Indo-US Nuclear Deal
A challenge to India's sovereignty, non-alignment and world peace
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WILL THE COURTS PUNISH THE RAPIST S.P.?

Ledha is a tribal woman from Sarguja district of Chhattisgarh, who was sent to jail on false charges of having participated in a land mine blast that killed three CRPF personnel. Her only crime was that she was married to Ramesh Nageshia, an alleged member of the Maoist party. She was pregnant at the time of her arrest and, thanks to the efforts of her lawyer, she got bail for one month to deliver her baby after which she was sent back to jail. She was ultimately acquitted from the case. However, her ordeals had only begun.

When Ledha went to the police station to show the acquittal order, she was pressurized by the police to make her husband “surrender”. She was lured with an offer of money and a job for her husband, only to be trapped by the police. Kalluri, the S.P. of Sarguja, was in charge of the “surrender” on May 28th 2006 with Ledha accompanying them. As soon as the police saw her husband Ramesh Nageshia at Civil Dagh village, they beat him up. S.P. Kalluri then ordered them to sit at the house of the gram panchayat secretary. Next, one Brijesh Tiwari of the Special Armed Forces, came into the house and shot Ramesh dead. A shocked and terror-stricken Ledha was taken to Shankergarh Police Station from where she was let off with threats of dire consequences if she dared to reveal what happened.

As soon as Ledha reached her village in September 2006, she was picked up by the police again. At the police station she was told to undress. When she refused to do so, the police brought her parents to the police station where her father was beaten severely. A completely defenceless Ledha was then forced to strip before the S.P. Kalluri who raped her after which green chillies were inserted into her vagina. She was not only kept in the lock up after this crime, the next day she was gang raped by Dheeraj Jalswal, S.P.O, and four other constables in a drunken state. She had to undergo this ordeal for 10 more days before she was let off.

In January 2007, a shattered Ledha mustered enough courage to file a case against S.P. Kalluri and the other guilty police in the Chhattisgarh High Court. A joint fact finding team initiated by the undersigned visited Sarguja district in Chhattisgarh. The team met Ledha in hiding since there was a real threat to her life from the same police. She expressed guilt at her husband becoming a victim and said “Dhoka Khaliye hum” (We were betrayed). Her daughter, Ranjita, is very weak and so traumatized that if anyone even touches her mother, she cries uncontrollably.

Ledha is not the first victim where the state has used rape as a weapon against women who live in areas with a history of anti-government movements. Ledha, however, is a brave woman who is determined to fight. We call upon all democratic minded people and organizations to ensure that the guilty are punished and Ledha is assured of justice.

*Committee against Violence on Women (CAVOW), Peoples Union for Civil Liberties (PUCL), Chhattisgarh*
There is trouble in the judiciary yet again, demonstrating the point that there exists no method by which complaints can be handled. This time it is complaints by one Judge of the Gujarat High Court against the other. Justice Majmudar has alleged that Justice Sethna virtually compelled him (how is not explained) to go to his house and intimidated and almost assaulted him. He has also implied (without disclosing details) that Justice Sethna behaved in an immodest manner with his wife. Both charges are serious. Justice Majmudar’s was obviously leaked to the press, as the full text appeared in several national dailies. As against this, Justice Sethna refers to the fact that Justice Majmudar’s son has been regularly practicing in the high court, has amassed a large practice in a relatively short period (most children of sitting judges are said to have a large practice at a young age) and that he was filing his vakalatnama in his father’s court and getting matters removed from the board. These are very serious allegations, and no investigation has been ordered into these as well. Instead, both Judges have now been transferred, Justice Sethna to Sikkim and Justice Majmudar to Jaipur.

Apart from the fact that the State of Sikkim is being treated as a punishment posting, Justice Sethna protests that there is no work there. One can understand if transfer is an interim arrangement enabling an investigation, but how does it resolve the problems which come up? If indeed Justice Sethna sexually harassed a brother Judge’s wife as is sought to be suggested, he is unfit to be a Judge. And Justice Majmudar’s son requires investigation for his professional practices. The son syndrome has corrupted the Judiciary beyond all repair and even when it surfaces in such a dramatic way, it is overlooked. Are there too many sons of too many judges, practicing in too many courts?

The Bar Council of India had published a list of all relatives of sitting Judges and practicing Judges and asked for those Judges to be transferred to other courts. Nothing happened after that, they themselves did not pursue the matter. If this is the sorry state of the Judiciary, for whom does the Judiciary function and who? The yet to be enacted Judges Enquiry Bill does not address these ethical issues. We are back to square one; live with the Judiciary you have, grin and bear it.
Welcome Judgment on Maintenance for Divorced Muslim Women

The Kerala High Court held that a Muslim woman who was remarried and had received reasonable and fair provision and maintenance from her former husband was also entitled to claim maintenance again under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 from the next husband who divorced her.

The court observed that the Act protected "the better or superior rights", which the Muslim women were "assumed to have under their personal laws". She is entitled to a lumpsum one-time payment, which will be a substitute for the payment of maintenance. Even on her remarriage, she can keep such payment. She does not have to prove that she is unable to maintain herself. The court observed that in cases where the woman actually remarried, the amount paid by way of fair and reasonable provision under Section 3(1)(a) of the Act by her former husband must be held to be sufficient provision for her till remarriage only and not till the end of her life.

SC: Ex-Gratia Not a Matter of Right

The Supreme Court held that payment of ex gratia to employees could not be claimed as a matter of right. According to the SC "the meaning of 'bonus' is a boon or gift, over and above what is normally due as remuneration to be received. The payment made ex gratia would not constitute any precedent for future years."

In the instant case, an Additional Labour Commissioner allowed payment of Rs. 11,10,398 as ex gratia to employees of a cooperative bank in Ghaziabad, Uttar Pradesh. The Allahabad High Court upheld the payment. The SC Bench allowed the bank's appeal against this ruling saying that the ex gratia payment made in the instant case cannot be regarded as part of contract employment. Therefore, the ex gratia payment made by the bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of the definition under Section 2 of the Industrial Disputes Act.

Talaq Before Reconciliation Invalid: Bombay HC

The Bombay high court was deciding a review petition filed by Dilshad Begum, whose husband Ahmedkhan Pathan had thrown her out of the house in June 1989.

Ahmed Khan pronounced triple talaq orally at a local mosque in 1994 in the presence of two witnesses, in the absence of Dilshad. He also sent a legal notice to Dilshad, along with a one-time maintenance, informing her of divorce. A Judicial Magistrate's court in Baramati granted her monthly maintenance of Rs. 400 under the Criminal Procedure Code (CrPC).

He challenged the order of maintenance in the session's court on the ground that under Muslim law, a divorced woman cannot get maintenance under CrPC. The session's court quashed the order of maintenance.

Dilshad filed an appeal in the high court. The Bombay High Court held that mere pronouncement of intention to divorce is not enough. Before talaq is pronounced -- orally or in writing -- there has to be an effort for reconciliation between the couple with the help of arbiters, Justice Marlapalle stated, holding the divorce in question as null and void.

Delhi HC Flays Sexual Abuse in Juvenile Homes

Chetna, a Delhi-based women and children's welfare society filed a PIL drawing the court's attention to the sexual abuse of children aged 6 to 12 by older inmates and staffers at children's homes and sought separate sections to house minors at the shelters. It focused primarily on mismanagement at two observation centres - the Majnu ka Tila Special Home for Boys and Nirmal Chaya for Girls.

The PIL detailed findings of a 2004 inquiry instituted by then Principal Magistrate, Juvenile Justice Board, S S Mann, which revealed the exploitation and mismanagement by juvenile home staffers. The NGO invoked provisions of the Juvenile Justice Act, 2000 which called for "care and classification of juveniles according to their age group". The Bench has now directed the Delhi government to submit a detailed report by February 28.
MATTOO CASE: SANTOSH SINGH CHALLENGES DEATH SENTENCE

Santosh Kumar Singh filed an appeal before the Supreme Court, challenging his conviction and death sentence in the Priyadarshini Mattoo rape and murder case. In his appeal against the Delhi High Court judgement, he has contended that the acquittal by the trial court was correct and proper and that the observation of the High court while convicting him did not find any basis against the evidence on record.

Times of India, Jan 24, 2007

SIDHU TO FIGHT POLLS

The Supreme Court stayed the conviction of Navjot Singh Sidhu in a road rage case, clearing the way for the ex-test cricketer to contest the Amritsar Lok Sabha bypoll, necessitated by his resignation.

The three-year sentence imposed by the Punjab and Haryana High Court had ruled Sidhu out of the contest because under the Representation of the Peoples Act, anyone sentenced to more than two years' imprisonment is barred from contesting elections till a court of law stays the conviction and sentence.

Times of India, Jan 24, 2007

SC WARNS AGAINST REVERSAL OF ACQUITTLALS

The Supreme Court held that an order of acquittal of an accused must not be interfered with unless there are compelling circumstances and the order is found to be patently illegal.

The Bench said that the paramount consideration of the court is to ensure that miscarriage of justice is prevented. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to re-appreciate the evidence, where the accused was acquitted. If the impugned judgment is clearly unreasonable and relevant materials have been unjustifiably eliminated in the process, it is a compelling reason for interference.

The Hindu, Jan 30, 2007

CENTRE OPPOSES LAW ON EUTHANASIA

The Supreme Court admitted a petition filed by an NGO, Common Cause raising the issue of an individual's right to die with dignity and sought a law to legalize 'euthanasia' with regard to terminally ill patients even as the Centre opposed the idea.
The proposed Section 502A also clarifies that the means of capturing such an image could be "videotapes, photographs, films or any other means". The provocation for this special provision is the scandal two years ago in Delhi over the sale of a CD containing a pornographic video of two public school students.

An expert committee set up subsequently by Maran recommended that the IT Act be amended to provide, among other things, a remedy to video voyeurism.

The government preferred to insert the video voyeurism provision in IPC rather than in IT Act as recommended by an expert committee set up by Maran since it was felt that the IT Act is essentially a civil law facilitating e-commerce and the BPO industry.

The Times of India, Feb 3, 2007

**CONSTABLES GET 7 YEARS RI FOR CUSTODIAL DEATH**

The court of Additional Sessions Judge sentenced to seven years' rigorous imprisonment, three constables while acquitting a fourth accused, Inspector Buddhi Prakash, who was SHO of the police station at the time for the death of a man in custody at Mehrauli Police Station 11 years ago.

Rajvir Singh, Bacchu Singh and Ramesh Huda were found guilty of culpable homicide n.t amounting to murder while Home Guard Kanwar Pal, the fifth accused, has been declared a proclaimed offender.

The victim Indal was caught while allegedly trying to steal a stereo system from a car on the Mehrauli-Badaipur Road on an evening in 1996. He was handed over to the police, who took him to Mehrauli police station.

According to the Crime Branch, the two constables, the Head Constable and Inspector Prakash beat up Indal all through the night in the lock-up. He was taken to AIIMS for a medical check-up, after which he was brought back to the lock-up. Towards the morning Indal began vomiting and was taken back to AIIMS. He died later at the hospital.

The Indian Express, Feb 7, 2007

**SHARIAT LAWS NOW IN J & K**

A select committee of the Jammu and Kashmir Assembly has adopted a private member's bill seeking the application of Muslim Personal Law (Shariat) in the state. Though being a Muslim majority state, personal law matters of the community are being guided by a commandment, consistent with Quranic injunctions, in force since Maharaja Pratap Singh's rule.

The bill deals with questions pertaining to succession, special property of females, including personal property inherited or obtained under contract or gift, or any other provisions of personal law. Also, on marriage, dissolution of marriage, mubarrat, dowry, guardianship, gifts, trust and trust properties, where the parties are Muslims, the rule of decision shall be the Shariat.

The new bill also seeks to repeal the provisions of the Jammu and Kashmir Laws Consolidation Act, in so far as they are inconsistent with the provisions of the new act.

The Asian Age, Feb 7, 2007

**ADOPTED SON ELIGIBLE FOR JOB ON COMPASSIONATE GROUNDS**

A writ appeal was filed by A. Sudhakar, who was a minor when his father, an employee of the Ennore Thermal Power Station, died in harness.

In 1997, his natural mother, who was not conversant with legal formalities, claimed appointment on compassionate grounds. One of the grounds on which the claim was rejected was that an adopted son was not eligible for compassionate appointment. The present appeal was filed after a single judge upheld the Tamil Nadu Electricity Board order. The Judges referred to a Patna High Court order and Section 12 of the Hindu Adoption and Maintenance Act 1956, which conferred upon the adopted child the same rights and privileges in the adoptive family as the legitimate natural born son or daughter for all purposes.

Holding that Mr. Sudhakar was eligible to be considered for appointment on compassionate grounds, the Bench said that the TNEB could pass an appropriate order as per law within eight weeks.

The Hindu, Feb 9, 2007

Compiled by Sijo Merry George
The Indo-US Nuclear Deal
a challenge to India’s sovereignty,
non-alignment and world peace

The media and the government have been drumming up quite a spin about the Indo-US Nuclear Deal. They would have us believe that it is the best thing that happened to India since the British Raj left our shores. We are told that India is being "liberated" from three decades of "nuclear isolation" by being given de facto recognition as a nuclear weapons state. And George Bush, Condoleezza Rice and their cohorts would have us believe that this is a step towards making India "a global power." But other more circumspect voices have been warning that the Deal will dangerously erode India's sovereignty in foreign policy matters, bury non-alignment securely and reverse her avowed policy of non-proliferation and promoting world peace. In this context, it is necessary to decipher through all the spin what this Deal really is and what impact it will have on the lives and destiny of the people of India.

The Deal, as expressed in the joint statements issued by US President Bush and Prime Minister Manmohan Singh on July 18, 2005 in Washington and on March 2, 2006 in New Delhi, establishes a new "global partnership" between India and the USA. The US is to provide nuclear technology, fuel and other assistance to India's civilian nuclear energy program, in return for which India has undertaken to separate her civilian nuclear facilities from her military ones and put 14 of her 22 reactors under International Atomic Energy Agency safeguards and continue her unilateral moratorium on nuclear explosive testing. The Deal, however, will not serve to effectively cap and dismantle India's nuclear weapons' arsenal since India can continue to produce fuel for nuclear weapons in its non-safeguarded facilities. Since the Deal allows huge imports of uranium for civilian reactors, scarce domestic uranium can be used exclusively for weapons. Rice herself has stated that it is unrealistic to expect India to agree to a freeze on India's nuclear arsenal in the absence of agreements from other regional powers such as Pakistan and China.
The ghosts of Tarapur

The history of the USA and India in the nuclear sector has always been clouded by what happened over the Tarapur reactors post Pokhran-I in the 1970s. The first agreement relating to nuclear co-operation with the USA which was concluded in 1963 guaranteed supplies of enriched uranium fuel from the US to run the Tarapur reactors for their entire life. But after India conducted its first Nuclear test at Pokhran in 1974, western countries imposed sanctions against India and the US stopped supplying fuel for Tarapur saying its domestic legislation prevented it from doing so. India put forward the argument that since the fuel agreement was an inter-governmental agreement, it had to be honoured by the US. Thereafter, for years India was treated as a pariah nuclear state by the US and its allies.

Death knell for the NPT

The Indo-US Nuclear Deal is now a complete reversal of this policy. The deal is a serious blow to the Non-Proliferation Treaty (NPT) which, though in dire danger of being completely dismantled, is still the only multilateral commitment, however vague, of the five nuclear weapons states (USA, UK, France, Russia and China) to global nuclear disarmament. The NPT requires these five states to pursue plans to reduce and liquidate their stockpiles. The NPT requires its non-nuclear weapons states to abstain from attempting to make nuclear weapons and, in return, they are promised help in nuclear technology for peaceful purposes. India is one of the three states (the others being Pakistan and Israel) that possess nuclear weapons but have refused to sign the NPT, retaining the sovereign right to acquire nuclear weapons when necessary. Now, in gross contravention of the NPT's underlying principles and the current norms of the Nuclear Suppliers Group, the US has enabled India to have civilian nuclear trade with the US and the also the rest of the world. This is tantamount to recognizing India as a 'legitimate' nuclear power and is a challenge to the disarmament and non-proliferation regimes, which are based on the assumption that access to nuclear fuel and technology must be given only in exchange for signing the NPT - accepting all its obligations and joining the regime.

(It is pertinent to add here that the US has done much to undermine the NPT. It uses the NPT as a "political weapon" to deny or mete out nuclear technology to states as it deems fit in its imperial interests. Iran is a stark case in point. Even though Iran is a signatory to the NPT, the US has gone all out to deny her right to develop nuclear energy for civilian purposes. Iran poses no great military threat to the USA, but what bothers the US is that development of a state's skills and capacity in generating nuclear energy for peaceful purposes also gives rise to the technology to develop nuclear weapons. If Iran develops such capacity to protect its political interests, this is what the US does not want because then it will not be possible for the US to impose its agenda on Iran and other countries of the region.)

Nuclear carrot

What has occasioned this change of heart with the USA that it seeks to end so many years of 'nuclear apartheid' where India is concerned? ...In essence, the promise of nuclear co-operation is being used to shape India's foreign policy and bring it in line with the US' strategic interests.

Sections of the media here would have us believe that the benevolent USA wants to solve the problems of the acute power shortages in India by allowing India to build and run nuclear power plants which would provide electricity to the power-starved Indian masses. Few informed people will buy this story, though. Even after 50 years of a civil nuclear program, nuclear energy accounts for only 2.5% of India's total energy needs by 2015. And even if the outcome of the Deal will bring about an improbable 20-fold increase in its production, nuclear power will still meet less than 5% of the country's energy needs. It does not take much to see that the promise of a nuclear deal to end thirty years of nuclear isolationism is like a carrot being dangled temptingly in front of the Indian government - a carrot which is attached to a stick which will be wielded to extract one thing after another from them. In essence, the promise of nuclear co-operation is being used to shape India's foreign policy and bring it in line with the US' strategic interests.

Requirements of US global hegemony

The USA's strategic perspective worldwide is dictated by the logic of its capitalist economy. The US has to project and maintain itself as the world's great superpower to protect its status as the safe harbour for the world's capital. In this task, the US military plays a key role - it ensures (for example, by the invasion of Iraq and the threatened invasion of Iran and other countries) that the bulk of the world's oil trade continues to be carried out in US dollars; it maintains physical control of much of the world's crucial resources (like oil) as well as of trade routes; it can also challenge potential rivals in an arms race such that it can undermine their economies.

The military partnership

The US armed forces are much smaller than are required
by its global hegemony. In order to maintain its hegemony over diverse and shifting potential adversaries, the US has set up a vast network of military bases, but the proliferation of new bases has spread the US forces even thinner. The resort now is to have “a range of basing and access agreements with as many countries as possible and in as many regions as it can.”\(^4\) This is where India fits in to its strategic interests. The US armed forces remain dangerously thin in the Asia-Pacific region and American officers “...are candid in their plans to eventually seek access to Indian bases and military infrastructure. India's strategic location in the centre of Asia, astride the frequently traveled Sea Lanes of Communication linking the Middle East and East Asia, makes India particularly attractive to the US military”\(^5\).

In a report commissioned by the US Department of Defence entitled *The Indo-US Military Relationship: Expectations and Perceptions*,\(^6\) an American colonel is quoted as saying: "The US Navy wants a relatively neutral territory on the opposite side of the world that can provide ports and support for operations in the Middle East. India not only has a good infrastructure, the Indian Navy has proved that it can fix and fuel US ships. India is a viable player in supporting all naval missions, including escorting and responding to regional crises." India has already provided port facilities for US forces engaged in the invasion and occupation of Afghanistan and Iraq.

The US needs not only Indian facilities, but the services of the Indian armed forces themselves for "low-end operations." The 'New Framework of Defence Relations' agreement of June 2005 signed by the Indian Defence Minister Pranab Mukherji with the US Administration, specifically mentions that Indian and US militaries would conduct joint exercises, joint responses to disaster situations, and collaborate in multinational operations and "peace-keeping" operations. Military-to-military co-operations have increased manifold in the last couple of years: there is a growing frequency of bilateral exercises, seminar, personnel exchanges as well as sales of military technology.

**Spreading ‘democracy’**

As a part of the Deal, India is to assist the US in its "Global Democracy Initiative" - the US' self-imposed mission to spread democracy and freedom around the globe. History has been witness to two main thrusts of such democracy-building initiative - one where US-allied politicians have been promoted against political parties and governments not closely aligned with the US (e.g. Nicaragua, Haiti, Cuba and Venezuela) and another to promote "free market democracy" in countries regarded as having an overly large government presence in the economy, notably the erstwhile states of the former USSR. More recently, the USA's democracy initiative has seen "regime change" efforts by undemocratic means in Afghanistan and Iraq.

**Proliferation Security Initiative**

India is also all set to become a part of the US-led 'Proliferation Security Initiative' (PSI) which is an illegal development under international law. The PSI is not a treaty or an organization, but an informal co-ordination among a group of states, without binding terms or regulations, under the banner of preventing the proliferation of weapons of mass destruction (WMDs). Discarding the UN route, the PSI calls for the participating states to arrest the transport of WMDs and "related materials". At their own initiative, and without the sanction of international law, the PSI participants may board and search any vessel in their waters or even on the high seas that is "reasonably suspected of transporting such cargoes" and seize the same. And as with the farcical US claim of WMDs in Iraq, which formed the US' justification for invasion, the PSI's claims would not be subject to the scrutiny of any international body, but could be based on US 'intelligence'.

**India as counterweight to China**

It has been readily acknowledged by Nicholas Burns, the Under Secretary of State for Political Affairs and other top Bush administration officials that Washington's objective in pursuing a strategic partnership with India is to make it an economic, military and geopolitical counterweight to China. The Pentagon report talks about how India and the US were forging long-term defence and security alliances aimed at containing China, a country both saw as an emerging regional and global power. This 'security system' is principally "an in-region solution for dealing with two of the biggest international security threats - an over-ambitious China and the spread of Talibanised Islam."\(^7\) The US is also fashioning an Asian NATO : the original North Atlantic Treaty Organisation (NATO) was an alliance against the Soviet Union; now the US wants to fashion an Asian NATO against China. Towards that aim, India has already been part of enhanced defence co-operation with Vietnam, Japan, Singapore etc.

**Prizing open the Indian market for US capital**

One of the other major outcomes of the 'deal' is the winning of more concessions from India for US companies.
Noam Chomsky, in a recent interview, put it candidly: "Washington's decision...[is] openly dictated by commercial interests. The US military industry generally sees India as a huge potential market and the same is true of the nuclear industry and others." Ron Somers, who heads the US-India Business Council (which comprises the largest 250 US companies with trade interests and investments in India) has remarked, "India's nuclear energy market (estimated to require $100 billion in foreign direct investment), which till now has been a closed sector, will open up for US companies, creating a potential 2,70,000 American jobs in high technology engineering and manufacturing over the next decade." Overall, the deal is expected to generate nuclear commerce worth over $100 billion for the US nuclear industry, which has been losing orders in a world increasingly wary of nuclear power. The US arms industry is also set to make a killing thanks to the Deal. India spends half of its defence budget on import of arms and equipment. (In 2003, India had the dubious distinction of being the world's largest arms importer, accounting for 19% of global arms imports.) The US Ambassador to India, David Mulford, bluntly stated in February 2005 that "the US, which has a small market share in this sector [India's arms purchases], intends to become a major player." The US Ambassador to India, David Mulford, bluntly stated in February 2005 that "the US, which has a small market share in this sector [India's arms purchases], intends to become a major player." The US arms industry is also set to make a killing thanks to the Deal. India spends half of its defence budget on import of arms and equipment. (In 2003, India had the dubious distinction of being the world's largest arms importer, accounting for 19% of global arms imports.) 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Act, however, makes it clear that India can receive nuclear fuel or nuclear reactors but cannot expect to import any technology that could be used for its nuclear cycle-like fuel enrichment, fuel reprocessing and heavy water production (processes which would enable it to make nuclear weapons).

- The PM had said that there would be no reference to a future nuclear test in the Act. The Hyde Act says that all co-operation will instantly cease once India conducts a nuclear test. This is blatantly discriminatory - the US retains its right to conduct nuclear tests (since it has not ratified the Comprehensive Test Ban Treaty [CTBT]), but India, who also refused to sign the CTBT, will be bound by a bilateral commitment not to conduct any more nuclear tests - if it does, it will face punishment and all co-operation will cease immediately.

- The PM had voiced opposition to any "annual good conduct certificate" to be issued by the US President to India's compliance with its non-proliferation pledges and other commitments. The Hyde Act has merely changed the word "certification" to "assessment". This means that the US President will annually certify to the US Congress that India is trustworthy enough for them to continue the deal with her. Thus while India has to allow safeguards in perpetuity for its civilian nuclear plants, there is no reciprocal guarantee for lifetime fuel supply for its reactors.

- The PM had declared that India would be able to stockpile nuclear fuel to create 'strategic reserves' over the lifetime of its reactors so that their working would not be disrupted if there were interruptions in the supply of fuel. The Hyde Act explicitly bars any reserve fuel other than normal operating reserves required to run its reactors.

- Further, it had been agreed that in the event of the US canceling its obligations to supply fuel, it would get other members of the NSG to take over its fuel supply obligations. The Hyde Act, however, sings a different tune: the US will only get other NSG members to supply fuel to India in the event of market failure alone, and not if it decides to terminate the agreement. In the latter eventuality, the US will actively work with other Nuclear Suppliers Group countries to prevent any further supply to India.

- The PM wanted the sequencing of steps in the deal's completion to be strictly "reciprocal" to Washington's moves (i.e. the 123 Agreement, the approval of the deal from the NSG countries, and a special safeguards agreement with the IAEA). The PM had said that India would not implement the safeguards till restrictions on nuclear commerce were lifted through the 123 agreement. But the Hyde Act demands that India take the IAEA safeguards agreement to the penultimate stage before the signing of the 123 agreement.

- The PM had declared his opposition to any scrutiny of India's unsafeguarded nuclear facilities. The Hyde Act mandates that the US President scrutinize all of India's nuclear activities.

- The PM stated that he would insist on "India-specific" safeguards in the IAEA, rather than the IAEA's existing Modified Additional Protocol. But according to Section 107 of the Hyde Act, not only is India bound to open up its nuclear facilities to the intrusive IAEA regime, but "in the event that the IAEA is unable to implement safeguards, US inspectors will be empowered to do so."

**Can the unacceptable provisions of the Hyde Act be mitigated by the 123 Agreement?**

The Government is now trying to quiet the voices of growing outrage at the humiliating conditions of the Hyde Act by spinning the myth that since the Hyde Act is an internal matter of the US, India will be bound only by the bilateral 123 Agreement which is yet to be signed. The claim that the unacceptable "extraneous and prescriptive" provisions of the Hyde Act (as described by Mr Pranab Mukherjee) would somehow be mitigated through the 123 Agreement is quite misleading.

The Hyde Act is the enabling legislation that allows Washington and New Delhi to enter into a bilateral agreement for civilian nuclear co-operation. That bilateral agreement, called the 123 Agreement, takes its name from Section 123 of the US Atomic Energy Act 1954 which stipulates an agreement for cooperation as a prerequisite for significant nuclear cooperation with any nation. Now any agreement under section 123 of the Atomic Energy Act would be by definition under US law, so in negotiating such an agreement the US Administration cannot go against its internal law. In any conflict between an international agreement and US law, the latter predominates. A case in point was the fuel supply agreement India had with the US for the Tarapur atomic power plant. After India conducted its first nuclear test - Pokhran I - in 1974, the US unilaterally stopped fuel supply to Tarapur.

The most sinister implication of the Hyde Act is not that it places India's entire nuclear energy program under IAEA scrutiny, but that it gives ample scope to the US for blackmailing India as and when it chooses. Everyone knows how Iraq was subjected to endless intrusive inspections supposedly to locate its "weapons of mass destruction". While no such weapons have been traced to date even when the country is under US occupation, those heading the inspections have revealed that US
How safe and cost-effective is Nuclear Energy?

Nuclear electricity generation is a mere 2.5% of India’s total electricity generation today. If the Nuclear Deal with the USA comes through, it will rise marginally to under 5% by 2015. Then, is it beneficial to enter into a deal which compromises our sovereignty?

Terribly expensive
55% of India’s fuel production is from coal, and at the present rate of consumption, coal will last for another 250 years. The cost-effectiveness of coal to production of nuclear electricity is 2:3, of gas 1:2, of hydro-electricity 3:5. Therefore, by all estimates, nuclear electricity generation is the most expensive. There is no reason good enough for India to prefer the nuclear energy option while abandoning the enormously cheaper source of electricity which would be produced if the Iran-India gas pipeline plan is implemented.

Hydro-electric power is the more viable option. According to the National Hydro Power Corporation, India’s untapped hydro-electric potential is 50,000 MW which is yet to be explored and which would tame the rivers that overflow and flood adjoining areas almost every monsoon.

No assessment has been made available to the Indian public whether the cost of nuclear energy generated from imported fuel, equipment and technology would be economically viable. Nor has there been any detailed study whether with the same quantum of investment we could be better off giving priority to nuclear energy rather than to renewable sources of energy like hydropower, wind or solar energy.

Some nuclear analysts feel that India should get rid of her dependence on imported uranium for her nuclear fuel needs and instead use the ample thorium reserves India has. (India has 25% of the world’s reserves of thorium, a radioactive metal which can be used as an alternative nuclear fuel to uranium.) There is no energy security in building external dependencies by buying reactors and nuclear material from abroad. For instance, if the US halts nuclear co-operation with India, what would happen to the enormous investments made in the nuclear plants and the public who would have become dependent on energy from them?

Too dangerous
It is argued that nuclear energy plants do not pollute the air and do not produce green house gases. But they produce emissions with extremely harmful effects. Till today, there is no foolproof method of disposing radioactive waste and the old outlived plants, and exposure to radioactive waste is almost as dangerous as being exposed to a nuclear bomb. And it is very expensive to dispose of this waste properly. In fact, the US has refrained from setting up any new nuclear power capacity for the past three years mainly because of the problems and high costs of disposing of nuclear waste.

It is impossible to make nuclear energy totally safe. There have been several accidents in the past - at Chernobyl in the erstwhile USSR, at Three Mile Island in Pennsylvania in the USA. What is needed is an impetus to develop ecologically benign renewable sources of energy.
intelligence agents were placed in the IAEA inspection teams to gather information useful for an invasion of the country. Similarly, the IAEA board of governors has now referred Iran's civilian nuclear program to the UNSC for possible action, not on the basis of any evidence, but on the basis of an "absence of confidence" that Iran's nuclear program is exclusively for peaceful purposes. The only reason Iran and Iraq were treated like this is because they did not surrender to US domination. With the Hyde Act, India has provided the US with an instrument to be persecuted in the same manner if it ever defies the USA in future.\(^5\)

In spite of the humiliating conditions of the Hyde Act, and in spite of some pressure from the UPA government's main Left allies to "walk away from the Deal", the government is pursuing steps towards concluding the 123 Agreement with the US. This is because the ruling elites of India view the implicit recognition as a nuclear weapons state as a major step towards India attaining the "global power" status they have long coveted, since it will bring in its wake closer economic, military and geo-political collaboration with Washington and Wall Street, and will also give a boost to India's military might since it will allow India's indigenous nuclear program to focus on weapon development. For these nebulous gains, the ruling elites are willing to compromise completely the country's sovereignty, independent foreign policy and economic interests. Not to speak of putting the lives of millions of Indian people in danger by thrusting them into the midst of an arms race in the region.

Arms race in the sub-continent
The Nuclear Deal is all set to spark an arms race in South Asia. Pakistan, upset by the potential change in its nuclear balance with India, asked the US for a similar civilian nuclear deal, but was promptly snubbed. China stepped in at this juncture and has reportedly agreed to sell Pakistan six to eight nuclear reactors at the cost of US $10 billion. China's message to the US is clear -- if the US decides to play favourites in the nuclear game disregarding the rules, China also reserves the same right. China's message to India is equally clear - China will exert herself to contain India's rise as a rival power in Asia by building up her neighbouring adversaries. The Deal is thus bad news for regional and global peace and the sooner the common people of the Indian sub-continent understand all its dangerous and anti-people fallouts, the better it is for us all.

The Nehruvian vision of India as being at the head of the world peace movement has long been buried. As nuclear physicist, M V Ramanna, has remarked: "Both sides of the divide have missed the principal truth about the Deal : it will impede, not promote, nuclear disarmament and effectively betray India's pledge to fight for global nuclear weapons elimination." The mayors of the only two cities to have been the sites of explosion of atom bombs, Hiroshima and Nagasaki, have issued a public appeal to the Japanese Prime Minister not to give Japan's consent as part of the NSG to supply nuclear material to India, and thus take the lead in fulfilling their obligation to pursue in good faith negotiations leading to nuclear disarmament. The people of India and the world need to reaffirm their resolve to do away with nuclear weapons altogether and start a massive movement worldwide to this end.

Sanober Keshwaar is the Assistant Editor of this magazine.

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Footnotes
1 These 'safeguards' have nothing to do with safety. They are inspections and checks at civil facilities to ensure that nuclear materials are not diverted to military uses.
2 Prful Bidwai, *Boon for dirty energy, disaster for peace*, Tehelka, 23/12/06.
3 'Global Power', *Client State ; India's place in the US Strategic Order*. Aspects of India's Economy, No.41, 2006.
6 The report, prepared by Juli A. MacDonald in 2002, is based on interviews with key American and Indian military officers and government officials.
7 Ibid.
10 Times of India, 18 November, 2006.
12 Aspects of India's Economy, No.41
13 The Hindu, 9th February, 2005
15 Those free from inspection by the IAEA
16 Aspects of India's Economy, No.41
A Primer on Nuclear Bodies and Treaties

The International Atomic Energy Agency (IAEA)

The IAEA is a multinational UN body which was formed in 1958. Referred to as "the UN's Nuclear Watchdog", it seeks to promote the peaceful use of nuclear energy and to inhibit its use for military purposes. The IAEA pursues this mission with three main functions: inspections of existing nuclear facilities to ensure peaceful use (termed 'safeguards'), information and standards to ensure the stability of nuclear facilities, and as a hub for the sciences seeking peaceful applications of nuclear technology. A test ban for atmospheric nuclear explosions was the first attempt at stopping the spread of nuclear weapons.

The organization and its Director General, Mohamed ElBaradei, were jointly awarded the Nobel Peace Prize in 2005. In his acceptance speech for the prize, ElBaradei said that only 1% of the money spent on developing new weapons would be enough to feed the entire world.

The Non-Proliferation Treaty (NPT)

All sovereign nations have the right and responsibility to their citizens to pursue and develop whatever defence systems are necessary to protect them from potential aggressors. This is inherent and not a privilege granted by the United Nations, the Non-Proliferation Treaty (NPT) or any other organization. However, due to the extreme danger associated with nuclear weapons, it has generally been agreed that all peoples of all nations would be safer if all such weapons were mutually agreed to be forsaken. The spirit of the NPT is based on that premise. The NPT, which came into being in 1968, is a blatantly discriminatory treaty. Five states are permitted by the NPT to own nuclear weapons: France (signed 1992), the People's Republic of China (1992), the Soviet Union (1968; obligations and rights now assumed by Russia), the United Kingdom (1968), and the United States (1968). Under the treaty, these 5 Nuclear Weapons States (NWS) agree not to transfer "nuclear weapons or other nuclear explosive devices" technology to other states, and non-NWS parties agree not to seek or develop nuclear weapons. In addition, the nations with nuclear technology agree to help those NPT signatories without it to develop civilian non-weapons nuclear capabilities. Complementarily, those non-NPT signatories receive no nuclear development help, and also might be subject to various economic sanctions by NPT states, in an effort to convince them to join the common good by becoming NPT states.

188 sovereign states are party to this treaty but two (India and Pakistan) out of eight confirmed nuclear powers (i.e., those who have openly tested nuclear weapons), and one unconfirmed nuclear power (Israel) have neither signed nor ratified the treaty. One further nuclear power (North Korea) ratified the treaty, broke it, and then later withdrew.

The 5 NWS parties have made undertakings not to use their nuclear weapons against a non-NWS party except in response to a nuclear attack, or a conventional attack in alliance with a Nuclear Weapons State. However, these undertakings have not been incorporated formally into the treaty, and the exact details have varied over time. The United States, for instance, has indicated that it may use nuclear weapons in response to a non-conventional attack by "rogue states".

Article VI and the preamble indicate that the NWS parties must pursue plans to reduce and liquidate their stockpiles; Article VI also calls for "...a Treaty on general and complete disarmament under strict and effective international control." This formal obligation
has never been adhered to by the NPT-recognized nuclear weapon states. Many proposals for a complete and universal disarmament tabled at the Conference on Disarmament over the past 3 decades have been rejected under one pretext or the other. The failure of the NPT-recognized nuclear weapon states to comply with their disarmament obligations, and the unconditional indefinite extension of the NPT, has left a simmering discontent among many signatories of the NPT, and a justification for the non-signatories to develop their own nuclear arsenals. The United States has designed "bunker busting" bombs containing nuclear material.

Every five years, there is a Review Conference on the treaty. At the seventh Review Conference in May 2005, there were stark differences between the United States, which wanted the conference to focus on proliferation, especially on its allegations against Iran, and most other countries, who emphasized the lack of serious nuclear disarmament by the nuclear powers.

**Nuclear Suppliers Group (NSG)**

The Nuclear Suppliers Group is a multinational body concerned with reducing nuclear proliferation by controlling the export and re-transfer of materials that may be applicable to nuclear weapon development and by improving safeguards and protection on existing materials.

The NSG was created in 1975 following the explosion in 1974 of a nuclear device by India -- a non-nuclear weapons state -- which demonstrated that nuclear technology transferred for peaceful purposes could be used for developing weapons. After India tested, it was noticed that countries like South Africa, Brazil and Argentina developed their own capabilities for nuclear explosives and it became obvious that no nation could be stopped from pursuing research and development to become a nuclear power. Hence, the NSG was brought into existence, to deny technology for peaceful applications, unless nations signed the NPT.

A series of meeting in London from 1975 to 1978 resulted in agreements on the guidelines for export of nuclear fuel and technology, better known as the Zangger "Trigger List", by the IAEA. Listed items could only be exported to non-nuclear states if certain IAEA safeguards were agreed to or if exceptional circumstances relating to safety existed.

Consequent to the Hyde Act and the 123 Agreement yet to be reached, the US ironically (keeping in mind the origin of the group) has undertaken to exert pressure on the Nuclear Suppliers Group to ease restrictions on exports to India.

**The Comprehensive Test Ban Treaty (CTBT)**

After decades of false starts, the traditional "big five" nuclear powers - the USA, Russia, China, the UK and France - backed talks which led to the CTBT being created at the United Nations in September 1996. If it comes into force, it will mean that all nuclear explosions anywhere in the world are banned. But it cannot come into force until 44 individually-named states -- known or believed to have nuclear reactors capable of making material needed for a nuclear bomb -- ratify it in their own legislatures. To date, 30 of this group have ratified the CTBT, including three of the big five - UK, France and Russia.

While almost every nation subscribes to the test ban treaty's noble aims, the realities of international power politics are playing their part with many nations seemingly waiting to see what the US does. Though President Clinton of the USA was the first world leader to sign this historic document, the US Congress rejected the legislation in October 1999 after Republicans argued that the CTBT would fail to properly monitor other nations.

Many nations say a test ban without disarmament is no longer good enough. Both India and Pakistan remain opposed to the CTBT, despite massive US pressure to sign. India has publicly argued that the CTBT merely formalizes nuclear discrimination, allowing the big five to maintain modern weapons but preventing others from developing an adequate nuclear deterrent.
Sex work law reform - Parliament Plays it Safe


On 22nd May, 2006 the Government of India introduced the Immoral Traffic (Prevention) Amendment Bill, 2006 ("the Bill") in Parliament, amid widespread protests and opposition from sex workers and civil rights groups. On the same day, the Bill was referred to the Standing Committee on Human Resource Development ("the Committee") for examination within three months. Given its wider implications, the Committee invited comments from concerned persons and agencies by issuing a public notification. In response, it received 62 written memoranda on different provisions of the Bill. Later, the Committee invited some organisations for oral hearings including sex workers, women's groups and anti-trafficking NGOs. The Lawyers Collective (LC) presented both written and oral submissions. The Committee also heard Secretaries from the Ministry of Women and Child Development (WCD) and National AIDS Control Organisation (NACO), Ministry of Health and Family Welfare before finalising its comments on the Bill.

Contents of The Report
Prepared over a course of seven sittings, the 182nd Report of the HRD Committee on the ITPA Amendment Bill was presented in Parliament on 23rd November 2006. The report summarises arguments made against and in support of the Bill, presents the Committee's findings and makes recommendations on the proposed Bill.

The table on the next page presents amending provisions, LC's arguments and inferences of the Committee on the ITPA Bill. In addition, the Committee makes some general observations, notably on the changing nature of commercial sex. According to the Committee, organised brothels are diminishing and sexual transactions are increasingly occurring in diffused and often, discreet sites. It also notes that trafficking of children for sex work has assumed grave proportions. For these reasons, the Committee suggests a review of the ITPA in its entirety and makes the following recommendations:

- Enact separate provisions in ITPA to address child prostitution including safeguards against prosecution of underage sex workers
- Introduce statutory provisions for rehabilitation of persons willing to quit sex work
- Increase budgetary allocation for rehabilitation, health and education of sex workers
- Amend Section 4 of ITPA to decriminalise voluntary spending by sex workers of earnings from commercial sex
- Implement the 1998 Plan of Action to Combat Trafficking
- Undertake efforts to reduce stigma; treat sex workers as 'victims'
- Redesign AIDS interventions recognizing exit from sex work as an efficacious prevention strategy

Critique
The Standing Committee Report is a mixed bag; combining some new ideas with old thinking. To illustrate, the recommendation to include sex workers in nodal authorities under Sections 13 A and B is a bold step affirming community involvement in anti-trafficking...
The Table below presents the amendments proposed by the Immoral Trafficking (Prevention) Amendment Bill, 2006 along with criticisms of the same by the Lawyers Collective and the Recommendations of the Standing Committee on Human Resource Development.

<table>
<thead>
<tr>
<th>PROPOSED AMENDMENT</th>
<th>LAWYERS COLLECTIVE'S CRITIQUE</th>
<th>COMMITTEE'S RECOMMENDATION</th>
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</thead>
<tbody>
<tr>
<td>Sec 2 (aa) - Consistent age of child to mean person &lt; 18 years</td>
<td>Welcome measure; should be accompanied by provisions that distinguish child prostitution from adult consensual sex work</td>
<td>Approved</td>
</tr>
<tr>
<td>Sec 2 (f) - Redefine prostitution as “sexual exploitation or abuse of persons for commercial purposes or for consideration of money or in any other kind”</td>
<td>Inserting words will penalise all transactional sex, against legislative intent</td>
<td>Redraft in view of purpose &amp; intent of legislation</td>
</tr>
<tr>
<td>Sec 3 - Enhanced penalty for keeping/managing brothels</td>
<td>Aggravated penalty does not secure more conviction; disruptive to community outreach for HIV prevention</td>
<td>Approved</td>
</tr>
<tr>
<td>Sec 5A - Definition of trafficking in persons</td>
<td>Poorly drafted, use of terms with no legal meaning, limited to trafficking for prostitution only</td>
<td>Redraft to include “inducement of religious or social nature”</td>
</tr>
<tr>
<td>Sec 5B - Punishment for trafficking in persons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sec 5C - Punishment for persons visiting or found in a brothel for sexual exploitation of victim of trafficking</td>
<td>Deficient &amp; unenforceable; will increase harassment &amp; obstruct safety &amp; HIV prevention</td>
<td>Redraft with clear definitions for victims of trafficking &amp; sexual exploitation</td>
</tr>
<tr>
<td>Sec 8 - Remove penalties against soliciting for prostitution</td>
<td>Welcome measure; incongruous with new Sec 5C</td>
<td>(i) Approved (ii) Insert provision to penalise soliciting by pimps &amp; agents</td>
</tr>
<tr>
<td>Sec 10 (ii) - Extend stay of female offender in corrective home for 5 to 7 yrs</td>
<td>Ensure sex worker's consent through legal representation</td>
<td>Rejected</td>
</tr>
<tr>
<td>Sec 13 (2) - Lower rank of Special Police Officer from Inspector to Sub-Inspector</td>
<td>Dilutes legislative safeguard against misuse of powers; will increase Police harassment</td>
<td>Rejected</td>
</tr>
<tr>
<td>Sec 13 (A) &amp; (B) - Set up nodal authority to combat trafficking at centre &amp; states</td>
<td>Widen mandate &amp; composition of agency</td>
<td>(i) Make setting up of authority obligatory (ii) Set out constitution &amp; functions in the Bill (iii) Ensure mixed composition including sex workers</td>
</tr>
<tr>
<td>Sec 20 - Divest Magisterial authority to evict sex worker from a locality</td>
<td>Welcome measure</td>
<td>Approved</td>
</tr>
<tr>
<td>Sec 22 (ii) - Allow ‘incamera’ trials</td>
<td></td>
<td>(i) Agreed with incamera proceedings to protect victim’s identity (ii) Insert provision allowing presence of person trusted by victim</td>
</tr>
</tbody>
</table>
efforts. Similarly, rejection of the proposal to lower Police rank under Section 13 (2) is a recognition, for the first time, of harm that arbitrary law enforcement causes to sex workers. At the same time, the legislature has responded conventionally - on lines of victim, crime and penal remedy, breaking no new ground on sex work law reform.

Flawed findings on Trafficking
The Committee has failed to scratch the surface and identify existent deficiencies in anti-trafficking law. Involuntary induction into sex work is already punishable. Penalties for child prostitution over which the Committee has expressed enormous concern, are higher than what is proposed. What is left unlegislated is trafficking for purposes other than sex work. Although the Committee notes that trafficking must be prohibited in all sectors, it justifies WCD's stand that ITPA can only address trafficking for sex work. This is unfortunate, as the demand for a comprehensive anti-trafficking law has come from all quarters.

The proposed definition of trafficking has been adopted from the U.N protocol, which allows flexibility to national legislatures to define trafficking in a manner consistent with domestic criminal law. The Committee ought to have advised the government not to follow admittedly vague language from the protocol. By accepting defective provisions in Sections 5A and 5B, the legislature will allow the accused to evade prosecution. Though appreciable, the Committee's suggestion to consider religious or customary inducement in sex work as trafficking ought to have been preceded by an assessment of existing laws against Devdasi and related practices. What was called for was a legal scrutiny of both existing and proposed anti-trafficking provisions. Instead, Parliament is left with a set of amateurish findings on trafficking in persons.

Underestimating the threat to public health
The most disappointing inference in the report is the denial of the undisputed link between public health and law. Universally, legal structures are known to influence risks and amplify vulnerability to HIV in commercial sex. The interface between HIV and rights is exemplified by the contrast between Sonagachi, Kolkata where HIV was successfully prevented among sex workers through rights based measures with Kamatipura, Mumbai where coercive strategies saw HIV prevalence soar among sex workers. The Committee however dismissed warnings on the deleterious effects of punitive measures ignoring testimonies from sex workers and health agencies including the Ministry of Health. It further advises NACO to replace 'condoms' with 'rescue and raid' against epidemiological evidence and good science. Unlike other countries where public health concerns have influenced State policy on commercial sex, the Indian legislature has regrettably chosen a legal response that hinders successful HIV programming.

Thumbs down to sex workers' rights
Through the 182nd Report, the Committee has attempted to appease both - pro and anti sex work advocates alike. Yet, it is not difficult to see through the cracks. Though the report discourages punitive measures against sex workers, it does not recognise their claims to work, earnings, health and occupational safety. The repeated reference to sex workers as 'victims' smacks of a patronising approach. Despite the State's abject failure in providing alternate support to persons in sex work, the report continues to endorse 'rehabilitation'. The biggest blow is the Committee's acceptance of penalties against clients under Section 5C. Proposing minor changes to the section does not detract from the Committee's principled support to a prohibitionist legal regime, rejected by sex workers and progressive rights groups universally.

A missed opportunity
Given the polarised nature of debate on sex work law as well as the starkly opposite representations that it received, the Committee has cleverly walked the tight rope; neither favouring nor disfavouring any view or constituency. While the report is politically expedient, it is also an opportunity lost to honestly review and revamp a law that has little to show in 50 years of its existence.

Footnotes
1 The Committee comprises 28 members from both Houses i.e, the Lok Sabha and the Rajya Sabha and is chaired by Shri Janardhan Dwivedi.
2 Sections 5 and 6 of ITPA. Sections 372 and 373 of the Indian Penal Code, 1860.
3 Proviso to Section 5 and Section 6 (2 A) ITPA penalises offences related to children with seven years imprisonment.
5 International commentaries on the U.N Trafficking Protocol admit to the ambiguity in language and the problems that it may pose in convicting traffickers. See Annotated Guide to the Complete UN Trafficking Protocol at www.hr|awgroup.orq/resources/Content/ TraffickingProtocol.pdf. The Protocol provides flexibility to national legislatures to define trafficking in a manner that is consistent with domestic criminal law.

Tripti Tandon is the Senior Technical and Policy Advisor, Lawyers Collective HIV/AIDS Unit, New Delhi
How to make the Domestic Violence Act work for you

Part -II

This is the second and concluding installment of the frequently asked questions compiled and answered on the new legislation on domestic violence by the Lawyers Collective Women’s Rights Initiative from experience.

1) How long will the orders under the Act be in effect? They will be in force till such time as the woman requires it. She can ask for a discharge of the order by applying in court.

E.g. a woman has got an order for monetary relief from the court stating that she will get Rs. 5000/- a month from her husband. However, subsequently, both the woman and her husband agree on a mutual consent divorce with a settlement giving her a lump sum amount. She can then go to court and ask for an order stopping the payment of Rs. 5000/- per month as monetary relief under the new law.

Any of the parties, i.e. the woman or the man can, at any time, apply to the court for altering or modifying the order. A change in circumstances has to be shown. E.g. - an application can be made to alter the amount received as monetary relief.

2) What if the perpetrator continues to commit violence or violates the orders passed by the court?

Violation or non-compliance with the order of the court is a criminal offence under this Act. In such cases, the woman can complain to the magistrate, to the police or to the Protection Officer. The perpetrator can be arrested following such complaint.

Violation of an order of the court attracts imprisonment for a maximum of 1 year and / or a fine of Rs 20,000/-

The court can also initiate proceedings under Section 498A of the IPC in addition to the above.

3) What if the woman or the other party is not satisfied with the order?

In such cases either party may appeal against the order in the higher court. If the application has been filed in the Magistrate’s court then the appeal shall lie before the Session’s Court. All appeals have to be filed within a period of 30 days from the date on which either of the parties gets to officially know of the order.

4) Who can help the woman in getting the reliefs under the Act?

The woman can get assistance from the Protection Officer (PO) & the Service provider (SP) for getting the reliefs under the PWDVA.

Protection Officer (PO) is an outreach officer of the court (not yet appointed in most states), who can help a woman in making complaints, filing an application before the Magistrate for orders, helping her in getting support like medical aid, counseling etc., and making sure that the orders passed by the court are enforced. E.g. if a woman has been beaten up by her husband and needs to go to a hospital, she can approach the PO to arrange for transportation to the hospital and make sure that she gets proper treatment.

Service Provider is a NGO or other voluntary association registered with state governments. They provide assistance and support to the woman facing domestic violence. A SP will assist her by providing legal aid, medical care, counseling or any other support. Though there will be other unregistered NGOs providing support services to women, but the major difference between the unregistered SPs and registered SPs under the law is that complaints can be lodged only with the registered SPs.

E.g. if a woman has been thrown out of her house and needs shelter, then along with lodging a complaint, the SP will also take her to a shelter home where she can stay temporarily.

5) How can a woman get help if she faces violence at night or if she cannot immediately go to the police or PO?

In such cases of emergency, either the woman herself or any other person on her behalf can give information of the incident of domestic violence to the PO or SP even through email or telephone. This can be done anytime during the day or even at night.

The PO or SP will then herself go to the place where the incident has taken place with the police and record the DIR. They will then immediately present this DIR to the Magistrate for an immediate order to make sure that the woman is safe and violence is stopped.

The PO, SP and police are under a duty to assist and
protect the woman in such emergency situations, and she does not have to go to them to lodge a DIR.

6) How can a woman get the orders from the court?
Step 1 - Information.
A woman or any person on her behalf can give information of domestic violence to the PO or to the Police. If the informant is not the woman who is facing domestic violence, he/she must sign the information provided. A complaint can be filed based on the information provided only if the woman herself wants to initiate legal proceedings.

Step 2 - Complaint.
A woman can lodge a complaint of domestic violence with the PO, the SP, and the Police or directly with the Magistrate.

This complaint is made in the form of a Domestic Incident Report. (If a woman wants to file a complaint under criminal law, she has to lodge an FIR. But since this Act is a civil law, she must file her complaint as a Domestic Incident Report).

A Domestic Incident Report (DIR) is the official format in which the complaint will be registered. This is an extremely simple format, which is available in Form I in the Rules of the Act. A woman can get this Form I from police stations, POs or SPs and fill it herself.

If the woman cannot fill the Form herself, the PO, SP or Police will convert her complaint into this Form I as a DIR and explain the contents to her.

The PO, SP or Police will then send the complaint (DIR) to the Magistrate/court.

2. Complaint (to be converted into DIR as provided in Form I of Rules)

Step 3 - Application.
An application for reliefs under PWDVA to the Magistrate can be made by:

a. The woman herself, directly to the court.
b. The PO on behalf of the woman, if she desires.
c. Any person on behalf of the woman, if she desires.

An application asking for reliefs (orders passed by court) can also be filed in existing legal proceedings i.e. divorce cases, maintenance cases etc.

E.g. If there is a pending divorce case between a woman and her husband and she has been facing violence from him, she can ask for a Protection Order in the divorce proceeding itself. She doesn't have to separately approach a Magistrate under PWDVA.

Step 4 - Proceedings in court.
After the filing of application for reliefs before the court, the following can take place:

a. The Court shall then fix the next date of hearing in the case three days after the application has been filed.
b. If the woman is facing grave danger, the court can pass an ex parte interim order in her favor and then fix the next date of hearing.
c. The other party shall get notice of the proceedings within 3 days and asked to attend court.
d. In case, the other party does not appear before the court on the date mentioned, the court can pass an ex parte order in favor of the woman.
e. The court can also pass an interim order in favor of the woman.
f. The other party shall be directed to respond to the woman's application in writing, i.e. by filing a "written statement". After the filing of the written statement, the parties shall be directed to present evidence and argue their case in court.
g. At any stage of proceedings before the court, the court can direct counseling of either/both parties. The court can at any stage take the assistance of family welfare experts. The objective of the counseling is to prevent any further acts of violence from being committed. A settlement can also be attempted at by the counselor, at the woman's request.
h. If a case of domestic violence is proved, the court can pass an order providing the woman with the relief she had asked for in the application.

The entire court proceedings should be completed within 60 days of filing the application.
**Step 5- Passing of order.**
Within 60 days of the filing of the application, the court can pass the orders asked for by the woman. In case the court thinks that there is the need for any other kind of direction to make sure that the violence is stopped, it can also give such kind of direction in addition to the orders that she had asked for in the application.

**Step 6- Discharge/Alteration/Modification of order.**
The order passed by the court will continue to be in force till the woman herself files another application asking the court to discharge the order, as explained above.

E.g. Asma has successfully got a Custody Order from the court for temporary custody of her son. But in the meantime, there was also pending litigation for permanent custody under guardianship law. The court in that case has given her permanent custody of her son. She can now go to court and ask for discharge of the temporary custody order under PWDVA.

Either party can also ask for alteration or modification of the orders passed by the court.

**Step 7- Appeal**
Either party can appeal against the order passed by the court to a higher court within 30 days from the date on which they received official information of the order.

**Post-Order Proceedings**

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<tr>
<th>Order</th>
<th>Appeal (Within 30 days) (Before Sessions Court)</th>
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<td>Application for Alteration/Discharge</td>
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**Step 8 Violation of Order of Court.**
If the order passed by court is violated by the other party, a woman can report to the PO and then file a complaint before the court. The violator can be immediately arrested, as it is a criminal offence.

The only provision for arrest under this law is where the other party has violated the court order, and the violator is arrested only then.

Under the PWDVA, either of the parties can be directed to undergo counseling by the court. There can be no counseling, after the application has been filed, without an order from the court.

A counselor shall be appointed from the "List of counselors" prepared by the Protection Officer. This list will comprise of representatives from registered service providers or other organizations who have experience in providing counseling.

The objective of counseling is to get an undertaking from the perpetrator to stop the violence and harassment. The perpetrator of violence will not be allowed to justify his acts of violence at the stage of counseling.

If the woman wants, then she can request the counselor to settle the matter.

If the settlement is arrived at, then the counselor will go back to the court with the terms of settlement. The court then shall satisfy itself that the settlement has not been forced on the woman. The court can then uphold the settlement and pass appropriate orders.

**8) What can a woman do to get relief from court if there is no Protection Officer or registered SP in her area?**
A woman can go to the police to file a criminal complaint under Section 498A of the IPC.

She can also request the police to record a DIR under PWDVA at the same time and forward the same to the Magistrate.

If the police refuse to file a FIR or a DIR then the woman can directly approach the Magistrate's court with the following:

- A "private complaint" requesting the court to direct the police to register the FIR.
  And/or
- She can file an application under the PWDVA. For this she can fill a DIR herself and attach it to her application.

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  And/or
- She can file an application under the PWDVA. For this she can fill a DIR herself and attach it to her application.

If the woman already has a pending case, then she can fill in an application under the PWDVA and file it as an "Interim Application" in the pending proceedings.

E.g.- Savitri has filed a civil case for injunction against her husband, preventing him from throwing her out of the shared household. This case is pending in court. If she faces domestic violence from him while the case is going on, she can fill out an application form under the PWDVA for a residence order and file it in court as an "interim application".

![Image](image-url)
Past conduct of employee irrelevant in departmental proceedings

R.S.S Prasad, employed as a mechanic by the A.P.R.S.T.C ('the Corporation'), was issued a charge-sheet for having stolen certain items of the Corporation's property while on duty. The Enquiry Officer, on completion of the domestic enquiry into these charges of misconduct under the APSRTC Employees' Conduct Regulations, 1963, submitted a report holding Prasad guilty of all the charges. The Depot Manager then issued proceedings for removing him from the services of the Corporation.

Aggrieved by the order of his removal from service, Prasad raised an industrial dispute. The Labour Court concluded that the punishment of removal from service was justified in his case as the charges of theft against Prasad were proved. Prasad then filed a writ petition in the High Court of Andhra Pradesh. Though the single judge observed that the charges of theft were correctly proved against Prasad, he held that the punishment of removal from service was disproportionate to the gravity of the misconduct. The judge observed that the Labour Court should have exercised its power under Section 11-A of the Industrial Disputes Act and held that since Prasad had put in 12 years of unblemished service, he deserved a lenient view in the matter. The Corporation preferred a Letters Patent Appeal before the Division Bench of the High Court which was dismissed, and Prasad's reinstatement with continuity of service but without back wages was ordered. The Corporation thereafter filed an appeal before the Supreme Court.

The Supreme Court held that the High Court's interference with the order of removal of the Labour Court, in its extraordinary jurisdiction under article 226 of the Constitution, was unwarranted. The Court noted that the High Court had failed to appreciate that the delinquent employee categorically admitted that he had stolen the property of the Corporation. The Supreme Court held that the past conduct of an employee is irrelevant in departmental proceedings and remarked that once an employee has lost the confidence of the employer, it would not be in the interest of the employer to retain that employee in service. The punishment of removal was held to be just with regard to the proved misconduct of theft. In such cases, there is no place for generosity or sympathy of the judicial forums to interfere with the quantum of punishment. The Supreme Court allowed the appeal, confirming the order of removal from service passed by the Labour Court.

No automatic invocation of Atrocities Act and when delay in lodging FIR is fatal

The prosecutrix belonged to the Pardhi caste. She had come to her parent's house in Kewad village a day before the date of the occurrence of the offence. On the day of the occurrence, her parents and brothers were away when she returned home after working in the fields. One Ramdas asked her to come out, and when she refused to do so, he dragged her to a distance of about 500 feet from her house where she was raped by Ramdas, Ashok and one other man. (Ramdas and Ashok reportedly had a land dispute with the prosecutrix's father.) She hollered for help and one of her uncles, who stayed nearby, was threatened with dire consequences when he tried to come to her rescue. She was also warned against reporting the incident to anyone.

She returned home at midnight and the next day went to Kelgaon where, along with her sister and two others, she reported the offence at the Kaj police station. The police, however, did not record the information or take any action on her complaint. In a couple of days thereafter, the prosecutrix, supported by her family members, went to the police station at Beed and lodged a report about the incident. But it was only some days later, i.e. on the 18th of January that a FIR was lodged.

In July 1998, the VI Additional Sessions Judge, Beed convicted the appellants under Section 376 IPC for raping her but a separate sentence was not imposed under Section 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Subsequently, the High Court dismissed the appeals preferred by the appellants challenging their conviction under Section 376 of the IPC.

In the appeal filed before the Supreme Court, the issues were:

1. Whether the case attracted S. 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 which requires that, if an accused
not belonging to an SC/ST commits an offence under the IPC (which is punishable with imprisonment for ten years or more) on a person on the ground that such person is a member of a SC/ST, s/he shall be punishable with imprisonment for life?

ii) Whether there was a delay in lodging the FIR and, if so, whether the evidence was sufficient to explain the delay?

The Supreme Court observed that there was no evidence to prove the commission of the offence under section 3 (2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989. The mere fact that the girl belonged to a Scheduled Caste does not automatically attract the provisions of the Act.

The Supreme Court observed that there was a delay of 8 days in lodging the FIR. However, the Court noted that mere delay in lodging an FIR is not necessarily fatal to the prosecution's case and such delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact. The Supreme Court observed that especially in the case of sexual offences, there may be initial hesitation on the part of the victim to report the matter to the police since it would affect her family life and her family's reputation or cast a stigma on her for the rest of her life.

In this matter, however, the SC came to the conclusion that the prosecutrix' evidence on the question of delay in lodging of the FIR was not satisfactory. The Court noted that in her deposition, the prosecutrix tried to conceal relevant facts from the court by not disclosing about the initial report lodged by her at the Police Station since it related to a non-cognizable offence. The Court held that the second report lodged by her after a few days relating to the offence of rape raised suspicions as to its truthfulness.

The SC allowed the appeals, setting aside the conviction on benefit of doubt and directed the appellants to be released forthwith.

**Ramdas and Ors. Vs. State of Maharashtra**
**AIR 2007 SC 155**

**Rape of a minor: "A momentary lapse"**

Amrit Singh, 31 years of age, was accused of the rape and murder of Raj Preet Kaur, a minor. The Trial Court found the accused guilty on both counts and sentenced him to death under sections 302 and 376 of the Indian Penal Code. The High Court of Punjab and Haryana upheld the decision and Singh filed an appeal in the Supreme Court.

The issues before the Supreme Court were:

1. Whether Amrit Singh could be convicted and sentenced to death for the offences based on the evidence put forth against him?

2. Whether he could be compelled against his will to submit the specimen of his hair under sec. 5 of the Identification of Prisoners Act 1920 for evidentiary purposes?

The Supreme Court observed:

1. The girl was raped on the cotton field of Singh himself. If an outsider had committed the crime, the deceased would have definitely cried out. However, Singh was her neighbour and known to her as a person of trust. She was clearly allured by Amrit Singh to accompany him in his own field where the offence took place.

2. However, the girl died as a result of excessive bleeding from her private parts and not due to the injuries on her neck or strangulation. Although, the possibilities of assault on her person cannot be ruled out, it would be improper to hold that Amrit Singh killed her intentionally.

Allowing the Appeal in part, the Supreme Court held that:

1. Imposition of death penalty was improper on the part of the Sessions Judge and the High Court in a case of this nature as there was no intention on the part of Amrit Singh to murder Raj Preet Kaur. Even otherwise, although the offence was undoubtedly heinous, it was held that this case did not qualify as a 'rarest of rare cases' to warrant such a punishment.

2. The commission of the offence could have been the result of a "momentary lapse" on the part of Amrik Singh on seeing a lonely girl in a secluded place. The accused had no pre-meditation for the commission of the offence.

3. As regards the issue of providing a specimen of hair as evidence, the Supreme Court disagreed with the State Counsel on the applicability of the provisions of the Identification of Prisoners Act, 1920 thereby declaring them to be inapplicable in such a case although not ultra vires the Constitution. The accused cannot be made a witness against himself against his will as laid down in Art 20(3) of the Constitution. The Supreme Court allowed the appeal in part and reduced the sentence from death penalty to rigorous imprisonment for life.

**Amrit Singh v. State of Punjab**
**AIR 2007 SC 132**
The mirage of justice in the colonial construct of international law

Gujarat Genocide of 2002

From 28th February to 2nd March 2002, mobs led by Bajrang Dal and VHP activists, attacked and mercilessly massacred people, and ransacked houses of the Muslim minority community in 19 districts of Gujarat. Derogatory slogans against Islam were shouted, mosques were attacked and copies of the Kuran were burnt. Widespread incidents of rape occurred as an instrument to humiliate the Muslim community. The violence was specifically targeted at Muslims, with military precision. Even MLAs of Gujarat actively participated in the violence with the full cooperation and protection of the state police force and the Municipal authorities.

It is estimated that across Gujarat over 1,100 Muslim owned hotels, homes of not less than 100,000 families, over 15,000 small and big establishments, around 3,000 hand carts, and over 5,000 vehicles were badly damaged or destroyed. 78 mosques, 71 shrines, 47 madrassas and grave yards were destroyed and 9 were converted to Hindu uses.

International law: cause or solution?
For progressive international lawyers, the constitution of the International Criminal Court is seen as a moment of triumph towards a more effective means to prosecute the international crime of Genocide. The definition of the crime itself under the Genocide Convention of 1948 is seen as universal whilst international law is viewed in the dominant discourse as an adequate legal resource to render justice to the victims of genocide.

The standard account
The standard account of the Gujarat Genocide identifies as its cause, the history of communal tension in Gujarat between the Hindu and Muslim community since the partition of India in 1947 which was heightened by the Hindu Right wing party, BJP coming to power in both the state of Gujarat and the Centre just prior to 2002. Their mobilization of people from across the country for the construction of a temple in Ayodhya, a city in northern India with mythological significance to Hindus resulted in scores of people traveling without reservation in over crowded trains across the country. Several incidents of unruly behavior by these mobs were reported. It is believed that on 27.2.2002 these mobs which were returning from temple construction work misbehaved with members of the minority community at the Godhra Station which is a Muslim majority area resulting in clashes and in retaliation by the minorities and the train was set on fire killing 58 Hindu passengers. It is believed that the state Government used this incident to provoke the sentiments of the Hindu majority leading to the genocidal violence by mobs, which were supported by the police authorities.
On account of the complicity of the state and central government in the violence there was a complete failure of the criminal law machinery and no action was taken either to prevent or prosecute the violence. Both the police and the judiciary actively suppressed evidence and enabled the perpetrators to go scot free. The nature of the adversarial system of litigation itself was exposed as inappropriate in instances of mass violence such as genocide. Human rights activists, lawyers and civil society viewed the Gujarat Genocide as an individual act of atrocity by a deviant state and argued vehemently for International law as the hope for justice and campaigned actively across the world for the appointment of an adhoc international tribunal like the one for Rwanda to prosecute the cases in view of the fact that despite having ratified the Genocide Convention, no municipal law had been enacted in India to implement its provisions. India was also not a signatory to the Rome Statute for the ICC. Thus despite the Security Council ignoring these cries for justice from India, the dominant opinion continues to blame the conflict on internal forces primarily based on certain religious tensions, and sees the international law remedy as adequate.

The dark side of international law: The creation of conflicting identities

However, a deeper look reveals a much more complex and unpleasant picture. Society in India was organized in a complex overlapping of various identities of language, caste, region and religion. Religion was being only one of the many ingredients that formed the larger identity. As Aditya Mukherjee has argued in his essay "Colonialism and Communalism in Anatomy of Confrontation, The Babri Masjid Ram Janmabhoomi Issue", a view of society as divided into the homogenous religious communities with common and mutually exclusive, political, cultural and economic interests, is a modern phenomenon, which took root halfway through British colonial presence in Indian- in the second half of the nineteenth century.

The fact that people in India did not have conflicting identities based on religion is evident from the character of the national movement for freedom from the British Raj under the leadership of Mahatma Gandhi whose basis was not competing indigenous or religious identities but a secular anti-imperialist ideology. In fact, even as far back as 1857, the first war of Indian independence was characterized by Hindu-Muslim solidarity against the British.

The very idea that society is organized in homogenous religious/linguistic communities having shared common social, economic or political interests that are different from, and antagonistic to, the interests of those belonging to other religious/linguistic communities first gained currency after World War I from a wholly European experience that defined international law at the time.

While colonies were not recognized to have the right of self determination vis-a-vis the colonizers, the local population within the colonies was believed to be bound within religious identities that were not capable of mutual coexistence based on these imported notions of self determination prevalent in Europe at the time. These notions found no basis in the history or social organization of the colonies.

Based on these prevailing notions of international law, the British assumed that the religious identity of Indian people dominated their entire social existence subsuming other identities (such as class, linguistic, regional, cultural, caste and national identities). The British colonizers thus worked towards creating and consolidating religious identities as all homogenous and conflicting identities. These conflicting identities were promoted by the colonial government to weaken the national movement in India which was mobilized on secular and anti-imperialist lines. The moral legitimacy of colonisation was weakened by the ideas of self-determination prevailing in the dominant discourse in Europe and the justification of colonialism to reign in India was met by the creation and projection of such conflicting identities.

The methods adopted by the colonial government included the apportioning of everything on religious lines, including jobs in the civil service/military service, seats in educational institutions, membership of the legislature, even membership of political parties etc. All government works were organized around identification of people with their religious identity. This encouraged people to identify themselves with this identity and as necessarily, in competition with other religious categories.

The creation of communal electorates played an important role in forcibly splitting people with common interests into separate constituencies. Ethnic violence was left unchecked by the colonial administration which cracked down on nationalistic resistance.

Rise of the RSS

The origins of right wing Hindu nationalism and the Rashtriya Swayamsevak Sangh (RSS), which is the mother of the other Hindu right wing organizations such as the Bharatiya Janta Party (BJP), the Vishwa Hindu Parishad (VHP), the Shiv Sena and the Bajrang Dal, lie in the colonial rule in India. The 1920s saw the Indian national movement gain immense momentum and mass support. The non-co-operation movement, under the leadership of Mahatma Gandhi, gained in popularity and had a serious impact on British rule. Threatened by the
strengthening of the anti imperialist forces, at this time with the tacit support of the colonial government, the RSS, the first Hindu Nationalist organization, was set up in 1925. Its mandate did not include an anti imperialist agenda, in fact, the colonizers were seen as allies and the Indian Muslims as the "other" or the enemy of a Hindu Nation. The founders of the RSS, H.D. Savarkar, Dr Hegdewar and Golwalkar, openly glorified the ideology of fascism and Nazism and criticized the Congress Party leadership for opposing it. The RSS vision of the Indian nation as seen in their writings in 'Our Nationhood defined' glorifies Hitler's fascist ideas. Despite the fascist character of this book, the British authorities did not ban it in India since such literature, while being perceived as dangerous in Europe, was essential for the imperialist policy of 'divide and rule' in India.

For these Hindu Nationalist forces independence was never a goal and they had always worked in tandem with colonial rule against the national movement, directing their cadre not to participate in anti imperialist activities and urging them to conserve their energy to fight the Muslims.

Self determination's dark side

Post independence India chose to constitute itself as a secular democratic Republic. The aspirations of the Hindu right wing to have a 'Hindu Rashtra' had remained unmet. Thus the RSS established first the Jan Sangh and then the BJP as its political wing and the VHP as its international organ and continued to work on the agenda of achieving self determination as a Hindu Nation. It is important here to observe that pre colonial social organization of the Hindus was far from homogenous or unified. The Hindu community did not have even homogenous socio-economic identity, leave alone a unified political identity.

In fact, even the demand for Partition and the proposal of the two nation theory was made by Jinnah squarely on the grounds of international law and not on the basis of there existing any popular demand or cultural or historical justification for the same. In fact there was no consolidation of the Muslim vote with the Muslim League, since the Muslim League had fared very badly in the 1939 elections in the Punjab. "By all canons of international law," Jinnah told Gandhi during his talks in September 1944, "we are a nation.....with our own distinctive culture and civilization, language and literature, art and architecture, names and nomenclature, sense of value and proportion, legal laws and moral codes, customs and calendar, history and traditions, aptitudes and ambitions." [reported in Wolpert, Jinnah of Pakistan, Oxford University Press].

Therefore the popular critique of the right to self determination has been that it denies the rights of minorities, who are perceived to have different secular interests from the majority though they are geographically intermingled and socially integrated in terms of language, food habits and history as well as economically interdependent. The dark side of self determination, in the Indian context, has been the creation and legitimatization of the idea of a racial majority necessarily having common social, economic and political interests and therefore automatically being entitled to self determination on this basis. This legitimatization by international law was in fact complicit in the construction of conflicting identities that had never existed in India before colonialism, and this is one of the causal factors for communal violence in India including the 2002 genocide in Gujarat.

Human Rights regime and conflicting identities

The shift of International law since 1945 from minority rights to human rights with a view to remedy what was perceived as the failures of the post-WWI international regimes has only led to what human rights activist Rajni Kohari describes as depoliticisation of the issues and deflection of attention from the structural sources and patterns of the violations by focusing narrowly on particular instances of atrocities committed by the state (Human Rights, Political Democracy and the Survival of Cultures, Rajnai Kohari etal, United Nations University Press, 1987). This is one of the primary reasons for the failure of the Genocide Convention and the international legal regime to deliver justice in genocides that occur in post-colonial societies.

After the communal violence broke out in Gujarat in 2002, almost instantaneously there rose a debate on whether what Gujarat had witnessed should be termed a riot or genocide.This debate appeared to imply that a riot was less abominable, or required a lower stringency of legal action, than genocide. Most importantly, if it were termed a riot, it would not fall within the purview of international law as laid down under the Genocide Convention of 1948.

The Holocaust yardstick

The particularization of genocide, as defined under the Genocide Convention as a special and more abominable offence, has itself become a tool for those engaged in the commission of genocide, to seek a defence in language. Strictly in terms of the definition of genocide under the Genocide Convention, a communal riot, even if organized and perpetrated by private individuals, would constitute genocide. However, due to the colonial construct of the term genocide, an unwritten necessity is superimposed on the written law and that is its need to conform to the experience of the Holocaust in Germany. Every targeted attack against a religious, racial or linguistic minority is judged by the Holocaust yardstick, and is accorded the stamp of genocide depending on
how like or how unlike the Holocaust it was. Similarly, what are in essence semantic debates, have drawn an ambiguous but definite moral distinction between suppression by governments of so-called "legitimate" struggles for self-determination as genocidal, while the reining in by national governments of "terrorist" or "secessionist acts" are seen as protection of national sovereignty. Chechnya in Russia, the Kurds in Iraq, Israel in Palestine and Darfur in Sudan are some contemporary examples of the above. Violence is either morally justified or rendered culpable as genocide depending on how the "international community" chooses to define the violence. This process of definition is in itself a political exercise and the source of considerable injustice.

The Genocide Convention of 1948 was clearly drafted keeping in mind only the experience of the Holocaust in Germany and was not even envisaged to apply to the colonies, or even to acknowledge their similar experience at the hands of their colonizers. What characterized the Gujarat Genocide and what distinguishes it from the Holocaust in Germany was the mass and widespread participation of members of the Hindu majority community of all ages, ranging from young boys of 13 to old people of 60 including women, who not only participated in the brutal violence but still feel it was justified. The other distinguishing feature was the lack of official organization or direction of the violence unlike Hitler's Germany that saw acts of commission by the state in killing and torturing Jews. The genocide in Gujarat saw the tactical omission by the state of bringing the violence under control and its deliberate acts of facilitating an atmosphere charged with religious animosity. The third and most distinct difference is the fact that after the genocide, the victims and perpetrators are forced to live together and remain economically interdependent. And lastly, the continuing moral legitimacy of the right of the Hindu Rashtra to dominate society and resort to the ethnic cleansing of Muslims to achieve this goal, that marks the post-genocidal period, unlike the delegitimizing effect that the victory of the Allies had against German fascism in World War II. This continued legitimacy cannot be tackled by the existing international legal regime that is based on an essential criminal law doctrine of punishment as a deterrent for deviant activities, particularly when such acts are not perceived as deviant but patriotic and are legitimized in the popular psyche. The Genocide in Rwanda bore greater similarity to Gujarat in both its causes and its manifestation.

The crime of colonization

The failure of international law to provide justice in the context of the Gujarat genocide is on account of its imperialist character. International law sees itself as the guardian of the human rights of the individual (international citizen) against despotic, dictatorial or autocratic rule. However, in essence, international law itself has been an instrument of camouflage for one of the worst ongoing human rights violations in the form of colonization. International law, by its continued legitimization of the right to self-determination on racial grounds, has led to the recognition of several post colonial societies as nation states. These nation states are predisposed to genocidal conflict on account of their populations defining themselves in mutually conflicting racial identities that are an artificial construct of colonial rule. While Nazi Germany has been made to account for its crimes against humanity and South African apartheid rule has been exposed through truth commissions, the crime of colonization has been decriminalized by a refusal to even acknowledge it as a crime under International Law.

Facilitating a forum and a language to expose the colonial origins of the Hindu Right wing identity would itself delegitimise such an identity in popular perception. One of the primary reasons for the failure of international law in preventing recurrence of genocidal violence or dispensation of justice is its prosecution orientation, with no mechanism for either prevention or post conflict reconstruction of a society that consists of both the prosecuted and the prosecutors. Thus it is imperative to look at the particularity of every episode of injustice with honesty and in its correct historical context and then devise a realistic and long-term solution for dispensation of justice. The myth of the power of the law, and its ability to render uniform outcomes thereby earning it the title of being universal, has to be put to rest.

Nandita Rao is an advocate practicing in Delhi and is a consultant with the Civil Rights Unit, Lawyers Collective.
“You can’t just ban child labour without taking into account the repercussions...”

Interview with child rights activist Rita Panicker

How does child labour affect adult labour?
Children don’t work in areas where adults work. Two decades ago, the perception was that removal of children from the labour force would facilitate the occupation of those jobs by elders. The equation cannot be that simple. Child labour is a symptom of a larger social malice prevalent in this country—poverty. People from a middle class background don’t send their children to a municipal corporation school because these schools don’t deliver quality education. A poor educational system for the poor is a violation of a child’s right and complete injustice to the poor. Enrolling children in schools does not ensure that the child will not drop out. We do not have an effective public distribution system for people living below the poverty line or a good primary health care center or even facilities like potable water.

Adults should be given minimum wages for the survival of their families. That is the reason why everybody in a poor family works. Unless alternative livelihood options are created in areas where there are many child labourers, the situation will not improve. The state should actively engage itself in those districts with the panchayats. A multi pronged approach should be adopted.

The Central Government’s notification banning employment of children as domestic workers and as workers in roadside eateries came into effect on October 10, 2006.

Rita Panicker from Butterflies, an NGO in Delhi which imparts nonformal education and health care to street and working children speaks to Sijo Merry George about the notification and suggests measures to address the problem of child labour.

Recently, Union Minister of State for Women & Child Development, Renuka Chowdhury, said that the ban on child labour should be eased to allow children to pick up traditional crafts and skills such as carpet weaving within the family structure. She even said that international laws banning purchase of products of child labour are insensitive to regional issues and that India is a signatory to them without thinking through the issues properly. What is your response to this?

Schools should be such that if a child is coming from an artisan family then he or she should have a choice to engage in craftsmanship to encourage jobs and entrepreneurship. Schools should provide multi-exit systems.

As far as the second part of the question is concerned, in some way or the other children are involved in manufacturing products, be it clothes, food etc. So where would you draw the line? It should be ensured that these children are not working in hazardous conditions which would prove harmful to their health, physically and psychologically. Every child should be given access to satisfactory education. I disapprove of differential setup of schools. Elitist schools procure subsidies or grants and even land. A PIL was filed in court against these schools stating that children from the working class should also
be given this quality of education. In response, these schools opened their doors but again only in the afternoons when children from elitist families had left. The rationale was that it would be traumatic for children from weaker sections of the society to mingle with the elitist class because the latter have so many things. This is absolute discrimination. We don't need to have fancy uniforms or shoes as part of the school structure. We can have class-neutral rules. If children from all strata of society are allowed to mingle, children will understand the meaning of equality. Why should a poor country like ours need such an elite system of education? We should have public schools where children from all strata of society study together.

What is the government policy on child labour in India? The Child Labour (Prohibition and Regulation) Act, 1986 envisions abolition of child labour and regulation of the work force along with providing education. The Ministry of Labour proclaims that their job is only to punish employers who violate this law and engage child labourers.

They can't just ban child labour without taking into account the repercussions. The Ministry of Labour should have discussed the matter with other ministries like the Ministry of Women and Child, the Department of Education, the Ministry of Human Development and the Ministry of Panchayati Raj for a multi-sectoral viewpoint.

Butterflies and Human Rights Law Network along with other agencies came together and drafted a plan of action, which was presented to the Labour Ministry and even to the Chief Minister of Delhi for discussion. We have not yet received any feedback from them.

Why is it so important to include jobs of children working as domestic servants in the 'hazardous' category? There are a staggering number of cases where children employed as domestic helps are abused. Butterflies had filed a writ petition a few years ago when we found 8 to 9 year old children being hired and exploited for long hours. There have been cases where they were physically, mentally and sexually abused. It is a great move to include jobs of children working as domestic servants in the 'hazardous' category but the Government does not have a plan of action.

In our writ petition we have demanded regulation of the placement agencies in the cities. There are over 2000 placement agencies in Delhi itself, which arrange placement of women and children in middle-class homes. None of them fall under the Labour Department. These placement cells are freely exploiting these children and parents do not even know what's happening. We demanded licensing of these placement agencies under the Labour Department. There must be a contract of labour even in cases of young adults.

Will the latest ban of the Ministry of Labour and Employment be conducive to higher literacy rates among children? The notification that came into effect from October 10, 2006 prohibits employment of children as domestic servants or servants in eateries. For most children, work is an economic necessity. Officials hope that the new ban will protect underage workers from psychological and sexual abuse and strenuous working conditions but with large families to support and no alternative means of income in sight, school is the last thing on their mind.

The government now plans to set up residential schools in every district for child labourers. Do you think this will be a fruitful move? The government started tribal residential schools all over the country in the 1950s. Residential schools are not the answer to child labour. The answer is to attack poverty and to work out alternative livelihood options. Let there be minimum wages, minimum working hours, fixed leave. Residential schools alienate poor children from the other children and they deprive them of suitable education. What will these children do after high school? Child health care centres, counseling centres, creche facilities etc should be set up in the school premises or in the panchayat office. Panchayats should be empowered instead of creating residential schools.

What was the situation after the ban was introduced? After October 10th, for two weeks, many kids working in road side eateries were asked to leave. Raids were also conducted by the police. Our resident center was also approached by the police for providing them with shelter but we asked them to take them to the Labour Department, who had no plan of action in place. There were many people who were not even aware of the ban. Many NGOs came together and prepared a plan of action and we argued that there should be an awareness campaign. Nothing has happened pursuant to that.

Under the amended Juvenile Justice (Care and Protection) Act (JJA), 2006 the penalty for publishing or broadcasting any information disclosing the identification of 'juveniles in conflict with law' or 'children in need of care and protection' has been raised to Rs.25,000. What is your response to this?

The penalty should have been increased a long time ago. We regularly see media houses violating the JJA. Even if the incident is reported in favour of the child, the

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The Constitution of Bangladesh provides that during the interim period (between dissolution of one Parliament and the constitution of the next Parliament) a Non-Party Caretaker Government, under a Non-Party Chief Advisor, would exercise executive authority on the advice of a Council of Advisers. A neutral non-party caretaker government is meant to ensure that the state institutions cannot be used by the outgoing Government to serve its partisan interests or to abuse them as instruments for "election engineering" i.e. manipulation of the election results.

On 28th October, 2006, following the completion of the five year tenure of the Begum Khaleda Zia-led Bangladesh National Party (BNP) government, President Iajuddin controversially assumed leadership of the Caretaker Government. His allegiance to the outgoing government rapidly became all too evident: he failed to work collectively with his council of advisers, undermining the constitutional spirit and appeared intent on rail-roading through the elections scheduled for 22nd January, despite the Election Commission admitting that the electoral roll was pitted with error.

Battle shifts to the High Court
In the light of this, three writ petitions were filed in November before the High Court at Dhaka by representatives of various political parties belonging to the Awami League-led 14 party Alliance challenging the assumption of the office of Chief Advisor by President Iajuddin, challenging the Chief Advisor's powers to take decisions unilaterally without consultation with the Council of Advisors, and challenging the declaration of the election schedule to conclude in the holding of elections on 22nd January, prior to the correction of the electoral rolls.

On 26th November, the Attorney General (AG), Mr. AJ Mohammad Ali, prayed for one day's adjournment in order to prepare for the hearing, and in the meantime reportedly met President Iajuddin Ahmed later at night. The next day the national press reported that the Election Commission, following discussions with the President, had declared the election schedule, despite the pendency of a writ petition on that very issue.

Controversial 'stay order'
On 29th November, arguments were advanced by both the sides and the Court was due to pass an order on the next day. On 30th November, however, the AG submitted an application for the formation of a larger bench for hearing of the case before the issuance of a Rule, given the questions of utmost public importance involved. The Court queried whether the AG could
apply for a larger bench at this late stage of the initial hearings, noting that in any event such an application could be made for the hearing to be conducted before a larger bench after issuance of a Rule. The AG claimed that there was an earlier decision where the Appellate Division had stayed the proceedings of a case to constitute a larger bench and he undertook to produce this order before the Court at 2:00 p.m., after the lunch recess. The AG returned to the court at 2:00 p.m. accompanied by several senior lawyers affiliated with the BNP and personally handed over to the Judges a "stay order" issued by the Chief Justice, suspending further hearings of the writ. The Court then rose.

The petitioners' lawyers - led by Dr. Kamal Hossain, Mr. M. Amir-ul Islam, and Mr. Rokanuddin Mahmud - immediately rushed to the Chief Justice's chamber to try to meet him to seek revocation/clarification of the order.

Violence breaks out
As the news spread that the hearing of the writs in the High Court Bench had been abruptly suspended, and that the Chief Justice had left the Supreme Court premises, protests broke out in Court. Reportedly, the Chief Justice's chamber and courtroom were broken into, and other courts were interrupted while conducting hearings by persons kicking at their doors or entering the rooms and shouting abuse at the judges. A four wheel drive vehicle of a former State Minister parked in the Supreme Court premises was broken and set alight. Riot police were deployed and lawyers and judges were forced to take shelter in their rooms waiting for the storm to pass. Later that day, the Supreme Court Bar Association announced its boycott of the CJ's Court.

I did not see the violence myself, but the descriptions and the later images broadcast on television were enough for a sense of devastation that this could happen to the Supreme Court, not just our workplace but the one institution which still remains a bulwark (however battered) for the protection of our basic rights. At the same time, it seemed that the method and manner of obtaining the CJ's stay order constituted the most brazen attack on the workings of the higher judiciary, and on the fundamental right to seek protection of the law in cases of alleged violations of rights. As such it would surely be the ultimate demonstration for those still intent on seeing no evil and hearing no evil regarding the immediately departed coalition government's actions in seeking domination over the Supreme Court itself (admittedly building on such interference by other administrations - a story for another day) and indeed of its apparent influence over key constitutional posts including those of the AG and CJ.

And it seemed that finally the role of those apparently influencing and constraining the Court's proceedings at the behest of what we politely like to call 'certain vested interests' would be exposed to the country at large, and not remain an open secret for lawyers alone to suffer.

Response of the Bar and the Supreme Court
The Supreme Court Bar Association (SCBA) at its first press conference after the incident, condemned the violence on the premises, but also questioned and condemned the actions of the CJ in passing this unprecedented order. The senior lawyers appearing for the petitioners also held a press conference, clearly condemning the violence, noting both that an inquiry should be held and those found responsible punished, and also that with regard to the stay order, no notice of this application had been served on the petitioners, nor had any of the usual procedures applicable been followed. They pointed out that the manner in which this order had been passed was clearly obstructing the course of justice and the enforcement of the Constitution, and that such an order was unprecedented. They also highlighted that the Attorney General clearly appeared to have acted ultra vires since his actions were apparently prompted by the out going Government (in the form of the Law Minister instructing the AG and accompanying him to the CJ) and could not have been authorized by the Council of Advisers (who had had no opportunity to consider or authorize any of the AG's actions).

Thus, the actions involved in obtaining the 'stay order'
manifested open and persistent defiance of the Constitution in order to deprive the nation and its citizens of a free and fair election in accordance with the safeguards provided in the Constitution, namely, that the election should be held under a Non-Party Caretaker Government and a truly independent Election Commission.

Lawyers charged with sedition
That evening, many (but not all) judges of the Supreme Court attended a meeting at the CJ's residence and adopted a 'resolution' condemning a 'group of lawyers and their flunkies' for the violence, and stating that they would not sit in Court until the SCBA and the Bar Council tender their apology, and also calling on the Appellate Division to draw up charges of contempt and sedition against those responsible. That evening the Court Keeper filed a FIR with Shahbagh Police Station accusing nine lawyers of sedition, unlawful assembly, trespass and criminal damage. The persons accused are all practicing lawyers of the Supreme Court, namely Senior Advocate Dr. Kamal Hossain (a former President of the Supreme Court Bar Association as well as a former Foreign Minister), Senior Advocate Mr. M. Amirul Islam (current President of the supreme court Bar Association and a former MP), and Mr. Rokanuddin Mahmud, as well as Mr. Subrata Chowdhury, Mr. Subrata Saha, Mr. Khairuzzaman, Ms. Tania Amir, and Mr. Aawsafur Rahman.

Over the next three days the BNP and its affiliate organizations (including its youth wing, and a lawyers group) held rallies demanding that those responsible for the violence be prosecuted, naming some of the senior lawyers and effectively holding them accountable without any inquiry. Intriguingly, they also demanded that the Supreme Court not sit until such action was taken.

Between 5th and 6th November, none of the Benches of the Appellate or High Court Divisions sat (reportedly with a few exceptions). The news noted that the Chief Justice had stated that the Supreme Court would sit again on 10th December, 2006, given that many judges felt that they could not sustain the situation of not operating the courts.

The people want a free and fair election
There is a national consensus for holding free and fair elections. The three writ petitions filed by the petitioners were brought in order to contribute to the process of creating an environment and enabling conditions for holding free and fair elections, in particular by questioning the authority and the unilateral process whereby the Chief Advisor Mr. Iyazuddin has been acting. The manner in which the 'stay order' was passed, and the hearing of the writ petition into the authority of the Chief Advisor to assume office, as well as the manner in which the petitioner's lawyers have been implicated in wholly fabricated and baseless cases on grave charges of sedition constitutes a serious negation of this exercise. It is particularly extraordinary that persons involved in making and defending the Constitution of Bangladesh should stand accused of sedition, not during military rule, but under a neutral non-partisan caretaker government regime.

These sedition cases may be seen as a way of diverting attention from the main efforts by many political parties and civil society to bring about significant reforms to enable a level playing field to be established for the elections.

The rising of the people
But all this has brought the people of the nation out on the streets to express their outrage at the mauling of the constitution and the organs and principles of democracy. About sixteen years ago, in our own jamdani or perhaps kantha revolution of 1989, during the last few days of the anti-Ershad movement, when the area between Paltan to the Press Club turned into a non-stop 24 hour singing fiesta, with songs and slogans reverberating into the early hours, I remember standing with thousands of others roaring out the classic anthem against injustice and abuse of power 'bicharpoti tomar bichar korkey jara, aaj jegechey shei jonota' [those who will try the judges, they have arisen today]. Then I kept wondering how to adapt the words so that they'd be more appropriate eg. Shoirachar tomar bichar korkey jara... etc [those who will try the dictator...]. With hindsight, of course, we should have also thought about the dictator's sidekicks and how they would reinvent themselves in subsequent 'democratic' regimes....

Today, when there's again a movement for democratic change albeit with very different parameters, it's time to re-appropriate that song again, with a minor clarification, and a call for accountability - '... tomar bichar korkey jara, aaj jegechey shei jonota. [..... those who will try you, those people have arisen today...]

STOP PRESS
The Sheikh Hasina-led Awami League and its allies announced in early January that they would boycott the upcoming elections given concerns that it would not be free and fair, in view of the flaws in the electoral roll, and the openly biased operations of the various constitutional bodies involved, including the Chief Adviser of the Caretaker Government. They led mass demonstrations of protest, and faced violent clashes from police and supporters of the rival political groupings. Then on 11th January, President Ijazuddin finally and suddenly announced that he would resign as Chief Adviser, while also declaring that a state of emergency would obtain in the country. [Hours before the announcement, the United Nations said that they were suspending assistance for the elections.]
identity of the child should not be disclosed. Media agencies seldom take permission from juveniles to report incidents. Also, the electronic media is not under the purview of any law. There are so many channels and every channel is in search of some sensational news. We have been approached by journalists who want to interview children rescued from several places but we don't allow them to do so.

Is it true that the JJA has helped adoptive parents from non-Hindu communities overcome their disabilities under the Guardian and Wards Act (GAWA)?

The purpose of the JJA was to open the doors of adoption to non-Hindu communities, who only had their personal laws to rely on. Before the JJA, if one wanted to adopt a child, it could be done under the GAWA. But under the Act, if you were a guardian to a ward, the child did not have the same rights as under the Hindu Adoption and Maintenance act (HAMA), where the child is considered as a natural child having all inheritance rights and is considered a legal heir. Under the JJA, when parents from non-Hindu communities adopt a child, it becomes legal adoption not guardianship.

The JJA 2000 was enacted on the basis of the UN Convention on Child Rights. The convention emphasizes social reintegration of delinquent children without resorting to judicial proceedings. Do you believe that this spirit is reflected in the treatment of juveniles?

Only the preamble is based on the Convention on the Rights of the Child. The whole approach of the Act is to institutionalize children. It is drafted poorly. In the Act, children requiring care and protection are referred to as "children" and while referring to children in conflict with law they are termed, "juveniles". They have already assumed a distinction.

Research was conducted in Mumbai and Pune by the Children's Aids Society, where a few NGOs submitted their opinions to the Child Welfare Committee (CWC) during child welfare meetings. Parents facing financial constraints expressed their inability to feed or send the child to school to these committees. The CWC forwarded such cases to the adjoining room, where the NGO members and counselors were sitting. They then suggested to the CWC as to which families needed sponsorship. The child who would have otherwise landed in an institution remained with the family who received financial support to raise the child. Such programmes should be replicated in other states.

What is the best way to deal with child labour?

We have to ensure that there are adequate funds to address this issue. The Prime Minister of India has spoken about a rehabilitation package for working children. Another key component is free vocational education. A stipend for the family will dissuade them from sending their children back to work. A mechanism needs to be created to establish social partnerships with panchayats, municipal co-operations, and NGOs. At the same time, our government needs to gear up the Sarva Shiksha Abhiyan, national child labour projects and the mid-day meal scheme to keep a check on dropout rates.

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The Caretaker Government under the new Chief Adviser, Dr. Fakhruddin Ahmed, has declared that it will take all possible measures to hold a free and fair election, including correction of the voter roll, and more importantly, steps to combat corruption and the abuse of power. It has already taken steps to ensure full compliance with the Supreme Court's directives on separation of the judiciary - a process which was virtually stalled for five years. On 24th January, in a sudden but long-awaited move, and following intense criticism from the Bar and others of the politically biased activities of his office, the Attorney General resigned (citing personal reasons). However, at the time of writing the rest of the Attorney General's Office remained firmly in place. The Chief Justice is due to resign, in the ordinary course, on 28th February 2006. It remains to be seen how the Supreme Court will address the questions that arose on 30th November 2006, and remain unresolved today.

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Jade Goody in court

Justice Katju beats us all in monitoring the entertainment industry and its relevance to Indian jurisprudence. As reported in the press, he told an accused's lawyer that an apology is not good enough in a contempt action and that he could not do a Jade Goody on the complainant. His apology could not be accepted just as hers was not and he would have to go behind bars (except that she did not). We marvel at his media savvy ways. His judicial duties leave him with enough time to study the obnoxious behavior of the entertainers.

Shilpa Shetty has to her credit a lot of ink split over her humiliation. Now, added to the commentators on the issue is our very own Supreme Court Judge. It is after all good to know that Judges watch Television very carefully. At least much of what we wish to say and do in public reaches their ears via the media. So now we need not worry. We have a medium through which we can reach the judges, entertainment.

Retired Judges

Now we have retired Judges mouthing Bal Thakeray's wisdom. We wonder when this wisdom dawns, before retirement, after retirement, or both. Speaking at a meeting, Justice Puranik said that he agreed with Bal Thakeray that President Abdul Kalam had been sitting on the clemency petition of Afzal, implying thereby that he ought to be executed immediately. Considering Bal Thakeray was so openly communal about both President Abdul Kalam and about Afzal, did the learned Judge have to agree? He might have views on the subject undoubtedly, but to tie them in so neatly with the Shiv Sena supremo was to give away his politics, not his legal wisdom.

One might of course ask how many judges give their judgments on time. We find years go by before a judgment is delivered. We find Judges asking for rehearing on the ground that they have forgotten what was argued. Should we blame their long hair getting into their eyes? Or their long holidays? Has the time finally arrived for a code of conduct for retired Judges?

Poetic musings

And here is a poem by a young law student

The morality of legality
Legal bane and mental sins
Temporary insanity with permanent bins.
Hounding dogs with barks alike.
Careless boundaries and broken fights.
Innocent lights switched off by the dark
Outside do the big cars park.
Long pages for dotted lines.
Fine prints and fake signs,
Loud people in a small hall.
Maybe deliver justice for all.
Thin line, dividing might.
Morally wrong, but legally right.

Aloukik Pai