

CITIZENS' VOICES ON  
'THE CHALLENGES FOR  
SOUTH ASIA:  
HUMAN RIGHTS AND DEMOCRACY'

# REGIONAL CONSULTATION

27-29 NOVEMBER 2010

KATHMANDU, NEPAL





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The views and opinions entailed in the papers presented at the conference are not essentially of the South Asians for Human Rights (SAHR) Organisation.

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South Asians for Human Rights (SAHR)

345/18 Kuruppu Road, (17/7 Kuruppu Lane)

Colombo 08, Sri Lanka

Telephone: +94 11 5549183

Fax: +94 11 2695910

Email: [sahr@sltnet.lk](mailto:sahr@sltnet.lk)

Website: [www.southasianrights.org](http://www.southasianrights.org)

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## Abbreviations

AFSPA	Armed Forces (Special Powers) Act
CA	Constituent Assembly
CAT	Convention against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COPA	Commission on Public Accounts
COPE	Committee on Public Enterprises
CPA	Comprehensive Peace Accord
CSO	Civil Society Organisation
EMR	Electro-magnetic Radiation
FATA	Federally Administered Tribal Areas
FIR	First Information Report
HRCP	Human Rights Commission of Pakistan
HSZ	High Security Zone
IDP	Internally Displaced Person
LTTE	Liberation Tigers of Tamil Eelam
MDG	Millennium Development Goal
MNA	Member of National Assembly
MP	Member of Parliament
NATGRID	National Intelligence Grid
NATO	North Atlantic Treaty Organization
NCSW	National Commission on the Status of Women
NGO	Non Governmental Organisation
NHRC	National Human Rights Commission
NPMHR	Naga People's Movement of Human Rights

NPR	National Population Register
NTPC	National Thermal Power Corporation
PAC	Public Accounts Committee
PLA	People's Liberation Army
POTA	Prevention of Terrorism Act <sup>1</sup>
PTA	Prevention of Terrorism Act <sup>2</sup>
RAB	Rapid Action Battalion
RoB	Rules of Business
SAARC	South Asian Association for Regional Cooperation
SACEP	South Asia Centre for Economic Policy
SAHR	South Asians for Human Rights
SEZ	Special Economic Zone
TCA	Torture Compensation Act
UAPA	Unlawful Activities (Prevention) Act
UID	Unique Identification Number
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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<sup>1</sup> As used in India

<sup>2</sup> As used in Sri Lanka

## Introduction

*Citizens' Voices on 'The Challenges for South Asia: Human Rights and Democracy' - Regional Consultation* organised by South Asians for Human Rights (SAHR) entails the proceedings of the consultation held from 27 to 29 November 2010 in Kathmandu. This event coincided with the tenth anniversary celebrations of SAHR network.

This publication has incorporated the presentations of six sessions of the three day consultation, among other supplementary documents. Session one involved a country perspective by seven nations under the theme 'the Challenges for South Asia: Human Rights & Democracy.' Session two on 'Transparency and Accountability of South Asian Parliaments' showcases the findings of the Parliament Watch project supported by SAHR. It is supplemented by views of several parliamentarians invited to the event from Bangladesh, India, Pakistan and Sri Lanka. 'Security Laws and Freedom from Torture' was the theme of the plenary session. During this third session three country presentations follow the speech made by the eminent senior lawyer Ms. Nitya Ramakrishnan. Parallel sessions on the themes 'Discrimination against Religious Minorities' and 'Internally Displaced Persons' which discussed common challenges in four South Asian states marked the fourth session. Introductory remarks on these sessions are by Dr. Hameeda Hossain and Mr. Ali Dayan Hasan respectively. The final plenary session entailing

an analysis of the process of drafting as well as the draft Democratic Charter of South Asia from human rights perspective.

SAHR hopes that these documents will strengthen to continue the dynamic discourse on democratizing communities, societies and states in the South Asian region.

## Welcome Address

- *Keshab Mathema*

It really gives me immense pleasure to stand before this very distinguished assembly of human rights defenders and activists from South Asian Association for Regional Cooperation (SAARC) countries in welcoming you all to Nepal, as South Asians for Human Rights (SAHR) celebrates its 10<sup>th</sup> anniversary.

SAHR as a movement is 10 years old but as an ideal it is as old as human aspirations for justice and freedoms. SAHR is committed to deal with the wellbeing of the excluded due to poverty, gender, physical or mental disabilities, caste, creed, and political or sexual orientations.

We in Nepal find this opportunity to host this important meeting extremely pertinent at this time when the country is in the midst of change. Only a few years ago, conflict and violence were sweeping the political contours of this country. We then dreamt of an inclusive society, where no one will be judged by one's social and economic background or ethnicity. I imagine the millions who descended on the streets of Kathmandu in the spring of 2006 must have had faith in such a vision. The dream still continues.

The country has now emerged out of the decade long conflict and is poised to move towards a society which safeguards the

inherent rights of its citizens regardless of its social conditions. The opportunity to do something to correct the mistakes of the past has never been greater. We are still maintaining the renewed hope. It is a moment of reckoning, for most of us. It is a change that must expand the potential for larger human progress on the basis of equal opportunity and justice.

The new constitution for Nepal must encompass some of the salient features of human rights and freedoms which meet the fundamental norms of the international covenants, most of which have been ratified by Nepal. Human rights and freedoms are inextricably linked to the peace and justice system. The peace process now under way, should not only attempt to restore the transitional justice which would address the transgression of the victims during conflict, but it should also strengthen the rule of law and the distributive justice system which probably faltered during the conflict. In other words, it is necessary to address justice in a more holistic and integral manner.

We in Nepal are very hopeful that this meeting will discuss and review the status of human rights issues in our region, implementation of existing laws, violations at state, domestic, and individual levels, and will propose serious action to mitigate all these aberrations. The recommendations coming from such a distinguished group of human rights defenders from all the SAARC countries will certainly encourage our leaders to rise above party interests for the larger benefit of people, by defending human rights of every citizen of this country. This way, I feel, we can start deepening democracy in our respective countries.

## 10<sup>th</sup> Year Anniversary Address

*- Dr Hameeda Hossain*

Some of us here today were first at Neemrana in 2000 where we drafted a declaration that was to guide South Asians for Human Rights (SAHR) in bringing together human rights defenders in the region. Mr Gujral, the Chairperson of SAHR, unfortunately is unable to join us because of his ill health, but I would like to place on record that in spite of his indisposition he has continued to inspire and counsel us.

Ten years on, I see many new faces amongst us which not only indicate the growth of the strength of the human rights movement in South Asia but also reflect the challenges presented by the wide range of violations of human rights by both state and non-state actors.

Today, I would like you to join me in congratulating Aung San Suu Kyi for overcoming 27 years of solitary confinement. We see hope in her renewed will to struggle for the release of others who are still in jail and we support her call for an end to the rule of the military generals in Myanmar. Her release might have come even sooner if governments in the region and elsewhere had stood firm in demanding justice and democracy and not been tempted into negotiating with the generals for development of natural resources. Today amongst us, I would also like to recognize two persons who

have spent time in jail in the Maldives. SAHR sent a 3-4 member delegation when the President of Maldives was imprisoning human rights defenders and the delegation met the President, as well as people who were in jail at the time, which included the present President of Maldives and two persons who are here – Mr Mohammad Latheef and Ms Jennifer Latheef, who have now joined SAHR and we welcome them.

Many of us have engaged in promoting human rights at the grassroots level within our own countries. But we have felt it necessary to synergise our struggles at the regional and international level. This is because we share a common vision for our societies in South Asia to make freedom and development meaningful for all citizens, irrespective of diversity in ethnicity, religion, sect, class, caste, gender, and social and sexual orientation. The challenge that a regional network like SAHR faces is to reinforce natural struggles to build a just and humane society. SAHR therefore has tried to evolve complementary and supportive approaches to promote substantive equality, genuine citizens' participation in public decision making, and to strengthen democratic institutions. While SAHR recognizes the primary responsibility of the state to implement the rights guaranteed in the constitutions, we believe that this is not possible without an active engagement by conscious citizens. It is through the convergence of formal rules and informal social norms that we can evolve a human rights culture. We believe that the imperatives of a vibrant and just society lie in the establishment of peace, democracy and human rights.

Progress reports on South Asia, particularly those emanating from the west, project its investment potential and economic achievements. We hear about double digit growth, the micro-credit miracle, and increasing prosperity. This tourist literature seems to gloss over the reality of poverty and injustice in our societies: of



children at work when they should be in school, of slum dwellers evicted so that we can have international games and the playground of the rich, of police raids, arrests and disappearances, and endemic violence.

The challenges to peace continue to be daunting as war or protracted low intensity conflicts endanger our security and freedom. In Afghanistan and Pakistan, villages have been wiped out by drones, while innocent civilians have become victims of suicide bombers or in the midst of armed attacks on mosques. Military intervention has brought an end to war in Sri Lanka, but will a majority dictated post-conflict settlement sustain peace? Within each of our countries, militarized solutions have played havoc with people's lives. In Baluchistan, Kashmir, the Northeast of India and the Chittagong Hill Tracts the rule of law has been undermined while peace accords still await implementation.

For 60 years now, hostile relations between India and Pakistan have been a major threat to peace in the region. Government officials were reluctantly pushed into a series of composite dialogues which never reached a conclusion. After the Mumbai incident, citizens' protests prevented the hysteria from descending into another armed fiasco. Spontaneously, SAHR members in Pakistan and India communicated with each other and arranged exchange visits by human rights and cultural activists and media leaders where they met with political leaders, government officials, and media to demand an end to war talk. It is time now, even if governments do not talk to each other, for citizens to start their dialogues for peace.

Unresolved conflicts between India and Pakistan have provided a breeding ground for extremist violence. Peripatetic armed groups, multiplied under the cover of jihad, have spread their tentacles from Afghanistan to Kashmir to Bangladesh and perhaps other locations

as well. Whether these are grounded in ideology, nourished by national rivalries or narrow power interests, they need to be exposed. Investigations by SAHR have revealed their background affiliations and regional connections with a response for wanton violence against civilians. The report that SAHR produced showed the need for a collective regional approach to address the growing militancy of small groups. South Asian states need to seek regional solutions for peace in Afghanistan, Kashmir and elsewhere rather than resort to narrowly defined national ambitions.

The emergence of terrorism is often used by governments to justify methods of lawless law enforcement. Promulgation of anti-terrorist laws in each of our states, whether at the behest of foreign powers after 2001 or compelled by internal political dialectics, have resulted in the violations of the right to life, liberty, and freedom from torture.

In all South Asian countries the impunity of security forces has allowed for extra-judicial killings, custodial torture, and disappearances. SAHR's comparative study of laws and practices in Bangladesh, India, Pakistan, and Sri Lanka demands an objective examination of the security regime because of the threat to constitutional supremacy and human freedoms.

The right to equality under law has been enshrined in all our constitutions. It is an essential ingredient of democracy that all citizens be treated equally irrespective of religion, ethnicity, caste, sect, or gender. In our electoral democracies majoritarian interests have served to create and reinforce communal differences and these differences have been used by political ideologists to fuel discrimination leading to intense communal conflicts.

In 2003, SAHR set up a South Asian People's Commission for Minorities whose members visited Pakistan, India, Sri Lanka, and

Bangladesh. Their conclusions, published under the title of 'Including the Excluded', gave evidence of how ethnic and religious exclusion in each country fed into the political dialectics of the neighbouring country because a minority in one country was the majority in the other. This report was followed by a more recent study on the use of religion by political establishments to discriminate and exclude communities within a nation state.

Competitive claims over land by the powerful and appropriation of natural resources have led to major internal displacements. The most brazen example being the recent post war displacement and internment of Tamils in Sri Lanka. SAHR's research found that while vast numbers were displaced and remained in poverty in Baluchistan the land's resources of gas and minerals were used for development of affluent sections of urban Pakistan. The Minority Commission Report on the Chittagong Hill Tracts reveals that seizure of land and forest resources has excluded the indigenous communities from their own lands.

SAHR decided to assess and monitor the behaviour of democratic institutions in our countries and the review of electoral systems prompted the formulation of recommendations for reform of electoral laws and mechanisms which were taken up by a few of the election commissions in the region.

Subsequently, SAHR has started a Parliament Watch programme where assessments are made of the parliaments in each country and their effectiveness as legislators and monitors of executive behaviour. The findings should stimulate critical debate on the weakness of the prevailing systems and yield insights on how citizens' activism could act as a restraint on political excesses.

The struggle for human rights is ongoing and should not be limited to round table discussions. Ten years of working together across South Asia has shown us the formidable and complex challenges of realizing human rights. We need to share our experiences and knowledge in devising strategies and action programmes. But above all, we can derive confidence and hope from the ongoing struggles of all those who refuse to surrender to injustice, oppression, and discrimination or to disasters, whether they are manmade or natural.

Let us inspire ourselves with the words of Aung San Suu Kyi: "A revolution which aims merely at changing official policies and institutions with a view to an improvement in material conditions, has little chance of genuine success. Without a revolution of the spirit, the forces which produce the inequities of the old order would continue to be operative, posing a constant threat to the process of reform and repression and regeneration. It is not enough merely to call for freedom, democracy and human rights. There has to be a united determination to persevere in the struggle to make sacrifices in the name of endearing truths to resist the corrupting influences of desire, ill will, ignorance, and fear".

# Inaugural Address - 'The Challenges for South Asia: Human Rights and Democracy'

*- Justice Kedar Nath Upadhyay*

Every nation in South Asia has some degree of regularity of factors that have ingrained as political destiny and development of human rights. Most countries in the region accept democratic values in their constitutions and are in different stages of political processes. Some countries have national mechanisms to protect and promote human rights whereas countries such as Pakistan and Bhutan do not have such independent national institutions for safeguarding human rights of the people. Even in countries that have national human rights institutions, there is no uniformity in their membership status and degree of institutional independence. In Nepal, the National Human Rights Commission is a constitutional body provided with a wide range of powers in its mandate.

The people of the SAARC region have common bondage born out of history, culture, and geographical proximity. They live in similar conditions of poverty, degradation of caste, and a baggage of social ill practices entrenched in their thoughts and feelings. Some of these are even archaic, inhuman, and superstitious such as sacrificing a child to fulfil a set of irrational beliefs, punishing an old woman suspected of witchcraft, and treating people of a certain community as untouchables. The politics of this region have so little

or no interest towards ameliorating the maladies suffered by the common people. It is less inclined to engage in the task of rendering social and economic transformation for the qualitative upgrading of lives of the people than to outplay rival political parties to gain and maintain the reign of power in the government. On the contrary, corruption and malpractices have been flourishing at the behest of some politicians or their party workers. The nexus of criminals with politicians and police or other public authorities is often reported. Some investigations reveal members of political parties involved with criminals to commit a crime where the victims are very often political rivals, opposing media persons, or human rights defenders.

The scenario in most of the countries in this region, at present or in the recent past, has been characterized by political turmoil and the harrowing nature of armed conflict. Though conflicts in Sri Lanka, Nepal, and Bangladesh have ended some time ago, other countries in the region are yet to enter into some form of reconciliation or settlement in solving such issues.

In Nepal, the National Human Rights Commission (NHRC) handles many cases of enforced disappearances, abductions, displacement, confiscation of private property, and torture. Even after the Comprehensive Peace Accord (CPA) was signed in November 2006 between the Maoists and the government of Nepal, the proliferation of arms and ammunition and the emergence of several armed bands have weakened law and order and security mechanisms in this country. It is known that democracy, good governance, rule of law, and respect for human rights go hand in hand. The CPA is the landmark where the foundation of the peace process was laid down to rebuild a more participatory and inclusive democracy, to develop mutual trust and goodwill among political parties, and to create a sense of common fraternity among the people of Nepal. The parties to the accords at various stages

expedited the process of making the interim constitution, holding elections to the constituent assembly, electing the President, Vice President, Prime Minister, and Chairpersons of the constituent assembly. With the abrupt dismissal order of the Chief of the Nepalese Army, army staff, followed by the alienation of Maoist Prime Minister, problems began to appear. Subsequent disruption in the working of the constituent assembly and competition among major political parties for leadership has delayed the peace process. The constituent assembly could not finalize the draft of the constitution in the stipulated deadline<sup>3</sup> as major constitutional issues remain unattended and unresolved. It is unlikely that the constitution will come out even within the extended period.

On the human rights front, the successive government led by three major political parties has not acted upon the recommendations made by the NHRC in cases of impunity, disappearance, displacement of people, and confiscation of private property, nor could they create a mechanism for the peace process or transitional justice.

In Nepal, many young men and women face severe problems to obtain employment and migrate to other Asian countries in search of employment. Among these vast numbers, women and children are exploited and some have become victims of sexual exploitation and even lost their lives. The government of Nepal does not seem to be active in securing safe and humane treatment of its people through formulating bilateral agreements with the resident countries of migrant workers. A multitude of workers from Bangladesh have had to face similar kinds of exploitations. In Nepal, the recurrence of strikes has seriously affected industries, business, education, and health.

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<sup>3</sup> Stipulated deadline was May 27, 2012

Most countries of the region are failing to address these kinds of problems and there is added suffering due to tsunami or occurrence of natural calamities or disasters such as floods, landslides, and epidemics. There has been no permanent body for emergency arrangement or rapid response at the state level, for the rescue, treatment, and relief of victims of natural catastrophes.

If democracy is to sustain and survive in South Asia it will happen through the achievement of peace, prosperity, and respect for human rights. The bulwark of democracy is none other than the civil society formed by committed people and its protection lies in their conviction, unswerving belief, and readiness to sacrifice their lives to safeguard democratic values.

Therefore, the pertinent question is, can the political parties of this region foster some commitment and nurture a democratic culture in the minds of the common people? This is a difficult and time consuming mission, but for people having a civilized history like ours it is not impossible. All we need is a concerted effort among civil society and resolution of policies of human rights activists to embark upon the mission that will gradually strengthen democracy and a human rights culture.



**Keynote Address:**  
**‘The Challenges For South Asia:  
Human Rights and Democracy’**

- *C.K. Lal*

The term *panos* (lamp) originated in Persia though it is also used in the Sanskrit language. Persians were fire-worshippers and the lamp is nothing but enclosed fire. In Hindu tradition it represents the sun which again means fire. In the context of what is burnt in fire, it is falsehood and what remains is the truth. Fire is important. Consequently, strugglers are said to possess this fire inside them, and only then can one continue with one's struggles.

Despite the saying ‘truth shall prevail’, truth does not prevail on its own. Truth too needs the protection of the warriors and in our day and age human rights defenders are these warriors because if they do not struggle or fight, will human rights or democracy be sustained? The path to truth opens as they proceed forward and when it is blocked they return to clear it. ‘Human rights defenders’ may be a new term but the concept is as old as human history. As long as the fire of which the lamp is symbolic, is within your hearts, truth will prevail.

'Challenges for South Asia: Human Rights and Democracy' is a topic which crops up quite often when South Asians meet. We consider ourselves to be South Asians even with the possession of Nepali, Bangladeshi, or Pakistani passports. Passports do entail certain obligations and rights but our cultures and commitments to the region transcend these national borders. When we talk about human rights or democracy or even good governance in South Asia, it is like looking for a polar bear in a Thar Desert. It is something that does not exist, or something that is there but simply on the verge of extinction, like royal Bengal tigers. The scene in South Asia can sometimes look very depressing and at best not very encouraging.

Afghanistan continues to be essentially an occupied territory. Occupying forces say they will leave by 2011 but then extend it to 2014. Then the statesmen say they will be there for as long as necessary. Is this the latest phase of colonialism in the 21<sup>st</sup> century, which has dawned in a different form? We must salute our Afghan brothers and sisters who are keeping the fight for human rights and democracy alive. It is said that when darkness is intense, even the brightness of a single lit match is adequate. And once their spirit begins to flow, soon the fire will start. Therefore, they must keep their spirits up for their long fight ahead.

Bangladesh has completed a cycle of transferring from a religious theocratic state to a secular nation and then returned to some form of democratic governance. However, we are yet to see whether this journey is a beginning of a curved or straight road towards achieving the goal of a just and peaceful democratic society. So, all South Asians have to be on guard, not only Bangladeshis, because whenever human rights and democracy is in danger in any of our societies, it becomes a common danger

to us all. Therefore, we need to be aware of the situation in all the countries in the region. Although the release of Aung San Suu Kyi is a victory for the spirit of democracy, the fate of at least 22,000 prisoners of conscience in Burma still hangs in the balance. We South Asians should pressurise our governments to speak against the junta rule and for the democratic struggles in Burma.

Bhutan is known to be the country of gross national happiness as well as of ethnic cleansing. The fate of Lhotshampas (the term refers to the heterogeneous ethnic Nepalese population of Bhutan), the Bhutani refugees living in Nepal and those remaining in camps is yet to be decided. There are Lhotshampas in Bhutan who are compelled to endure the pressures of ethnic dictatorship on a daily basis. Probably their voices need to be heard more, all over South Asia.

Whenever the term 'democracy' is used with a qualifying adjective such as 'Islamic' democracy or 'grassroots' democracy (which is reminiscent of Maldives), it is suggested that there is something lacking in that particular 'democracy'. This context is somewhat frightening, as our fears come from our own experiences. In Nepal people who grew up during a particular democracy prevailing earlier, are happy with the attempt to achieve a 'just' democracy now.

Unfortunately, in Maldives, people still talk about democracy with adjectives, which is evident of the fear that prevails. In South Asia, Nepal has formulated the largest number of constitutions in the shortest period of time. There has been at least one constitution every decade. The first written constitution was in the 1940s, then in the 50s, 60s, 70s, 80s, 90s, 2000, and probably in 2011 another constitution would be promulgated.

Still the status of democracy, human rights, and governance in Nepal leaves a lot to be desired. This shows that while political-legal structures are very important and necessary, they are not sufficient to ensure rights. Consequently, people in Nepal should be on guard and they will need the solidarity from all over South Asia because probably there is a long struggle ahead in a different form, in Nepal as well.

Pakistan unfortunately is a country at war with itself. There are very few countries in the world that fight within their borders and this saps the national spirit. Once the spirit is drained, human rights and democracy become mere rhetorical slogans. Yet the press in Pakistan has maintained its fighting spirit, the judiciary has suddenly found its voice, and all have been making themselves heard. Allama Iqbal said "there's something in us which allows us to survive" and that 'something' continues to be at risk in Pakistan and perhaps all over South Asia, because if Pakistan is at risk, Afghanistan is not safe, and South Asia is not safe either.

It is doubtful whether the conflict in Sri Lanka is over or just gone underground. If it is on the surface it could be identified but once it goes underground, challenges are extreme, especially for human rights defenders. You cannot hold anybody to account when the struggle is underground and therefore you are unsafe every moment, day and night. It is being alleged that Sri Lanka witnessed an ethnic cleansing, almost a genocide in scale in eliminating certain sections of the population. There is a feeling among military states that the vanquished have no rights but only obligations. But there comes a point when the vanquished begin to walk, when the dead return from their graves.

Tibet should be considered a part of South Asia. Politically it is a part of China but at the level of civilisation and culture, it has always been a part of South Asia. There are Tibetans living in the Tibetan region of the People's Republic of China which is autonomous from the mainland, in India, in Nepal, and in different Western countries. But the Tibetans have no country of their own. They only have a province in China, a government in exile in India, and scattered pockets of settlements and squatters in different countries all over the world. No matter where they are, the rights of Tibetans are under threat. In Nepal the government disrupted the election of Tibet's government in exile and it should be noted that if people are not allowed a voice they are essentially driven underground. When such freedom movements go underground, dangers multiply, not only for those who sympathise with them but also for the regimes that drive them underground. So human rights, democracy, and governance of Tibetans should be of interest to all South Asian human rights defenders.

In the above alphabetical list, discussing India has been kept for last because when we talk of South Asia, it is the elephant in the room. From Nepal we could touch the leg and call it a pillar, from Sri Lanka they would hold its tail and call it a rope to hang or save some people, from Bangladesh it may be an ear looking like a fan. When large pockets of land are in a permanent state of expansion, human rights as a concept itself is not very prominent, as it has been happening in military administered states of North Eastern India, for example in Kashmir, of which Arundhati Roy's observation created a hue and cry recently. Just because you disagree with Arundhati's characterization of Indian Maoists as 'Gandhians with guns', it does not give any

one the right to demand that she be excommunicated, that Fatwa be decreed against her or her existence be challenged. There is no other country in the world that not only commemorates its history of slavery but celebrates it by hosting a sports event by spending millions of dollars and billions of rupees uprooting the homeless, starving 80% of the population who makes a living on less than Rupees 20 a day. South Asia could be led by a military regime in Pakistan for a while, or a military regime in Nepal, Burma, or Bangladesh. But one dreads the day if such a regime was ever to appear in the vicinity of New Delhi. India is a big country – almost a continent in itself. Billions of surplus, possesses the third biggest army in the world, perhaps also the biggest paramilitary and police force in the world outside of communist countries. It has a very large illiterate population, the richest and the most expensive private residents in the world as well as the most impoverished population in the world, proving it to be a country with a lot of contradictions. Nobody from India can tell that we have no right to speak about them, especially because what happens in India has an impact on all of us.

There are some common features with regard to the challenges for South Asia on human rights and democracy. Poverty is a challenge that we do not recognize seriously as we talk about it in vague terms. At the same time, almost everything - politics and structural matters, legal matters, threats to human security, access to water, safe drinking water, sanitation, health services, and education is being privatised. Where does it leave the common masses? Lack of respect for fundamental freedoms in the name of religion, tradition, and national interest is also a challenge. National interest is meaningless in the context of human rights and democracy. There is only regional interest or global interest.

If religions sanction employing children as domestic servants, putting people in prison, underage marriage, dowry deaths, etc. we had better change that religion. Illegal occupation of land involving the use of force still exists in South Asia for which Afghanistan, parts of Northeast India, in some ways Kashmir, parts of Pakistan and Bangladesh, and even probably parts of Nepal are examples. With the escalation of conflicts of any type - even if the armed conflict is for a just cause - human rights is the first thing that comes under threat. Equal access to justice by disadvantaged groups is something that we have not been paying enough attention to. The culture of impunity, different kinds of fundamentalism including free market fundamentalism, are threats to human rights, democracy, as well as the rule of law.

But why do we keep failing despite our strenuous attempts? B.R. Ambedkar said that “fraternity, liberty, and equality, each are equally important”. But he laid maximum emphasis on fraternity. So how do we build fraternity? States have a vested interest in fighting against fraternity because fraternity means connecting people. States and even political parties are more interested in dividing people. Fraternity needs the initiative of social leaders because we need to renew our fight inside our own countries and then go beyond the border of states. Then only can we overcome fear. In order to build fraternity we need to develop our senses and sensibilities through arts such as poetry, philosophy, etc. The movements for independence in South Asia drew its sustenance/ fire from the aesthetic arts. The spirit itself has to be in a permanent state of struggle. There is no other way to attain a desirable society.

Finally, the translated text of a Hindi poet, late Dushyant Kumar reads, “It is not my intention to just create a commotion, but a desire to change the situation.”



## SESSION ONE:

### *Country Perspectives –* **‘The Challenges for South Asia: Human Rights and Democracy’**

#### **Introductory Remarks - *Amit Sengupta***

During the *jana andolan* and the democratic revolution in Nepal there were two very distinct incidents - the mass violations of human rights by the military forces and the Maoists, such as violence against women, and torture within military barracks. More stories on these violations during the ten years of conflict in Nepal are yet to be told and justice yet to be seen. Even though there was great hope articulated in every small town or village, now it seems to be dissipating. Aung San Suu Kyi has been released but there are still hundreds of political prisoners imprisoned in Burma. In Sri Lanka, journalists were picked up and continue to be eliminated and during the conflict with the LTTE, those surrendering to the armed forces were killed. In India there are great struggles between large sections of Adivasis and Dalits on land grabbing by the corporate state where the state has become a ‘banana republic’ in the context. There are armed as well as non-violent struggles going on all over India protesting against this.

## **Bangladesh - *Khushi Kabir***

The 2009 elections ended a two year military-led regime where human rights were considered a bane. The caretaker government ushered in the need to have a corruption free and better governed Bangladesh. There is some positive action by the caretaker government such as the Right to Information Act being passed and the Information Commission being set up. On paper, citizens have the right to ask for information except on the security of the state. NGOs are able to provide such information while the private commercial sector is not. At the same time the National Human Rights Commission (NHRC) was reorganised with a Professor of Law of the Dhaka University as its Chair and a team picked, taking into consideration the aspects of gender, ethnicity, and religious diversity. More women have been elected to the parliament than ever before and they also hold important positions in the cabinet and other different bodies.

Despite this, violence against women continues. But more and more writ petitions are going into courts - for example, the recent judgement against Fatwa. Poverty prevails while socio-economic inequality is higher than ever before and the number of people living below the poverty line and in extreme poverty is much higher. The culture of impunity continues with the law enforcing agencies - such as the Rapid Action Battalion (RAB), set up in 2004 - with members of the police and other forces resorting to extra-judicial killings. From January to June there have been 64 extra-judicial deaths which include death in custody and in cross fire. The NHRC has spoken out against this but the government continues to claim that there are no extra-judicial killings. This year alone there are 22 cases of disappearances and many reports have shown that they have been picked up by state bodies such as the RAB. A recent clash erupted near the city in Rupganj between the armed forces

and the people, over the building of a housing estate for the armed forces. Around 50 persons were injured, one died, and two went missing. Fact finding missions have found that the government has not taken action to find out what has happened to the people who disappeared, the people who were killed or to redress the issue of impunity.

There is a need to build a stronger resistance and a movement within South Asia to raise issues that have been ignored, such as water sharing, the enclaves, the people - mostly fishermen languishing in foreign jails, religious intolerance, secularism, etc. Bangladesh has gone back to secularism but with a clause that says Islam is the state religion. A country cannot be secular and have a state religion at the same time.

### **Bhutan - *Tek Nath Rizal***

The voices of Bhutanese refugees and people in Bhutan living in imprisonment have been neglected and ignored by the human rights community in Asia and other parts of the world. When they try to voice their opinions and problems, the organizers have forced them away from the meetings.

Violations of human rights in Bhutan by the state were rampant since 1988. As a result, almost one-sixth of Bhutan's population was forcefully evicted out of the country in the 1990s. Following massive pressure from rights organizations and other sympathisers around the globe, the then King of Bhutan Jigme Singye Wangchuck in an attempt to blindfold the international community abdicated the throne in 2008, ensuring the monarchy goes to his son Jigme Khesar Namgyel Wangchuck who is the present king.

There is much discrimination happening against Lhotshampa, the Bhutanese of Nepali origin. The district court of Bhutan accused a Nepalese speaking Bhutanese citizen of showing a Christian film in some localities and increased his jail term to 3½ years. Furthermore, two innocent Christians are being hunted. How can a person be sent to jail for practicing a religion of his choice, in the 21<sup>st</sup> century?

The first general election was held to trumpet the so called democracy in Bhutan. During the first general elections in 2008, around 80,000 Nepalese speaking citizens dwelling in Bhutan for centuries were denied voting rights. They have been leading a life of slavery without any legal documentation; their children are not admitted to schools. During court procedure every citizen is required to use **Dzongkha**, Bhutanese national language as a medium of communication and those who cannot speak **Dzongkha** have to hire a government official as their interpreter. So justice depends on their interpretation. Even judges are without legal backgrounds and are mostly appointed by the king. Contrary to constitutional provision, the Chief Justice and Justices of the Bhutanese Supreme Court do not have legal backgrounds.

Some Eastern Bhutanese citizens have faced an even bitter fate than the Nepalese speaking Southern Bhutanese. There are no human rights organizations registered (or unregistered) in Bhutan, hence no record of human rights violations.

Bhutanese citizens enjoy free movement in India due to the Indo-Bhutan friendship treaty. However, Indian police officials help Bhutanese security officials in re-arresting Bhutanese citizens who are released on bail by the Indian courts. Bhutan has been persistently using mind controlling devices (Electro-magnetic Radiation –EMR) in police interrogation, which were banned by the UN several years back. Hopefully, freedom fighters and human

rights defenders from SAHR will continuously support this cause and keep putting pressure on the government of Bhutan to resolve the Bhutanese refugee issue.

## **India - Vrinda Grover**

One would have imagined that 63 years of independent democratic rule would be sufficient to make the transition from treating the peoples of India as subjects to citizens. However, India today appears to have the apparatus of democratic governance in place but is not necessarily respecting, protecting or promoting human rights of the peoples of India. India is at a very critical juncture today because it is one of the emerging global economic powers, as well as the largest democracy, apart from being a significant force in South Asia.

Three features that characterise India today are impunity, impoverishment, and intolerance. The main factors that will determine how Indian democracy will unfold are the militarization, the dictate of global financial capital, the growth of majoritarian politics and the surge of extremist views and ideology. At the receiving end of these are marginalised groups, women, Dalits, Adivasis, and religious and ethnic minorities. A strong people's resistance is challenging land acquisition and mining in Central India. The laws and policies of the Indian government are aimed at maximising private profit. Pertinently, the institutions and mechanisms of democracy that are mandated to provide remedy and justice are to a large extent complicit in the physical assault as well as deprivation of people's access and control over natural resources.

Kashmir and the Northeast represent vexed political disputes, towards which the Indian state has chosen to respond with greater

militarization instead of a serious political engagement. The private corporate sector supports this militarised approach and there is frequent use of law enforcement machinery to forcibly acquire land and suppress democratic protests. This year (2010), Irom Sharmila marked the 10<sup>th</sup> anniversary of her hunger strike protest against the Armed Forces (Special Powers) Act (AFSPA) of 1958. AFSPA and other draconian laws determine the lives of people of the Northeast of India and Kashmir. Large parts of the country are not governed by democratic institutions. Paramilitary or military forces and security apparatus are in operation in many parts of India and routine imposing of emergency regulations are becoming the norm rather than the exception. Freedom of association, speech, and expression are under grievous attack with the legal provision of sedition being deployed to silence and criminalize dissent.

The direction in which India is moving does not bode well for the rights of its people and could set a dangerous trend for the region. While the Right to Information Act of India has been hailed regionally as well as globally as a landmark legislation to create transparency and accountability of the state, the state has now set afoot processes, to collect and control data including name, residence, age, and photograph, as well as bio-metric information of each person. Thus technology is being deployed to collect fingerprints and iris scans of every resident of the country. This ambitious exercise of herculean proportions, without necessary legal sanction, seeks to award a Unique Identification Number (UID) to each resident of India. This will enable the state to configure a National Population Register (NPR), NATGRID and other databases, giving the state total access and control over people within its territorial borders. The UID being propagated as the technological device to ensure access for the poor to all government benefits and financial inclusion, will enable the government to access, monitor, and track our lives. Thus the infrastructure for authoritarianism and surveillance is being put

in place to allow the government, intelligence agencies which are subject to no statutory or other oversight - a total of 21 agencies - to have access to 11 databases at the click of a button.

The equation between the state and citizen is being altered through laws, policies, state action, and practices. Therefore, strong domestic human rights activism that links with regional partners is necessary for the enjoyment of democracy by all the peoples of South Asia.

### **Maldives - Jennifer Latheef**

Practices such as female circumcision, bride burning related to the custom of dowry in marriage, and female infanticide has not been common in the culture of Maldives. Nonetheless, violence against women has been widespread and the issue has been silenced since human rights abuses in general are silenced in Maldives. Women who objected or tried to leave abusive relationships were told by *Ghazis* to try to make the marriage work, whereas the advice given to men was its opposite. Maldivian women, to a large extent have socially internalised to accept these abusive conditions within marriage. Until recently there was no awareness raising and no one spoke out against any human rights abuses.

Only after the democratic movement which began in late September 2003 did the Maldivians find their voice and started working for a change through the formation of political parties. Freedom of expression, association, assembly, and most other fundamental rights were only realized after that.

Issues of women's rights, equal opportunity, education, and the perception of violence against women are changing drastically for the worse. This is due to the conservative interpretation of the Holy Quran and an unqualified and corrupt judiciary. Today, issues

such as child rights and beating women are being called a right given to men by god. Many scholars who promote such views are able to speak freely and spread their views whereas Muslims with dissenting views are silenced or called infidels.

Due to the political instability and the disputes between the opposition coalition and the government, Islam is often times used as a tool by both parties. Recently, the *majilis* debated the bill on violence against women where some MPs raised their concern on what they deem to be a right given to men. The bill proposed to make violence against women a civil offence and not a criminal offence.

The judiciary too plays a vital role in the low status and negative perception of women and their rights. Since the separation of powers, not enough emphasis was placed on strengthening the judiciary and ensuring that the judges were qualified. The Human Rights Commission noted the major difficulties faced by them due to the view on women's rights by a majority of the judges. For example, a woman who was drugged and gang raped was sentenced along with the rapists saying she was acquainting with strangers. A female child who was also gang raped after a break-in into her home was told she was a willing participant because she did not scream for help. A young girl who was raped and beaten was viewed as deserving the 'punishment' because she was smoking during the fasting season of Ramazan. There have been instances where female children have been taken out of schools by parents and given in marriage or as *jarias* (concubines). Maldivian women did have a relative freedom before it was systematically taken away.

The first democratically elected government has failed so far in dealing with the issue of underhand yet purposeful lowering of women's status. They have failed to introduce policies that will empower women. The



Ministry of Islamic Affairs allows preaching hatred, intolerance, and oppression of women. On a happier note, it should be mentioned that the artists and film makers are actually coming out with songs and movies to raise awareness about empowering women.

## **Nepal - Prof. Kapil Shrestha**

Since the success of Nepal’s people’s movement in 2005/ 2006, the successful conclusion of elections to the constituent assembly three years ago and the signing of the CPA in 2006 between the state - represented by seven mainstream parties - and the insurgent Maoist forces, the country is indeed going through an unprecedented and irreversible transformation and transition. This has indeed affected all aspects of society, politics, governance, and the mindset of the people.

Nepal is often characterized by rollercoaster-like dramatic changes in people’s moods, expectations, and mindsets. Sometimes people are so euphoric, optimistic, and hopeful with a lot of expectations and at other times this hope, optimism, and expectation suddenly turns into despair, disillusionment, pessimism, and cynicism. Nevertheless, this change has opened up a challenge to address a backlog of issues and problems that have been piling up for so many centuries.

The politics of democratization, peace building, and national reconciliation is becoming more complicated, crisis prone, uncertain, unfixable, and dangerously volatile. Because of the obsession of politicians and decision makers in promoting the peace building process and political process, most of the important issues relating to human rights, democracy, development, and social justice have been consigned to the back burner. This has resulted in political, economic, and social stagnation and forced thousands of youth to

look for employment and security outside the country. Millions of Nepalese are migrating to the Gulf, South East Asia, Korea, Japan, and elsewhere. If not for this remittance - the largest source of income to the country - the economy of Nepal would have been burned and destroyed by now.

The interim constitution has stipulated a mandated gap. The new constitution has to be ready by 28 May 2011. The deadline was extended last year by one year, yet the Chairperson of the constitution drafting committee, the Speaker of Parliament, and influential politicians doubt whether the deadline shall be met. The biggest fear and apprehension is what is going to happen if the constituent assembly is a jumbo body of 601 members? This may be the largest parliament ever in South Asia and even in the whole of Asia.

When analyzing Nepali politics there are five major crisis/ fault lines:

1. The crisis of confidence and trust between political parties.
2. The crisis of consensus - Unless the 601 members cooperate with each other, the constitution cannot be passed as it needs a two-thirds majority.
3. The crisis of cooperation.
4. The crisis of compromise - Most of the time politicians and political parties are engaged in unproductive debates, inflexible positions, and confrontational and undemocratic politics.

5. The crisis in consolidation of democratic and peace processes  
- In Nepali society there are three types of major conflicts: political/ ideological conflicts mainly between mainstream parties and the Maoists; conflicts based on caste, ethnicity, and gender; and regional conflicts between people living in the south and the north.

There are some positive acts of politics in Nepal such as the very good rapport among top political leaders, a commitment to a broad vision of change and democratization among all political parties, unprecedented awareness and assertiveness among the people as well as a strong presence of civil society.

### **Pakistan - I.A. Rehman**

The greatest challenge to democracy and human rights in Pakistan is this 'spurious democracy' that has been ailing Pakistan. The state has a crisis of legitimacy. Elections are not accepted as fair since those elected have to buy their seats and then engage in corruption to recover the cost incurred.

In Pakistan the state does not have a monopoly on power. There is a government, a military, and now there are militant extremists with authority who are not liable to listen to anyone else. There is a weak parliament which is not in control and in turn is not able to function for the benefit of the people. The agenda is set by the military or aid givers and work for the people is restricted. It will buy planes but will not build schools. It will buy bullet proof vehicles for ministers but not buy buses for the common people.

Democracy has suffered because of the overarching ideological debate of whether it is a theocratic state or non-theocratic state. After President Zia-ul-Haq there is no dispute that Pakistan has become

a theocratic state, which means that it is confronting democracy directly. It was the military that decided President Musharraf's ouster in 2008 and the restoration of the Chief Justice on 16 March 2009 and all agreements are decided by the military. There is no law under which the intelligence agencies can be controlled.

Poverty is growing with 40-45% of the population living below the poverty line. Women have more political space but killing for honour continues. Child rights are neglected. Minorities' risks have increased due to the rise of militancy in the North. The MDGs are not to be attained. But there are showpieces: a Human Rights Ministry, a Women's Ministry, and a Minorities' Ministry. There are also ceremonial ratifications of covenants but laws are not made accordingly. Since 1953, politicians and politics have been demonized. With President Zia-ul-Haq's introduction of 'non party democracy', political parties have degraded as they have no democratic norms and are infested with corruption.

One of the most important incidents to have happened in Pakistan is the adoption of the 18<sup>th</sup> amendment in 2010. For the first time, all parties in Pakistan came together to establish a genuine federation. Under this amendment, power and resources are being transferred to the provinces and that will contribute to the growth of a democratic tradition in Pakistan. But that is only if the 18<sup>th</sup> amendment can be fully implemented.

### **Sri Lanka - *Ambika Satkunanathan***

In Sri Lanka we are currently witnessing the entrenchment of a form of elective authoritarianism where the state appears to be a multi-party democracy that holds polls regularly to elect the legislature and executive, but fails the substantive test of democracy. Scholars refer to such countries as partial or diminished democracies or more

appropriately, a diminished form of authoritarianism. The path towards authoritarianism is aided by the myth-making machine employed by the regime which is busy at work creating an invincible, almost god-like leader/ monarch who has to be venerated and whose actions are never subjected to scrutiny. For instance, the President’s brother is quoted in the *Economist*<sup>4</sup>, as stating that the era of kings has begun and western notions of accountability and transparency are not relevant to Asian culture.

Following the end of the war, the government altered the methods it uses to intimidate and exercise control over the activities of human rights groups and activists and now uses less overtly violent means, such as cumbersome and restrictive regulations and increased policing and monitoring. At the same time the government maintains the national security apparatus which it justifies by reference to global trends such as the war on terror, which offer not only justification but also a moral standpoint from which to defend the curtailment of human rights, and label rights activists and those who oppose draconian measures which curtail civil liberties as traitors.

The government’s victory over the LTTE has enabled it to also dismiss as irrelevant, the root causes and grievances that led to the armed conflict and label it as a ‘terrorist problem’ rather than one that requires a solution that acknowledges and addresses historic political and social injustices.

## **Development as an equivalent to peace and justice**

Another means through which the state dismisses calls for the protection of human rights and a political solution to address the grievances of the minorities is through the use of the ‘peace

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<sup>4</sup> A Coronation in Sri Lanka: Beating of the drums, *the Economist*, 18 November 2010

through development' discourse which argues that development and economic prosperity will lead to increased peace, security, and justice. The government denies there are genuine grievances that demand a political solution and further justifies its stance by pointing out that it is committed to the economic development of the conflict affected areas which it says will address the needs of the Tamil and Muslim people. This discourse, hence, 'de-politicizes' and de-historicises discrimination and injustice.

Further, since proponents of this school of thought fail to acknowledge the role of structural injustice in perpetuating poverty, in a context where there is no substantive reform to address disparity of power, in practice, development most often serves to only widen existing inequalities. Also, as we have witnessed in the recent past many development initiatives have resulted in the displacement of large communities who have lost their lands and livelihoods. These communities often tend to be those who have experienced historical marginalisation and discrimination and are placed on the margins of emerging development initiatives.

Where the international community is concerned, while donor support continues for development programmes which supposedly aim to prevent the re-emergence of conflict, donors do not seem to have considered whether and how the stated aims of their programmes could be achieved in an environment where there is securitization and militarization of post-war reconstruction and development. The growing support provided by China to Sri Lanka and its closeness to countries such as Iran and Pakistan has also meant that countries such as India and the United States feel the need to continue to provide aid for fear of losing influence in the region.

## **The right to forget and the creation of a common/ shared identity**

Another issue with which Sri Lanka is struggling, is dealing with the rights violations of the past, particularly those that took place during the last phase of the war. These include possible violations of humanitarian law and the arbitrary detention of nearly 11,000 persons on suspicion of being members of the LTTE of whom nearly 5,000 remain in detention. The majority of Sri Lankans, largely those not directly affected by the armed conflict, appear to prefer to forget the past and move forward. Part of the process of forgetting also involves the creation of a shared/ collective memory. The reality is that, often the national memory/ history which might be more appropriately described as the ruling memory, is constructed by the victors or those in the more powerful position, since it is hard to collectively construct a shared memory under conditions of inequality. The hegemonic memory also shapes the common identity, the creation of which becomes important in a context where forgetting the past is seen as imperative to move forward. Communities, such as the Tamils and Muslims that have experienced collective violence or intractable armed conflict and feel that their grievances have not been addressed, will not be able to perceive themselves as part of the so-called ‘common/ shared’ identity. These dual constructions - of memory and identity - naturally and not surprisingly, enable the state to deny responsibility for addressing grievances and inequalities.

### **Limitations of legal reform**

The space available to rights groups in Sri Lanka has shrunk even further following the end of the armed conflict, particularly in the conflict affected areas. Coupled with diminishing returns of

advocacy initiatives this has meant that groups have had to re-assess interventions, such as legal reform initiatives, since litigation and legal reform, commonly used by rights groups to seek redress for historical and structural injustices, have yielded mixed results. Rights groups are hence realizing the need to revisit this and perhaps frame issues and strategies differently, because as long as practices and institutions that embody and perpetuate injustice remain, the impact of legal reform initiatives will be limited. For instance, while language rights are enshrined in the Constitution of Sri Lanka, Tamils are unable to exercise this right due to discriminatory practices and their inability to seek remedies for violations within a system which dis-empowers them politically. Discrimination is therefore institutionalized in the social, political, legal, and economic structures.

This raises various questions for rights groups and activists, some of which could perhaps be explored further during the course of this consultation.

- In such a context how can they contribute to the creation of a new political community?
- How can they enable and empower survivors to challenge the hegemonic memory and normalisation of past injustices?
- How can they support groups in their efforts to demand redress for structural and historical injustices?
- How do they find openings in very complex and sometimes restrictive spaces to ensure the continuity and longevity of such initiatives?



## SESSION TWO:

# Transparency and Accountability of South Asian Parliaments

### Introductory Remarks - *J.C. Weliamuna*

Transparency and accountability in parliaments has been one of the key focus areas of SAHR. The objective of this Parliament Watch project was to strengthen citizens' participation in democratic processes and make the parliament more responsive and accountable to human rights issues. In that context, the Parliament Watch programmes have been introduced in several countries.

### Bangladesh - *Irfath Iva*

The Parliament Watch research in Bangladesh contains a brief focus on the law making process, critical areas of concern to ensure transparency and accountability, the proportion of human rights sensitive laws, highlights of the 9<sup>th</sup> parliament (2009-2010), and lacuna/ gaps, challenges and recommendations to make the parliament effective, accountable, and transparent.

There are some crucial stages in the law making process where special attention should be given to ensure transparency and accountability. For example, the role of the Speaker should be

neutral in parliament to ensure transparency and constructive criticism. When the Domestic Violence (Prevention and Protection) Act 2010 was passed, eleven nominees were supposed to discuss, but unfortunately except a single parliamentarian there was no nominated Member of Parliament from the opposition party to evaluate it. Also, only one member gave his opinion and brought 12 amendments, but no amendments were accepted. Even though the individual parliamentarian requested to make it public or accessible on the internet before passing the bill, the request was not accepted by the Speaker. Subsequently, it has been very difficult to collect constructive criticism. In addition, a significant time was spent in the parliament on discussing Points of Order. This was a waste of time and resources and its recurrence should be discouraged.

Despite these draw backs, some positive initiatives have been taken at the inception of this government (the 9<sup>th</sup> Parliament). Consequently, a total of 48 standing committees have been formed in the first session itself, whereas the past government spent more time in formulating it. But still there is a long way to go with regard to this exercise, as it lacks an effective monitoring strategy or a strict time bound mechanism for the implementation of the committee recommendations. There is provision in the Rules of Business (RoB) that the standing committee members should seek opinions from experts. Even though it did happen in the context of two or three bills, it is not regularly practiced in the process of passing all bills.

Statistics show that a total 35% of bills promoted in parliament concern human rights issues, 37% on development issues, 21% on finance and tax, and 7% on the benefits for VIPs. There are some important bills passed such as the National Human Rights Commissions Bill, Right to Information Bill, Consumer Act, and Citizens Act. However, private members' bills are not encouraged to be presented most of the time. Only 12 private members' bills have

been placed in the 9<sup>th</sup> Parliament. Some important bills addressing human rights issues like Preventing Custodial Death and Torture Bill 2009 and Code of Conduct of Members of Parliament Bill is less likely to be passed. From the past it has been observed that only six private members' bills were passed in the last 38 years.

Citizens are not proactive in submitting petitions to the Petitions Committee due to the lack of awareness and the communication structure. Schedule of standing committee meetings are displayed to the public, but only selected parliamentary proceedings are aired and broadcast in television and radio.

Amongst the challenges faced in the 9<sup>th</sup> Parliament are, frequent boycotting of the parliament by the major opposition parties, absenteeism, personal attacks on political leaders, lack of respect and tolerance amongst the political leaders and parties, the dominance of the ruling party, promulgation of laws with undue haste and without prior information to the public at large, lack of awareness building exercises in terms of relevant rules and procedures, etc. Ultimately these very crucial issues hinder transparency and accountability of government.

### **India - Vinod Bhanu**

This exercise is part of an effort to keep watch and rate the parliament's performance on human rights related issues. The Indian parliament meets thrice a year. The 'budget session' is from February to May, the 'monsoon session' begins in June/ July and the 'winter session' is in November/ December.

There is no formal mechanism to observe or assess our parliamentary performance or individual MPs. The people/ voters have the right to know what is happening within the parliament and how their

elected representatives perform on their behalf. This initiative at least provides civil society a mechanism to observe and assess parliamentarians' performance and ultimately the parliament on human rights related issues.

The report contains a general introduction to the parliament, the length of sessions, and highlights important issues and bills related to human rights. It provides a combative view on media and the parliament and a brief analysis of the questions raised in parliament. Finally there is a discussion on the scope for further advocacy by CSOs, NGOs, and other experts and an annexure of important bills. When discussing media verses parliament it is often seen that issues on human rights reported in the media are never raised in parliament. This may be due to the lack of awareness. Similarly, crucial development/ social sector issues are never covered in the media.

Probably all South Asian countries experience the lack of access to policy makers and policy making spaces by the civil society including NGOs. There is a need to further improve access and space, create a sustainable working relationship with the MPs, and provide information and research support to them.

### **Maldives - *Aiman Rasheed***

Maldives has had a tumultuous political period. There was a ruler for 30 years, Maumoon Abdul Gayoom, after which the new democratic constitution came into force in August 2008. The first multi-party presidential election took place in October 2008 and the first multi-party parliamentary election took place in May 2009. The new constitution paved the way for a new system of governance and Maldives witnessed a complete overhaul of its system of governance. Experts estimate that more than 80 pieces of legislation need to be

passed through the parliament in the two-year interim period for the proper functioning of the state. So far, only 15-20 pieces of legislation have been passed with the critical pieces of legislation still being entangled in the parliamentary process.

The legal framework in Maldives is borrowed from an era where there was no separation of powers, the judiciary was not independent and the legal framework did not account for basic democratic functions of a state. The role of the parliament as per the constitution is to hold the government accountable, act as a watchdog, appoint persons to independent institutions, and pass statutes relating to democratic processes. The role of the parliament is more pronounced during the interim period because its role is more acute during this period with the parliament being responsible for the appointment of persons and setting up of institutions as well as passing legislations for the proper functioning of all these institutions that need to be set up during the said period (from 8 August 2008 to 8 August 2010). The constitution refers to the interim period as the time provided to the state to allow the transition from the previous system to a new, fully democratic system.

Maldives has a presidential system of governance but the constitution stipulates that the parliament is supreme in many instances. This has led to clashes between the parliament and the executive as well as the judiciary. These clashes have in turn led to deadlocks and halts in the workings of the state. The parliament itself has failed to pass critical laws that have affected the functioning of the executive and the state. In some instances, this has led to lower revenue for the government. Some of the institutions that need to be set up for the processes of the state have not been created and the state budget was altered according to the wishes of the parliament without any thought of the plans of the executive.

There are three sessions of parliament per year. Over 40 pieces of legislation have been presented since mid 2009 and about 12 pieces of legislation has been passed and ratified. 6 out of the 15 pieces of legislation relating to human rights were passed and 5 of 10 pieces relating to governance were passed. Most legislation relating to the economy such as the Profit and Taxation Bill has not been passed. A majority of MPs are businessmen or are associates of businesses - especially the lucrative tourism industry - leading to a conflict of interest in the passing of bills relating to economic reform. The failure to enact relevant legislation and set up procedures, has negatively impacted the functioning of independent institutions such as the Judicial Service Commission, Elections Commission, the Human Rights Commission, etc.

The functioning of parliament is relatively transparent. However, the processes are not clear to the public. Hence, the ability of the public to access and influence parliamentary processes is limited to a greater extent. Sessions of the parliament are aired live on television and broadcast radio. Sittings of the parliament and committees are open to the public and media by default. However, few people (if at all) attend the committee sittings and the media does not usually cover the committee meetings. Minutes and other relevant documents are uploaded on the parliament website, though the consistency and the quality of documentation leave much to be desired.

Amongst the challenges faced is the negative political climate which is not conducive to proper functioning of parliament, the ineffectiveness of the judiciary to resolve the ongoing disputes between the executive and the parliament, consequent deadlocks in the state functioning, and the constantly changing system of governance.

## **Pakistan - Raza Ahmed**

The parliamentary process in Pakistan is rather recent. There has been a transition since 2008 with the ouster of President Musharraf through a people's movement. Since then, there have been almost two years of parliamentary proceedings.

The overall legislative practice and proceedings in parliament have improved. 30 laws were tabled and passed by the parliament as opposed to 4 in the previous year. The issue of promulgating ordinances by the president has also seen a decline in the recent year and the Acts to Ordinance ratio has also improved in the last year.

However, the problem with transparency remains, because the texts of assembly debates and the proceedings of the Parliamentary Committees are still not made available on the public websites and access to information therefore has become difficult. Similarly, records of the committee meetings are also not made public. For example, the proceedings of the committee on the 18<sup>th</sup> Amendment have not been made public as yet even though it is a fundamental and vital constitutional amendment for Pakistan. The other problem is that senior parliamentarians are often absent from proceedings.

An achievement in this context is that female Members of Parliament have been far more active than their male counterparts. For example, over 50 female members out of the total 76 present in the national parliament were responsible for generating 50% of the business in the House.

The Pakistani media has also emerged as a robust entity although often its depiction of parliamentarians and parliament is not all that fair. The process of demonization of politics and politicians continues. Only 46 members were present at a certain session in

parliament and on average only 74 Members of National Assembly (MNAs) are present at sessions out of 342 parliamentarians in the National Legislature.

In the last two years many human rights related laws were passed such as the Public Defender and Legal Aid Office Act of 2009 which gives opportunity for legal aid. But this remains to be implemented, like many other laws in South Asia. Similarly, the Protection against Harassment of Women at the Workplace Act of 2009 was passed and the Prevention of Domestic Violence Act was tabled and approved although that also needs to be implemented. The Transplantation of Human Organs and Tissues Act of 2009 which protects the vulnerable and the poor and the Guardians and Wards Amendment of 2008 which allows for rights of mothers to keep custody of their minors have been passed.

The parliament actually changed the constitution and removed all the insertions made by the military dictators of the past. There is more provincial autonomy through the 18<sup>th</sup> Amendment, the concurrent list has been abolished, the President's office has been weakened and the Prime Minister's office has been strengthened. Similarly, the fundamental right to education is now part of the constitution and there is a better role for intra-provincial coordination by the council of common interest. Implementation remains a challenge, with the parliamentary committee on this achieving only slow progress.

### **Sri Lanka - *Dilrukshi Handunnetti***

Transparency International Sri Lanka chapter is implementing this programme on behalf of South Asians for Human Rights (SAHR), under very trying conditions because such a project has always carried a risk element.



This project/ research initiative in reference to the 18<sup>th</sup> Amendment was captioned as ‘centralization of self’. This is a very effective way of gauging the effectiveness of the programme to not go by statistics, but by how people conceive this idea and respond to the work done in Sri Lanka.

The project looks at five vital areas for engaging and accessibility to parliament by the public such as the calendar of sessions of business of parliament, records of business conducted, papers laid on the table of parliament, declaration of financial and criminal antecedents and entitlements of MPs, and functioning of parliamentary committees.

The researcher experienced the following limitations when carrying out this project:

1. The system does not support sufficient access to information - Whenever attempting to meet a parliamentary official he was stopped, he was not allowed access to documents, and was not given authentic information.
2. Reluctance on the part of parliamentary officials to share information - Although some information should be accessible, the Hansard copies were not available on time. Whenever he wanted to study the proceedings, they would say the copies are missing.
3. Parliamentarians being critical of this exercise and opposing any kind of scrutiny - There have been a few parliamentarians who spoke to the researcher and openly asked “Why do you want to do this?” A couple of parliamentarians have mentioned that it is donor-driven and this is what traitors would be doing.

4. Low access to parliament related information by the public - The researcher notes that people did not have proper access to parliamentary proceedings.
5. There was absolute rejection when comments were made on parliamentary ethics and the need to promote ethics.

Comparison of visual examples from other South Asian parliaments is proof of Sri Lankan legislature being better behaved. Two MPs informed that it was not up to civil society to propose standards for legislatures. Two MPs wanted the findings to be debated in parliament. Some MPs have used the reports in their speeches. The public responses were that it was impossible to promote best practices in Sri Lanka.

Consequently, promoters of best practices will require special security budgets for institutions as well as researchers. Orientation for MPs should include training in basic law and basics in democracy and human rights. The parliament should independently take disciplinary measures against MPs associated with rights abuses and provide for the declaration of not just assets but also criminal antecedents.

## **Responsibility of MPs in advancing accountability of parliament**

### **Bangladesh - *Zunaid Ahmed Palak***

The 9<sup>th</sup> Parliament of Bangladesh has passed 113 Acts in five sessions within 22 months. Though only 35% of Acts concern human rights which includes the National Voters' Registration Act, the Election Commission Secretariat Act, the Right to Information Act 2009, the Consumer Protection Act 2009, the Money Laundering Act 2009, the *Upazila Parishad* Act 2009, the Labour Amendment Act 2009, the Domestic Violence Prevention and Protection Act 2010, and National Human Rights Commission Act 2009.

The Prime Minister Sheikh Hasina has taken an initiative to make the parliament more effective. For the first time ever, 48 standing committees were formed in the first session and seven chairpersons of the committees were selected from the opposition.

Yet there are limitations. The private members' bills are not encouraged and only 12 private members bills were placed in the 9<sup>th</sup> Parliament. Also, Preventing Custodial Death and Torture Bill of 2009 was not tabled in the parliament. Extra-judicial killings in Bangladesh during the previous government and the present government are aggravating this situation.

Amongst the challenges faced, the opposition parties boycotting parliament, personal attacks on political leaders, and the lack of respect and tolerance amongst political leaders and parties could be emphasised.

Following are some of the recommendations to make parliament more effective:

1. Parliament is inconvenienced by inadequate staff, office space, as well as furniture.
2. The need to increase the duration of sessions or parliament sessions.
3. The need to increase the duration of the Prime Minister's question and answer sessions from 30 minutes to an hour.
4. The need to introduce a code of conduct for young parliamentarians (currently, 58% of the young representatives are first time elected).
5. Ensure the regular attendance of the sessions by the Prime Minister and Leader of the Opposition.
6. The need for more representation of MPs in standing committees.
7. The need for necessary amendments to the constitution and rule of business with regard to accountability and transparency of the parliament.

In order to achieve the efficiency of MPs the following recommendations are proposed:

1. Provision of logistical support such as office space, office equipment, and adequate staff.
2. The need for an orientation programme for newly elected MPs.
3. MPs to organise a public hearing to share success and failure in their respective constituencies and portfolios, at least once a year.
4. The necessity for MPs to discourage the culture of boycotting sessions.
5. Introduction of punitive action such as cancellation of the parliamentary seat for MPs who are continuously absent for sessions for a stipulated period.

### **India - Yusuf Tarigami**

As a member of the Jammu and Kashmir legislative assembly, it is difficult for me to talk much about the role of parliamentarians. People in Jammu and Kashmir have been suffering for many years. The main causes for this unrest are the denial of political rights and democracy. Unfortunately, democracy has not been allowed sufficient space in Kashmir.

There is a link between the non-performance of democratic institutions and the rise of extremism. This is the reason it has been hard and difficult to reinitiate the process of democracy, as well as re-elect the legislative assembly and sustain its functions.

While militarization takes place, intervention of cohesive organs of the state becomes more visible in settling the issues. This is witnessed in Maldives, Pakistan, and sometimes in Bangladesh as well. The military perspective in dealing with the situation in Kashmir leads to imposing undue pressure on the authority of institutions like the legislative assembly. Human rights groups working in the South Asian region at different levels have to coordinate activities in order to strengthen the institutions and the processes itself and be on guard against militarization and the rise of extremism. Only then the process of democracy will get reinforced.

Recently, there was unrest amongst youngsters in Kashmir, due to the visit of parliamentarians. This opened up some elements of communication with the people and created hope which helped in diminishing the level of disillusionment. There have been many suggestions that a dialogue has to commence with the representatives of the people of Jammu and Kashmir, whose voices certainly have not been part of the democratic process. This dialogue will be a strength for the parliamentarians whose responsibility will be to put pressure on the respective powers in the region, both India and Pakistan, primarily connected with the issue in Kashmir. It is essential that they must enter into a meaningful dialogue. It is the dialogue initiated in 2006 that led to a reduction in the level of violence and creation of hope in a positive direction. Due to the terrorist attacks in Bombay this effort was derailed, the process itself stopped. Consequently, the disappointment and disillusionment resulted in unrest at a wider level.

For the level of human rights violations and violence to reduce, parliamentarians must put pressure and raise their voices in every manner they possibly could. Dialogue within Kashmir's own population and with the region gives some hope which will help in the reduction of violence to a certain extent. Kashmir is not

just a localized crisis but affects human rights and the democratic perspectives in the region. The leadership must rely more on institutional procedures and strengthening of institutions at the grassroots level. Governments at different levels will not respect those recommendations unless the process of empowerment at the grassroots level initiates them.

Both India and Pakistan have used every thread of force at their command to impose their own set of solutions as far as Kashmir is concerned, waging war five times and maintaining the biggest mobilizations on the border. Nevertheless Kashmir remains the same. It is not to be looked through the prism of national security. There prevails a human tragedy which deserves serious human effort in ameliorating the conditions. Parliamentarians must do their best so that the people are not demoralized in improving their lot.

### **Pakistan - *Bushra Gohar***

In Pakistan, parliament is supreme. The country is a democracy that is going to be in perpetual transition. The 18<sup>th</sup> Amendment is definitely seen as a miracle that has happened in Pakistan and hopefully it will be implemented. There is a will to bring about certain changes and the expectations on our part are huge, but the support network is very scattered and limited.

Religious minorities have a difficult time in Pakistan. But do they not deserve our prayers? For instance there was an accident in Gilgit, Baluchistan where a bus fell in to a river. An honourable member requested the Speaker to stop the proceedings to pray for those who lost their lives. The Deputy Speaker at the time questioned whether those who died were Muslims or non-Muslims. When stated that they were Muslims, the Speaker said if that was so, we can pray for

them and otherwise we would observe a one minute silence. This was re-affirmed by the Minister of Parliamentary Affairs.

The Domestic Violence Bill has not been passed yet. It was the private member's bill that was taken up. It was passed unanimously in the National Assembly with the endorsement from the Prime Minister but it was delayed in the Senate where it was allowed to lapse due to a comment made by a member of the Senate to the effect that if it was passed it will actually lead to breaking of marriages. Once it went to a Parliamentary Committee which was formed. Then the 18<sup>th</sup> Amendment was passed. Therefore, the Parliamentary Committee is now unable to work on it. As a result it has to now be sent to the National Assembly or to a joint sitting. The Harassment at Workplace Bill which the women activists have been working on, pushing for 20 years was passed.

Women's Parliamentary Caucus formed in 2006, now has women members from all political parties. It is led by Dr Fehmid Mirza, the Speaker of the National Assembly who is a woman and is working very hard to get at least common issues agreed upon.

There are about 50 Standing Committees in Pakistan which is actually the backbone of the parliament. If the parliament has to be effective, then work has to be done in the Standing Committee. The CEDAW report was discussed in a Standing Committee comprising civil society representatives of the National Commission on the Status of Women (NCSW). At least, this report convinced the government to accept the challenges on the ground.

However, in this context, we face many challenges. We lack staff to support in conducting research. There is no technical support even to upload minutes on the website. There is a live one hour question session open to the public. But the necessary support is not



there. We do not have sufficient space to hold Standing Committee meetings and the relevant Ministers are often not available for them. Sometimes the media is not willing to take up human rights issues.

Another challenge is to work within the respective political party. Whatever issue that comes to parliament has to come through a consensus within the respective political parties. There is a need to strengthen the process within the political parties, to be able to take up many human rights issues. Also, the political parties have been weakened in Pakistan due to the prevalence of dictatorships in the past.

### **Sri Lanka - *Wijeyadasa Rajapakshe***

Sri Lanka gained the universal franchise in Asia before any other country, as far back as 1939. Sri Lanka received independence in 1948. The Republic Constitution was adopted in 1972. Between then and now, the country has been subjected to Emergency Regulations for a period of 32 years. The Emergency Regulations are only a face-lift for the military law.

The powers of parliamentarians have been reduced to zero since the inception and adoption of the 1978 Democratic Constitution. With the 1978 Constitution the Executive Presidency was introduced and immunity was legitimized by Article 35 of the Constitution, where even if a crime is committed by the President, no legal action can be taken against him/ her. Concurrently, the Indian Prime Minister has been taken to court for not taking action against one of his Ministers on time.

In Sri Lanka, presently, there exists a democratic dictatorship because the dictatorship has been approved through election by the majority of the people. With the 18<sup>th</sup> Amendment to the

Constitution, the powers of the President were strengthened. Consequently, the limitation for any president to continue only for two terms consisting of six years per term, was removed. The Speaker of the Parliament is the elder brother of the President. Seven or eight ministry portfolios are held by his younger brother and most of the parliamentary affairs and decisions are controlled and monitored by his eldest son.

No where in South Asia or the developed countries in Europe, are Ministers and Deputy Ministers holding executive posts entitled to be members of oversight committees. At a time, out of 31 members of oversight committees the majority was from the government. This consisted of 18 Ministers or Deputy Ministers. Currently, the posts of Chairman of both oversight committees – the Commission on Public Accounts (COPA) and the Committee on Public Enterprises (COPE) are held by Ministers and Deputy Ministers. Therefore, the whole purpose of establishing these committees has really been lost.

There were revelations of corruption reaching almost LKR 300 billion in a country where the annual revenue was limited to LKR 700 billion. Within 17 days of presenting the COPE report, some Members of Parliament whose names were mentioned as culprits crossed over to the government in a group of 18 persons.

The cabinet is a large one, at one time reaching 115 ministers. After the second term in 2010 the President appointed a new cabinet consisting of 96 members. The democracy within parliament has been turned upside down. It is now difficult to identify the opposition and the government. When this government came into power, being a minority government, it had only 108 ministers. The government then started buying seats through monetary bribes and ministerial portfolios and managed to increase the number to

132. At the last election in April 2010 the government was able to secure 144 seats which have currently risen to 162. This is the latest culture established, where for monetary gains and prestigious posts, members of parliament are crossing over from the opposition to the side in power.

Since 1994, the President herself/ himself has retained the portfolio of the Ministry of Finance. As a result, now the current President is the Head of State, Head of the Government, Head of the Cabinet, Commander-in-Chief and the Minister of Finance. It is humanly impossible for a President of a country where there are so many conflicts such as ethnic conflicts, economic issues, and public uproars to hold so many responsible positions.

## **Discussion and Recommendations**

- After three decades of war in Afghanistan a parliament was formed in 2009 and the constitution gives more space for the marginalized groups. However, laws are still pending and there are contradictory laws. For example, before 2007, the Afghan President signed an Act on transitional justice against those who committed heinous crimes in the past three decades, but the parliament passed a law in 2007 which provides a blanket amnesty for all such crimes.
- The parliamentary privilege committee/ ethics committee should ensure transparency and accountability of the parliament. But unfortunately in Bangladesh even though the constitution calls for this, the privilege law has never been enacted. The Parliamentary Committee of Privileges has not met during the 9<sup>th</sup> Parliament.

- The Parliamentary Privileges Committee's responsibility is to take action against members when the prestige of the parliament is lowered. The former Speaker of Parliament in Bangladesh was found to have been involved in corrupt practices, but no action was taken. There are at least 20 MPs who violate the rules of procedures but they are in committees where they face a conflict of interest. There are at least 18 MPs who have filed false affidavits which is a criminal offence but they still continue in their positions.
- In India, people involved in criminal investigations are allowed to contest. The Citizen's Election Watch in India observing the elections in the State of Bihar noted that out of the 240 members of the legislative assembly about 120 have got criminal cases against them, about 85 of which are serious criminal cases. Serious criminal cases are classified as charges of murder, attempt to murder, kidnapping, robbery, financial forgery, etc. In the Lok Sabha, out of 543 MPs, 161 have criminal cases against them and about 75 are serious criminal cases. It must be suggested that every candidate contesting elections declare their assets and criminal records which should be made available in the public domain. And also a law should be passed that if a person has criminal charges against them (six months prior to the election) they should not be allowed to contest.
- There was a private member's bill in India that there has to be some level of qualification for MPs but there was objection against it because a sizeable section of the population are yet to come to a higher level of literacy and they cannot be deprived of becoming a people's representative. The more educated tend to become criminals and are more opportunistic and corrupt.

- In India there was a debate about the criminalization of politics, the nexus between criminals and politicians or better yet the politicization of criminals because now the criminals - previously used by the politicians - have become a part of politics.
- The salaries of MPs in Pakistan might be the lowest in South Asia, however they do get discretionary development funds under two different heads - the public works that is a fixed 20 million per year and the development fund, where the Prime Minister decides the amount. This discretionary development fund has opened an avenue for corruption and it was proposed that this should be used for education and health instead. Even provincial assembly members get discretionary development funds.
- According to the *Gunda* law if there is disturbance at a village meeting the whole village is punished irrespective of who created the disturbance.
- The advancement of democratic institutions is a prerequisite for safeguarding the rights of citizens. Certain institutions remain targets of certain power brokers with vested interests.
- In the Indian parliament it is vital to make the executive accountable. Unless this happens they will become a power unto themselves and may not respond to the needs of the people.
- The Sri Lankan President enjoys more immunity than any head of state in the world. In Pakistan too there is immunity for the President in the Constitution but not for parliamentarians.

- In India, parliamentarians receive Rupees twenty million (INR) per year, a hundred million in their five year period. An MP in Sri Lanka draws approximately Rupees one million (LKR) per year annually by way of salary. However, for Ministers and Deputy Ministers there are additional benefits such as bungalows, vehicles, unlimited petrol, as well as unlimited telephone calls.
- Through People's SAARC event, the civil society activists are trying to encourage parliamentarians from South Asia to form a South Asian Parliamentarians' Forum in order to raise issues in parliament about South Asian identity, the need for peace and corporation in the region, visa free South Asia, etc.
- Parliamentarians from South Asia should visit the leaders of the parliamentary parties in Nepal and discuss how to overcome the problem of the constitution. A lot of sacrifices have been made by the people of Nepal and those sacrifices for democratic order should not go waste.
- There is a need for much greater participation of people to strengthen parliaments and therefore there is a need for a pre-legislature process where before any Act is made and goes to the Cabinet it can be widely discussed with the people. In South Asia, parliamentarians never conduct any public hearings or meaningful consultations with the people. There is no input of the people in the law making process.
- Bureaucracy is a big problem in South Asian countries. The bureaucrats are not accountable to anyone and at times withhold very important legislation that has already

been tabled. Some very important laws never even go to a Standing Committee if the government decides to steamroll it through. The bureaucracy decides on what needs to be made a law, not necessarily the parliamentarians. The bureaucracy prepares the Bill which is put before the Cabinet. Where and to what extent does the civil society come in with regard to its formulation? How is the parliament going to negotiate with the increasing power of the bureaucracy? Systems need to be institutionalized in this context. Standing Committees/ Select Committees are such spaces where there is an engagement with people and experts to receive diverse perspectives.

- There is a continuous trivialization and marginalization of both the importance of parliament and parliamentary process in all of South Asia.
- Senior MPs hardly participate in debates and most of the important decisions and compromises related to Bills are made outside parliament. In the Sri Lankan parliament, an hour of questions has been allocated where 80-90% of the time relevant ministers are not available and as a result either the dates to answer the questions are changed or some other minister who does not hold the specific portfolio, answers. Most of the questions regarding state finances, public funds, etc. are asked at times when the Finance Minister is not in parliament. Also, some MPs do not attend committee meetings.
- Institutions are important for the formation of good governments and smooth delivery on a day-to-day basis, but the institutions themselves and the parliamentarians have to be more accountable.

- In Pakistan there was a charter of democracy between major political parties - the Pakistan People's Party and Pakistan Muslim League Navaz - before going in for elections. This has been important to strengthen the democratic process and for the first time a Leader of the Opposition was appointed the Chair of the Public Accounts Commission (PAC).
- Political parties continue to be weakened in Pakistan. The role of the opposition in a democracy is very important. One of the biggest problems in Sri Lanka is that there is an elected dictatorship. But citizens suffer also because the opposition is weak. Question time in parliament is one of the most important methods by which the opposition especially makes a government accountable.
- Nine months of hard work within the Parliamentary Committee and in small party groups outside, went into the 18<sup>th</sup> Amendment in Pakistan. When it came to the parliament, nearly every political party had a say in that document and was supported because of the process that was followed.
- In Sri Lanka, there have been many attempts to establish the rule of law, but it has failed because the example that comes from the top is something different. The expectation of SAARC has not been fulfilled and therefore there is a need for an alternate regional organisation.
- Democracy is to uphold the rule of law and not the rule of a person. It is a social contract. Therefore, people should be educated to elect the correct people to parliament.



The following recommendations were made:

- SAHR should communicate the issues faced by South Asian parliamentarians such as lack of offices, research facilities, etc. to the parliaments.
- The ‘Parliament Watch’ study should develop some criteria to evaluate how the opposition is performing in the respective countries.
- The state of internal democracy within political parties should be incorporated into the study. How do they really vote? If conscience voting is permitted, on what types of issues are conscience voting permitted?
- SAHR should arrange an orientation/ workshop for the MPs in South Asia, mostly for the young and first time elected. This will help raise the human rights issues in parliament.
- The findings of the study should be made available through simple, easily readable articles.
- Pressure groups should be organized in each country among civil society.
- In Nepal, parliament faces the problem of reaching a consensus on the constitution. SAHR should take up this issue.
- Pre legislation debates must be organized.

- Poverty is the worst form of human rights deprivation. SAHR should have a programme to fight for the eviction of slum dwellers and for those displaced due to development projects such as the Commonwealth Games in Bangladesh and India.

## PLENARY:

# Security Laws and Freedom from Torture

### Introductory Remarks - *Salman Raja*

Security laws and freedom from torture have been of great importance as concern for increased national security has come in to conflict with basic human rights. The existence of emergency laws cannot be a sanction for torture but it allows detention more easily. Yet there is no legitimate reason for extracting information by torture under any circumstance.

Torture has been in existence not only in countries that have been incriminated with it but also in the U.S. and it is carried out by the NATO forces in Afghanistan and Pakistan. Torture is part of the culture of investigation of law enforcement and has to be independently examined and resisted. Consequently, as it is closely related to the lack of any forensic training or forensic facility of the investigation, and in the absence of that, the first measure that law enforcement agencies resort to, is torture. Torture may get enhanced by the security situation, and the real problem is the regular norm that torture is becoming. This needs to be addressed at a cultural and institutional level in terms of engagement with the police and the courts in order to sensitize all concerned with law enforcement across the region.

### *Nitya Ramakrishnan*

Security legislation is an area in itself with aspects ranging from the accountability of security and intelligence agencies to special procedures that affect individual rights and target groups that are inconvenient to the ruling dispensation. The politics of security legislation which tend to criminalize conduct, otherwise to be considered normal dissent or speech and association, is an area in itself. Independently, torture as a human rights concern is a malice that affects all corners of our countries.

The express terms of security legislation dilutes due processes and in diluting these provisions serve as an express invitation to custodial abuse. For example, are the extra-judicial confessions made to police officers, more difficult and stringent bail conditions, and longer pre-charge detention periods? Pakistan and Nepal have had either executive orders or laws permitting fast track military courts in military custody and also permitting extra judicial police confessions and the temptation to record confessions. In India, the Supreme Court slackened the prescription with the safeguards of its own prescription in dealing with security legislation. For instance, the Supreme Court reluctantly upheld a provision in the currently defunct Prevention of Terrorism Act (POTA) permitting confessions made to police officers while in police custody as evidence<sup>5</sup>.

The bar of judicial scrutiny is often lowered in these cases. In Pakistan, the first and the third amendment took away the jurisdiction of the High Court and the Supreme Court to inquire into any detention order in terms of a military order and their Anti Terrorist Act today

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<sup>5</sup> Kalhan, A., G.P. Conroy et al. (2006). Colonial Continuities: Human Rights, Terrorism and Security Laws in India, *Colombia Journal of Asian Law* 20 (1), pp.94-234. [http://www.abcny.org/pdf/ABCNY\\_India\\_Report.pdf](http://www.abcny.org/pdf/ABCNY_India_Report.pdf)

bars both the Supreme Court and the High Court from giving bail in certain categories of terror offences.

Security legislation affects custodial rights and custodial justice also by discursive management of security or the discourse surrounding the threat of a nation in peril. This tends to brutalize the police force and desensitizes the usual institutional checks on custodial power. Several Muslims who had been held on terror charges in India have mentioned the particular tools of abuse used by the police while dealing with them. The other check was institutional checks on custodial power. For instance medical officers who were supposed to do a periodic check on detainees tend to look the other way despite obvious signs of abuse.

In the Indian Supreme Court decision on the Masooda Praveen case<sup>6</sup> - where a woman reported to the Supreme Court that her husband had been picked up by the security forces in Kashmir and killed - it was established before the Supreme Court that he had been picked up on more than suspicion and said that it would be ill advised to interfere in security matters. In Nepal, the case of Maina Sunuwar<sup>7</sup>, a 15 year old girl who was picked up because her mother was suspected to be a Maoist, was electrocuted in the cruellest possible manner and the army officer responsible was later promoted and sent on a foreign assignment. Despite Supreme Court orders the man evades justice because he has the protection, not only of the military but clearly of the government. There is this ascendancy of the security and military power which has a direct impact on custodial rights.

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<sup>6</sup> Public Commission on Human Rights (J&K) and People's Union for Democratic Rights (Delhi) (2007). *Missing in Action – Report of the Judiciary, Justice and Army Impunity in Kashmir* <http://www.pudr.org/sites/default/files/pdfs/masooda-1.pdf>

<sup>7</sup> Maina Sunwar. <http://www.advocacyforum.org/emblematic-cases/2011/01/maina-sunuwar.php>

The Indian Supreme Court has given far reaching judgments on custodial rights. The Nepalese Supreme Court has come up with a remarkable judgment in the last year (2009) which states that the enumerated fundamental rights in the Nepalese Constitution would include all ramifications of human rights that are internationally understood. The Supreme Court of Bangladesh very early on probed the concept of a reasonable ground to arrest. Incidents such as the Maina Sunuwar case in Nepal and in Bangladesh journalist Tasneem Khalil<sup>8</sup>, who was kept in illegal detention and tortured for writing about the military and eventually released only when there was international pressure, are still occurring. Security legislation adds exponentially to the culture of impunity.

As rights advocates, the challenge is to engage the state directly in turning it towards a discourse more advantageous to rights. There are three important aspects when considering custodial torture.

1. There can be no immediate recourse to justice regardless of the several safeguards that laws may prescribe around.
2. The person or family that is affected is not in a position to secure justice. There must be compensation, action against the guilty, and an administrative redress against the department on a wider range which had permitted this to have happened. The Law Commissions of Bangladesh and India have both recommended that there must be a rule of presumption against the custodial officer, if injury or death in custody or during the period of custody is established.

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<sup>8</sup> Human Rights Watch (2008). The Torture of Tasneem Khalil  
<http://www.hrw.org/reports/2008/02/13/torture-tasneem-khalil>

3. Custodial crimes are a class apart and the manner of investigating them and bringing them to justice would have to be different.

### **India - *Asmita Basu*<sup>9</sup>**

National emergencies have been declared thrice in independent India, yet emergency laws have existed in some form ever since independence. This indicates the extraordinary becoming a routine and the institutionalization of emergency laws passed during non-emergency times without any form of derogation from human rights obligations. While the state has the power to enact legislations to safeguard the security of the state and protect public order, such laws can only place reasonable restrictions on the exercise of rights guaranteed under the constitution. Do the security laws in India meet the test of reasonableness?

Most of these laws have been hastily enacted without adequate public consultation. These laws have often resulted in the violation of fair trial guarantees and a whole host of other human rights. The justification always provided is that the conventional criminal laws approach crimes as individual infractions and do not address movements that 'collectively subvert and destruct the structures of governance' and enforcement itself. This justification is an acknowledgement of the problems in the criminal justice system.

The laws therefore can be categorized very broadly into three:

1. National laws that apply in non-emergency situations – for example the Unlawful Activities (Prevention) Act (UAPA),

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<sup>9</sup> Excerpts from the paper, Asmita Basu (2010). Routinisation of the extraordinary – a mapping of security laws in India, written for SAHR.

which was amended in 2008 to bring provisions to curb terrorism.

2. Area specific central laws – enacted by the Central Government, these laws apply to selected areas. Eg.: the Armed Forces (Special Powers) Act, which was enacted in 1958 to apply to the Northeast and extended to the state of Jammu and Kashmir in 1990.
3. Special laws enacted by State Government to deal with issues of public security and public order.

Most of these laws have often been a knee jerk reaction to a situation. For instance the UAPA was enacted after the Mumbai terror attacks in 2008. The practice of these laws reveals that there has been a flagrant misuse of powers, the hardening of stands and alienation, targeting and harassment of already marginalized groups, and silencing of dissent.

Article 352 of the Constitution empowers the President – the head of the executive branch of state – to declare a state of emergency, through a proclamation, either nationally or in a particular territory, if there is a threat to security, by war or external aggression or armed rebellion. Article 358 of the Constitution states that fundamental freedoms guaranteed in the Constitution can be suspended at the time of emergency. However, Article 359 states that even during the times of emergency certain rights are non-derogable such as the right to life (Article 21) and procedural safeguards (Article 20).

The Supreme Court in the case of Naga People's Movement of Human Rights (NPMHR) held '[t]he disturbance may not be of such a magnitude as to pose a threat to the security of the country or part thereof so as to call for invocation of the emergency powers



under Article 352. If the **disturbance caused by armed rebellion does not pose a threat to the security of the country** and the situation can be handled by deployment of armed forces of the Union in the disturbed area, there appears to be no reason why the drastic power under Article 352 should be invoked.' Through this reasoning the apex court made a distinction between 'security threats by armed rebellion' – a term apparently not applicable to armed insurgency in the northeast, and use of security forces in internally disturbed areas. In the latter instance, there is no need to declare an emergency. It is relevant to note here that all the armed groups operating in the Northeast have been banned under the newly amended UAPA as 'terrorist organizations' engaging in terrorist acts. The broad definition of 'terrorist acts' provided in the UAPA includes acts undertaken with the intent of threatening the 'unity, integrity, security or sovereignty' of the country. The judgment of the court in the NPMHR case in declaring the areas in the northeast to be 'internally disturbed' but not posing a threat to national security and the subsequent inclusion of northeastern armed groups as terrorist organizations committing acts of violence that threaten the security of the state, create an obvious anomaly.

The most glaring challenge to the right to life is present in Section 4 of the Armed Forces (Special Powers) Act (AFSPA). This section empowers army officers, except *jawans*, to use force 'even to the extent of causing death' for violating orders prohibiting the assembly of more than five people, or carrying weapons or carrying any object that is capable of being used as ammunition, in disturbed areas. Excessive power is thus vested on officers of the armed forces to deal with offences that do not attract more than two and half years of imprisonment, let alone the death penalty. To justify the use of such force, the officer need only be 'of the opinion that it is necessary to do so for the maintenance of public order'. Hence there is no need to justify the use of excessive force on grounds

of self-defence or minimum levels of proportionality. As succinctly put by a senior lawyer/ journalist, Section 4 “ignores the officer’s duty to respect the life of a citizen, omits this vital injunction, and contains instead a *carte blanche* unheard of in any other democracy - even to the extent of causing death”. There have been numerous instances of excessive use of force by the army in disturbed areas in the northeast and in Jammu and Kashmir. The South Asia Human Rights Documentation Centre records an instance where indiscriminate firing by the central armed forces in Kohima led to the killing of seven and causing grievous injury to 22 people. The shooting was in response to a tire burst mistakenly perceived to be a bomb explosion by the personnel.

The Unlawful Activities (Prevention) Act (UAPA) places significant challenges to fair trial guarantees. It also has a significant impact on the expression of political dissent, particularly due to broad definitions provided under these laws such as the definition of ‘terrorist organization’. Hence in India there is no official emergency, but a continuing denial of emergency.

### **Nepal - *Om Prakash Aryal***

The State Cases Act deals with the criminal procedure and allows the civil police to interrogate and record statements on criminal cases. The police without any permission from the judicial authority can take a person into custody for 24 hours, but judicial permission is needed for an extension of custody. There is a provision that a detainee may seek physical examination while he/ she is produced before the judicial authority, but this law does not say anything about the measures to be taken in case of subjection to torture is proved. Under the Police Act, the conduct of police has been regulated. This law strictly prohibits uncivilized treatment, harassment, and

violent conduct while undertaking/ executing search operations. However, this law gives immunity from prosecution to the police for the actions purported to have been done in good faith. As per the Armed Police Act, armed police personnel can be deployed in certain circumstances and they too have immunity from prosecution on the same ground as may be applicable to the civil police. Both the Police Act and Armed Police Act do not include torture under the list of offences. The Army Act has purported to bring torture before the court martial. Unfortunately, the Torture Compensation Act (TCA) has not yet defined torture as a crime, which means that the Army Special Court lacks sufficient instruments to try an offence of torture.

The purpose of TCA is to define torture and compensate the victim. It requires physical and mental examination when a person is taken into or released from custody. Any complaint related to torture shall be filed with the District Court within 35 days, the court then requires conducting a physical examination on the aggrieved person within three days and if the court establishes an incident of torture the government will be ordered to redress the victim with Rupees 100,000. On the other hand, the court may pass a verdict to punish the complainant with fine amounting to Rupees 5,000 in case of a complaint being filed with malicious intention. Though international law defines torture as a crime, this Act does not uphold the international standards. It merely provides a mechanism of referring the culprit to disciplinary action.

The definitions of torture both in the Interim Constitution and the TCA are not consistent with the International Convention against Torture (CAT). For instance, in these documents there has been no distinction made between torture and other cruel, inhuman, and degrading treatment. Yet, no law requires criminal prosecution for

the offence of torture. There is an urgent need for a comprehensive statute to advocate against torture.

### **Pakistan - *Rabia Chaudhry***

This is a discussion on how security laws are used as an excuse for torture.

The rather nascent definition of torture has been broadened in this instance. Basically it was just the method of arriving at the truth during Moghul times when basic laws, criminal laws came into being. However, Pakistan has been under dictatorship for a very long time. This has been used as a guise for legitimacy, to dissipate any possible challenges to that legitimacy, and to maintain requisite order. Under President Zia-ul-Haq's regime, the first dungeons were set up. Then we had this huge problem of missing persons during President Musharraf's era. But torture and security laws both have been very good playmates of the dictators.

In the absence of any proper laws regarding investigating or investigative methods, torture has become entrenched in police psychology. Since it happens behind closed doors - as there is no legitimacy - exact statistics cannot be collected.

All this is being done despite the fact that Pakistan is a member of many international organizations. Pakistan has been a member of the Universal Declaration of Human Rights. For a very long time it has ratified treaties. Even though treaties are signed for political purposes they are not ratified and cannot be included within everyday laws.

There are domestic laws on torture, the code of criminal procedure being the basic law. The police machinery is under the duty of law to safeguard the rights and liberties of the accused. A police order issued very recently taking cognizance of this problem, specifically speaks of torture and custody and describes the penalty of a maximum of 5 years of imprisonment in case of conviction. This is a problem that the police are policing themselves. In a study conducted, we found that one of the judges having realized this fact asked the lawyer to present data for the past 10 years of how many police officers have been held accountable for torture. There was only one in ten years.

There are constitutional safeguards<sup>10</sup> though. Article 9 ensures quality of life, Article 10 deals with grounds of arrest. The inability to secure fair trial can be very torturous in itself. There was non-registration of FIRs.

Article 4 deals with torture, securing the dignity of man as inviolable. No person shall be subjected to torture, for the purpose of extracting evidence. However, despite these constitutional safeguards there are several detention centres and torture cells which are being held illegally all over the city. And I think there were 52 that were found in Lahore in 2008 that we could report. Most of these are military operated and the situation has worsened post 9/11 and the war on terror situation, because people who are arrested disappear and are kept and tortured for several months to extract confessional statements of involvement in those activities. Over the year, there were 600 disappearances in Baluchistan alone. In many cases people face severe torture.

There is an Anti Terrorism Ordinance. Even though the democratic government has begun to realise that this is a problem that we are

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<sup>10</sup> Constitution of Pakistan <http://www.pakistani.org/pakistan/constitution/>

facing, under the guise of security laws and anti-terrorism laws - for example, now onus of proof has been shifted to the accused - the definition of terrorism has been widened to include anyone suspected of carrying explosives. Preventive detention for 90 days without bail or judicial review again goes to show the general mindset of how security laws can be used for purposes other than which they were drafted for.

Incidents of torture take place on two different levels. There is the police station level (the *thana* level) and the prison level. At the *thana* level there is a complete lack of formal or prescribed methods of investigation in filing or registering FIRs. There is corruption and women and children are more sensitive and therefore easily victimised. There are no medical examinations. So if a person is brought in even with obvious signs of torture, as there is no medical facility available, it would never be placed on record.

NGOs over the years have gained access to prisons and as a result, there is constant scrutiny. Prison rules were drafted in line with the UN standards of minimum rules of treatment of inmates. There is a problem with budgetary allocation which makes the situation and accommodation far worse in the prisons. Inmates do not have medical facilities, overcrowding is a problem, and bribery the norm. Prolonged detention without trial is another problem.

### Recommendations:

- The police should not be responsible for policing themselves.
- A higher degree of accountability should be introduced.

- Human rights officers already exist in all *thanas* in paper only. *Thanas* should be made operative and relevant persons should be there.
- Facilities for medical examination should be provided.

### *Comments from the Floor*

#### *Sri Lanka:*

In Sri Lanka there are two national security laws, the Public Security Ordinance promulgated during the British Raj and the Prevention of Terrorism (Temporary Provisions) Act of 1978. Even though it was named temporary provisions, after later amendments it also has become part of the permanent law of the country.

Under the Public Security Ordinance the President has powers to promulgate 'Emergency Regulations' which do not need parliamentary approval. Sri Lanka has been ruled since 1971 under National Security Laws with some interruptions.

A person who is detained first under preventive law could be kept in police detention for 30 days and thereafter they have to be produced before a magistrate which is demanded under Emergency Regulations. Also a person can be detained under the Public Security Ordinance for a period within one year. Considering detaining a person under the PTA the power is given to the minister and that detention could stretch for 18 months. Persons can be detained under both these National Security Laws. Firstly, detention for one month under the Emergency Regulations and secondly, the detainee is transferred to be detained further under the PTA.

There are approximately 3,000 political prisoners who are detained under the PTA and Emergency Regulations. One detainee has been there for the past 15 years and they are in a legal black hole, as there is no indication as to when they will be released. Even the minister has the power to detain.

If a person is produced by the police on a charge under the PTA, he/she will be detained till his/ her trial is concluded. But in many cases the persons detained for trial have never been tried. A Fundamental Rights application case has to be filed for their release which may be after 2 years detention or sometimes it may be even 6-7 years. In this instance, only the Attorney General undertakes to discharge the person.

There are various types of detention such as detention for investigation, preventive detention, detention of surrendeers, etc. There was a time when people surrendered to the police due to their fear of the LTTE and they were also detained.

A trial of a detainee depends entirely on an extra-judicial confession made to a police officer. In a judicial confession the confessor is informed as to how that confession could be used against him/her, but under Emergency Regulation no warnings are given. The confession alone is sufficient without any corroboration, to convict the detainee. For example is the case of Singarasa vs The Attorney General of Sri Lanka, where Singarasa had been convicted based mainly on an extra-judicial confession extracted from him, without corroborating the truthfulness of his confession. Normally, a judicial confession also must be proved to be voluntarily made.



### *Maldives:*

Maldives is known as a country of 300,000 people. Torture, particularly systematic torture takes place there. The rationale given is that inflicting torture is always for national security. The least security threat towards the state comes from people who fight for rights or freedom and that is a huge problem as far as national security is concerned. National security in Maldives means the security of the president and state officers.

Custodial torture and death in 2003 instigated the entire freedom movement and the subsequent change of government. The culture of torture is so deeply embedded in the Maldivian society and ordinary people must understand that torture should not exist in such a manner.

Now, the abuse and the routine frequency of torture, and the impunity where the executive controls the judges of the Supreme Court is no more.

### *Afghanistan:*

Security laws in Afghanistan were changed many times. Before 1978, during the time of the king's regime there were no specific security laws, but there were laws under the pretext of detention for national security for unspecified time. People were arrested and put in jail without providing any legal assistance. After 1978, when the April coalition happened in Afghanistan, the security organs, especially the intelligence services, were allowed to detain anyone and keep them in jail indefinitely. There were no jail facilities for the detainees and about 200 people were kept in a room.

At present, there are new advocates of human rights and human rights defenders whereas in the past there was no legal bar or an independent lawyers' network in Afghanistan.

After 1992, when the Mujahideen came to Afghanistan, there was no general system of security. Every commander and warlord was allowed to detain a person for unspecified time and there were no lawyers to defend these people. In 1996, during the Taliban regime any sergeant/ Mullah was allowed to arrest a person and put them in a private detention centre to inflict torture.

The situation changed in 2001, with a new Constitution which bans torture, but the coalition forces are allowed to arrest a person and detain indefinitely and even use brutal methods to extract evidence. For decades security organs were allowed to extract evidence through torture. And now this method is used by the coalition forces and all police are allowed to use torture to extract evidence.

There are different centres and different sites for detention. Every Taliban Commander was allowed to behead anyone under the pretext of spying for the coalition forces.

There is a lack of institutional infrastructure and support by way of legal assistance from trained lawyers and human rights activists to protect the people against torture in Afghanistan.

The situation of Pakistanis who have been unlawfully rendered to NATO authorities in Afghanistan is particularly pitiful. At the moment, the obligations of the State of Pakistan towards their nationals in the hands of the NATO forces are not very clear. It was reported that several hundred people were picked up and just handed over to NATO authorities and ever since they have been languishing in the Bagram theatre in Afghanistan. The Pakistani

Government has assumed no responsibility so far to ensure that either charges or a trial are brought against them or their release arranged.

It is essential that organisations with sufficient capacity should work together with the governments to resolve detention issues such as when their own citizens are being unlawfully detained in another state.

### ***Bangladesh:***

The Constitution of Bangladesh proscribes torture and any type of inhuman punishment or treatment. Freedom against torture or any inhuman punishment is a fundamental right of every citizen. However, a number of constitutional amendments made later have diluted this prohibition. For example with regard to the provision for preventive detention, if the government determines, any person can be arrested and detained for an unspecified duration and the detainee will not have any right to know the reason for his/her detention. There are emergency provisions stipulated in the constitution that states that during an emergency period all other fundamental rights can be suspended for an unlimited period.

During the last regime in Bangladesh there was a law which established the Rapid Action Battalion (RAB). After establishment it carried out hundreds of extra-judicial killings and when human rights organizations raised their voice against the RAB, the government passed a law for their immunity. They are totally immune from any challenges against them in the past three year period. At that time the present ruling party was very vocal against the RAB, but after coming into power they are endorsing the actions of RAB. Although some of the ministers including the prime minister have

expressed their commitment to stop extra-judicial killings, it is yet to be seen whether the government will take any proactive action.

The Telecommunications Act is also dangerous, under which any citizen's telephone or email can be tapped or checked.

Bangladesh has an Anti Terrorist Act from 24 February 2009. It was earlier called the State of Emergency Anti Terrorism Ordinance. Under this Act about 200 anti-government people are detained.

Human Rights defenders who receive funds from abroad need to get their projects approved by the NGO Affairs Bureau and for particular organizations these funds are sent to the Ministry of Home Affairs for clearance. When it goes to the Ministry of Home Affairs it automatically goes to the National Security Intelligence and to the Special Branch.

On a positive note, Bangladesh has established a Right to Information Commission and a Human Rights Commission who have begun work.

### ***Nepal:***

In Nepal, the proportion of the punishment between the perpetrator and the crime he/ she has committed is much less. The compensation is Rupees 100,000 and this is paid from the coffers of the government. The perpetrator is not required to pay this amount from his pocket.

The government which has ensured the continuance of this culture of impunity in Nepal, hardly abide by any recommendations made by the Human Rights Commission.

Citizens of one country being killed by the border security guards of another country should be investigated. Everyday Indian Border Security Forces kill Bangladeshi Nationals.

Security laws facilitate torture. Facilitating oversight is the only way in which we can try and prevent abuse of the law, where the implementation is completely different and negative of what is stipulated in the actual law. The establishment of an agency that has the mandate to investigate custodial killing or maybe a situation of special prosecution themes that can be used in special circumstances is recommended.

The challenge for the human rights defenders in this context is to advocate anti-torture rationale with concrete evidence such as in the Indian Supreme Court judgement on the D.K. Basu or Massoda Parveen case.

The kind of torture vetted out for those who are wanted in security cases are very different.

## PARALLEL SESSION ONE:

# ‘Discrimination Against Religious Minorities’

### Introductory Remarks - *Dr. Hameeda Hossain*

Two important points on this topic:

1. The contradictions between constitutional principles and the political dialectics of an electoral democracy.
2. The return to secularism and the introduction of articles on secularism that has taken place not as a result of popular parliamentary arrangements but because of a judgement by the courts. So it was actually the judiciary that intervened to bring it back.

Religion has been used for the protection of a class and not for divine purposes. What is the role of religion? Its purpose is not only to build power, but also to control the masses. How can the judiciary be used, as in Bangladesh? Why is the government/ party in power still holding onto Islam as the state religion? There is a need to look at alternatives to these.

Why is religion such a strong factor in our search for electoral votes? Does everybody really vote according to their religion? Do Hindus only vote for one party and Muslims in India vote for one congress? Why does the majority or the upper class minority consider religious minorities a threat? Is it because in South Asia there are minorities in one country who become majorities in the other country and they tend to be a threat in this very hostile environment of South Asia?

### **Bangladesh - Prof. Amena Mohsin**

The first Constitution of Bangladesh adopted on 4<sup>th</sup> November 1972 had secularism and democracy as two of its fundamental principles. But gradually the state made a shift towards majoritarian politics. It was done under democratically elected regimes as well as military regimes who wanted to legitimize their power, either through popular referendum or through acquiring legitimacy through parliament which was largely regarded as authoritarian. In 1975, Sheikh Mujibur Rahman, father of the nation, was assassinated along with his entire family, except his two daughters who were abroad. Immediately afterwards Bangladesh was declared an Islamic Republic - which was later changed. In 1977, Ziaur Rahman, who had come in to power after the military take over and the assassination of Sheikh Mujibur Rahman, inserted the verse 'Bismillahir-Rahmaanir-Rahim' (meaning: 'In the name of Allah, the beneficent and the merciful') at the beginning of the constitution before the preamble. In 1988, President Hussein Muhammed Ershad who assumed power in 1982, after the assassination of Ziaur Rahman who dropped secularism from the constitution, declared Islam to be the state religion through a constitutional amendment.

Recently, Bangladesh has gone back to the original constitution bringing back secularism, but there is a contradiction because Islam

has been retained as the state religion of Bangladesh. A state religion and a secular constitution cannot exist simultaneously. Religion is again used as a tool to oppress religious minorities because when Islam is declared the state religion, automatically the Muslims become the dominant population of the country. Though Article 28 of the Constitution of Bangladesh states very clearly that the state shall not discriminate against any citizens on the grounds of religion, race, caste, sex, or place of birth, we find the 'Islamisation' process and growing majoritarianism during attacks against the Ahmadiya<sup>11</sup> communities and increased attacks on the religious minority communities, especially the Hindus.

The voting behaviour becomes an important factor where the political system of Bangladesh gravitates, to an extent, towards the minority. The higher the number of minorities in the constituency the greater would be the stake of the political party. In the last elections, there was a change in perception of the minority community where they felt secure to cast their votes in an environment where the military was present.

Minority communities have very little faith in the legal system of the country. In a survey among 1388 members of the Hindu community only 28.1% felt that if they filed a complaint the police would take action against the criminals. 42.21% felt that sometimes the police took action while 19.68% responded that the police would never take action against the criminals.

In the mass media too there is little representation of the minority culture. In the education sector there is very little mention of the culture of the minority communities. Although Dhaka University

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<sup>11</sup> Who are the Ahmadi? *BBC News* 28 May 2012 [http://news.bbc.co.uk/go/pr/ft/-/2/hi/south\\_asia/8711026.stm](http://news.bbc.co.uk/go/pr/ft/-/2/hi/south_asia/8711026.stm)



has a Department of World Religions, it does not have a curriculum on the religions of other communities apart from the Muslims.

Bangladesh has a discriminatory law, the Vested Property Act, where the property of the minority Hindu community has been appropriated by the ruling party/ government, and was originally invoked during the 1965 war between India and Pakistan as the Enemy Property Act. This should have lapsed after the liberation of Bangladesh. However, it still exists. There are amendments to the Act but they have major loopholes as well.

### **India - Satya Sivaraman**

What exactly is a religious minority? The terminology of majority and minority basically evokes a kind of political mathematics. While one often refers to the Muslim population in India as a 'minority' it must not be forgotten that we are talking about over 120 million people, hardly a number that lends itself to the imagery evoked by the term 'minority'. Again, while Hindus are supposed to be the overwhelming 'majority' religion, the fact is that they comprise of a wide variety of communities with their own belief systems, ethnic characteristics, languages, and rituals. For instance, the Adivasi or indigenous people who constitute around 10% of the Indian population are supposed to be also 'Hindus', despite their distinct spiritual practices and way of life. There have been arguments that their faith, culture, traditions, and belief system should not be subsumed under Hinduism. There have even been attempts to give the Adivasi religious faith a name - *adidharma*. Similarly many Dalit ideologues have argued that they have separate religious systems and that they have nothing in common with formal Hinduism, which is essentially an upper caste Brahmin ideology.

The point I am trying to make is that the term minority should perhaps be used to describe upper-caste Hindus who are indeed very small in number and have historically wielded a disproportionately high influence on politics, the economy, and definitions of culture in Indian society. The caste system pervades all over South Asia and there is a need to understand discrimination in the region in terms of the caste system rather than only taking religious discrimination into consideration.

Muslims in India are discriminated against broadly, both economically and socio-politically. Economically, Muslims occupy a position/ status slightly above the scheduled castes and tribes but lower than the backward castes. The Muslims, of course, are not a monolithic community and many Muslims being poor, there exists an economic inequality among the community. Poorer Muslims in India tend to be much poorer than the Dalits, but not poorer than the scheduled tribes. The majority of the Muslim population falls into the income category between that of the Dalits and backward castes and well below that of the Hindu upper caste population. A very high percentage of Muslims are from the ranks of displaced rural artisans and also composed of landless labourers. In this context, the economic discrimination against them cannot be linked to their religion. However, it could be analysed as due to the general class discrimination that exists against the rural and urban poor.

South Asia has the world's largest number of poor people between India, Pakistan, and Bangladesh and discrimination against religious groups is certainly a prominent issue. But in terms of economic discrimination, it should be noted that poverty rates among Indian Muslims on an average are similar to those in Muslim dominated countries like Pakistan and Bangladesh. All these South Asian countries implement policies against the poor in general.

The discrimination against Indian Muslims in social, cultural, and political terms is far more serious an issue. The context has only become worse in recent decades due to the resurgence of the extreme rightwing Hindutva ideology. According to the fascist ideology of Hindutva, Muslims and other religious minorities are considered as permanent second class citizens who do not have equal rights on par with the Hindus. The shocking Ayodhya judgment of the Allahabad High Court, in a sense, is in my opinion like the official announcement of a declaration of a Hindu *Rashtra* in India. The judgment is based on Hindu religious myth, and ignores both law and logic. It indicates the extent to which the idea of Hindu *Rashtra* and Hindu supremacy has penetrated even the Indian Judiciary, apart from other institutions of the state.

The Hindutva organizations have basically occupied three different levels of power in India: state power, street power, and subversive power - the last seen in the series of terrorist attacks by different Hindutva organizations that are now slowly being unearthed by official investigators of the state. Hindutva groups have infiltrated the Indian army, police, media, and civil service. Unfortunately, even their electoral opponents share some of the key concepts of Hindu supremacy promoted by the Hindutva groups while their truly secular opponents are miniscule in number and influence in India today. Unless there is effective political mobilization against the growing organisational power of the Hindutva organisations, the realities on the ground indicate that India is heading towards a future of majoritarian Hinduism.

### **Pakistan - *Saba Naveed Shaikh***

In Pakistan, Hindus being the largest religious minorities forms 50% of the total minority population, apart from the Christians, Ahmadis, and Sikhs.

The primary target of religious discrimination in Pakistan is places of worship. The government has established a Property Trust Board which is supposed to protect properties of minorities and ensure that if certain land has been allocated for the construction of a temple or mosque, nothing else should be constructed in that place. Unfortunately, that Board has not been very effective.

Talibanisation in Pakistan has affected the minorities. Letters were sent out to non Muslim churches to close down within a certain time limit and also the public praying spaces are limited due to security concerns. On 28 May 2010, two simultaneous attacks took place on Ahamadi mosques in Lahore where almost 90 people were killed.

One of the major problems in Pakistan is the *blasphemy laws*. In 1980, five new sections were added to the Pakistan Penal Code which gave extremely severe punishments for blasphemers of Islam. Section 298 B and C were commonly referred to as anti-empathy laws. These sections have also been given a violent interpretation by the courts and approximately 13 Muslims have been caught, violating them. Consequently, many have taken the law into their own hands as a result of which many non-Muslims have been killed. In 2004, an amendment came for the administration of anti-*blasphemy laws*, yet there was no decline in the number of *blasphemy* cases. People accused of *blasphemy* have to suffer a long duration of pre charge detention and trial detention, because the judges constantly keep delaying their cases for security reasons. If the judges decide in favour of the minorities they would have to face the wrath of the Muslims. In 2010, Asia Bibi, the first woman of the Christian minority to be given a death sentence under the anti-*blasphemy laws* had been charged under section 295 C of the Penal Code. In November 2010 she was given the death sentence. The role of media is almost negligible when it comes to

the protection of minorities. The media maintains a very indifferent silence toward the minorities and whatever coverage they receive results in a very negative perception among Muslims. For example, about two years back there was a very famous anchor<sup>12</sup> who hosted a religious programme in Pakistan. He gave a statement that it is the duty of every devout Muslim to kill Ahmadis. And two days later a number of Ahmadis were murdered in broad daylight but no action has been taken against them.

The education curriculum is preferential to Islam and opens an avenue for discrimination. Since Islam is the state religion, minorities are ignored in the designing of the education curriculum. For example, Islamic studies are compulsory for both Muslims and non-Muslims and although there is an alternative subject called ethnic studies for non-Muslims, most people do not opt for it. The teachers need to be trained not to instil an extremist mindset among the children and to teach them tolerance. At the same time the minorities have restricted opportunities to acquire higher education in Pakistan. Although there are government quotas set, they are denied admission on merit. 20 extra marks are given to Muslim students who have memorized the Quran. In Pakistan there exists a lot of *madaris* (religious schools) which promote religious hatred by inculcating the concept of Jihad at a very young age. In 2007, the Human Rights Commission of Pakistan (HRCP) stated the existence of almost 15,000 registered *madaris* and almost 8,000 religious seminaries which include a school/ mosque which only engages in Quaranic education.

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<sup>12</sup> IFJ condemns inflammatory broadcast and link to murders in Pakistan, *Daily Times*, 13 September 2008.  
[http://www.dailytimes.com.pk/default.asp?page=2008%5C09%5C13%5Cstory\\_13-9-2008\\_pg7\\_39](http://www.dailytimes.com.pk/default.asp?page=2008%5C09%5C13%5Cstory_13-9-2008_pg7_39)

The Constitution of Pakistan does recognize the right to freedom of thought and conscience, and religious laws have been drafted intimidating this constitutional right. For example the constitution stipulates the higher offices in politics only to be conferred upon Muslims. Therefore, the President and the Prime Minister can only be a Muslim in Pakistan.

The law of evidence in the country specifies that the value of non-Muslim witnesses is half that of a Muslim witness.

Another prominent issue is forced conversions to Islam and this number has tragically increased over the years. Most are forcefully converted either because they want to have a better standard of living or due to harassment. HRCP reported that in April 2009 within the Sindh minority itself 18 Hindu women had been forced to convert.

Amongst the positive aspects the Sikh Marriage Ordinance was passed where Sikh marriages can now be registered in Pakistan. In December 2000, the Minister of Human Rights and Minority Affairs announced a one month remission for Christian prisoners. It is recommended that non-Muslims need to be accommodated within the legal structures especially by repealing the blasphemy laws.

### **Sri Lanka - *Chulani Kodikara***

Buddhism in Sri Lanka goes back to the time of Emperor Ashoka. The arrival of Buddhism coincides with the establishment of formal kingship and following the Ashokan example Buddhism becomes the state religion. It continued to be the state religion until colonial conquest and under the British there was a gradual disestablishment of Buddhism although the British promised to

protect and promote Buddhism. The Buddhist revival in Sri Lanka in the 19<sup>th</sup> century began to acquire distinct nationalistic and ethnic overtones under the leadership of Buddhist ideologist Anagarika Dharmapala. During the revival, Buddhism became fused with the Sinhala language and race, and the revivalist frustrations slowly became directed not against the foreign rulers but against other ethnic elements within Sri Lankan society - the Muslims and the Tamils.

The first formed independent government under the leadership of D.S. Senanayake was committed to a secular state. The 1948 Constitution provided the framework for equal citizenship of all, and section 29 of the Constitution prohibited discrimination against any community. Despite strikes and demands of Sinhala nationalists for recognition and elevation of Buddhism, the Senanayake Government resisted these demands. In December 1950, a high ranking delegation of Buddhist monks requested state protection for Buddhism and in 1951 a delegation from the All Ceylon Buddhist Congress demanded an official commission to inquire into the grievances of Buddhists, but these requests were denied.

Unfortunately this commitment for a secular Sri Lankan state was short lived, and subsequently political leaders have not been able to resist mixing religion and politics. Under S.W.R.D. Bandaranaike in 1956, a Sinhala Buddhist platform capitalized on the Buddhist revivalist demand. The Sinhala only legislation was passed and a Buddha Sasana Commission appointed to look in to the grievances of the Buddhists. State schools were nationalized and there were curriculum reforms to go with that. Land colonization schemes resettled large numbers of Sinhalese people in the areas of the north and east which were predominantly Tamil and Muslim areas. This

trend of passing laws which privileged the majority has continued under subsequent governments.

The current constitution confers a foremost place for Buddhism and also declares Sri Lanka to be a unitary state. State's self identification with Buddhism also finds expression in other ways like the rituals and symbols of state, the prominence given to Buddhist clergy in state events, and more recently the phenomenon of ritual stamping of the landscape with Buddha statues all around the country. Under the current constitution although Sinhala and Tamil are both recognized as official languages, Tamil is recognized as the language of administration in the North and East and the Official Languages Commission, which is in charge of monitoring and implementation of language rights has not been able to completely achieve its goals.

There have been a lot of anti-Christian sentiments recently and there have been attempts to enact anti-conversion legislation. With the development of Evangelical Christian activity in Sri Lanka there has also been a number of attacks against Christian churches and Christian priests. This violence has taken the form of complete destruction of some churches, the stoning of parsonages especially of statues, the burning of bibles and hymnals, and the killing of a Pastor in 2008.

The opposition for devolution in Sri Lanka comes from Sinhala Buddhist nationalist lobbying. While devolution has been a constant and a consistent demand of Tamils since before independence, with the militarization of the conflict in the 1970s, it has increased. Also, there has been collective violence against the 'other communities'. The more serious attacks have been against the Tamils, starting with the 1956 riots and then riots in 1958, 1971, 1977, 1983, and 1987 causing displacement and destruction of property. The other target of this violence is NGOs. During the war when NGOs were



advocating for a negotiated settlement they were seen as aiding the Tamil Tigers and over the years the violence has become increasingly more organized. No action has been taken by the state or its law enforcement to prevent the violence. The perpetrators are often not identified or prosecuted and even when they are prosecuted no convictions are forthcoming.

Buddhist monks have also played a role in a number of these incidents. In 1958 for instance it is alleged that a group of rioters were led by Buddhist priests who systematically combed the city. Monks were also involved in inciting crowds and as orators in 1983. The role of the *sanga*, the Buddhist priesthood in nationalist ideology in Sri Lanka is in contrast to the ideal concept of the monk as the one who has renounced the material world to transmit the teaching of the Buddha to humanity and to search for liberation along the cycle of birth and death. Some have entered parliamentary politics to defend and promote this Sinhala Buddhist agenda. The Jathika Hela Urumaya emerged in 2004 as a party of Buddhist monks who won seats in parliament.

In Post-war Sri Lanka, Sinhala Buddhist ideology has found further support and the challenge is how to confront this ideology.

## Discussion and Recommendations

- The Ahmadis in Pakistan are being tortured. Last month their mosques were burnt in a suicide bomber attack and no resolution was passed in the National Assembly in sympathy for them.
- Ahmadis are seen as a minority, not as Muslims in Pakistan. There are more than 32 sects of Islam right now. Ahmadis

have been excluded from the religion and the parliament gives the jurisdiction that their belief system is fundamentally different from other Muslim sects.

- The death penalty is the maximum penalty for blasphemers. When there is a law which validates such punitive actions, it encourages common people to abuse it.
- Honour killing is a custom that has not been legalised under the law and a common issue that exists in Pakistan.
- In Bangladesh, the Hindu community, especially women, do not have the right of inheritance and divorce rights as per personal law. Hindu women do not have a law on marriage. There was a movement in Bangladesh to establish a marriage law for Hindu women. This law will secure the women a marriage registration and the right to divorce even though it is quite strongly opposed by a vestige group.
- The ethnic minority in Bangladesh is also facing huge discrimination. With the emergence of Bangladeshi nationalism, the Hindus as well as people of other ethnic groups were turned into religious as well as ethnic minorities. Bangladesh today, with the help of the judiciary has a revival towards a secular state. And the present government came with a popular mandate where secular politics played a very important role. The scenario of a secular revival in Bangladesh and a Hindutva movement revival in India will be adversely affected.
- The alarming ascendancy of the Hindutva is a challenge for Indians as well as all South Asians. During the late 1950s and 1960s there was quite a good climate for secular India

spearheaded by the Muslim population in South India, especially from Tamil Nadu and Andhra Pradesh.

- The Penal Codes of India, Pakistan or any other South Asian country have provisions on religious offences and these are intended to protect the religious minorities. These provisions are not being explored in Bangladesh properly.
- India is one of the countries with a large amount of Muslims who face discrimination.
- Muslims constitute the largest religious minority in India. Dalits are probably a majority when compared to the upper caste Hindus. Historically, Indian society has been run by the upper caste Hindus and even the Congress leadership was upper caste Hindu. In the modern period even the Indian nationalist movement against British colonialism was led by upper caste Hindus to a very large extent and secularism was an aberration. It was confined to small sections of the Indian leadership which was western educated, progressive in its thinking, and socialist in its ideas. There are many instances from Indian independence where the Hindu upper caste view was imposed over the rule of law and Constitutional Rights, and found support in many parts of India.
- The Hindutva rose in the 1970s and 1980s because of economic changes happening in India. The green revolution displaced a huge number of people from the countryside to the cities. When there is a large rural migration to the cities there is a cultural displacement also and most people search for new identities in the city. The Hindutva ideology was an alternative religious nationalism which replaced the earlier anti-colonialist nationalism that the Congress

had presented once upon a time. Hindutva has arisen as a political ideology to consolidate the power of the upper caste which has been diluted by various factors, but in the past 20 years it has risen due to various socio economic factors and migration too played a big role.

- The Ayodhya judgment on 30 September 2010 is a problem because of two things:
  - The court was mandated to decide on a title suit, claiming title, claiming possession of the site where the Babari Masjid stood while ignoring the central question which was posed before the court. The judgment does away with all established principles of jurisprudence by ignoring the main question posed before it.
  - There are many faiths in India. The judgement gave a weighting which does not have any basis in the Indian Constitution.
- To give an example of the exact opposite of what happened to Ayodhya, in Orissa a small community was fighting against a big oxide mining project. They went to the Supreme Court and the Supreme Court 'dismissed' their faith, so the faith of minority communities in India are not important but that of the majority community is treated as supreme.
- There is a common conception that the Ayodhya judgment is a pre-constitution sort of justice and a lot of people do not agree with the judgement.
- There have been and continue to be huge protests against the high court Ayodhya judgment that is bound to be

challenged in the Supreme Court. There have also been a whole series of judgments that have put the Gujarat Government on the map. The arrest of major ministers in the Gujarat Government has also taken place. The revelation of a Hindutva plot in many of these terrorist attacks is itself a testament to the working of Indian institutions and Indian democracy.

- The Constitution states that Maldives is a 100% Sunni Muslim country. Maldives faces the problem of Islamisation of the education, not having mixed schools, pressurizing the government to have separate schools for the two sexes, and also women receiving any education. Yet, there are apparently no religious minorities.
- After the end of the war there have been mass colonization attempts in the north and east of Sri Lanka headed by military cantonments in those areas. And in each of these military cantonments there are Buddhist temples which have been constructed, although there are no Buddhist civilians in those areas. There is consent within the majority community that this is merely the way to avoid an emergence of another armed struggle from those areas.
- Afghanistan is yet to face any religious minority problems but instead it is infested with ethnic problems. 99% of Afghan people are Muslim and 1% is Hindu. According to the constitution all Supreme Court decisions at the local level and the lower level courts will be under Islamic Sharia law. But in terms of the Islamic sectarians, even some rights have been given to Shia Muslims. The great example is selecting of the Shia member as the Minister of Justice so that social and religious problems can be solved by themselves in the

Shia region of Pakistan. In Afghanistan, Shia scholars, and even Sunni and other majority communities, have proved that personal laws of Shia people are 50-60% against women's rights and have started re-mobilising against them. In the last two years it was pointed out that Afghanistan will go towards a sectarian crisis as it is the land of the local as well as the regional intelligence services. They are supported by different known and unknown sources which provide the opportunity and energy for internal conflicts.

## PARALLEL SESSION TWO:

# Internally Displaced Persons

### Introductory Remarks - *Ali Dayan Hasan*

Internally Displaced Persons (IDPs): The IDP issue cuts across South Asia. It has assumed extreme proportions in Pakistan and Afghanistan, and is also a very serious problem in Sri Lanka as a consequence of the ending of the war against the LTTE. It remains a problem between Bhutan and Nepal. It is also a problem found in Bangladesh, on the Indian border. And of course in Kashmir, with regard to the Tibetan nationals living in India, this historical IDP issue has been dragging on without a solution. In the northeast of India there is internal displacement to a larger extent due to mass uncertainty. The northwestern part of Pakistan and Baluchistan is also essentially a location with the IDP issue.

The problems that IDPs encounter are very much the same wherever they are located. However, in Sri Lanka there is an extreme situation because it is not only that the people are internally displaced, but there are very serious restrictions on their freedom of movement and all other accompanying freedoms.

## **Afghanistan – Prof. Sarwar Mamound**

In Afghanistan there are different categories of IDPs and refugees living in refugee status in Pakistan and Iran. Those who are internally displaced in Afghanistan due to natural disasters and poverty, existed in the past even before the war started. They have remained as IDPs for decades because of wars, natural disasters, etc.

In Afghanistan, in the past three decades, during the Soviet invasion and the civil war, the IDP issue emerged. The afflicted people left their native places and resettled as IDPs in areas where the situation was normal. However, due to the lack of a proper system of acclimatisation, these IDPs had no means of continuing their livelihood. Even at present, there are no regulations which legally provide and protect the livelihoods of IDPs. Those who are internally displaced face problems from the armed groups and even from the para-military forces in Afghanistan sponsored by the pro-government units. In their newly settled areas IDPs face problems with the host community as well.

When the Mujahedeen came to power, many Afghans left their native places owing to the factional fighting as well as their dominance over those with whom they had differences in the past. In 1992, a huge number became IDPs in Balkh and other provinces in the northern parts of the country. During the factional fighting in Kabul almost 70,000 people were killed. At this time many Afghans left Kabul and other cities and became refugees in Pakistan. The surge of refugees to Pakistan, Iran, and other neighbouring countries created serious humanitarian problems to those nations. Those who failed to reach Pakistan and Iran were stranded in the bordering areas languishing in makeshift mud dwellings with no support at all for their survival.



In 1996 when the Taliban came to Kabul many residents who were linked to the former regimes left the country and some even became IDPs in the northern part of Afghanistan. During Taliban rule, Afghanistan was ignored by the international community. Consequently, poverty was prevalent in all parts of Afghanistan and there were no means of living for the IDPs. With the collapse of the Taliban regime in 2001, families affiliated with them left Afghanistan and found refuge in Pakistan. In Pakistan they live mostly in the tribal belt and in the FATA region.

Adequate support is not available from the international community for IDPs living in Afghanistan. The IDPs living in Kabul who came from the war zones mostly from Helmand, Kandahar, and even from the Northern and Eastern provinces have suffered in the harsh winters and lost their children and elders. IDPs in Afghanistan need support and a proper solution for the future.

### **India - *Dr Sudeep Basu***

The following are some theoretical and difficult issues concerning IDPs:

1. Refugees have protection from an international body but IDPs have to negotiate with the power which was initially responsible for their predicament, to seek a solution.
2. IDPs may be doubly or triply displaced from their position.
3. Unlike global refugees, IDPs may not have any place to return to, particularly, in the case of development induced displacement because once the land is developed by way of creating a factory or a Special Economic Zone (SEZ), their habitat is completely erased.

There are three major types of displacement in India - development, disaster, and conflict induced. The state's response to each type is different. In disaster induced displacement, the state is proactive in getting help and support from international bodies whereas in development induced displacement and communal violence that induces displacement the state is slow in its response and more often reluctant to seek support from outside. The state is unsure of whether to obtain support particularly when development projects in progress are indicative of abuse of power.

In India, the district magistrate has the full power to call the army to deal with communal violence and subsequently designate relevant areas as communally disturbed. This is problematic because if the army is called to intervene, it amounts to inviting the state powers in a manner. In development induced displacement, how should the issue of displacement of rural populations for the sake of industrialisation be dealt with? In this context, by land acquisition for industrial purposes, the houses as well as the livelihoods of the rural population are lost. Most farmers are landless, long time agricultural wage labourers. One does not know how the issue of development induced displacement can be solved to satisfy and empower the new generation of rural youth. The issue is to strike a balance in dealing with the issues of development that benefits masses and the responsibility of the state towards the protection of the rights of the citizens.

### **Pakistan - *Kamran Arif***

Pakistan has hosted for a long time, the world's largest refugee population without ever signing the Refugee Convention. Pakistan has never had a good track record as far as protecting the rights of refugees are concerned.

The definition of refugees creates problems since every person is under the protection of the state. Only when people lose the protection of the state the international community takes up responsibility for protecting them. This is in the context of discrimination on the basis of race, religion, nationality, public opinion, and membership of a particular group. Though Pakistan has not signed the Refugee Convention, Pakistan does sit on the 40 member Executive Committee of the UNHCR. Since the early 1990s, UNHCR with the General Assembly has been making guiding principles for the protection of refugees. But there is no international legal framework for the protection of IDPs. Since Pakistan has not signed the convention there is no statutory basis for protecting the rights of refugees. The one position of the Refugees' Commissioner that oversaw the protection of refugees was created through an executive order and it did not have any standing guidelines. So the policy was changed due to the 'compassion' of the Commissioner.

The IDP issue in Pakistan started with the 2005 earthquake which killed more than 100,000 people and displaced much more. Then the military operations in the Baluchistan Province, FATA, Swat, and now issues in other parts of the country have led to further displacements. In the latest phase of IDPs caused by the 2010 floods, the number of IDPs is not known. Many never registered in camps and all available data is based on IDPs who were in the camps. For example, when the military operation started in Swat, more than two million people fled and nearly one million were being hosted in the district of Mardan and another one million in the district of Swat. In both the districts the IDPs were more than the population of those districts and 93-94% of those IDPs never went to a refugee camp. They sought refuge in people's houses and other spaces and were taken care of not by the government, but by the local people.

Absence of legal protection for the IDPs creates numerous problems. The IDPs of Pakistan can be classified in to two distinct groups: displaced due to military operations and due to natural disasters.

Particularly with regard to military operations, quite a lot of hardship could have been avoided if they had been better planned. When the military operations started, people were given 1-2 hours notice to leave their houses. Then there was no transport to evacuate them. People lost valuable property and then the operation resulted in the destruction of the houses, the livestock, and agricultural property. The government did not even do such basic planning as providing information to prospective donors and individuals. There was no information available on where humanitarian aid was required, and how to get there. Consequently, quite a lot of people got left out and stranded without aid for days.

Since there is no law and a proper system on the protection of the IDPs there are also no guidelines on ethical standards for humanitarian organisations or other organisations. People who had come to volunteer assistance had belonged to a militant organisation and also there are issues of transparency and accountability in their activities.

When does a person become an IDP? Is it when he joins an IDP camp or when he leaves his house/ district? Who becomes an IDP therefore goes to the hands of people who run registration at the IDP camps. If it is a military operation the military might have a lot to say about who can be registered and who cannot, as IDPs.

A lot of children in Swat died while they were making the journey to the refugee camps. Another vulnerable section is the women, in this context. There is no proper system for adoption of orphans and there have been a lot of people who wanted to adopt children,

but instead the displaced children were entrusted to orphanages that were not reliable or safe. Another vulnerable group is those of the religious minorities. In one particular district Sunnis and Shias were separated into different camps.

With regard to the IDPs there are issues of freedom of movement as well as administrative shortcomings. The census data in the 2005 earthquake relief effort was inadequate. There are issues with land demarcation as well as transparency and accountability within the government system. Presently no relief efforts or rehabilitation efforts in Pakistan can take place because the donors, particularly the UN were not impressed by Pakistan's efforts after the 2005 earthquake.

When the military claims victory it forces the IDPs to return to their own homes, yet the people do not feel safe and claim that they are being used as human shields.

The IDPs cannot enforce their rights as citizens. It is for CSOs and concerned citizens to protect the legal rights of the IDPs.

### **Sri Lanka - *Mirak Raheem***

There is no comprehensive IDP policy in Sri Lanka and the fundamental rights chapter of the Constitution has no specific mention of IDPs. But there are broad sets of freedoms and rights which guarantee the rights of IDPs.

In Sri Lanka there has been a growing support towards the institutionalisation of IDP issues, to try and create a framework so that authorities could deal with it. There is a huge push still to try and develop an IDP policy but at the same time there are also questions as to its utility in this current context.

There is a real urge to try and do 'performance governance' which is basically to show the international community that Sri Lanka has an evolved set of standards on which policies should be made. In Sri Lanka, a major problem is how to ensure the basic implementation. There is a long term need to develop an IDP policy which would be cross cutting and which ensures that the various aspects of displacement and of refugees are covered.

There was an IDP Bill developed because a key international UN actor was visiting Sri Lanka but this legislation has not yet been presented to the cabinet. Similarly, there is a resettlement policy. At the moment there is also a National Human Rights Action Plan. There is an issue of how much energy civil society actors can put in to strengthening such bills especially when there is a clear lack of commitment on the part of the government to actually implement them.

The central problem in this context is the recognition of displacement. The current government's position in Sri Lanka is to narrow down the prevailing IDP problem. The government identifies the IDP issue as being the displacement that took place in early 2008 to the end of the war in May 2009. Sri Lanka was listed amongst the top ten countries along with Pakistan for the highest rates of displacement in 2009. It also recorded one of the worst violations from humanitarian law to the violations of civil standards. But this year there has been a marked improvement in resettlement, and now Sri Lanka is presented as a positive case of how a displacement problem is ended. In Sri Lanka, the government will admit that out of the three hundred thousand people who were displaced from 2008 there are only 17,000 who are currently displaced. At ground level the actual situation is a lot more complicated. For instance, the government considers a person is resettled even if that person is in his/ her village but is not able to return to his/ her house, because it

might be mined or occupied by the military, with no indication of when it might be released.

Another issue is hidden displacement due to the unavailability of official statistics of the government. This information can be obtained from various line ministries but it is all unofficial. It is estimated that there remain 130,000 - 180,000 IDPs including those in Jaffna and the northern peninsula of the island. The government occupies roughly 18% of these areas maintaining exclusive security zones where people are not allowed to visit and some of these areas are just flattened without any standing buildings. In addition, there is the population of displaced Muslims in the Northern Province who were expelled by the LTTE in 1990. A principle challenge is how to ensure there is a continuing commitment on the part of the government to address this problem.

India's involvement in the Sampur Special Economic Zone (SEZ) which was a former High Security Zone (HSZ) in the East is controversial because so many people are unable to return to their homes when the government designated it a SEZ. The government has signed an agreement with the National Thermal Power Corporation (NTPC) of India to set up a coal power station. Consequently, India is exporting the 'success' of its SEZ policies to Sri Lanka as well. It is followed by the issue of politicisation and ethnicisation of displacement as well as this increasing legitimate fear that there are other hidden agendas as well. The lack of a proper policy on the IDP issue is undermining the 'peace' achieved by the government and in turn it is aggravating ethnic disharmony and distrust.

Therefore, the need to involve civil society actors, citizen communities, churches, mosques, and any group that could ameliorate the distrust between various displaced and host populations is crucial at present.

## Discussion and Recommendations

- Kashmir has maintained a zone of conflict since 1947. Sections of the population are displaced from both areas particularly the Jammu region. In the Indian part of Kashmir there are a huge number of groups of displaced persons from 1947, 1965, and 1971.
- Pakistan historically has different kinds of refugees and IDPs. During the Afghan revolution, there was a major influx of Afghan refugees. They have been settled in refugee camps for more than 30 years where their children were born and grew up, but because of the problems of rights they could not claim Pakistani citizenship, as they were forced to displace, to become IDPs. The state refused to provide them protection because they were refugees and not IDPs although for all practical reasons they were IDPs. During the Iranian revolution thousands of people came to Pakistan. The Pakistani government started aerial bombing and there has been displacement due to this.
- In Nepal, due to the decade long armed conflict a huge number of people have been displaced. But there are no government studies conducted in a systematic manner. The actual number of displaced is much larger than the half a million figure. When the Comprehensive Peace Accord (CPA) was signed in 2006 at the end of the conflict, it specifically mentioned IDPs and their common difficulties. Four years have lapsed and no systematic effort is made on the part of the state to solve the problem of IDPs. In Nepal, this issue was raised in a couple of citizen's forums that Nepal should have legislation in the line of UN guidelines to deal with this problem.



- One group of people who are extremely poor and vulnerable are women and children.
- The refugee convention is outdated and Euro-centric and was created to deal with the aftermath of World War II. In the African States they have their own regional refugee convention under which they adopted a new definition of a refugee as a person who is outside his habitual place of residence and whether they cross international borders or not, is immaterial. A similar regional convention is needed to deal with related problems in this region.
- When people are outside their habitual place of residence they lose their source of livelihood.
- Bangladesh has thousands of refugees from Myanmar. Although not as significant a problem as it is in India or Pakistan, IDPs are an issue in Bangladesh. These IDPs are mainly due to natural disasters. Most of them find their homes in slums in Dhaka and other parts. The government has no statistics or policy to address the issue of IDPs. At the same time, IDPs are hurt by mining explosions in eastern parts of Bangladesh. Owing to the local mining efforts many people in the nearby villages have been evicted and eventually they become IDPs who are yet to be rehabilitated or compensated.
- Conflict related IDPs receive better attention because of the scrutiny that is applied during conflicts, as well as due to the existence of the international humanitarian law. The situation is monitored, when forced eviction takes place. Similar monitoring procedures will not occur in an involuntary movement of people, due to a natural disaster.

- Sri Lanka comes under criticism internationally because it is a signatory party to every law in this context.
- In the aftermath of the tsunami, there was caste discrimination in IDP camps.
- When it comes to equity, it becomes very difficult to push the government to develop a proper policy. But with regard to natural disasters the government is much more comfortable in developing policies and attaining equity.
- Although natural disasters are included, development induced displacement is excluded in all definitions of IDPs.

## PLENARY:

# ‘A Democracy Charter for South Asia: Human Rights Perspectives’

**Prof. Imtiaz Ahmed**

The SAARC Charter for Democracy, an official inter-governmental draft was an initiative for approximately one year. Then at the Thimpu summit Bangladesh’s Prime Minister Sheikh Hasina raised the need to have a SAARC Charter for Democracy. This was welcomed by other members and Bangladesh was given the task to host the first inter-governmental meeting which took place in September 2010, where this particular draft was circulated.

Some of the problems noted were:

1. The process is ill founded, ill designed and undemocratic mainly because this is a Charter for Democracy with no participation of people in it. When a journalist requested for this draft at the meeting in September it was pointed out that it would be given when it is approved by the higher bodies. This shows that there is a dearth of transparency.
2. Gandhian understanding of *upayo* and *upai*, the relationship between the means and end, states that if the means are faulty

then the end cannot be good. So if the means are undemocratic it is very difficult to have an end which would be democratic.

3. The draft states 'the supremacy of the respective constitutions'. If a constitution is problematic such as having a state religion, secularism, etc. such a phrase will be a problem.
4. There is nothing on political parties or internal democracy or democracy within. Unless and until you have a democracy within, it is very difficult to have democracy without.
5. There are politically loaded words which would have different meanings such as 'checks and balances among the legislature, executive, and the judiciary' which actually refers to separation of powers.
6. The emphasis of the draft is more on electoral democracy. For Ghandi, electoral democracy was a heartless doctrine. Electoral democracy ought to have other layers to hold the concept in its proper meaning.
7. The draft states the appointments of the judiciary and the executive as fair and credible but in our practice in South Asia we know the extent of fairness and credibility involved in the appointments.
8. There is a citation, practice democracy at all levels of the government and society. But in South Asia, there is an element of majoritarianism with little guarantee, particularly of the minority communities. The whole issue of safeguarding minority issues is not there.

The SAARC Social Charter which is now an approved document was also an inter-governmental document at the track two level, initiated by members of the South Asia Centre for Economic Policy (SACEP). The SAARC Charter for Democracy also was initiated by SACEP and there was a meeting in Kathmandu on the draft where Dr Godfrey Gunatilleke from Sri Lanka was requested to draft the concept paper. This draft is expected to be approved at the next summit in April/ May 2011. Recommendations to this draft need to be sent by December to the Foreign Secretaries.

It was agreed at the caucus meeting that the following letter will be sent to the respective governments:

“We, the Members of South Asians for Human Rights (SAHR), are aware that an inter-governmental process is currently under way to frame a SAARC Charter for Democracy. In our recent meeting in Kathmandu on 27-29 November 2010 we had the opportunity to look into the draft prepared by one of the member states of SAARC that was placed at the inter-governmental meeting held in Dhaka in September 2010. However, we would like to bring to the attention of the governments of all SAARC member states that we find the process of initiating such a Charter ill-designed, if not undemocratic, as it lacks transparency and remains devoid of people’s participation. We, therefore, urge the governments of all SAARC member states to immediately engage the parliamentarians, civil and human rights activists, opinion-makers, and other concerned members of the society in the process of drafting the Charter so that a truly democratic Charter inclusive of the hopes and aspirations of the people of this region could be devised and adopted. SAHR too would soon be dialoguing with a wider section of the people in all the SAARC countries to get feedback from them on this issue.”

Amongst the recommendations made at the caucus meeting were:

- The Charter must ensure the sovereignty of the people.
- It must clearly outline the duties and obligations of the member states.
- There should be a focus on the rule of law, human rights, and justice.
- It must stress on the culture of democracy, peace, and security, including internal and external threats.
- It should aim to strengthen democratic institutions while institutionalizing the principle of balance of power.
- The democratic process and elections ought to be made clear.
- The measures taken in cases of unconstitutional changes of government should be stated.
- It should emphasize issues relating to political, economic, and social governance.
- It should state the mechanisms for implementation.

It was also decided that civil society should engage with the governments to inform them of the recommendations coming from civil society, human rights activists, policy makers, opinion makers, and others. If the governments fail to accept this, the draft would remain as a 'citizens' initiative'.

## Discussion and Recommendations

- After consultations and participatory discussions much effort is always put to bringing together good documents, but how do we make sure that it gets implemented? There are effective laws for women's and children's rights but their enforcement and implementation is difficult. Maybe civil society or SAARC can monitor these processes through a citizens' audit. Recognition of the role of political parties, civil societies, and NGOs in a democratic political system is a prerequisite which is implicit in the setup of a democratic system. Civil society in many countries is in danger. Therefore, it should not only be recognized but the systems should also be strengthened.
- Conducting free and fair elections for the legislature and other local bodies to ensure the appointments to the judiciary and executive are fair and justifiable is essential. A local democracy is the foundation of a democratic structure. Election of local bodies and devolution of power to them not only deserve recognition but also need to be highlighted. In this context, the term 'non discriminatory' should be used instead of 'fair'.
- Accountability and transparency of the legislators must be ensured.
- Elections alone do not stop fascism, but other structures do - particularly internal democracy. Political parties ought to be democratic and clauses on democracy should be entailed in their manifestos. Growing inequality as well as the deprivation of the poor and marginalized cause serious threat to democratic ways of governance in many countries.

In Bangladesh, at least by their own admission, two-thirds of the parliamentarians are businessmen.

- There is a need to define a standard of human rights and democracy.
- South Asia must be a war-free zone and therefore this document should make commitment to ensure and promote a culture of peace. Commitment should be made to reduce the burgeoning military expenditures in all countries in the region.
- Any change in government should be permitted through free and fair elections and democratic means based on universal adult franchise and any other means of achieving the same should be unequivocally renounced. The charter should also incorporate the issue of visa-free South Asia and free movement of people, information, trade, and ideas in the region.
- It must also be mentioned that national security legislations are contrary to the democratic principles.
- Through experience in all the South Asian countries, in particular Bangladesh, independence of the judiciary essentially means independence of lower judiciary, but it should ideally include the higher judiciary as well. Regarding democracy and human rights the higher judiciary is more important because it deals with writ jurisdiction and the constitutionality of a government.



## **Hishila Yami**

Nepal is currently in the process of making a progressive constitution and is going through a transitional period.

About 7,000 cadres from all over the country gathered to have a discussion on three documents which were related to the question of which stage of democracy should Nepal move to. These three documents are related to democracy, progress, and over-all change. There was a great debate within the Maoists and non-Maoists on whether the People's Liberation Army (PLA) should attend this meeting. There was great pressure within the PLA to come with a united voice to plead for the main party leader. One document was by the Chairperson and two documents were by the Vice Chairpersons. This was a great democratic exercise where people from the cultural, geographic, and journalist sectors attended. There was a fourth voice - an independent voice, the voice of the people - pointing out what was lacking from the other three voices. In Nepal the mixed proportional elections helped bring inclusiveness and competitiveness also.

South Asia today is very rich in movements such as class movements raised in India or the Maoists waging class, cultural, or religious movements.

Now that India and China are competing with America there is prosperity but with that comes inequality. There are struggles in India and in the centralized State of China on dealing with the separatist movements that might come with the booming economy. There are movements in Burma also, where Aung San Suu Kyi is now released. In Afghanistan and Pakistan the inter-related country contradictions and ethnic contradictions are also another problem.

The instability, uncertainty, and the contradiction in Nepal can be seen at the perspectives of both Maoists and the non-Maoists. Maoists are looked upon as a force that brought change while non-Maoists are looked upon as forces comfortable with the previous regime. South Asia should reach the level where democracy is referred to the majority but entails the inclusiveness and proportionate participation. This exercise is needed at every level, at political, human rights, social, NGO, INGO, or even at military level. Then only can we come to a holistic perspective for a sustainable, equal, and egalitarian world.

## Report of the Rapporteur General

Keshab Mathema formally opened the proceedings with his speech. Commending SAHR for 10 years of work since its inception at Neemrana, India in 2000, he commented that while SAHR might only be 10 years old, its aspirations for freedom and justice were more mature, older, and stronger.

In his inaugural address, Justice Kedar Nath Upadhyay, former Chief Justice of the Nepal Supreme Court noted that ruling regimes have little or no interest in alleviating the suffering of the people and even less inclined to engage with matters of social transformation. Mechanisms in place to promote human rights in countries are not uniform and in some countries there are no independent institutions to safeguard human rights.

The keynote address was delivered by C.K. Lal, eminent writer and human rights defender from Nepal. Whilst noting the depressing human rights scenario in the region, he urged human rights defenders to continue in their quest for justice and truth, and ‘keep the fire alive’ in their hearts. He said there is nothing like ‘national interest’, because what happens in one country in the region affects all. South Asian nations should thus work for mutual cooperation and regional benefit.

Welcoming the gathering, Co-Chairperson Dr Hameeda Hossain from Bangladesh said that while SAHR recognises that the state has the primary responsibility to address human rights issues, this

is not possible without the active engagement of citizens. SAHR has just completed 10 years of work and this time has shown that synergy at regional and international levels is necessary to fight for human rights at large, effectively supporting national struggles. She commended the release of Aung San Suu Kyi who had been held under house arrest for most of the last two decades. In wishing the regional consultation a success, Dr Hossain quoted Suu Kyi: “A revolution which aims merely at changing official policies and institutions with a view to an improvement in material conditions, has little chance of genuine success. Without a revolution of the spirit, the forces which produce the inequities of the old order would continue to be operative, posing a constant threat to the process of reform and repression and regeneration. It is not enough merely to call for freedom, democracy and human rights. There has to be a united determination to persevere in the struggle to make sacrifices in the name of endearing truths to resist the corrupting influences of desire, ill will, ignorance, and fear”.

## **Session I: Country Reports on Human Rights**

The country reports on challenges to human rights and democracy included some very moving and heart rendering narratives of brazen violation of democratic rights, ranging from illegal detention and torture, displacement, attacks on women's rights, suppression of dissent, and imposition of emergency laws. The common thread running through these reports was the concern of increased militarisation of states, the flagging of external threats or internal dissent as reasons to clamp down on fundamental freedoms, absence of functioning democratic systems of governance, erosion of secularism, threats of majoritarian politics, elections which is a major tool of democracy but used as a tool of violence against minorities, among others.

**Bhutan:** Tek Nath Rizal said the voices of the Bhutanese are not being heard and in fact they have been thrown out from meetings/conferences of human rights organizations. The Bhutanese government is now persecuting people for practicing their own religion or discriminating them because they do not speak the Dzongkha language, while the role of the Bhutanese media in exile has not been recognised. Those refugees who have accepted third country resettlement have to cope with a loss of identity, uncertainty about their property, etc.

**Maldives:** The ‘back to Islam’ transition in the Maldives is affecting women’s and children’s rights. Practices such as circumcision of women are being introduced, whereas this did not happen before. While Maldivians have found their voice through the formation of political parties and dialogue, today women living in the islands and who belong to the middle income brackets still face numerous difficulties. Radicalization and conservative interpretation of the Quran, together with a traditional judiciary is not helping the situation of women. There is no tolerance of other views of Islam.

The relative freedom in Maldives is deteriorating. This is due to systemic failure. The justification provided by the authorities and others is Islam. On a positive note, artists, film makers, etc. are coming out and speaking about these issues more than ever before. Women are coming out to speak for their own rights.

**Pakistan:** According to the presenter of this country report, Pakistan is a nation at war with itself. The biggest challenge is that the state is not legitimate. Pakistan is becoming a theocratic state and its rulers are not interested in mitigating the sufferings of the people even though poverty is growing at 45%.

The sovereignty of the military is guaranteed. They are not subject to any laws and all agreements are decided by them.

Pakistan enjoys a vestige of democracy with ministries for various social aspects such as children, women, and the minorities. But these do not function properly. On the other hand, the 18<sup>th</sup> Amendment is the first time all parties came together. If the 18<sup>th</sup> Amendment is implemented, it will form autonomous provinces.

**Sri Lanka:** The country is facing the phenomenon of electoral authoritarianism where the President has centralised all powers to himself even though Sri Lanka is a democracy. His actions are not subject to scrutiny. There is heavy media clampdown and fear of reprisals has led to self-censorship by media personnel. The war on terror has been used as an excuse to curtail human rights. The development work is mainly restricted to mega scale projects of which the result is deprivation of multiple rights of many people. The President's focus on forgetting the past is seen as imperative to move forward, but what he fails to understand is that minority Tamils and Muslims do not relate to that collective shared memory which is drawn by the victors. The space for human rights organizations has drastically shrunk.

**Bangladesh:** The 2009 elections and the installation of a caretaker government ended military regime where human rights was kept in abeyance. The election manifesto promised certain freedoms. The positive elements are that a Right to Information Act has been passed, an Information Commission has been established, the national Human Rights Commission has been reorganized, and consideration has been given to gender and marginalized groups in the composition of the commission.

In addition, more women have been elected to parliament than before. More women are also holding important decision making positions than before. However, disputes in parliament continue and violence against women continues for which more people are moving to courts to get redress.

Though some MDGs may have been met, poverty remains high. The disparity between the socially/ economically advantaged and disadvantaged is higher than ever before. The percentage of persons living under the poverty line is low, but the total number is high. A culture of impunity still remains, the Rapid Action Battalion still exists, and extra judicial killings and disappearances still occur.

The state has declared secularism, while maintaining Islam as the state religion.

**India:** After 64 years of self-rule, the transition from subject to citizen has not happened. Democracy is not necessarily protecting human rights of persons in India. India is the regional bully.

Which way will India turn? It has turned towards impunity, impoverishment, and intolerance. There is militarization and growth of majoritarian politics.

The infrastructure of democracy is not providing the remedy it is supposed to. The government is not properly engaging in the issue of Kashmir. There has been no response to democratic protests on this issue by the government. There is the paramilitary as well as the military in the state and that is more the norm than the exception. All freedoms are under attack. The democratic institutions are not performing their mandate.

The most worrying phenomenon is that a national population register (a unique number for each person) is being set up. The infrastructure for authoritarianism is being put in place. The relationship between the state and the citizen may change as a result.

**Nepal:** The success of the people's movement in 2005-2006 and the signing of the peace treaty between political parties and Maoists were commendable achievements.

The state of transition for Nepal has affected all aspects of society, politics, etc. It is an exciting and tumultuous time in Nepal. The people were euphoric, optimistic, and hopeful then, but now there is despair, disillusionment, and cynicism.

This is an unparalleled opportunity, though with a backlog of issues. In spite of initial optimism we have found that transition is a very complex process. Nepal is now in a more uncertain and dangerous situation.

The current situation is that Nepal has pushed the peace building, political, and human rights and development processes to the backburner. This has resulted in the stagnation of social and cultural development. There are doubts about meeting the extended deadline with regard to finalizing the constitution.

The youth of the country are migrating outside for work and for reasons of security.

Remittances by migrant labour are the biggest form of foreign exchange.

Nepal has the largest parliament in Asia with 611 members. There is a crisis of confidence between political parties and leaders. There



is a crisis of consensus. Nobody wants to surrender an inch to each other and is engaged in sterile debate in parliament. There is a crisis with regard to the consolidation of democracy.

There are only pseudo democrats, not real democrats. The Maoists are disruptive and populist. They have made threats of revolution-type takeover.

However, the situation is not completely hopeless. There is a strong rapport between top political leaders. When they meet, they are like long lost friends. There is a culture of dialogue. There is good citizenry support of the process. The strong presence of civil society is a great advantage.

## **Session II: Transparency and Accountability of South Asian Parliaments**

This session noted that the independence and integrity of parliaments in the region are affected due to direct or indirect executive control, manipulations in the electoral process, and lack of transparency in parliamentary affairs. That human rights are not taken seriously in parliaments across the region is also a matter of concern. It was also pointed out that committee systems and parliamentary affairs are also affected due to lack of commitment by MPs/ legislators and lack of resources. The session also acknowledged some of the achievements of parliamentarians in advancing accountability of parliament or measures of transparency of activities of parliament. However, there is little or no formal mechanism to allow access to the policy making spaces by NGOs.

The report of the Parliament Watch project in the region was presented. Notable points included the fact that in Bangladesh,

35% of the laws enacted in parliament during the reporting period addressed human rights issues. In India it was the opposite: most of the HR issues raised in the media were not taken up in parliament, and there was no formal mechanism to allow access to the policy making spaces by NGOs.

The clash between the executive and the legislature in Maldives is resulting in many pieces of legislation still stuck in parliament or adopted with too much compromise due to conflicts of interest. On the positive side, parliamentary sittings are broadcast live to the public.

Passing of laws in the Pakistani parliament has been a bit slow with only 30 acts being passed in the year 2009-2010. The 18<sup>th</sup> Amendment which was recently passed was received very positively as it would give more autonomy to the parliament, and it was noted that women parliamentarians were very active with 50% of the business in parliament being generated by 50 of them (out of the total of 342 in parliament).

The Sri Lankan presenter in her delivery specially noted how the system does not support sufficient access to information, reluctance on the part of parliamentary officials to share information, and how parliamentarians are critical of the exercise of promotion of parliament ethics.

The Bangladeshi MP in his presentation noted the need for orientation programmes conducted by civil society to better educate parliamentarians on how to address human rights matters in parliament. The Indian MP observed that unless the government respects and empowers the grassroots and supports civil society in this exercise, they would never be able to fight extremism. The Pakistani MP in her delivery looked at specific examples of

how and where the parliament can improve its transparency and accountability, and also observed the lack of resources for conducting standing committee meetings. The Sri Lankan MP observed how emergency regulations in force in his country for the past 32 years basically legitimize military law and how a prevailing ‘democratic dictatorship’ affects the transparency and accountability of parliament.

### **Session III: Security Laws and Freedom from Torture**

This plenary session noted that torture is part of the culture of investigation and law enforcement in the region and that in the laws of some states it is not seen as a punishable offence or even defined as a crime. While security concerns of the state are legitimate concerns, it should not be a sanction for the imposition of emergency laws or for torture.

The capacity of civil society and victims to get their concerns raised could come with institutional structures that facilitate oversight and trained personnel equipped to fight security laws. At the same time, advocacy efforts should also target the judiciary which often condones torture even when cases are brought to its notice. After all, courts are also not immune to the nation in peril mindset. The aspect of justice was very poignantly brought out when talking of cases of custodial torture – that there is no immediate recourse to justice even if there are laws and safeguards. The affected person or his/ her family members are hardly in a position to secure justice.

It was noted that while the state has the powers to enact legislation to protect security and public order, there should be reasonable restrictions and the issue is whether security laws meet these

restrictions. It was posited that if different investigation tools were needed for security-related crimes, then different tools were also needed for custodial crimes. Panellists also stated that there is no comprehensive thought of laws being promulgated; hastily passed without public discussion and in reaction to situations.

The issue of foreign prisoners languishing in neighbouring country jails was raised once again at this forum with a call for organisations such as SAHR to take this up with governments.

### **Parallel sessions on discrimination against religious minorities, IDPs, and a South Asian Democracy Charter**

The session on discrimination against religious minorities followed up on a SAHR publication on this issue, and the authors of country chapters spoke on their findings, including majoritarian politics that has used religion as a tool for domination of minority communities even in states that are supposedly secular. It was discussed that while constitutions guarantee equality irrespective of caste, creed, religion, or gender, attacks on religious minorities and their places of worship are on the increase and committed with impunity, and that women and children are increasingly the victims of such attacks. Most notably, elections which are a major instrument of democracy have been used as a tool of violence against minorities – for example the case of vote bank politics.

Internally Displaced Persons are doubly wronged as they have to seek redress from those that displaced them in the first place. Economic displacement is perhaps the most critical form of displacement. However, displacement as a result of natural disasters is assuming alarming proportions. Legal protection of

IDPs need to be formulated both on national and international levels.

The session on democracy saw a very participatory and constructive critique of a draft charter on democracy in South Asia that was formulated by Bangladesh for consideration by other Member States of SAARC. Given that this draft in its final form will be the product of discussions by civil society in all 8 countries, it has been recommended that it be renamed as the ‘Citizen’s Initiative on Democracy’.

Participants pointed out the importance of positing the document as one of the people, as sovereign citizens within sovereign states, with control over their natural resources and the environment. It was stressed that democracy be addressed in substance rather than only on electoral democracy, focusing on constitutionalism rather than on constitutions, including issues related to gender, minorities, and discrimination, among others. Any citizen’s charter on democracy must include the concept of universal human rights, the threats to democracies, whether domestic or external, political or economic.

The right to dissent, as well as the right to question without it being viewed as a criminal act, should also be included in the charter. In terms of accountability, indicators and monitoring mechanisms, acceptable standards against which to review charter demands, were all deemed to be its integral components. It was also recommended that SAHR communicate with governments and speakers of parliament of the region, of its involvement in this charter.

People of South Asia share common bonds of culture, history, and geography and face similar crises of poverty, gender inequality,

and racial and caste biases. If democracy is to be sustained, human rights, rights of women, justice, and peace have to be ensured.

*The recommendations are reproduced in the statement issued at the conclusion of the conference.*

## **Statement Issued at the Conclusion of the SAHR Regional Consultation of Citizens' Voices on 'The Challenges for South Asia: Human Rights and Democracy'**

South Asians for Human rights (SAHR), a network of independent human rights activists from eight countries, noted with concern the lack of transparency of democratic institutions, and the exclusion of citizen's participation in legislation and policy making.

The participants welcomed the SAARC Summit Initiative for a Charter for Democracy but were concerned that the draft of the charter was limited to a bureaucratic exercise and did not ensure that citizen's voices be heard.

SAHR recognises that the people of South Asia share common bonds of culture, history, and geography but notes with concern that government visa regulations have restricted freedom of movement within the region. This has frequently led to cross border killings by security forces and detention of foreigners in prison in neighbouring countries.

SAHR notes with concern the threats to people's sovereignty due to increased militarization and anti-terrorist and security laws which give impunity for violations of the right to life, liberty, and freedom from torture, erosion of secularism, and dominance of

majoritarian interests in political decision making. The upsurge of extremist violence and obscurantism has encouraged customary practices which are a threat to women's rights to movement, choice, and security.

SAHR is concerned that emergency laws imposed in the name of state sovereignty undermine people's sovereignty, and that parliaments need to become transparent and open to citizens' participation so that legislation promotes human rights.

SAHR was concerned with the use of religion as a tool for discrimination against minority communities even in secular states, and that while the constitutions guarantee equality irrespective of caste, class, ethnicity, religion, or gender, attacks on religious minorities and their places of worship are committed with impunity.

Armed conflicts, economic development, natural disasters, climate change, etc. have led to internal displacement, further contributing to poverty and deprivation.

SAHR calls upon governments of South Asia to:

- Include citizens' voices in the formulation of the SAARC Charter for Democracy through active engagement with citizens' groups.
- Repeal or amend security laws to include human rights guarantees.
- Enforce constitutional guarantees of freedom from torture.
- Urge the government of Bhutan to release political prisoners, set up effective and efficient institutions to oversee human



rights, and to resettle Bhutanese refugees in their home country.

- Prevent the usage of emergency laws to suppress fundamental rights and dissent.
- Ensure constitutional guarantees of freedom of expression and thought, without fear of repercussions or reprisal.
- Formulate a South Asian protocol on treatment of prisoners in accordance with the Paris Principles and a regional convention for settlement of IDPs in conformity with the UN Guiding Principles on IDPs.
- Ratify the UN Conventions on Refugees and the rights of migrant workers and their families and include clauses to protect migrant workers in bilateral treaties.

SAHR recognises that while the state has the primary responsibility to promote and protect human rights, this is not possible without the active engagement of citizens across the region, who share a common South Asian identity.

SAHR thus urges human rights defenders and activists to:

- Engage with parliamentarians in order to ensure that human rights concerns are addressed in parliament.
- Press on governments and government institutions to halt discriminatory practices that serve to further marginalise minorities, because of their religion, language, ethnicity, caste, sect, gender, and sexual orientation.

- Put pressure on their respective governments to end military rule in Burma.
- Engage in drafting a Charter for Democracy which would contribute to an inclusive, democratic culture and strengthen democratic institutions.
- Interact closely with media to provide information, to promote and protect human rights, and to strengthen freedom of expression and thought.

# Annex 1

## The Challenges for South Asia: Human Rights and Democracy

Kathmandu, 27-29 November 2010

### PROGRAMME

DAY 1 (SATURDAY 27 NOVEMBER)	
0830	Registration
0920	Welcome Address and 10 <sup>th</sup> Year Anniversary Address
	Speakers:
	Keshab Mathema
	Dr Hameeda Hossain
0940	Inaugural Address (Honourable Justice Kedar Nath Upadhyay)
	Keynote Address (C.K. Lal)
1000	Cultural Show by Maiti, Nepal
1030	Tea

Session I		
The Challenges for South Asia: Human Rights and Democracy		
1045	Country Perspectives	
	Chair/ Moderator: Amit Sengupta	
	Rapporteur: Aiman Rasheed	
	Speakers:	Khushi Kabir (Bangladesh)
		Tek Nath Rizal (Bhutan)
		Vrinda Grover (India)
		Jennifer Latheef (Maldives)
		Prof. Kapil Shrestha (Nepal)
		I.A. Rehman (Pakistan)
Ambika Satkunanathan (Sri Lanka)		
1200	SAHR General Body Meeting Matters	
	Constitutional Amendments Introduction of Election Committee Announcing Election Rules	
1230	Lunch	
Session II		
Transparency and Accountability of South Asian Parliaments		
1315	Chair/ Moderator: J.C. Weliamuna	
	Rapporteur: Dinukshi Fernando	
	Speakers:	Irfath Iva (Bangladesh)
		Vinod Bhanu (India)
		Aiman Rasheed (Maldives)
		Raza Ahmed (Pakistan)
Dilrukshi Handunnetti (Sri Lanka)		

1415	Country Experiences – Responsibility of MPs in advancing accountability of parliament	
	Speakers:	Zunaid Ahmed Palak (Bangladesh)
		Yusuf Tarigami (India)
		Bushra Gohar (Pakistan)
	Wijedasa Rajapakse (Sri Lanka)	
1515	Tea	
1530	Discussion on the Plenary ‘Transparency and Accountability of South Asian Parliaments’	
1630	Election to the Bureau – Introduction of Nominees to the General Body	
	Caucus on Parliament Watch with Parliamentarians	
1730	Film/ Documentary	
End of proceedings		
DAY 2 (SUNDAY 28 NOVEMBER)		
Session III		
Security Laws and Freedom from Torture		
0900	Chair/ Moderator:	Salman Raja
	Rapporteur:	Tahirih Qarratulayan
	Torture Report	
	Speaker:	Nitya Ramakrishnan
	Security Laws	
	Speakers:	Asmita Basu (India)
Rabia Chaudhry (Pakistan)		
1030	Tea	

Session IV		
Parallel Sessions		
1045	(a)	Discrimination Against Religious Minorities
	Chair/ Moderator:	Dr Hameeda Hossain
	Rapporteur:	Garima Shrivastava
	Speakers:	Dr Amena Mohsin (Bangladesh)
		Satya Sivaraman (India)
		Saba Naveed Shaikh (Pakistan)
		Chulani Kodikara (Sri Lanka)
	(b)	Regional Consultation on Internally Displaced Persons
	Chair/ Moderator:	Ali Dayan Hasan
	Rapporteur:	Maham Naqshband
	Speakers:	Dr Sudeep Basu (India)
		Kamran Arif (Pakistan)
		Mirak Raheem (Sri Lanka)
		Prof. Sarwar Mamound (Afghanistan)
(c)	South Asian Democracy Charter	
Rapporteur:	Dinesh Tripathi	
1245	Lunch	

Session V		
SAHR General Body Meeting		
1400	Executive Director's Report/ Address Presentation of Accounts	
1445	Tea (Voting for Election of Bureau Members)	
	Moderator:	Kamla Bhasin
1530	Chapter discussions	SAHR's strategies and areas of future work
1615	Plenary discussion	Methodology of working with members in each country Coordinating between regional and national work Any other AGM matters/ discussion
1715	Announcement of election results	
1730	Reception	
1800	Bureau meeting	
End of proceedings		
DAY 3 (MONDAY 29 NOVEMBER)		
Session VI		
Open discussion - A Democracy Charter for South Asia: Human Rights Perspectives		
0900	Moderator:	Prof. Imtiaz Ahmed
	Rapporteur:	Dinesh Tripathi
	Speaker:	Hishila Yami
1030	Tea	

	Moderator:	Vrinda Grover
1045	Final document of the conference presented by Rapporteur General (Jackie Lyman)	
1100	SAHR statement Discussion Amendments Adoption of statement	
1145	Vote of thanks (Zohra Yusuf)	





Citizens'Voices on 'the Challenges for South Asia: Human Rights and Democracy' – Regional Consultation entails the conference proceedings from 27 – 29 November 2010 in Kathmandu, Nepal. This event coincided with the 10<sup>th</sup> anniversary of South Asians for Human Rights (SAHR) network.

SAHR is a democratic regional network with a large membership base of people committed to addressing human rights issues at both national and regional levels. SAHR seeks to contribute to the realization of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR comprises both institutional and individual members. An elected bureau works as the organisation's executive body while the membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Mr. I.K. Gujral, former Prime Minister of India and Dr. Hameeda Hossain of Bangladesh respectively. The Network Secretariat is located in Colombo, Sri Lanka. Chapter offices are located in Colombo, Dhaka, Kabul, Kathmandu, Lahore and New Delhi.

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### **South Asians for Human Rights (SAHR)**

345/18 Kuruppu Road (17/7 Kuruppu Lane), Colombo 8

Tel: +94-11-5549183 Tel/fax: +94-11-2695910

Email: [sahr@slnet.lk](mailto:sahr@slnet.lk) Website: [www.southasianrights.org](http://www.southasianrights.org)