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Paper No. 16
PRESENTATION BY MR. JUSTICE RAJINDAR SACHAR, CHIEF JUSTICE (RETD.) HIGH COURT OF DELHI, & FORMER UN SPECIAL RAPPOERTUER ON RIGHT TO ADEQUATE HOUSING ON:

"SAFEGUARDING HUMAN RIGHTS: OPPORTUNITIES AND CHALLENGES PERSPECTIVES FROM GOVT, N.G.O"

AT A SEMINAR ON "MEDIA AND HUMAN RIGHTS" ORGANISED BY ASIAN MEDIA INFORMATION AND COMMUNICATION CENTRE ON NOVEMBER 24TH - 26TH 1999 AND HELD AT BANGKOK THAILAND.

1. All over the world the promotion and protection of human rights is accepted without any debate. Also accepted is the universality of these rights, not just in the present but also since the hoary past of human existence. Thus thousands of years back Atharva Veda, one of the most sacred text of Hindus said, "as the cow protects her new born even at the risk of her own life so one should enlarge one's heart infinitely with compassion for all sentient beings." The words of Christ are equally apposite when he said "do not do unto
others what is hateful to you." Similarly in the Holy Quran there is an injunction that all men are brothers and that non-muslims should be treated with no less dignity and respect for their personality than Muslims.

In the West, Voltaire, Locke, Thomas Jefferson in 17th and 18th centuries kept up the flame.

2. In the 20th century the emphasis on human rights owes its origin to the Charter of United Nations, which in the Preamble has reaffirmed to people "fundamental human rights in the dignity and of human person, in the equal rights of men and women and of nations large and small."

3. Overwhelmed by the misery and the almost total rout of all civilised and humane existence both within and inter nations, the General Assembly of the United Nations in recognition of the inherent dignity of the individual proclaimed the Universal Declaration of Human Rights (U.D.H.R.) on 10.12.1948. This document is a foundation which emphasised the place of human rights as being essential for the development of individual and society.

4. Article 19 of the declaration mandates that everyone has a right of freedom of opinion and expression: and to receive and impart information and idea through
5. A number of international covenants emphasise the pivotal position of Human Rights, the most notable being International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

6. India's founding fathers and mothers who framed the Constitution showed similar concern by Incorporating Part III guaranteeing to its citizens the right to equality, to non-discrimination on any ground, freedom of Speech and Association and right to life.

7. Bereft of any embellishment, recognition of Human Rights must proceed on the acceptance of the basic equality amongst all the citizens and to treat each individual as an end in itself. From that flows the inevitable premise that the country must have a democratic set up and as is often said, be a government of laws and not of individuals. Unquestioned acceptance of supremacy of laws over every individual in the society, be of any ideology, wealth, caste or political, social or economic power, is the raw material from which the foundation of Human Rights has been laid. Any slight dent in the acceptance of these postulates would destroy the citadel of Human Rights and a mere husk would gape at us.
8. The role of Indian Press in the earlier period of our Independence in the matter of safeguarding human rights is a mixed one. Though individual cases of police excesses of the poor, or slum dwellers were no doubt reported, but not in the context of Human Rights Violation but as an individual police official’s aberration.

9. Governments conveniently invoke the sensitive ground of national security to sometime silence the media from reporting Human Rights violations especially from the sensitive areas. Unfortunately, the media by and large have a tendency to accept the gratuitous advice without demur. But this yielding is totally counter to the spirit and confidence which the international covenants repose in free press and the expectation that it will fulfill its essential role in development of democratic structure.

10. It is however a matter of satisfaction that media has now become more conscious of its role in the preservation of Human Rights and correspondingly its new language and reporting reflect its realization of what was aptly said long time back by Mr. Muggeridge the Editor, Punch weekly "The choice for us is between security and freedom. And if we ever ceased to prefer the latter, we should soon find that we had nothing of any worthwhile left to secure any way."
11. Some time a hollow question is deliberately posed by those in political power in the developing countries. It is suggested that in developing countries, the stress should be on economic rights, and if in the process of civil liberties are curtailed this price must be accepted temporarily. In my view no such artificial conflict of choice between economic and political rights arises.

12. Bread and liberty are two sides of the same coin, and deprivation of either must inevitably damage the fabric of the other. The freedom to agitate for bread and sustenance to fight for one's liberties are concomitant.

13. Fortunately, this myth of conflict between political or economic rights or artificial prioritization of such rights in developed or developing countries was exploded, when Vienna Declaration and Programme of Action at the World Conference on Human Rights (1993) affirmed that human rights are the birth rights of all human beings and their protection and promotion is the first responsibility of the government and that all the human rights are universal, indivisible and inter related.
14. Freedom of an individual which is postulate of Human Rights obviously can have no meaning so long as the poor in the country do not have their economic conditions improved and the discrimination based on privilege do not become memories of the past rather than becoming more and more aggressive as the time passes on.

15. If, therefore, I confine myself more with some aspect of human right peculiar to the developing countries, it is not because of the lack of recognition or the importance of those aspects of the human rights which are more emphasised in European and American context. It is only because I feel that the benefit of recognition of those aspects of human rights as put forth by the European context will not have large appeal unless the protagonists of human rights in developing countries concern themselves with the actual realities of oppression of the weak and of discrimination in the social set up which stares every one of us in face. Europe and America are concerned with the rights of Gay Group, the rights of unmarried mother, right to abortion or the status of surrogate mother, no doubt important aspects of human rights dimension in their social set up. But should not we of developing countries concern ourselves with more urgent aspect of Human Rights.
16. The blessing of Government would degenerate into tyranny of government unless it is accompanied by a recognition that there are certain basic rights which are possessed by all the citizens. Though believers in Human Rights must be ever vigilant to resist any onslaught on the civil and political liberties of the individual and there can be no compromise on their essentiality, it is necessary that these rights, so far developing countries are concerned, must co-relate it with the equally important major issue which is also an aspect of human rights, namely, the development of the economy and the responsibility of the society to feed, clothe, house, maintain its people free from starvation, and able to bring up one's children and oneself in a decent, healthy environment.

17. The horror of poverty was highlighted in a message given on observance of International day for the Eradication of poverty on 17th October 1999 by the UN Secretary-General, who reminded us as to "how many times have we said that it (poverty) was incompatible with human dignity".

But billions of people are still trying to survive on less than three dollars a day, with no drinking water, health care, or access to education, still denied the jobs that would help them escape their impoverished
state, and thus, still deprived of some of their most basic rights.

18. Now it is beyond dispute that right to adequate housing is recognised as a Human Right by the International Community, but yet according to indicators compiled by the United Nations Centre on Human Settlements, at present over 100 million people live in a state of absolute homelessness, while an excess of one billion people are forced by circumstances to reside in desperately inadequate housing conditions which threaten their health, security, safety and dignity.

19. It also needs emphasizing that a number of such rights that are generally recognised as housing rights are linked to or derived from other human rights, such as equality and non-discrimination, gender equality, property rights, the right to a fair trial, the right to freedom of movement and to choose one’s residence, the right to privacy, the right to process and other human rights related to housing.

20. The much touted claim by the protagonists of globalization that it will accelerate progress in developing countries is belied by UNDP’s Tenth Human Development Report of 1999, which says that “market dominated globalization has led to growing marginalisation of poor nations and people, growing
human insecurity and growing inequality with benefits accruing almost solely to the richest people and countries" and that "the global gap between the have-haves and have-nots, is widening.

21. The report further says that "the top fifth of the world's people in the richest countries enjoy 82% of the expanding export trade and 68% of foreign direct investment the bottom fifth, barely more than 1% of the combined GNP of the 48 least developed countries".

22. HDR 1999 has commented "the benefits of globalization in the past decade have been so unevenly shared - between countries and regions of the world and between social classes in individual countries - that the very word has come to acquire in certain quarters a pejorative tinge". It has further warned that 'globalization' is not the one-word panacea dogmatists claim it to be. If anything globalization is creating new threats to poor and rich countries alike apart from the danger of financial volatility and the resulting job and income insecurity.

23. Finally, HDR 1999 points out that even supposedly global institutions like the World Trade Organization are dominated by the rich countries and are incapable of articulating or defending the interests of the majority of the world's peoples.
24. "Similarly World Development Report 1999-2000 report" identifies "four critical lessons" of the development experience in the past half-century - growth does not trickle down and so development efforts must address human needs directly".

25. The report says, given current projections, the number of people living in absolute poverty will continue to increase. At the start of the new millennium, an estimated 1.5 billion people will subsist on the equivalent of a dollar a day, up from 1.2 billion people in 1987. By 2015 the number of people subsisting below this international poverty line could reach 1.10 billion.

26. About 220 million urban dwellers, 13 per cent of the developing world's urban population, lack access to safe drinking water and about twice that number lack access to even the simplest of latrines. That ugly reality made Mr. Nitin Desai, the UN's Under-Secretary-General for Economic and Social Affairs, to comment acidly that "the world's economic system was alert enough to protect the rich but too tardy to protect the poor. If one looked at financial flows, the net transfer of flows out of developing countries had amounted to nearly $60 billion. The goal was not to have a global economy that ended up as a welfare state for the rich."
Rethinking was needed on how to make the system more equitable and mindful of long-term concerns.”

27. Though developed world pours reams of sympathy for the plight of the poor of the developing world, but ironically the subsidization of agricultural output in the North not only shuts out imports from developing countries but also leads to unfair competition in the latter’s own markets.

28. Northern producers continue to benefit from protection. Clothing and textile producers are still protected both by high tariffs and by stringent quantitative restrictions on imports from developing countries, and they will continue to enjoy high tariff protection even when all quota restrictions are removed in 2005.

29. US excludes most textiles and clothing products from its scheme, and its Most Favoured Nations (MFN). As a matter of fact it has been calculated that restrictions on imports of textile from developing countries cost the consumers in USA as high as 27 billion US Dollars. If quotas were removed, textile prices would be reduced by 50% for the U.S. consumer.

30. Another denial of human rights is to the half of the population, that is the women. The burden of
deprivation, poverty and violence is the heaviest on them. In most parts of the world, men refuse to accord equal status to women in matters of public life, employment and decision making.

31. "An International Labour Organisation study shows that "while women represent 50 per cent of the world adult population and a third of the official labour force, they perform nearly two-thirds of all working hours, receive a tenth of world income and own less than one per cent of world property."

32. In most countries women have neither a right to the home in which they were born nor to the home they live in after marriage. This essential homlessness of women is a major factor in limiting the valuable contribution women can make towards gaining and retaining a home and, in turn, in building society. This critical factor has the effect of perpetuation of gender inequality and poverty.

33. Admittedly women face discrimination and marginalisation in subtle as well as in flagrant ways. Women constitute 70 per cent of the world’s poor. The media needs to take seriously the lament of Platform for Action adopted by Fourth World Conference of Women held at Beijing, China (1995) wherein it pulled up the media by pointing out that "the lack of gender sensitivity in
the media is evidenced by the failure to eliminate the gender based stereotyping that can be found in public and private local, national and international media organisations”.

34. Though Vienna Declaration and Programme of Action, 1993 adopted at the World Conference of Human Rights resonantly affirms that speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a primary task for the international community, but the ground reality and conspiratorial silence from rich world’s quarter where much is endemic, is greatly disturbing.

35. Taking into account the ground reality that in developing countries where the impact of public opinion is weak and the indifference of politico-cum-bureaucratic nexus is proverbial both the media and the NGOs have a common stake in the preservation and protection of human rights.

36. It is therefore a matter of satisfaction that during the last 25 years, NGOs have contributed to international and national discourse on issues of global scope such as eradication of poverty and the promotion of gender, equality, peace, sustainable development and

37. Globalisation reinforces the tenuous relationship between States and the NGOs. Although States are necessary agents for the implementation of human rights policy they are also among their chief violators or accomplices to such violators.

To maintain such control, governments use different means to hamper, disturb or stop NGO activities. They may challenge the credibility or legitimacy of an NGO or its actions by using legal or sometimes illegal means to ban NGOs from operating in the country to intimidate or arrest NGO personnel.

38. The elimination of child labour has been the priority item of the agenda of N.G.Os in India much earlier than the recent international onslaught on this item, by developed countries, a pressure which unfortunately is motivated more by their desire to corner a greater share of increase in International Trade and Commerce than for their alleged commiseration for the children.

39. This approach of the North was trenchantly criticized by Professor Jagdish Bhagwati, who regretted that "this sentiment was then picked up by
NGOs and given the colour of moral objectives like ending child labour (leading to social clause). Bhagwati argued that NGOs movements also had a nationality, the protest over hormone injected beef was launched by European NGOs while the American ones were silent.

40. Professor Bhagwati also came out heavily against an extended protection of Intellectual Property Rights that has to come to be accepted and argued that economic logic did not justify such protection.

41. Now, undoubtedly - right to healthy environment is a human right. But in this garb the developed countries should not be permitted to pressurise the developing countries in such a manner that their economic development suffers. One of the very seriously debated agenda is the question of global warming. All kinds of pressures are being put on the developing countries to reduce the emission of green gases while completely ignoring that the six major countries specially U.S.A. has an emission rate of 5 metric tones of carbon whereas that of India is the lowest at 0.02 metric tone. 80% of the current emission comes from the industrial nations which have only 25% of the world population. Some calculations have been made to show that the taking of the average cost of emission even at a minimum of 20 U.S. $ per tonne the South is sending about 60 billion
U.S. $ to the North and as there is no assistance coming from the North such a burden cannot possibly be taken by the developing countries. It is here that the role of NGOs in the developing countries must visualize and prioritize their own plan of action and not merely echo the programme put by N.G.O of North. Even the World Bank has recognized that where the objectives of developing countries conflict with global environment such as the mitigation of green gases the development takes priority.

42. The brazenness of this unconcern by the developed nations is again highlighted by the latest guidelines finalised by Japanese government for its policy to be made effective from 1998, namely: Nations seeking Japanese Official Development Assistance (ODA) for environment and anti-pollution projects will now have to make obligatory purchases of goods and services from Tokyo. That environment standard insistence is a neat way of trade advancement, is clear from the fact that Japanese government plans to limit "tied ODA loans" to projects related to anti-pollution and other environmental protection projects and measures.

43. In situations where there is more political space and less oppression, the most common method the governments use to limit the space for NGOs in civil society is to place NGOs in the box of social service
providers. This approach is often used by governments in developing countries and is supported by the IMF and other major donors. Governments use this classification politically and often accuse NGOs of overstepping their mandate when they raise issues of civil or political rights. In extreme cases, NGOs will be identified as a part of the political opposition.

44. Mr. Peter Van Tuige in his Article "N.G.O. and Human Rights sources of Justice and Democracy", published in Journal of International Affairs (1999), notices that this goes hand in hand with a drive to centralise and homogenise government-NGO relationship. While this approach has also been supported by NGOs because it allows them to step to tap increasing flows of official donor money. It has created a new problem of accountability to the population they serve”.

45. Mr. Tuige gives a thought provoking warning to the effect that "NGOs in developed countries have better access to foreign governments, international organisations, multinational corporations and the media and can bring pressures to bear. They can spot advocacy opportunities at international and global levels. The danger is that they will dominate the agenda especially since they have much greater political and financial resources than the local and national NGOs in the
developing world. Thus transnational networks may be dominated by strong NGOs”.

46. A review of NGO access to official financial resources already warns of a threatening oligopoly of a limited number of Northern based NGOs or NGO networks which have become market leaders each controlling annual budgets of approximately $500 million.

47. In India, the involvement of NGOs has received fillip by the innovative method of Public Interest Litigation (P.I.L) fashioned by the Supreme Court by relaxing the vigour of locus standi as is usual under the Anglo Saxon jurisprudence. Thus, N.G.Os and even public spirited individuals, are permitted to intervene in human right matters seeking directions from the High Courts and the Supreme Court whenever Human Rights are being violated on the principle that the poor and deprived sector of the society by themselves have not the resources and expertise to obtain relief by themselves.

48. Thus, important changes in the law of rape and crime against women were initiated under the pressure of women N.G.Os.

49. In India, we don’t have a specific law of privacy. But it is now recognized that right to privacy is one of
the human rights. People Union for Civil Liberty (PUCL) - which I am associated took up the matter to the Supreme Court against the practice of telephone tapping by the law enforcement agencies. Though we did not succeed fully but still good deal of safeguards against arbitrary and uncalled for wire tapping have been laid down by the Supreme Court thus reducing the rigor of the arbitrary functioning by the law enforcement agencies.

50. Similarly N.G.O., have either by Court action or creating public opinion have succeeded in pressurizing Indian Govt. to make beneficial changes and observance of Human Rights to undertrials, child labour, displaced victims and of development programmes.

51. Amnesty International fight for preservation of a human right for the abolition of death penalty - is of unique contribution.

52. The role played by Habitat International Coalition and other NGOs to get Istanbul Declaration of acceptance of Human Right of Housing is another landmark.

53. As a U.N. Special Rappoertuer on Right to Adequate Housing I received tremendous help from the NGOs in preparation of my report, and I acknowledge the same in my final report which was published by the Centre for Human Rights in Geneva in 1996 in para 227 I said:
"Throughout my reports I have recognised the catalytic role played by civil society and non-governmental and community-based organizations in bringing housing rights to the forefront of concern and action at local, national and international levels. I must place on record my appreciation of the assistance accorded to me, especially by way of information received from these groups. Although the work of these groups continues to be indispensable for progress on developing a wide acceptance of housing rights and on these rights being understood in a larger canvas, a number of additional practical strategies need to be followed".

54. I may quote from Mr. Amartya Sen, Nobel Laureate who said "It is often claimed that non-democratic systems are better in bringing about economic development", but immediately repudiated this by firmly opining that "There is, in fact, no convincingly general evidence that authoritarian governance and the suppression of political and civil rights are really beneficial in encouraging economic development. Indeed, the general statistical picture does not permit any such induction".

55. I myself also strongly believe that just as human rights cannot be safeguarded unless there is a free press, and a strong public opinion reflected by NGOs
similarly there cannot be a free press, or independent functioning of NGO if human rights of the majority continue to be violated, because then there will be no democracy and which alone is a condition precedent to preserving both.

56. A believer in human rights has to have anger and compassion - anger at injustice, compassion for the weak and disadvantaged. Realism must spill over into the study of human rights. Let not universities and colleges concern themselves only with slavery in Rome, Greece and Fascist Germany, but also with the gross violations of human rights at home. A study of the human rights perspective in developing countries can no longer be the concern of researchers alone - along with research, there must be firm action against the violator of human rights. It is the depth and the sincerity of media and N.G.Os in this regard that will determine the course of Preservation and Protection of Human Rights not only in developing countries but even in the rest of the world.

(Rajindar Sachar)