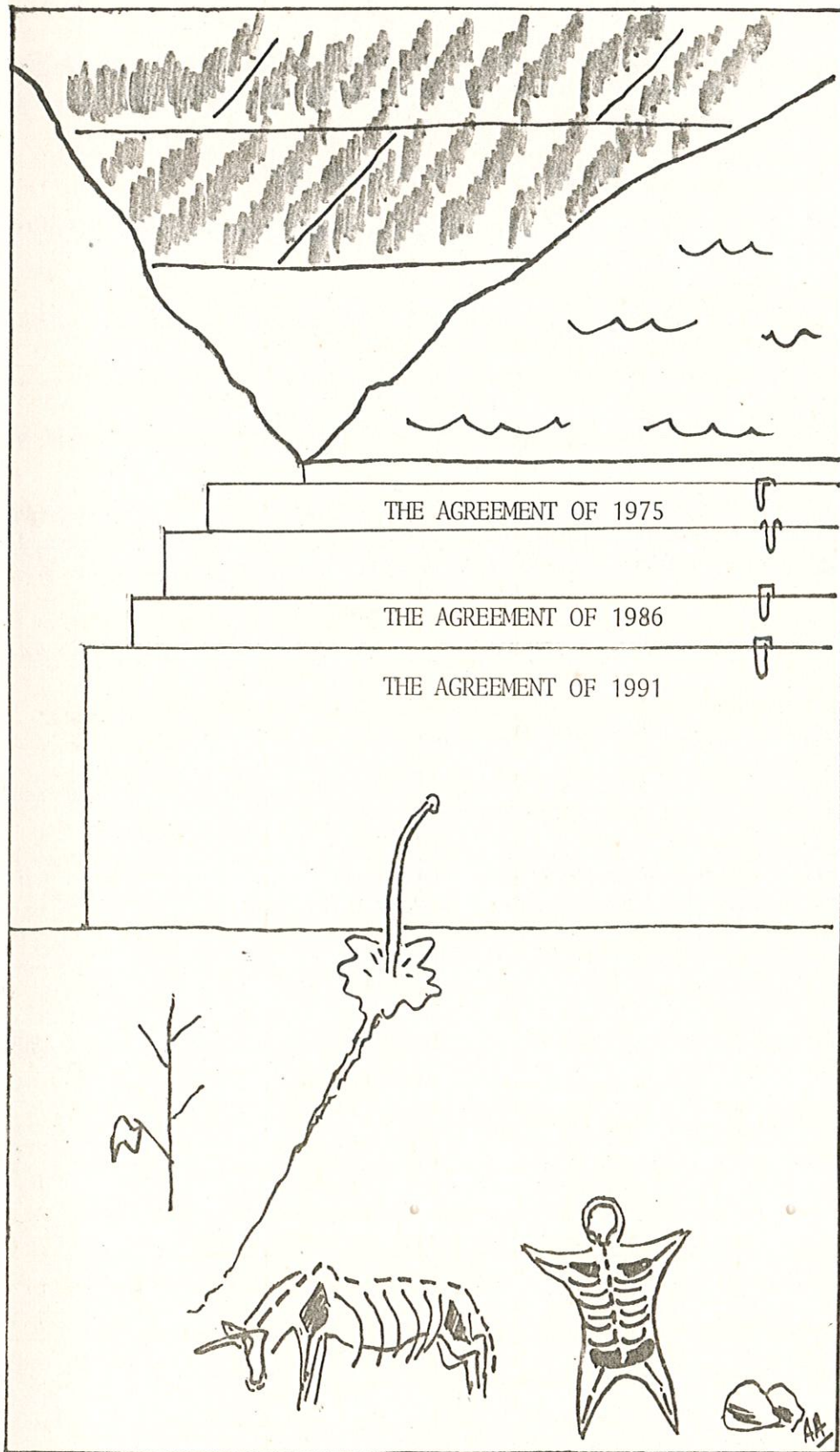
As regime after regime came and went (on both sides), the dispute failed to be resolved. At one point in 1980, the then Pakistan Foreign Secretary stated that "since we have no dispute, there is no question of agreement to be reached" (S. Islam, 1992). The issue has become more complicated in the wake of the polarised atmosphere in Sindh. A prominent member of the National Assembly of Pakistan from Sindh, Makhdoom Khaliqzaman, had reportedly announced his withdrawal from the Committee for Repatriation of "Biharis", maintaining that the stranded Pakistanis did not belong to any of the four provinces of the country and as such the question of their repatriation to this part of the world did not arise (Askari, 1989). The element of domestic politics was thus involved with the repatriation problem and this was quite evident even from Benazir Bhutto's vague suggestion that the 'Muslim Ummah' should be the solution for these people (Anam, 1992). Recently some breakthrough seems evident on this issue, as during Begum Khaleda Zia's recent good-will visit, there was an agreement that Pakistan will be repatriating 3,000 families to Pakistan by December 1992.

One common strand which seems to run through all the cases mentioned above is the existence of parties with vested interests who not only seem to make profit (material or otherwise) out of the miseries of poor, desperate people, but who also complicate the process of resolution of disputes! The time has come perhaps to think of an alternative discourse of conflict resolution to the ones pursued so far.

I will try to list some of the pertinent points which should be considered in the resolution of refugee problems in South Asia.

1. The so-called 'benevolent bilateralism' of India is proving to be inadequate in solving the problems that are increasingly encroaching on the region as a whole. Moreover since the refugee problem is inherently a humanitarian one concerning the violation of basic human rights, there should be no inhibitions on the part of the government in letting international organizations like the UNHCR come and inspect the camps. This can be done under a congenial SAARC umbrella, where they may work in close liaison with the governments concerned.
2. In order for refugees to return quickly to their own country, regional pressure should be exerted on the government concerned. Forums like the South Asian Regional Dialogue will have an active role to play in moulding public opinion towards this end.
3. Government policy-makers should be made to see that problems of national interests are not necessarily best solved through military intervention nor from a defence policy based on modernist notions of the nation-state (Imtiaz Ahmed 1992). Rather they tend to aggravate the problem, leading to blatant violation of human rights. Increasing measures of decentralization of administration, the sharing of powers with local authorities, introduction of the principle of self-government are the approaches to be encouraged. The argument for this is that if you can't trust your 'own' people, then why call them your 'own'?
4. Equitable distribution of economic and welfare benefits should be assured to all regardless of race, creed, caste, colour or language. Easier said than done perhaps, but the root of such effort lies not so much in convincing the government but rather the cultural and business elites in each state. The political and cultural elites of South Asia should perhaps start to learn that employment or education is not a privilege but a birth right for all.
5. One of the prime causes for illegal migration is economic. According to international law the right to earn one's livelihood is a fundamental human right. As such, states should recognise that with the globalization of the labour market, state boundaries should no longer provide a barrier for a person's search for employment. Possibilities for legalized border trade should also be explored. In an age where satellite T.V. and dish antennas defy traditional notions of territoriality, there can be nothing so pathetic as putting up barbed wire fences to uphold the national sovereignty of a country.

"The future survival of 250 million people may depend on multilateral integrated river basin development"



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RIGOBERTA MENCHU
Fighting for the rights of indigenous people

By

Rangita de Silva

In the face of mass scale genocide taking place in Guatemala the Nobel Committee's decision to award the Peace Prize to 33 year old Rigoberta Menchu is a powerful comment against racism and a triumphant celebration of pluralism.

The award is a triumph^{not} only for Menchu but for all activists in Civil Rights and grass roots organizations who are fighting for the rights of indigenous people. In fact she was in the frontline in the campaign to have the UN designate the year 1993 as the International Year for indigenous populations.

The Nobel Peace Prize Committee in awarding Menchu the prize has stated that this was in "recognition of her work for social justice and ethno cultural reconciliation". Amid the large scale repression of Indian peoples in Guatemala she has played a 'prominent part as an advocate of native rights'. The Nobel Committee citation stated that Rigoberta Menchu stands out as "a vivid symbol of peace and reconciliation across ethnic cultural and social dividing lines, in her own country, on the American continent and in the world".

It is a cause of deep anguish that the US government continues to sell weapons to Guatemala, which ironically are being used against the country's own Native Americans. More than 120,000 people have been killed in the 30 year rebellion against Guatemala's successive repressive governments. Security forces have been responsible for as many as 50,000 deaths, during the counter insurgency campaigns of the 1980s. Menchu in a strikingly poignant statement says "The celebration of Columbus is for us an insult".

The Chairman of the Nobel Committee has commented on the somewhat controversial nature of the prize announced as it were in the week marking the 500th anniversary of Christopher Columbus arrival in the New World. Like many other countries in South and Central America Guatemala has experienced great tension between the descendants of European immigrants and the native population. In the 1980s the tensions came to the point of eruption in large scale violence.

Menchu has been accused of being an advocate of guerilla warfare and the award as contributing another arsenal to the guerilla warfare. Serjersted the Chairman of the Nobel Peace Prize Committee has rejected this accusation and has stated convincingly that it is "our clear conclusion that her long term goal is peace".

In the defence of Menchu a columnist has written graphically "she makes those who are guided by hate, racism, selfishness and stupidity tremble".

Menchu's life story reads like that of most fighters for freedom who have had to undergo the most brutal suppression and persecution. It is a story of indomitable courage, strength and unwavering conviction of her beliefs. Her story is no romantic struggle for the preservation of her people but an account of growing up amidst personal sorrow and loss during the civil war. Her autobiography "I Rigoberta" translated into 11 languages captures vividly the torture and death of family members. It recounts the story of Indian life in the mountains and the oppression of the Indian people who make up 60% of the population, by descendants of the European colonists who form the minority.

Menchu's closest family members fell victim to the struggle. Her 16 year old brother was publicly burned in 1980 by security forces. Her father who was the underground organizer of an agrarian trade union called the Peasant Unity Council was burnt to death when a building caught fire in a police raid during a

demonstration before the Spanish Embassy in Guatemala town, organized by the Peasant Unity Council. All the demonstrators lost their lives in the fire.

Soon after her father's death soldiers kidnapped Menchu's mother, kept her in hiding, raped her repeatedly and left her to die of her wounds under a tree.

Menchu's dream of a free and equal Guatemala still remains only a glorious vision. The current Guatemala government has been talking to the guerrillas for 18 months in a search for a negotiated settlement. Whatever may be the outcome of this, the award of the peace prize to Menchu is symbolically a blow to racism and ethnic bigotry, and a tribute to those groping for peace, pluralism and ethnic tolerance.

Even though Menchu has been forced to live the better part of the last 11 years in self imposed exile in Mexico she remains the vibrant voice of the disappeared and murdered in Guatemala. Sejersted in announcing the decision of the Nobel Peace Prize Committee echoed the hopes and dreams of all those voices faint and indistinct but struggling to be heard, when he said:-

"I hope one of the effects of the award will be a better understanding of indigenous peoples in America and around the world".

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