

HUMAN RIGHTS advocacy



FACT file



Health and human rights: an inextricable linkage

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HUMAN rights and public health are two complementary approaches. Human rights approach seeks to describe and then to promote and protect the societal-level prerequisites for human well being in which each individual can achieve his or her full potential. Modern human rights are a historic effort to identify and agree upon what governments should not do to people and what they should assure to all. While there is a long history to human rights thinking, agreement was reached that all people are 'born free and equal in dignity and rights' when the promotion of human rights was identified as a principal purpose of the United Nations in 1945. Then, in 1948, the Universal Declaration of Human Rights was adopted as a universal or common standard of achievement for all peoples and all nations.

The preamble to the Universal Declaration proposes that human rights and dignity are self-evident, the "highest aspiration of the common people," and "the foundation of freedom, justice and peace." "Social progress and better standards of life in large freedom" including the prevention of "barbarous acts which have outraged the

conscience of mankind" and broadly speaking, individual and groups are considered to depend upon the "promotion of universal respect for and observance of human rights." These rights inhere in individuals because they are human. They apply to all people around the world.

The specific rights that form the corpus of human rights law are listed in several key documents. These are the Universal Declaration of Human Rights (UDHR), United Nations Charter (UN Charter), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although the UDHR is not a legally binding document, nations have endorsed it with great legitimacy through their actions.

Since 1948, the promotion and protection of human rights have received increased attention from communities and nations around the world. The awarding of the Nobel Peace Prize for human rights work to Amnesty International and to Ms. Rigoberta Menchu symbolises this extraordinary level of contemporary interest and concern with human rights.

According to World Health Organisation (WHO), health is a state of complete physical,

mental and social well being and not the absence of disease or infirmity. It highlights the importance of health promotion as the process of enabling people to increase control over and to improve their health.

Around the world, health care is provided through many diverse public and private mechanisms. The responsibilities of public health are carried out in large measure through policies and programs promulgated, implemented and enforced by or with support from the state.

The first main function of public health is to assess health needs and problems. In response to first function, it is said that a state's failure to recognise or acknowledge health problems that preferentially affect a marginalised or stigmatised group may violate the right to non-discrimination by leading to neglect of necessary services and in so doing may adversely affect the realisation of other rights, including the right to "security in the event of sickness or disability" or to the special care and assistance to which mothers and children are entitled (UDHR, Article 25).

The second major task of public health is to develop policies to prevent and control priority health problems. If a government refuses to disclose the scientific basis of health policy or permit debate on its merits or in other ways refuses to inform and involve the public in policies development, the rights to seek, receive and impart information and ideas regardless of frontiers (UDHR, Article 19) and to take part in the government directly or through freely chosen representatives (UDHR, Article 21) may be violated.

The third core function of public health, to assure services capable of realising policy goals, is also closely linked with the right to non-discrimination. When health social services do not take logistic, financial and socio-cultural barriers to their access and enjoyment into account, international or uninternational discrimination may readily occur. For example, in clinics for maternal and child health, details such as hours of service, accessibility via public transportation and availability of day care may strongly and adversely influence service utilisation.

In conclusion, it can be said that without human rights people and their communities cannot be fully healthy. Securing health rights are to promote the human rights. So securing human rights and meeting health related needs constitute the critical step in addressing global health problems.

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PHOTO: AFP

Violence against women fuels spread of HIV/Aids

Significantly more young women than men are now being infected by HIV/Aids as violence against women and girls fuels the spread of the virus. HIV/Aids is a human rights catastrophe which increasingly affects women, said Amnesty International in the report Women, HIV/Aids and human rights published ahead of the International Day for the Elimination of Violence Against Women.

"The increasing spread of HIV/Aids among women and sexual violence are interlinked. If governments are serious in their fight against the disease they also have to deal with another worldwide 'pandemic': violence against women," said Amnesty International.

Violence is a key factor in women's risk of contracting the virus. Studies suggest that the first sexual experience of a girl will often be forced and we know that one in five women will be a victim of rape or attempted rape in her lifetime. Traditional practices such as genital mutilation, early marriage, and the practice of newly bereaved widows being 'inherited' by other male relatives also increases women's exposure to the virus.

Mass rape and sexual violence in conflicts drives the HIV pandemic, in countries as disparate as the DRC and Colombia. In the DRC tens of thousands of women were raped during the conflict and the health system has completely collapsed with only eight percent of donated blood being tested before use in transfusions. The situation in the war torn region of Darfur in Sudan is likely to go the same way given the similarities of rape and sexual violence again used as a weapon of war. The majority of women in Darfur have also undergone female genital mutilation, a factor increasingly likely to put them at risk of infection.

Stigma is still a serious problem - for both survivors of rape and people living with HIV/Aids. Women often refrain from seeking medical treatment following rape because of the risk that they will be identified as rape victims within their community and ostracised. In Colombia Amnesty International has received testimonies about people from stigmatised groups, including those thought to have HIV/Aids, who have "disappeared", been persecuted or killed.

"In many parts of the world stigma blocks the way for women to access appropriate medical health care and leads to the exclusion of women from families or communities," said Amnesty International.

Where women are denied property and inheri-



PHOTO: INTERNET

tance rights, employment and access to finance, they are forced into dependence on men which places them in a very weak position to assert their rights and protect themselves from violence. Many women and girls also lack awareness of measures required for self-protection from HIV/Aids. In Ethiopia, for example, some 80% of married young women have had no education and are unable to read. Ensuring access to education including awareness raising about sex, health

and HIV/Aids is fundamental to protecting the right of girls and women.

"Discrimination and unequal power relations make it more difficult for women and girls to control their lives and their own sexuality, including negotiating safer sex. Women must be empowered to act effectively in their own best interests," said Amnesty International.

Source: Amnesty International.

RIGHTS investigation

AN INDIAN PERSPECTIVE

Criminal responsibility for torture

SAUMYA UMA

IN India, the prohibition against torture is absolute in theory. However, the use of torture by police, armed forces and other state actors is a stark reality. Today, it remains less an individual aberration and more a systemic failure to build a culture of human rights among such agencies. However, torture practised by non-state actors, including armed insurgent groups, terrorist outfits, fundamental political outfits, members of "upper" castes and other de facto power-holders requires to be equally condemned. Even as the Supreme Court lays down more and more guidelines to prevent custodial torture, the routine use of torture upon civilians continues unabated.

In India, torture takes place for a variety of reasons as a substitute for police investigations, for fabricating cases and saving influential persons by implicating innocent persons, for "teaching a lesson", for extortion and for maintaining status quo and preventing empowerment of oppressed groups of people. It is often seen as the only way to maintain law and order, control terrorism and crimes committed by the underworld, extract confessions and investigate crimes. The victims are the most vulnerable sections of society, including poor, uneducated, illiterate persons, dalits, religious minorities, women, children, adivasis (indigenous persons), civilians in "disturbed areas" and human rights defenders. Many such victims have little knowledge of law and poor access to the justice delivery system, and those who do access the courts are often intimidated and coerced against asserting their rights and demanding justice.

The Legal Framework

Neither the Indian Constitution nor any other law contain an express prohibition of torture. However, judicial pronouncements have interpreted the right to life in Article 21 of the Constitution of India as a right not merely to survival or existence, but the right to live with dignity. Torture involves the violation of dignity and therefore falls within the ambit of Article 21. Several provisions of the Code of Criminal Procedure provide for judicial scrutiny of detentions, and vest powers and responsibility with the magistrates to act proactively in situations of custodial torture of arrested / detained persons. Causing hurt to a person in order to extract a confession, wrongful confinement, voluntarily causing hurt / grievous hurt, kidnapping, abduction and murder are all penal offences under the Indian Penal Code (IPC). As a general rule, the Indian Evidence Act prohibits the use of confessions obtained in police custody as evidence in court (S. 25).

In addition to domestic law, provisions that ban torture in international conventions that India has

ratified are also binding on it. India has ratified the International Covenant on Civil and Political Rights (ICCPR), which bans torture and other forms of cruel, inhuman and degrading treatment even in times of national emergency or when the security of the state is threatened (Articles 4 and 7). The Indian government signed the Convention Against Torture (CAT) in 1997 but has not ratified the same, on the ground that existing laws have adequate provisions to prevent torture, in addition to constitutional safeguards. Further, India has ratified the Convention for Elimination of Racial Discrimination (CERD) in 1968, the Convention on the Rights of the Child (CRC) in 1992, the Convention on Elimination of Discrimination Against Women (CEDAW) in 1993, and is bound by the provisions of these conventions, all of which guarantee a right not to be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. In addition, India is also bound by provisions of the four Geneva Conventions of 1949, and in particular, provisions of Common Article 3 that prohibits torture in situations of internal armed conflict. India is not a party to the Rome Statute on International Criminal Court, which spells out torture as a war crime and a crime against humanity.

Laws of Grave Concern

Draconian laws have been enacted with arbitrary, unbridled powers that license police and armed forces to inflict torture on individuals in the name of national security and countering terrorism. The Prevention of Terrorism Act (POTA), Armed Forces (Special Powers) Act (AFSPA), The Public Safety Act, National Security Act and preventive detention laws are some such examples. POTA contained many provisions that give arbitrary and unfettered powers to the security agencies. Instead of deterring terrorist activity, this law has been used against juveniles, old people, members of minority communities, dalits, adivasis, industrial workers, political opponents and human rights defenders, for acts including illegal custody, solitary confinement, torture, forced confessions, sexual and religious humiliation, encounter killings and disappearances. It is therefore small mercy, that the new Indian government repealed this law.

The AFSPA has come under fire in recent times, with the alleged rape, torture and killing of Manorama in Manipur in July 2004 by members of the armed forces. This law gives unbridled powers to armed forces to enter, arrest and search without a warrant, and the right to shoot to kill if the member of armed forces is "of the opinion that it is necessary to do so for the maintenance of public order." The Act has been justified, time and again, as the only means to control the situation of insurgency in the North-eastern states, and to prevent the secession of the north-eastern states. However, experts say that the AFSPA had failed to suppress insurgency in

the state and has proved counterproductive, as it has festered civilians' hostility to Indian authorities, and has caused insurgency-related activities to increase. In addition, various state-specific laws exist in the north eastern states and Jammu & Kashmir, that strengthen the powers of apprehension, arrests, searches and shooting given to the security forces, as the only way to handle the situation in 'disturbed' states. In addition, clones of POTA continue to exist in many states, including Gujarat & Maharashtra.

The police and armed forces enjoy virtual impunity under Section 197(1) and (2) of the Criminal Procedure Code, which provide for a prior sanction of the central government for prosecution of public servants. Similar requirements of government sanction are also hemmed into AFSPA and other laws, including the Prevention of Corruption Act, for prosecution of a public servant for corruption. However, the Supreme Court has confirmed that government sanction is not required for prosecution of malicious actions that do not fall within the ambit of official duties (*Shembhoo Nath Misra vs. State of Uttar Pradesh*, AIR 1997 SC 2102). In addition, under Section

19 of the Human Rights Protection Act of 1993, National Human Rights Commission (NHRC) cannot directly investigate complaints of human rights violations by the armed forces, but can only request a report from the central government, based on which it can send its recommendations to the government. This provision has been severely criticised by national and international human rights organisations, including the NHRC itself.

These, and such other legislation, have infused and contributed to an overall climate of impunity within the country. Arbitrary, unbridled and sweeping powers given to the police and the armed forces under these laws have reduced their sense of accountability for their acts. Even though some safeguards against torture and other human rights violations have been incorporated in these laws, such safeguards are rarely implemented. Justice and accountability for acts of torture continues to remain an elusive issue in India.

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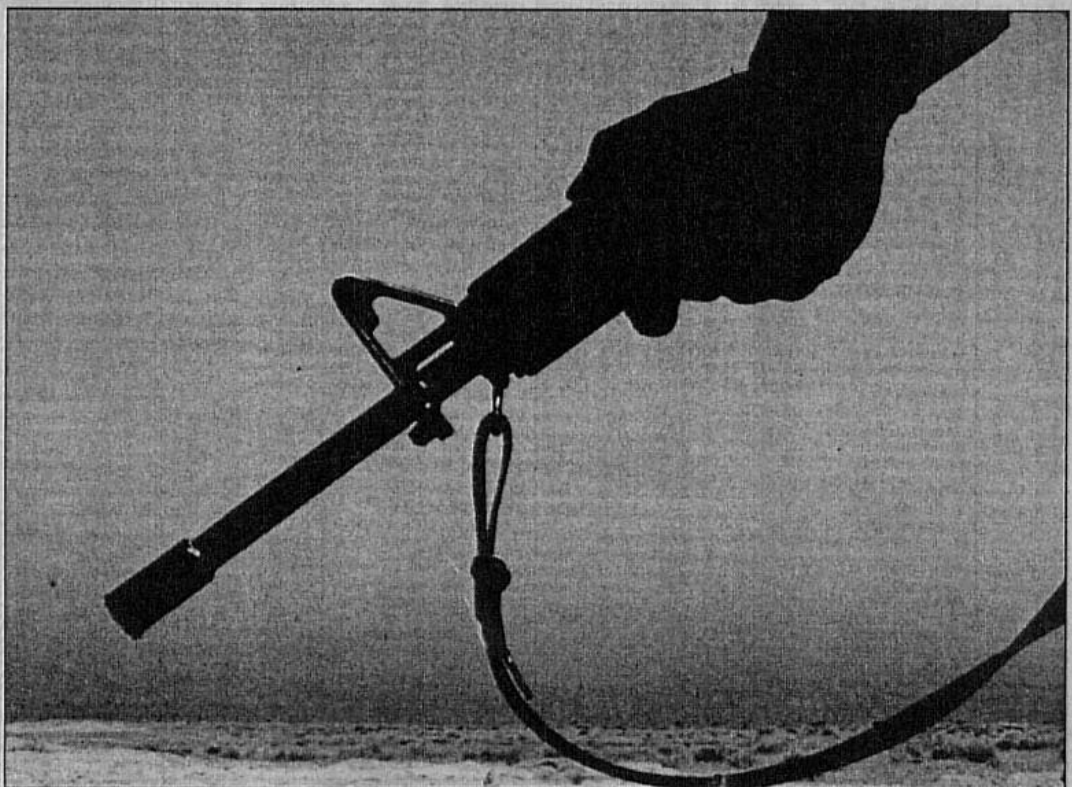
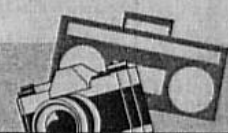


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FOR YOUR information



Rights of the Migrants

SULTANA RAZIA

Crossing borders voluntarily or for some reason is a common phenomenon nowadays and sometimes they are forced to migrate for their survival. These people often suffered if they are not getting legal protection. Violation of their fundamental human rights increase social disintegration and declining respect for the rule of law. To uphold their rights, the United Nations created the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It was approved on 18 December 1990 by the UN General Assembly and the most comprehensive international tool promoting the human rights of migrants. The strength of the Convention lies in enabling all those persons, who qualify as migrant workers under its provisions, to enjoy their human rights regardless of their legal status and it protects both documented and undocumented workers.

Nevertheless, States undertake to ensure that migrants whose rights have been violated may seek judicial remedy.

From On 1 July 2003, it came into force as the seventh basic human rights instrument of the United Nations. In brief the convention covers the following rights:

- Right to freedom of movement and from their countries of origin;
- Right to life, privacy and property;
- Right to freedom from torture or cruel, inhuman or degrading treatment or punishment;
- Right to freedom from slavery, servitude or forced compulsory labour;
- Right to freedom of thought, expression, conscience and religion;
- Right to a fair and public hearing with all the guarantees of a due process;
- Right to be provided with necessary legal assistance, interpreters and information in an understood language;
- Right to have recourse to diplomatic or consular assistance and protection;
- Employment:
- Right to enjoy the same treatment as nationals regarding social security benefits in so far as they fulfil the legislation requirements;
- Right to emergency medical care;
- Family and Children of Migrant Workers:
- Right to a name, registration of birth and nationality;
- Right of access to education;
- Cultural and Economic Rights:
- Right to preserve a cultural identity;
- Right to transfer earnings and savings upon the termination of their stay in the State of employment;
- Information:
- Right to information by the State of origin, State of employment, or the State of transit of their rights arising from the present Convention, the conditions of their admission, and their rights and obligations in those States;
- Other rights of migrant workers and members of their families who are documented or in a regular situation;
- Migrant workers and members of their families who are documented or in a regular situation shall enjoy the rights set forth below in addition to those already mentioned. In such a way, the Convention seeks to discourage illegal migration.
- Political Rights:
- Right to participate in the public affairs of the State of origin, in accordance with its legislation;
- Information:
- Right to information, including all conditions concerning their stay and their remunerated activities;

The campaign to ratification of the convention is going on and this will be achieved only by building awareness about the Convention with government officials, diplomats, politicians, NGOs and the public-at-large, nationally and internationally and mass awareness is a must for that.

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