

CURRENT AFFAIRS

The Invasion of Iraq and After

S. M. Daud

Right since the Gorbachov era in the last years of Soviet Russia, the United States has been throwing its weight about in the international arena. The threat of Soviet intervention checked the States to some, though not very great extent. The arms race and the encirclement of Soviet Union with the corresponding rise in defence expenditure made the Soviet collapse inevitable. That story was repeated in China and the other countries professedly Communist after the Second World War. In a way this proves the correctness of the theory that Marxist rule if it is to survive, has to have a universal or at least substantial presence-at least in the territorial and financial sense.

The collapse of the Soviet and Chinese communist experiments led to revivalism in practically all countries-primarily, the erstwhile Communist countries. Internationally, there survived no effective check upon American adventurism. A unipolar world has always signalled strife and turmoil. The deterrence of nukes has proved ineffective to check this phenomenon. Societies troubled by imbalances are bound to erupt into violence, which spreads like wildfire in the midst of dried tinder. While revivalism when conflicting with an emerging progressive world may receive the support of reactionaries, cutting across national and other barriers, it cannot prevent the contradictions that are inherent in the capitalism/imperialism ridden world. That explains the emerging European opposition to the growth of American power-as yet in the embryo form, but bound to spread rapidly in the days to come. This theoretical background is necessary to explain the subject under consideration viz. the decision to invade Iraq twice within the course of less than 15 years and the result of those excursions.

The two world wars of the last century and the growing freedom struggles in the former British colonies made it clear that Britain could no longer prolong its rule. That wasn't enough to show the imperialists, that their days were over. Economic penetration of countries either directly or through the compradors has been tried; but doesn't work too effectively. Examples of this are the collapse of French and British experiment in the Middle East in between the two world wars. Both realized the futility of their attempting to continue ruling and happily yielded to the Americans the role of erecting a barricade. Despite its huge resources and the brazenness of its rulers, the United States has had to suffer some notable setbacks. But it cannot be said that she has always failed. South and Central America continue to be under its sway, despite Cuba and Nicaragua. Again in Europe while 'old' Europe has become defiant, new satellites like the East European countries have rushed to defense of American interests. In the Middle East, despite planting Israel plumb in the centre of the region, the Arab countries-specially, the streets continue to be inimical Iran and Turkey, once dependable allies have become suspicious and disinclined to act as mercenaries to defend America's designs. The Central Asian republics have been loyal to America, but at the same time cannot totally give up their subordination to Russia. And in any case they are far too distantly located to be of any

strategic use to Imperial America. Cairo, Riyadh and Amman have regimes, which are well disposed to the United States; but there is the marked antipathy and rising anger against America, which can lead to coups anytime. The United States can successfully quell the revolt; but as Iraq's example shows, cannot retain control after the victory is over. The resulting deaths, casualties and mounting economic setbacks lead to eventual defeat.

Even a casual look at the two invasions of Iraq will show that America has ended up with a disaster as large as that it met with in tiny Vietnam. The hope that setbacks it received in Vietnam and Lebanon would be avenged in Iraq has been dashed. If anything, the failure in Iraq is likely to lead to the permanent decline of its standing in the region. The first invasion was perceived as a crusade against Iraqi invasion of Kuwait. There is some evidence to show that Saddam's misadventure in Kuwait was whetted by American hints that it had no serious interests to preserve the Sabah rule in that territory. Possible Egypt, Saudi Arabia and Israel advised the United States to correct its mistake. Be that as it may, the Iraqi strongman erred in believing that America when it came to the final push would step back. President Bush (the First) got the Saudis and the restored Sabah dynasty to reimburse his country for the expense incurred. In addition, Iraq was saddled with sanctions and reparations that were crippling. The former led to the decimation of Iraq as a point of any significance. Its atomic plants had already been destroyed by Israeli raids encouraged by the West and the end to the 1st Iraq War left the Saddam regime with little more than armour to put down Shia and Kurdish resistance. Despite years of sanctions, the Saddam regime retained its grasp over the country and its delaying tactics vis-à-vis U.N. inspections gave America and Britain the excuse they needed to intervene more effectively. Excuses had to be invented. Weapons of mass destruction (WMDs) were said to be littered at secret hideouts in the country. Next Saddam was repressing the Iraqi population, in particular the Shias and Kurds. Third the regime was autocratic, undemocratic and tyrannical. Forth, Iraq was abetting enemies of America and Israel to launch attacks upon the two countries and their embassies etc. in different lands. Fifthly, the Saddam regime was preventing the emergence of a pluralist and democratic Middle East. Sixth, Saddam had tried to get the first Bush killed. None of these or other minor excuses reflected even the most trifling bit of truth. In fact, all these allegations could be laid with better conviction against Israel, and certainly America itself. No WMDs have been recovered, though America claims that plans of Saddam to produce these have been recovered. If the mental condition and fabricated blueprints were proof, no country can be exonerated of having designs to manufacture and if necessary use WMDs. The link said to exist between Al Qaeda, Hamas and Hizbullah or Saddam has been shown to be a fib. Saddam's regime, brutal as it was, can never measure up to what Iraqi prisoners have suffered at American hands or the loss that human rights have suffered in America-Britain occupied Iraq. As to wanton destruction, the material damage that has been inflicted on the country is so enormous that even trillions of dollars spent over decades will be unable to restore Iraq to its Saddam-level standard of living. Iraq far from being a menace to any country in the Middle East or anywhere in the world had been reduced to the status of the basket case. And there was no proof of Iraq having designs upon any of its neighbours, Kuwait included. When U.N. approval was not forthcoming, Bush and Blair decided to act unilaterally. They were joined in by the rightist regimes in Spain,

Italy, Bulgaria, Japan and South Korea. The regimes in common with civil society in all these countries-the invading ones included-were acting against the express wishes of the people -the vast majority of them. This did not deter the warmongers-Blair's voice being more strident than that of the draft-dodger George W. Bush (the Second).

The attack upon Iraq was truly devastating as it was expected to be. The initial difficulties that the invaders encountered gave rise to the false belief that the invaders would retreat. They only doubled their weaponry and 'shock and awe' did its job. The resulting anarchy is still there, though the invaders have nearly doubled the troops meant to perform police duties. The expected benefits-like oil-have not come. On the contrary even the Halliburton the Bechtel Corporations are reduced to robbing the American till to recoup their overheads. American troops far from being welcomed as Liberators are in danger of being shot at; ambushed taken prisoner or lynched by the resistance in Iraq. Calling them 'thugs and murderers' as Bush and Blair have been doing repeatedly is not solving any problem. Saddam's capture and the formation of a Governing Council with elections under U.N. auspices plus the imminent hand over of direct rule to Iraqis, doesn't seem to curb the desire for revenge. The dance of death, destruction and devastation proceeds apace and all hopes of a vibrant democracy coming to Iraq has disappeared. Saddam did not give democracy to Iraq; but he certainly gave security, secularism and economic well being to the vast population and this despite the years of sanctions which went on being prolonged at the instance of USA and Britain.

A quick glance at the plight of Iraq will show that the Coalition of the willing has failed in every aim it set out to fulfil. The aerial attack may have lessened the number of deaths and casualties for the invaders. But the number of Iraqis dead or physically incapacitated has been immense-the numbers are not in mere thousands. It would be true to say that those dead or maimed for all times to come number tens of thousands. Insecurity is not restricted to the capital city of Baghdad or the troubled Sunni region. It has enveloped the entire country, the Shia and Kurdish regions not excluded. Battles fought by the resistance in Kufa, Najaf and Kerbala show that the Shia belt has been spearheading the revolt against the Bush-Blair invaders and their puppets, rather than waiting to fling garlands of welcome at them. The material damage includes destruction of thousands of homes, offices, commercial and industrial habitations plus museums, libraries, religious shrines and hospitals. The brutal repression includes attacks upon civil targets by the use of helicopters and sky ships. That the Americans have acted in self-defence or in retaliation is a lie. More often than not they have been the first to attack because of the jitteriness of their soldiers and specific instructions received right from the President downwards to terrorise the Iraqis. This has not happened as the resistance continues to inflict death and devastation upon the forces of the Occupation-though the larger number of those suffering may be innocent civilians compelled to take up jobs with the Occupiers and their cohorts to fend off unemployment. Valuable books and artefacts have been lost from the world famous Library and Museum located in Baghdad. The shameful treatment accorded to those taken captive in Iraq and bundled into the prisons within and beyond Iraqi territory, show that powers professing to usher in a regime of liberty have been guilty of violating all the conventions relating to prisoners of war, whether engaged in the actual fighting or suspected of being parts of the Saddam regime. Pictures first printed by

Al-Jazira and now carried over even by the American media show large scale humiliation visited upon the captives. These were not 'aberrations', minor lapses or the doing of a 'few errant' elements as the Bush-Blair regimes contend. The blatant, disregard of basic decencies shows a depravity unequalled in the annals of human brutality. For years to come, British and American visitors to the Middle East will have to pay for the brutalities inflicted in Iraq and Palestine. Surely, the Iraqis are not going to take lessons in advancement of the human rights movement when they see what the occupation forces are doing and have done to the natives. Even if the victims be resisters, they are following the hallowed example of freedom fighters in all lands. The economic reconstruction is a task that has been entrusted to the United Nations Organisation. This body has actively co-operated with the invaders and the result was the killing of the High Commissioner for Human Rights. The UNO commands little or no confidence from the vast majority of Iraqis. Brahimi who has taken an active part in selecting members of the interim governing Council has lost all credibility by choosing known puppets of America. The way out is complete evacuation of the troops and so-called social workers deputed to Iraq and their replacement by troops contributed by the Scandinavian and African countries. Indian troops will fit the bill completely, but it is difficult to see them working to the satisfaction of the invaders or their silent backers in the U.N. Troops from Pakistan or South East Asian nations may not accomplish the task because of their well known subservience to American interests.

What is the remedy? This is a difficult question to answer. But the problem brooks no delay. The solution lies in short term and long term remedies. In the short term, the first and most pressing problem is to put an end to the Occupation and do so visibly, in that Iraqis see the hated invaders departing lock, stock and barrel. Their replacement cannot be the puppet interim governing Council. It has to be Iraqis selected for their neutrality as between the Baath regime and its foes. This team should be aided by a U.N. Selected team whose personnel is restricted to countries known to be out of American sway. The world body should recover the costs of rehabilitation and monitoring from the culprits i.e. America and Britain. The compensation should include all the losses that Iraq has sustained rights since the commencement of the sanctions regime. Next a Constitution has to be drawn up which will confer a wide degree of autonomy upon all the three regions of Iraq viz. Kurdish, Sunni and Shia dominated. The Constitution has to proclaim respect for secularism and tolerance of diversities that even Saddam respected. Next are the long-term solutions. The U.N. has to be strengthened with American influence being curbed – a process that will require greater co-operation amongst Russia, China, France and Germany. If these countries stay back in the coalition to save the world from Yankee imperialism abetted by perfidious Albion, the world including them will suffer. The time to act has arrived and let it be remembered that Munich did not check Hitler. It only whetted his appetite for more. Bush and Blair may go, but the phenomenon they represent is too serious to be checked by ineffective and futile verbal blasts which have no effect upon the invaders-actual or potential.

India Shining and the Aftermath

S. M. Daud

The saffronites faced a setback after the killing of Gandhiji. So severe was the reverse, that a leading light, Dr. Shyamaprasad Mukherjee was compelled to join the Indian National Congress. As long as Gandhiji lived, the saffron elements in the Congress led by Vallabhbhai Patel dared not stage a coup to unseat Jawaharlal Nehru. But after killing of the Mahatma, Patel stood no chance to oust Nehru. Soon after Patel died, the secular elements came into their own. Not that the saffronites gave up the struggle without a fight. The continuing communal ill will, Pakistani provocations in Kashmir and elsewhere and big business dismay at the Nehruvian model for economic development, all joined hands. Patel's staunch supporters in the State of Madhya Pradesh had dwindled to three viz. Ravi Shankar Shukla, D.P. Mishra and Seth Govind Das. With Shukla and Govind Das weakening in their resolve, Mishra had no followers left in the congress. By now S.P. Mukherjee had also regained confidence to revert to his true type. Remnants of the Hindu Mahasabha and the R.S.S. formed what was falsely described as a secular formation – the Jana Sangh. A large number of pracharaks from the RSS were made part of the newly formed Jana Sangh and the first foray of this party into active politics was to provide a platform to the discredited Mishra to denigrate Nehru and his 3 mantras viz. secularism, socialism, and non-alignment.

The Nehru years-except for the tail end-saw a virtual wipe-out of communalists. Opposition to the Congress came from the Communists, for the socialists though not in a position to gain adherents, spent most of their time in fighting or collaborating with rightists to eliminate Communists and their suspected allies in the Congress. The ill-advised attack on the Chinese forces stationed at the border and the subsequent humiliation shook Nehruites as never before. The Congress right, joined by the Socialists and Sanghites and divisions within the Communist movement heralded the advent of a malignancy in the Indian body politic, which still survives. Factionalism in the Congress led to the formation of the Janata Party. This however could accomplish only one task. viz. oust Indira Gandhi from power. Internal squabbles within the party and the joining of hands by progressives led to the glorious victory of Indira Gandhi. The Emergency, short-lived though it was-gave the communalists and reactionaries a chance to strut about as saviours. The 1977 Lok Sabha polls led to a turbulence, which ended with the rout of the anti-Indira forces in 1980. Indira, in her second coming-was beset by unending problems, chief among them being the Khalistan struggle. It ended, but a heavy price had to be paid by the country in the form of Indira's killing, the alienation of the Sikhs consequent to the storming of the Golden Temple to flush out secessionists and the unfortunate riots of 1984. From 1985 onwards, the country had to face the Ram Janmabhumi phenomenon. At one of its session's the BJP openly adopted the issue as its own making no bones of the fact that this would fetch it huge dividends in the shape of votes and crazed followers. To counter the Mandal agitation, Advani launched the 'rath-yatra' from Somnath to Ayodhya. Laloo's act of having Advani arrested could not check the drift towards the polarisation of communities. Communalism and communalists had survived and thrived in India by this expedient. The Babri Masjid demolition and waffling of the so-called secular forces led to the formation of an alliance led by the BJP. Regional politics had a

fall-out in the sense of parties joining and leaving the BJP or Congress led alliances. In fact the Congress was initially confident of emerging triumphant without joining hands with other parties. The changing coalescence-severance and reconciliations were baffling. No ideology was involved and there were occasions when it seemed that even the Congress would disintegrate on a national scale. It did, but without the momentous consequences dreamt of by the trio of Pawar-Sangma and Tariq. The BJP led alliances tried its hand at ministry-making thrice. Its success at the third attempt heralded an epoch unmatched for corruption, communalisation, erosion of basic freedoms and impoverishment of the masses. Aided by a soiled administrative set-up, a supine media and a bitterly divided polity, it could and did get away with the worst of excesses. Scams-day after day and touching the highest in the party and government, the allies not excluded, were sought to be glossed over by the timely chant of 'law will take its course'. The media with very few exceptions joined in the cover-up and vilification of political opponents. The pinnacle was attained in the persecution of the sleuths, rather than the criminals in the Tehelka affair. Despite the scandals, the NDA braved it out by unparalleled brazenness. George Fernandes's come-back without a judicial exoneration and the contrived clean-chit given by the newly appointed Saikia led to no sense of shame on the part of the wrong-doers. Polls-whether at the State-level or by-elections to the Lok Sabha-indicated a strong swing against the BJP and its allies. These were dismissed as aberrations. Realising the gravity of losing Gujarat-described as the 'laboratory' of the Hindutva experiment, Modi was brought in to replace Keshubhai Patel and his team of deemed effetes. And Modi gave his money's worth. First was swaggering of the primitives, now that their day had come. It is not clear whether the saffronites managed the Godhra tragedy or merely took advantage of it. Their propagandists went into the top gear to portray the happening as a Pak-inspired-Indian Muslim-performed deed. That this spoke poorly of the saffron-touted efficiency at policing was cleverly glossed over. Modi was lionised and Vajpayee thrice imitated his language to divert attention from the active involvement of the saffron element in Gujarat's political and administrative wings. Having seen the spread of the riots in the State and the rise of communal tension in neighbouring States, Gujarat went to the polls and the Congress was decimated. Modi, triumphant, was used to stir trouble in Maharashtra, Rajasthan, Madhya Pradesh, and Chhatisgarh. Once again, the results were a triumph for the Modi strategy. But these victories could not stem the worsening economic situation. Joblessness was glossed over and industrialists perceived to be crooked helped out. Inflation was reduced, so that the cronies in Commerce and Industry thrived. Every asset of the nation was up for grabs-water, land, money in the banks and defence requirements went to cronies or those who gave cuts. This went side by side with ridiculing of political opponents. These last changed from quarter to quarter. Mayawati, Mamta, Jayalalitha figured alternately as heroines and vamps.

The unfortunate part is that the media, by and large, went along with this charade. There were honourable exceptions to this-the foremost being the Hindu and its allied publications and the Indian Express under the stewardship of its Editor Shekar Gupta. They preserved neutrality, which was truly remarkable. M.J.Akbar's 'Asian Age', which once gave hopes of becoming the leading crusader against communalism and corruption, showed different colours. Seema Mustafa and M.J.Akbar in common with the uppity

Indian middle-class had always resented the attention received from masses and classes by members of the Nehru-Gandhi dynasty. Their antipathy came out in swipes - indecorous, indecent and inendiary. Akbar had an additional reason for harbouring a grudge against the dynasty. Once he had got elected to the Lok Sabha on a Congress ticket and that was it. No further attention was paid to him whereas he was expecting entrance into the charmed circle of confidantes. As to Seema, she had developed delusions about being an ace analyst-someone courted, consulted and confided in on the lines of a James Reston. That adulation wasn't even had by Dileep Padgaonkar or G. K. Reddy amongst Indian journalists. The saffronites offered balm to their singed egos. Akbar was invited to and feted at several Sangh-sponsored functions – an important one being the release of a crazed attack upon Sonia just before the Lok Sabha polls. Initially ignored, the BJP managed to assuage the feelings of the two scribes by making them part of high-flying visits abroad by the Prime Minister and President. The bait was swallowed and space provided to Sonia-baiters like Arun Nehru, Suhel Seth, and the lesser fry Balbir Punj. Addicted to astrological predictions, the Indian public was doled out a prediction a day, each one sure that Sonia would lose and that Atal would come back with a huge majority. The Asian Age had carried on a campaign of sorts against the mumbo-jumbo that M. M. Joshi was seeking to push into University curriculums. However, it saw no wrong in patronising all manner of soothsayers-the only criterion being that they predict a rout for the Sonia led Congress. Opinion and Exit polls were pressed into service to bolster the spirits of the NDA and demoralise the secularists, who were consoled with the palliative that things would have been far better had the Congress been led by a person other than Sonia. Her faults like an accent, reading out a script, being totally out of touch with the masses, practising drawing room politics etc. etc. were repeated as fatal drawbacks. Hindi spoken by Mark Tully was passable, but not that uttered by Sonia for the first had dared Indira while the other was a stowaway who had escaped detection. What fooled the Saffronites and their drumbeaters was the despondency displayed by even those who despised the Saffronite version – persons, doctrine and strategy. The saffron brigade in letting loose the 'India shining' and 'Feel Good' blast adopted tactics employed by Goebbels and the latest ad-agencies of the world. Simply put this was to invent a lie-India Shining (because of Vajpayee), Feel Good (because the bears and bulls were merrily robbing the genius investors of their savings and lastly the opposition was terribly disunited. When they could win against the good governance of Gehlot, the craftiness of Ajit Jogi and the decency of Digvijaysingh, swatting Sonia for all times to come was no difficulty. Unfortunately, too much was read into the negatives of the Opposition.

Expensive advertisements proclaiming the advent of good times under Atalji, Advani's cross-country journeys, Atal's frenzied aerial trips and the bombast of Naidu, Jaitly, Naqvi, Mahajan and managing of tamashas like sari distribution, arranging entry into the party of film and T.V. stars, sports people etc. gave the impression of the 'carpet bombing' campaign succeeding. The suffering masses-orphaned peasants, thrown out of employment workers and employees, being phased out, small and medium businessfolk, students with no future-these were the silent majority. Much is made of the alleged mistake of the saffronites in the choice of allies in the States. The TDP, the AIADMK, Mamta's Trinamul Congress, the JD (U) were all discredited people. They should have

been shrugged off like the INLD of Haryana before the polls. As a matter of fact the NCA had its almost full innings because of these allies. They had kept it afloat and they were doing nothing unusual in extracting their pound of flesh from the Centre. After all, the BJP hadn't been exactly selfless when seeking them as allies.

For all the confidence boasted of by Naidu and his many General Secretaries, those in the formation who had their ears to the ground, smelt a rat in the thinning crowds thronging campaigns by the great crowd-pullers like Advani and Vajpayee. Modi was pulled in to spout his special brand of poison against Sonia, the Muslims and Christians. Teams of unknown Muslims or Christians were formed to forge the myth that the minorities had now realised what a great treat awaited their co-religionists once the NDA won. The south was said to be opening itself to the saffron offerings. What could not be belied was that the anti-incumbency factor was riding high. The electorate was not sophisticated enough to distinguish between the elements responsible for their privations. It was hitting out at those within sight. This is what had happened in the polls to the assemblies of Rajasthan, M.P. and Chhatisgarh. The difficulties the great majority faced in these states were not all due to the ruling Congress regimes. But the masses wanted to punish the rulers nearest to them. In the absence of an effective secular opposition, they fell for the deceitful saffronites. The brouhaha against the Congress hasn't yet subsided in these States for which reason the saffronites won there also in the Lok Sabha Polls also. But the moment of truth is at hand-witness the hue and cry against Uma Bharti in M.P. Very soon this alienation will grip all the States where the voters have unwisely chosen the saffron alternatives as rulers. The anti-incumbency factor has not hit States like West Bengal, Orissa, Delhi, Tripura and Himachal. West Bengal and Tripura have become impregnable Red Citadels and will remain so as long as the ruling Left Front and the main Opposition the Congress (I) do not falter too badly. In Orissa, the unwise choice of J. B. Patnaik to lead the Congress gave the BJD a readymade weapon to discredit the party. Delhi has returned the Congress, not because of any special virtue in the Sheila Dixit rule, but because the people of Delhi rightly ascribed the blame for the insecurity factor to the Centre. Next they saw close at hand the corruption indulged in by the NDA-rulers and middlemen alike. No wonder Mrs. Dixit shone in comparison to the likes of Khurana. Himachal remained untouched by the 'feel good' campaign as adherence to the WTO regime had destroyed its cash rich produce like apples. Punjab, Karnataka, to some extent even Maharashtra, lost out to the saffronites or their allies because of in-fighting within the Congress as also alienation of the dalits. Misrule led to the rout of the Congress in Kerala. Anthony may be integrity incarnate and Karunakaran's canniness may have been vote-fetchers in the past. For the present the Keralites want a solution to the water, power and employment shortages they face. Additionally they want a check to the growing menace of communalism. Anthony's frolics with the Godly personnel may have endeared him to the saffronites-but that's all and their numbers are unlikely to grow, irrespective of the staging of riots. In the North-East the economic problem can be solved only by removal of trade restrictions with countries like Bangladesh, Nepal, Burma and China. More, there is need for defanging outfits like those working through front organisations of the RSS. The poll results here show nothing worthwhile, except the cutting to size of Sangma.

While the Saffronite BJP and their allies in Bihar and elsewhere have been shown their place, there is no room for complacency. Saffronites have been worsted in three important States of the South, but they have crept into Karnataka and the caste and community mix there is fragile. The RSS has been working in this State as it has done in Gujarat. Its proximity to the coast has made the State a haven for assorted bands of those living on their wits. It was precisely this type which succeeded in generating mistrust between communities in Gujarat where the communal divide has been stilled, but not completely eradicated. Regionalism is growing all over the nation and silted with caste or community antagonisms it can lead to consequences too dangerous to even think of.

The UPA has begun on a faltering note. The Left front has rightly declined to participate in the Govt. The DMK's trust must not be breached by acts, which led to a temporary setback. Parties which are part of the UPA – specially, from the South are ideologically close to the Left and the Congress. It is a pity that pandering to narrow sentiments led to a rift between them. Jayalalitha, Chandrababu and the emerging Kannadiga stalwarts share an ideology with the BJP whatever the disclaimers they make. Mamta has to be further exposed and shown to be what she truly is – an autocrat, self-obsessed dictator and a highly unstable personality. She has to be shunned by the Congress for all times to come.

What lessons do the results of the recently concluded polls have for us? Firstly, it is the unreliability of the opinion and exit polls, specially those conducted and analysed by people like Arun Nehru, Suhel Seth, the assorted TV channels and the Asian Age. The bitterness and interest of these sources eliminates whatever little credibility, the opinion polls otherwise have. Next, is the unreliability of Astrologers, however high-falutin their lingo. Like Akbar and himayati troupes they are hired to toe a particular line. They speak neither from conviction, nor knowledge and have therefore to be totally disbelieved. Even their so-called scoops carry no conviction for if the slender circumstances they cite in proof of their be acceptable suspicions. Seema Mustafa also deserves to be questioned as to what exactly was the purpose of her unusually timed visit to Sweden and the articles Asian Age published which had the effect of a damp squib.

The time to eliminate Communalism from the Indian psyche has arrived. There may be a need for a party, which believes in and bravely advocates free enterprise. But it has to be secular in terms of its social and cultural outlook. We need to go forward and not be driven back to the Stone Age every time the propertied seem to be in danger. Next, our organs of public information and comment need to be more professional and not behave like the 'embedded' cohorts of the Bush establishment. Third histrionics have no place in a maturing democracy, even if the performers are people flaunting a selflessness, which they never had. The people in general, need to shed their diffidence. They have begun on the right note and what is needed is an increase in this feeling of independence. No culture-much less Indian-requires undue reliance upon old fogeys or charlatans.

THE ISSUE OF TRIPLE ‘TALAQ’:

EVOLUTION OF SHARI‘AH LAW AND ITS POTENTIALITY FOR CHANGE

Asghar Ali Engineer

Shari‘ah law is considered quite central to Islam and one can hardly think of Islam without it. Its centrality to Islam is unquestionable. However, very few Muslims know that it evolved over a period of time and that much human effort have gone into its evolution. It is considered as wholly divine and hence immutable. This assumption comes in the way of any re-thinking on issues like rights of women, which is quite crucial today. It is therefore, very important to understand the nature of Shari‘ah law and its evolution. Arabia was a by and large a Bedouine or nomadic society except Mecca, Madina etc. which had sedantic population. Nomadic societies have no written laws and hence nomadic Arabs too, had no such laws. The settlements in Mecca and Madina came into existence out of nomadic populations settling around watering places but continued to follow their oral customary laws and traditions. They did not evolve any written laws unlike their Jewish and Christian neighbours who had revealed laws. The Arabs, in fact, had no tradition of learning and Arabic to them was more sacred to ears than to eyes. Even before Islam appeared on the scene there were no more than 16-17 people who knew how to read and write. The Arabs relied mostly on oral traditions.

In fact the Arabs looked down upon scholarship as to them nomadic life was more precious and settled life was a sort of economic compulsion. They used to send their children to nomadic tribes for learning proper language. Thus they were nearly illiterate and were quite proud of their nomadic culture. Thus this pre-Islamic culture was referred to later as jahiliyyah i.e. one based on ignorance. The Qur’an brought to them, for the first time, the written culture and written laws. No wonder than that the first revelation of the Qur’an began with iqra’ i.e. read. (see 96:1)

Thus the Qur’an became every thing to the Arabs, a storehouse of knowledge, knowledge (‘ilm) they had never known. The Qur’an repeatedly stresses the word ‘ilm. ‘Ilm is a very comprehensive word in Arabic which embraces entire range of human knowledge. Thus the Qur’anic revelation was highly enriching experience. It gave them great wealth of knowledge and also laws to organise their society in keeping with just laws. The Arabs had very little in terms of knowledge (‘ilm) and laws except some tribal customs and traditions which could not go too far. The Arabs were acquiring wealth as some of them were in international trade but they had no higher knowledge which could give them a place in the world.

It is important to note that the Arabs were surrounded by Roman and Sassanid Empires both of which were highly cultured and had highest achievements in terms of learning and scholarship. The Arabs, on the other, were at the bottom compared to their achievements. But once the Qur’an was revealed to them and they became masters of

new knowledge this equation changed fast and Muslims raced far ahead and Baghdad evolved as a centre of knowledge and boasted of world's treasure of knowledge.

Thus the Quran was more than a miracle for the Arabs and all those who accepted it as the book of guidance. It was treasure house of science, philosophy, religion and law. However, often it provided guidelines and one had to extract from it what we can call *istinbat*. It has whetted the Arabs' thirst for knowledge and as long as the Prophet (PBUH) was alive they went to him asking for guidance and the Prophet obliged them abundantly. Often many verses were revealed in response to questions from the believers. The Qur'an, needless to say, became the major source of the Shari'ah law. As the Arabs wanted to base every thing now on the religion they embraces and which meant so much to them, they would ask flurry of questions so much so that at times the Prophet had to tell them not to ask too many questions lest all this become binding on them. Thus next to Qur'an Prophet's sayings and doings called (*sunnah*) became another source of Shari'ah law. However, the Prophet and hence his guidance was not available forever after his death. Other sources had to be found as new problems continued to arise particularly as Islam spread to other areas outside the Arabian Peninsula.

Even within Arabian Peninsula problems arose after the death of the Holy Prophet necessitating proper guidance. For example the Quran does not mention the punishment for drinking and this problem arose during the Khilafat of Hazrat Umar. Neither there was anything in the *sunnah* of the Prophet as everyone had stopped drinking completely after prohibition and the Prophet had no occasion to punish anyone. Thus analogical reasoning (*qiyas*) had to be used to prescribe punishment for drinking. Thus third source of Shari'ah law became *qiyas* i.e. analogy.

Then it was also necessary to develop a consensus among the learned of the *ummah* for acceptability and universality of the law so evolved and this was known as *ijma'* i.e. consensus. Thus *ijma'* became the fourth source of Shari'ah law. The corpus of Shari'ah law developed over centuries using these four sources. However, it must be made clear here that this applies to Sunni Islam and the Shi'i Islam does not accept two later sources i.e. *qiyas* and *ijma'* as sources of Shari'ah law. For the Ithna 'Ashari Shi'ahs and Isma'ili Shi'ahs *qiyas* and *ijma'* are replaced by the sayings of the imams. For Shi'ahs imams are considered as *ma'sum* (i.e. infallible) and hence what they say about law becomes part of the law.

For Isma'ili Shi'ahs the final compilation of the Shari'ah laws took place during the time of the 14th imam Imam Mo'iz and compilation was done by his Chief Da'i Sayyidna Qadi al-Nu'man and this compilation is known as *Da'im al-Islam* and there is now no question of re-opening any issue. All these laws are based on the Qur'an, *sunnah* and sayings of Ali and Imams from Hasan to Ja'far al-Sadiq and finally approved by Imam Mo'iz. The principle of *ijtihad* cannot be applied. Whatever is written in *Da'a' im al-Islam* is final.

However, it is not so, at least theoretically, as far as other sects of Islam are concerned. As we referred to above spread of Islam outside Arabian Peninsula gave rise to many new

problems and these problems had to be satisfactorily tackled, especially after the death of the Prophet. The main guidance was available from the companions of the Prophet after his death.

These problems had to be solved within the frame-work of Islamic teachings but real problem arose when the Qur'an and sunnah were silent on the issue. Here before we proceed further it is necessary to point out that the Shari'ah can be sub-divided into matters pertaining to 'ibadat and mu'amalat. According to us 'ibadat (though there are differences among different sects in these matters too) should be re-opened for a discussion. 'Ibadat of course include prayers (salat), fasting (saum), haj, and zakat. These are fixed and immutable and cannot be affected by social changes. These are thus beyond scope of any discussion and are matter between human beings and Allah.

However, in what we call mu'amalat.i.e. matters between human beings and human beings, social changes can have an impact and the Shari'ah law can be reviewed in these matters and here it is useful to understand how social conditions have affected compilation of these laws. Among these laws too we can sub-divide these laws as those pertaining to crimes (jara'im) like theft, robbery, rape, adultery, murder etc. for which the Qur'an or Shari'ah law prescribes punishment and personal laws like marriage, divorce, maintenance, inheritance, custody of children etc.

In most of these matters pertaining to crime or personal matters the Shari'i-i.e. law giver has given clear guidance and detailed laws have been compiled. The basic theory, it is important to note, is that Shari'i-i.e. the law giver is Allah and all these laws are divine and hence immutable. But this is to be qualified as in common perception every bit of Shari'ah law is divine and hence immutable.

It is important to note that in Sunni Islam out of four sources two i.e. qiyas and ijma' are non-divine and part of human efforts to solve the new problems arising. There are four main schools in the Sunni Islam i.e. Maliki, Hanbali, Shafi'I and Hanafi. Of these Maliki and Hanbali are traditionalist while Hanafi is categorised as based on ra'i i.e. opinion. Imam Abu Hanifa lived in Kufa and Baghdad and had to face very complex situations. Baghdad was confluence of Arab and non-Arab civilizations and problems being thrown up were also far more complex and not easily found in first two sources i.e. the Qur'an and sunnah. Thus Abu Hanifa had to resort to his opinion.

Imam Malik and Imam Hanbal, on the other hand lived in Hijaz and were much closer to the Arab traditions and it was easier or them to find guidance within traditional sources especially within the frame-work of Prophetic sunnah itself. Thus they had no need for resorting to opinion or ra'i.

Thus according to Mahmasani "If we were to arrange the various schools in accordance with the degree of their recourse to opinion, the Hanafi school would be placed first and the Zahiri school last. The remaining Sunni schools would be placed in the following order: the Shafi'I, the Maliki and lastly the Hanbali. It is necessary to point out, however, that the above classification is but an approximation, for it is unlikely to find a particular situation in which we can justify a diametrically opposite listing. For example, we shall

see in the Hanbali school's acceptance of one witness for purposes of evidence a less rigid stand than the Hanafi school." (Mehmasani Falsafat al-Tashri fi al-Islam, tr. By Farhat J. Ziadeh, Leiden E.J.Brill 1959, Pp18)

After the death of the Prophet (PBUH) people use to consult prominent companions who had spread to different parts of conquered territories. These companions like Abdullah bin Abbas, Abdullah bin Umar, Abdullah bin Mas'ud and others. They were considered good at fiqh problems and their opinions had lot of weight. After them came another generation called tabi'in i.e. followers of the companions of the Prophet and then taba' tabi'in i.e. followers of the followers.

It was then that need was felt for systematising Shari'ah rules into different schools and the famous four schools came into existence i.e. Maliki, Hanbali, Shafi'i and Hanafi. These schools or madhaib spread in different parts of Islamic world. And it must be said that Imam Ja'far al-Sadiq played very important role as directly or indirectly all the four Imams befitted from his fiqhi thinking.

During early period there were many re schools one of which was that of Tabari who was also a great commentator of the Qur'an. But these schools didn't survive and among Sunni Islam only these four schools survived. The Fiqh Ja'fari was followed by the Ithna 'Ashari Shi'ahs and the Isma'ilis also developed their own fiqh compiled as Da'a'im al-Islam in two volumes.

Thus it will be seen that there are significant differences in these schools both in the category of 'ibadat and mu'amalat. These differences were due to both ideological differences as well as those of socio-cultural conditions. The earlier period i.e. up to second century hijra was quite dynamic and productive. This was mainly the formative period for Islamic Shari'ah. This was also the period when Islam was spreading to other territories in Central Asia, South Asia and parts of Africa. These converted Muslims entered into Islam with their cultural and mental baggage.

It is important to note that any law has to have some social base. It cannot be created out of vacuum. Even divine pronouncements have a social base. That is why the Shari'ah law provides space for what is called 'aadat i.e. customs and traditions which do not clash with divine objectives. Thus many Arab customs became part of the Shari'ah laws. Some customs were of course modified suitably so as to make them conform to the divine objectives and goal of justice.

Thus nikah, mehr and certain forms of divorce all existed before Islam appeared on the scene. These were suitably changed to make them acceptable with Islamic values. Earlier these were followed by the Arabs just because they happened to be the customs and traditions but the Islamic law giver made justice central to these practices.

In pre-Islamic period or period of jahiliyyah nikah, mehr, divorce, inheritance etc. were not based on the concept of justice whereas in Islam justice is quite central. These customs such as above were heavily loaded against women. Women had absolutely no

say in matters of her nikah. Her father or grand father or brother could give her away to any man and take away the mehr himself. This was obviously very unjust to women.

The Qur'an, therefore, adopted nikah as a valid procedure for marriage but changed its nature and made it quite just for women. No nikah could be valid without woman's consent in presence of two witnesses and it was she who would fix the mehr amount and mehr would belong to her, not to her father as a wali or a marriage guardian. Thus it would be seen that Islamic marriage became very just to women.

It is important to note that in pre-Islamic Arabia women did not count for much in social and family life. Islam gave her a place of dignity and elevated her to status of equality with man (2:228). It was a great revolutionary step. As far as the Qur'an is concerned women as believers had in no way inferior status. This has been spelled out unambiguously in the verse 33:35. This verse leaves should not leave anyone in nay doubt about equal status of women.

However, society was not ready for such revolutionary step. As pointed out above socio-cultural norms of a society overrides religious ideals and jurists succumb to social pressures in bringing women's status to given social levels. This is precisely what happened with the status of women in the Shari'ah formulations. For example, father hardly ever allowed her to make free choice for her marriage and exercised his authority to compel her to accept his choice and Shari'ah developed the doctrine of kufw i.e. of status. Also, even if she cried it was taken as her consent as she is thought to be crying for being separated from her parents. Such extrapolations eroded her free choice.

Thus we see cultural practices find their ways into juristic pronouncements. No Qur'anic pronouncement confines women to four walls of home. Women are seen as active social agents like all believers. She is charged with all Islamic duties including that of enforcing good and fighting evil (amr bi'il ma'ruf wa nahiy 'an al-munkar). This is most important duty a believer has to perform and a believing woman is also charged with this duty. No woman can perform this duty sitting at home. She as an active and sincere believer must perform this role with great sense of responsibility. It was for this reason that Imam Abu Hanifa was of the opinion that she can become a qadi as she is also charged with the function of enforcing good and fighting evil.

However, it was our cultural influence that she was required to sit at home and look after her husband and children. This is nowhere mentioned in the Qur'an as part of her duty. But it became part of juristic thinking and almost a sacred duty of a woman to look after her husband and children. One can easily see how cultural norms become part of so called 'Islamic behaviour' and part of Shari'ah law. In early Islamic society particularly during the Prophet's time and immediately thereafter she performed active public duties. Hazrat 'Umar had even appointed her as inspector of weights and measures.

There is another controversial issue of hijab. Our conservative jurists under the influence of their own socio-cultural practices interpreted the Qur'anic verses in such a manner as to restrict her freedom. In fact there is no mention of hijab in Qur'an for all Muslim

women. It has been particularly mentioned for azwaj-I-mutahharat i.e. wives of the Prophet (33:53). The word hijab has not been used for other believing women at all.

The women in fact have been advised not to display their adornments publicly as during the period of ignorance the women would stand in public places dressed in their best and also wearing anklets and try to attract men's attention towards them and their adornments by striking their feet. This was not in keeping with the dignity of women. The Qur'an thus advised them not to display their adornment publicly except what should be displayed (24:31).

Basically it is an advice from Allah to protect her chastity and again exception has been made for what should remain open thereof and there is near unanimity among the fuqaha' that she can keep her face and hands up to elbows open. This opinion too, needless to say, culturally mediated. The then prevailing culture permitted face and hand to be kept open. The purpose is to protect her chastity, not to confine her within four walls. In fact in a given culture a dignified dress should suffice for her.

However, in the Shari'ah law great deal of restrictions were imposed on her and she was held responsible entirely for her chastity though the Qur'an holds men equally responsible for this. In the preceding verse i.e. in verse 24:30 it is said "Say to the believing men that they lower their gaze and restrain their sexual passions. This is purer for them." Thus primarily it is men's duty to restrain their sexual passion but in Shari'ah law all the restrictions have been imposed on women, not on men.

This is also because of cultural influences and not the Qur'anic pronouncements. The men has, equal, if not greater responsibility, to maintain sexual norms and chastity. Men also has to dress properly in this respect. To cover head or not to cover head is more cultural than Qur'anic requirement. We must learn to distinguish between cultural and what is Qur'anic. Our Shari'ah formulations in respect of female norms have been greatly influenced by our cultural norms.

Even practice of polygamy, as we have discussed separately in our article on the subject, was made more pervasive due to our cultural norms than due to the Qur'anic pronouncements. If we read the Qur'anic verses 4:3 and 4:129 together polygamy is hardly permissible. The Qur'an was the first divine Book to stipulate such harsh conditions for polygamy so as to make it almost impossible. Justice is so central to the Qur'anic pronouncements on polygamy that without fulfilling that condition it would never be permissible and there is great deal of debate whether material justice is enough for polygamy or equal love is also part of it. The verse 4:129 leaves us in no doubt that equal love is also part of it.

In this brief discussion on sources of influences on the jurists it becomes obvious that social dynamism ultimately leads to legal dynamism and the legal philosophy should not be based on outdated medieval concepts. Legal philosophy while based on Islamic and Qur'anic values should not become stagnant but should remain dynamic and ijthihad should be a continuous process. Ijthihad, of course, should reflect consensus of ummah and all leading minds of ummah should be involved. The Qur'anic values unfortunately

were neglected in favour of our cultural norms and because of this Islam began to stagnate. We must again make these Qur'anic values central to our jurisprudence and Islam would become the most progressive religion of the world.

AFTER ABOLITION OF TRIPLE TALAQ – WHAT NEXT?

Asghar Ali Engineer

The Muslim Personal Law Board (MPLB) has taken bold decision to review practice of triple talaq at one go in its next meeting in July in Kanpur. The Board undoubtedly deserves congratulations from all those who are committed to women's rights and had been campaigning for this essential reform. Hundreds of Muslim women have suffered because of this pre-Islamic practice which, came back into Hanafi and Shafi'I Islamic law for reasons not to be gone into here.

It is unfortunate that the Sunni Barelvi ulama have threatened to launch an agitation if MPLB approves of abolition of triple divorce. They maintain that though it is bid'ah (i.e. sinful form of divorce) nevertheless once pronounced thrice it is valid. They have stated nothing new. It was because of this view by the Hanafis that triple divorce was practiced so long in India though it was abolished in most of the Muslim countries. The Barelvi threat should not deter the members of MPLB from abolition of triple talaq though the Board would like to evolve a consensus on the matter. It would be better if the MPLB persuades the Barelvis to agree.

It would be better if such consensus is worked out as Barelvis are in majority and if they do not agree the abolition of triple talaq by the Board may not be very effective. An overwhelming majority of Muslims in India follow the Barelvi School. It is also important to note that unless it takes the form of legislation it may not be effective if triple divorce is challenged in the court of law.

Suppose despite the MPLB abolishing it if someone pronounces triple divorce it will remain valid in the court of law unless it is abolished by law. Thus what MPLB has to do is to prepare a draft and give it to the Government to enact it. And as we have pointed out in our last article (See Secular Perspective 16th to 30th June, 2004) such a precedent already exists and the Dissolution of Muslim Marriage Act was drafted by the ulama led by Maulana Ashraf Thanvi and others and enacted in 1939.

But if such an exercise is undertaken by the MPLB it has to be quite comprehensive. There is great need for codification of Muslim Personal Law today. It should be done as early as possible. What is known as Muslim personal law today, it is interesting to note was known as either as Anglo-Mohammedan Law during the British period or simply as Mohammedan Law and was enacted by the British. But after independence the terminology changed and the Anglo-Mohammedan Law, in order to wipe out its colonial stamp, came to be re-named as Muslim Personal Law. However, its contents did not change.

Thus mere change in its terminology was a political act, not a harbinger of social change as in other Muslim countries. To de-colonise its name is not enough, one must de-colonise it content wise as well. During the colonial period women were not supposed to play an active role in socio-political matters, at least among Muslims though there were exceptions like Bi Amma (Mother of Ali Brothers) and many other women who played important role in freedom struggle.

But now 56 years after independence much water has flown down the Ganges and Muslim women are also in the forefront of many social movements. They are far more conscious today than they were during the colonial period. It is after great deal of efforts that the MPLB has agreed to abolish triple divorce. Very important as this measure is, it is not enough. There is crying need for a comprehensive legislation to be drafted under the guidance of MPLB by the ulama and Muslim intellectuals and lawyers.

As I have often pointed out Islamic law is so progressive that it can become basis for a Uniform Civil Code. However, conservative Muslim society dragged the Qur'anic pronouncements to its own level and introduced, through human reasoning many measures, which curbed women's rights. Despite reforms in other Muslim countries women have not got full measure of equality, which the ulama theoretically concede. Iniquitous measures vary from country to country,

In Saudi Arabia, for example, women are not allowed to drive and they are jailed if they drive. In Kuwait until recently women were not allowed to vote and had to wage struggle for years before this right was conceded recently. There is debate raging in Saudi Arabia as to why women cannot drive while they can drive in other countries. Obviously issues like driving and voting were not in existence in early Islamic period. It is the ulama in Saudi Arabia and Kuwait who, using their own reasoning prohibited for women. And now women are waging struggle in these countries against these measures and ulama are opposing it saying it is 'sin' for women to drive or vote.

In many other Islamic countries like Indonesia, Malaysia, Pakistan and Iran women drive and vote without any religious constraint. Qur'an is the only unanimous divine source for Muslims and it remains most progressive in respect of women's rights. Ideally it grants equality between man and woman and should be the main source of legislation about women's rights.

The past interpretations of the Qur'an were constrained by socio-economic conditions and should not be binding on the present and future generations of Muslims. All great Islamic thinkers have repeatedly made this point and have accepted the central role of ijtiḥād (creative interpretation). It is only our social conservatism, not lack of theological sanction, which prevents our ulama from exercising it.

The attacks on Muslim identity by the Sangh Parivar also have been one of the reasons for resistance to any change. These attacks may continue and demand for Uniform Civil Code persist and find legitimacy if there is no initiative for change. Its attacks may even continue after such initiative. Our initiative for change is not motivated or restrained by

these attacks. It should be based on the merit for change. Muslim women should not suffer and should get justice.

My plea with MPLB and concerned Muslim intellectuals is to initiate measures for drafting a comprehensive law duly codified which will embody the Qur'anic spirit. Triple divorce and unregulated polygamy has often been the cause of attacks on otherwise quite progressive Islamic personal law. Polygamy may not be abolished completely but strictly regulated as directed by the Qur'an. In fact both the verses on polygamy i.e. 4:3 and 4:129 should be read together to understand the real Qur'anic intent. Even the first verse i.e. 4:3 requires rigorous justice to all wives and ends by warning that 'if you cannot do equal justice then marry only one'.

The second verse i.e. 4:129 makes it clear that equal justice is humanly impossible and do not leave the first wife in suspension. With such warnings polygamy should not be practiced unregulated. All other Muslim countries except Saudi Arabia and Kuwait have introduced strict measures to regulate it. Thus a draft law should introduce such regulatory measures and specify circumstances in which one could take second wife as has been done in Pakistan. Those circumstances could be when the first wife is terminally ill, or medically proved to be infertile or barren and that too with the permission of the first wife and the court of law.

Today, though by no means polygamy is widely prevalent among Muslims (it is much more among Tribals, Dalits and upper caste Hindus), still one finds cases of desertion of first wife and marrying another without giving justice to the first wife. This should not happen and this is strictly prohibited by the Qur'an. The Qur'an permitted polygamy to help women in distress like widows and orphans, not to do injustice to them. It is the duty of the ulama to educate Muslims in this respect.

Thus there is crying need for a new draft law which the MPLB can draft with the help of Muslim lawyers and intellectuals incorporating all these changes and ask the Government to enact it. If it is properly drafted I am sure, it will become a model law for others to follow as in Islamic law women enjoy all the rights which modern laws have given to women like widow remarriage, compulsory arbitration before divorce, inheritance, right to property, right to earn and so on. And all these rights are unconditional and a wife also has right to lay down conditions at the time of marriage.

As such a law may take time since it is not easy to develop a consensus due to sectarian differences, the Board in the meanwhile should launch an awareness campaign against misuse of polygamy etc. it should also see to it that the amount of mahr paid is substantially high (part of which can be deferred) to discourage easy resort to talaq. The Qur'an itself encourages high amount of mahr. And mahr is woman's own untrammelled right. In case of divorce it can provide her with a measure of economic security. It is regrettable that in some Muslim communities mahr is only nominal and as low as Rs. 41 or Rs. 51.

In all these matters MPLB can play an important role as it has come to be acknowledged an authoritative body and in a sense representative too. Though it is understandable that it cannot rush into things, it can certainly cautiously proceed further leading the way. If the women suffer after all half the umma suffers and Qur'an does not admit injustice in any case.

TRIPLE DIVORCE – NEED FOR CHANGE

Asghar Ai Engineer

Recently several cases of on the spot triple divorce have been reported in the press. In Bihar just because wife of a person did not vote for the candidate of his choice in the Loksabha election he pronounced triple divorce and threw out his wife. Again just a few days ago, a husband came drunk in Bhadrak, Orissa on 3rd June, and had a tiff with his wife and pronounced talaq thrice but in the morning he realised his mistake and wanted to take back his wife but leaders of the Muslim community separated them insisting that it is irrevocable divorce and they cannot live together as husband and wife. Besides this many cases just go unreported.

There is now report from Kerala that members of orthodox Sunni organisations have threatened to agitate if women are allowed to pray on Friday in the mosque. In the girls college in Manjeri students have been praying on Friday in the mosque on college premises. But the Samastha Kerala Sunni Students Federation (SKSSF) has launched a public agitation against women being allowed to pray on Friday in the mosque.

What such acts of triple divorce or agitations against women praying on Friday in the mosque convey to the world? Do women have secondary status in Islam? Is it sin to pray to Allah in mosque on Friday? What sort of Islam is this? How can Islam banish women from praying on Friday inside the mosque? For these orthodox Muslims customs and traditions are more important than the Qur'anic injunctions.

They do not know that Islam was the first religion in the world to empower women and give them equal legal status. The Qur'an clearly pronounces equality of sexes see verses 2:228 and 33:35. Commenting on the verse 2:228 Maulana Azad in his Tarjuman al-Qur'an says that it is revolutionary declaration of equality of sexes 1300 years ago. But the Muslim society under the influence of feudal social ethos never realised this revolutionary potential of Qur'anic teachings.

However, these old institutions developed under different social ethos cannot work today. The women are making fast strides in different fields of life. The extent of education and consciousness of their rights is far more widespread today than ever before. Even in conservative Saudi society the women are no more prepared to accept their traditional role. Only last week i.e. beginning 12th June 2004 seventy Saudi Arabian scholars and intellectuals participated in the first day of third national dialogue forum in Madina to address the rights of women in particular prompt and full delivery of justice to women.

The overall theme of this three -day forum is women's rights and duties and their relation to education. Many women scholars read out papers in this forum to discuss ways to eliminate religious extremism in the Saudi Kingdom. In Madina the organisers hope to create an environment conducive for Saudi intellectuals and scholars to discuss the position of women in Saudi society and to find out the best ways to develop their status in line with Islamic teachings.

This clearly shows there is great deal of ferment among women even in the Saudi society. Women cannot be treated in the old ways any more. In India also Muslim women have become more conscious about their Islamic rights and are demanding changes in the Personal Law in keeping with the Qur'anic teachings. As pointed out the Islamic laws in relation to women are most modern in their approach but Muslim societies have preferred traditional interpretations by Imams in pre-modern feudal society to the clearly worded Qur'anic injunctions.

Talaq is a highly sensitive issue as it can break years of marital relations between husband and wife. Thus the Holy Qur'an is also very cautious in matters of divorce. Firstly, it has adopted most modern approach to this sensitive issue. It requires arbitration before any breach of relations. The Qur'an says, "And if you fear a breach between the two, appoint an arbiter from his people and an arbiter from her people. If they both desire agreement, Allah will effect harmony between them." (4:35)

Thus through arbitration the breach should be prevented and attempt should be made to bring them together again as Allah desires harmony. Despite such clear Qur'anic injunction we approve of triple divorce in one sitting and destroy marital life in one breath. How such an act be Islamic? It is greatest injustice, specially with women. Again justice ('adl) is so central to Qur'anic teaching. And to throw ones wife but by pronouncing three words of talaq is most unjust act. There are three four key words in Qur'an – 'adl, ihsan, rahmah and hikmah (i.e. justice, benevolence, compassion and wisdom) and triple talaq is against all these key words. Neither it is justice, nor it is benevolence (ihsan), nor is it compassion (rahmah) nor is it an act of wisdom (hikmah). All Muslims are also not unanimous on this form of divorce. Ahle-Hadith, Hanbalis and Shi'ahs reject this form of talaq. Even Hanafi Muslim countries like Jordan have reformed this practice and enforced the Quranic injunction of arbitration. Arbitration can and does save many marriages. The Qur'an does not permit triple divorce at all. Three talaqs has to be spaced over a period of three months so that husband and wife get enough time for reconciliation through intervention of relatives and friends. Moreover talaq can be given only when wife is in a state of tuhur i.e. purity after menstruation. If talaq is pronounced during the period of menstruation it will not be valid. The Prophet has ordered wife to be taken back if the talaq is pronounced during menstrual period. Triple divorce disregards all this completely.

Some Muslim women have devised a standard nikahnama (marriage contract) strictly within the Shari'ah framework and given to the Muslim personal law board a couple of years ago so that Muslim women do not face such situations. Since marriage in Islam is a contract such nikahnama is perfectly valid and was approved by a great 'alim like

Maulana Ashraf Thanavi. But the personal board is hesitating to implement it. If implemented, it can give lot of relief to Muslim women. This is very modest piece of reform (in fact it is really not any reform or change but only a modicum of relief to suffering women) but the personal board is hesitating in implementing even this.

All ‘ulama agree that pronouncing triple talaq in one sitting is bid‘ah (innovation) and that bid‘ah is sin and yet this sinful practice is enforced in the name of divine law. In fact triple divorce indeed is great sin as it so unjust and oppressive for women. Every possible attempt should be made to eradicate this sinful practice from our society. The ‘ulama who are guardians of Islamic law should play a leading role in this matter. I have had discussion with many ‘ulama who privately agree that this form of divorce should be abolished but do not have courage to say so publicly.

The personal law board should at least launch an awareness movement educating Muslim men about desisting from this sinful form of divorce and resort to the Qur’anic form of divorce as clearly spelled out. I am not aware of any such awareness movement. The Muslim men are Islamically illiterate and do not even know that triple divorce is a sinful form of divorce and Holy Prophet has strongly disapproved of this form of divorce. If the members of personal law board do not have courage to abolish this form of divorce they should at least have courage to launch an awareness movement among Muslim men and appeal to them not to resort to such form of divorce. Maulana Ashraf Thanvi and others had taken a bold step in 1939 and drafted the Dissolution of Muslim Marriage Act, which gave great relief to suffering women. Can the members of Muslim personal law board not show such wisdom and draft a comprehensive law codifying the Muslim personal law on the lines of the 1939 Act. It will give great and much needed relief to Muslim women.

However, there is no such sign of codifying the Muslim personal law and suffering of Muslim women continues. If Maulana Ashraf Thanvi and others could take such bold step way back in 1939 why can’t our ‘ulama in 21st century take such step? This will be not only in keeping with the true spirit of Islam but will also go a long way in improving the image of Islam in India. It is due to such un-Qur’anic practices that image of Islam has suffered and the demand for Uniform Civil Code surfaces.

The Islamic law is most progressive and in fact should become a model law for all others if our orthodox ‘ulama care to understand and implement it in its true spirit. Maulavi Mumtaz Ali Khan, Maulavi Chiragh Ali, Justice Ameer Ali and others pleaded for reforms in late 19th and early twentieth century but nothing has happened so far.

Now it is for Muslim women to acquaint themselves thoroughly with Islamic law and launch a movement for reform and change. Women in all Muslim countries have struggled for change and succeeded. Now, as referred to above, even women in the most conservative Saudi society have begun to assert themselves. It is therefore, high time that Muslim women in democratic society like that of India struggle for reform within the Qur’anic frame-work and win their rights guaranteed by the scripture.

That seems to be the only way left for them. Progressive and believing Muslim men should also come forward and support such movement for reform.

SPECIAL ARTICLES:

Remedies Against Discrimination and Inequality **The Global Experience and Lessons for Indiaⁱ** **Dr. Prakash Louis**

Discrimination and inequality are usually considered to be essential part of social order. This is also a fact that discriminatory practices and inequality are ubiquitous and omnipotent. It would be empirically untellable to deny the social, cultural and historical fact of discrimination and inequality. But the danger emerges when one takes these social divisions as fixed and final or strives to present these as 'divinely ordained'. It is argued by some that since the social stratification, which results in discriminatory principles and practices, is a divine plan, it cannot be altered. But the heart of the matter is that division of people into high and low is a societal process and not a divine intervention. Moving away from this deterministic point of view, the social scientists in the recent past have been trying to understand the social realities like discrimination and inequality and the impact of these practices on those who are subjected to these.ⁱⁱ

In a bid to do away with discrimination and to gap the inequality existing in society affirmative action or positive discrimination was introduced in many societies and polities. Since, discrimination stems from social, economic, political cultural and religious principles, affirmative actions have been considered as socio-economic, political and cultural remedies. There are three inter-related principles behind the affirmative action policies and programmes. They are: 1) Affirmative action policies are developed as anti-discriminatory policies in several countries of the world. These are envisaged to provide protection to the discriminated and deprived social groups. 2) These anti-discriminatory policies are different from the general policies enacted for the welfare of the poor. 3) Thus, these affirmative action policies are a remedy to 'include the excluded' and thus goes beyond the principles of mere welfare and concentrates on the rights of the discriminated social groups.

From the point of view of the dalits, discrimination and inequality are the outcome of caste system in general and the practice of untouchability in particular. The principles of caste system gave genesis to untouchability which in turn imposed social exclusion on the dalits. The central and crucial fact of social exclusion is that this practice emanates from the institutionalized attempt to keep out or to 'cast out' a segment of the population from the powers and privileges of a social order. Here we do not deal with the ill-treatment one particular individual who 'ill-treats' another person, but the social processes that are operative in general. Thus, social segregation is an institutionalized form of social distancing expressed in physical separation. It signifies the convergence of physical and social space and is to be distinguished from other social forms, which also structure social distance in spatial termsⁱⁱⁱ. Affirmative action is a political remedy to remove the impact of social exclusion and the discrimination suffered due to this age-old practice.

In this paper we propose to examine some of the factors and features of discrimination suffered by the dalits in India. It also analyses the impact of reservation policies enacted for the last five decades which was supposed to be one of the basic remedy for eliminating discrimination. Also, it presents arguments that are though preliminary in nature about the need for affirmative action in private sectors. And finally, this paper looks at the enactment of affirmative action policies in other countries and suggests remedies to eliminate discrimination and inequality suffered by the dalits in India.

Discrimination and Inequality

There is no denial of this fact that discrimination and inequality in various forms and intensity seem to have been part of every society. The definition of discrimination according to the International Encyclopedia of Sociology is, “Discrimination is the denial of opportunities and rights to certain groups on the basis of race, sex, ethnicity, age or disability’. In common parlance discrimination can be simply defined as prejudice transformed into action. Thinking of a group of people in a certain way and then promoting practices or conditions that support that thinking is discrimination.^{iv} Discrimination is learned behaviour and this is passed on to next generation.

Sociologically there are four categories of discrimination. 1) Intentional individual discrimination. This refers to isolated act of discrimination performed by an individual on the basis of personal prejudice. 2) Unintentional individual discrimination, which is an isolated act of discrimination performed unconsciously by an individual. 3) Intentional institutional discrimination occurs when discrimination is based on the personal prejudices of the members of an institution. 4) Unintentional institutional discrimination is discrimination that is part of routine behaviour of an institution that has unknowingly incorporated prejudicial practices into its operating procedures. In the recent past, discussions on discrimination have focused on unintentional institutional discrimination by suggesting different measures for correcting this. Some people believe that this form of discrimination can be corrected by affirmative action programmes. But there are others who argue that the protective action only pretends to rectify the wrongs but protect the statusquo.^v

The International Labour Organisation (ILO) Discrimination (Employment and Occupation) Convention, 1958 (no. 111) defines discrimination as any “distinction, exclusion or preference, which has the effect of nullifying or impairing equality of opportunity or treatments in employment or occupation as may be determined”.^{vi} In this Convention, the grounds for non-discrimination include race,^{vii} colour, sex, religion, political opinion, national extraction or social origin. While the rhetoric of eliminating or reducing discrimination has become a global concern, the reality is that newer forms of discriminations can be seen at all levels and in all sectors.

In the recent past, non-discrimination also came to centre stage of debate at the national and international levels. ‘The moral argument for non-discrimination carries a great deal of weight in both the international and the national domains. It stems from the basic human rights premise that all human beings are equal and deserve to be treated as such.

Such principles are embedded in the Universal Declaration of Human Rights as well as in the ILO Declaration of Fundamental Principles and Rights to Work. The argument against discrimination is that society disintegrates under discrimination. Race riots, race-related arson attacks, racially motivated murders and the proliferation of neo-Nazi tendencies are all manifestations of the socially detrimental consequences of leaving discrimination unchecked. Equally, violent backlashes against inequality are also more likely to occur when discrimination is not addressed. Economically speaking, it is not only society but also the individual employer who pays the costs of discrimination. By discriminating, employers are failing to use the full potential of the human resources available to them and are therefore neither maximizing production nor minimizing costs.^{viii}

Like discrimination, inequality is also a much debated social category. Equality of opportunity is the situation that exists when everyone in a society has the same economic, political and social rights. Equality of outcome is the situation that exists when everyone in a society has the same rights and rewards as everyone else, regardless of talents, skill, or work. Inequality is the existence of unequal rights, rewards, or responsibilities among different groups in society. Various types of inequality-economic, social and political-are interrelated; they influence and reinforce one another in a variety of ways.^{ix}

Inequality and discrimination take different form in different societies. Moreover, they adapt and change themselves according to the changing social reality. Hence, to state that in the modern, liberal state and society, inequality and discrimination are reduced if not eliminated would not be in tune with the reality. Moreover, discrimination and inequality have permeated all aspects of social life. Further, they have deprived the lower castes of resources, power and human dignity and thus have reduced the dalits to the most degrading social existence. Thus, caste segregation did not confine itself to individual realm but took hold of collective interaction too. And thus, the dalits became the victims of socio-historical process of segregation, exclusion and discrimination.

Profile of the Dalits

A careful examination of the socio-economic profile of the Scheduled Castes augment the fact that even five decades of planned development has not introduced expected change in their lives. According to the 1991 census reports the dalits constitute about 160 million out of 1000 million population of India. But if one documents the representation of the dalits in the socio-economic sectors it is abysmally low. Literacy is considered to be one of the indicators to measure the progress of a community and a nation. In comparison to other national agenda like land distribution and asset creation, literacy is seen as an easily attainable goal. But the reality is that even in this sphere the dalits have been discriminated.

Table1 : Literacy trend among SC and Total Population

Year	Scheduled Caste Population			Total Population		
	Male	Female	Total	Male	Female	Total
1	2	3	4	5	6	7

1961	16.96	3.29	10.27	34.44	12.95	24.02
1971	22.36	6.44	14.67	39.45	21.97	29.46
1981	31.12	10.93	21.38	65.60	29.76	43.67
1991	49.91	23.76	37.41	64.13	39.39	52.21

Source: National Commission for Scheduled Castes and Scheduled Tribes Report 1996-97.

There is no doubt that the dalits have attained comparatively better literacy rate in the last four decades [Table 1]. Literacy rate of dalit women has improved considerably from 3.29 in 1961 to 23.76 in 1991. While this trend indicates positive move among the dalits marking the beginning of greater social mobility, yet the achievement is not proportional to the rhetoric of special provisions made for the weaker sections. In the last three decades in a special way, Total Literacy Mission or National Literacy Campaign, District Primary Education Programme [DPEP], *Sarva Shiksha Abhiyan*, Residential Schools for the Scheduled Castes etc., were introduced to ensure steady increase in the literacy and educational attainment of the dalit children.^x But all these seem to have ‘untouched’ the dalit community.

Any discourse on dalits and development also leads one to analyse the five decades of implementation of special welfare measures and poverty alleviation programmes. It is common knowledge that poverty alleviation programmes were specially designed to enable the dalits to move from below to above poverty line. But inspite of many special provisions aimed at the upliftment of the Scheduled Castes, over 60 per cent of agricultural labourers are returned as living below poverty line in 1993-94 [Table 2]. Since, the Scheduled Castes are landless and assetless, agriculture continues to be the mainstay of occupation. Since, the scope of being regularly employed in agriculture is limited and not even the stipulate minimum wages are paid, the Scheduled Castes are forced to live in poverty. In contrast to this category, only a small segment [29%] among them are returned as below poverty line in other labour category.

Table 2 : Different Social Groups Below Poverty Line [%]

Rural Area	Scheduled Castes		Others	
	1987-88	1993-94	1987-88	1993-94
Self- Employed in Agriculture	41.21	37.70	25.57	25.57
Self- Employed in non-Agriculture	41.60	38.19	31.42	29.49
Agricultural Labour	59.77	60.00	53.30	52.34
Non-Agricultural Labour	46.49	41.44	34.45	35.59
Other Labour	29.98	29.00	19.26	34.37
All	50.07	48.14	34.37	31.29

Source : Consumption Expenditure Survey, NSSO, 1987-88 & 1993-94.

Another significant fact is that there is no sector in which discrimination is not practiced towards the dalits and that too without any penalty. The Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its report presented to the Parliament on 15th

March 2000 pointed out that out of 481 judges in High Courts there are only 15 judges who come from the Scheduled Castes. This is just over 3.11 percent. If the population of the Scheduled Castes is over 16.48 percentage and over five decades of affirmative action did not ensure atleast a size of Scheduled Castes to become judges, the interests of this community would not be served. The Report further goes on to state, “The members of the judiciary have so far been drawn from the very section of society which is infected by ancient prejudices and is dominated by notions of gradation in life. The internal limitation of class interests of such judges does not allow them full play of their intellectual honesty and integrity in their decisions. Their judgments very often betray a mindset more useful to the governing class than to the servile classes and no sympathy for any real measures designed to raise their dignity and progress”.^{xi}

At the broader level, this needs to be stated that the dalits suffer from the following: lack of independent source of income; lack of alternative source of income; lack of occupational mobility which would make available alternative sources of livelihood or escape from exploitative situations; lack of organisations to ensure collective bargaining power. This is also notable that they cannot even utilize the special welfare measures initiate in their favour since the power relations in the given Indian social order goes against them.

Reservation: the Constitutional Model

The architects of Indian Constitution taking into account the discrimination and inequality suffered by the dalits opted for reservation or affirmative action as a remedy. Affirmative action is usually defined as that measure which is aimed at minimizing if not doing away with discrimination and deprivation. In political discourse, the following terms are interchangeably used: affirmative action, positive discrimination programme, protective discrimination, compensatory treatment, reservational justice, preferential treatment, reservation policy etc. It is also remarkable that affirmative action is also seen as ‘compensation principle’, that is, advocating reparation for past discrimination.

It is usually argued that Indian preferential policies are based on 4 principles: 1) compensation for past prejudices; 2) protection of the weak, as per Article 46 of the constitution; 3) proportional equality so as to bring the discriminated to an equal level with the others; 4) social justice incorporating distributive justice and social welfare. These basic principles of reservation were also seen as the act of including the excluded. Let us briefly look at some of the constitutional policies related to reservation.

The Constitutional anchorage of reservation policy in India could be delineated from the following articles of the Indian Constitution: Articles 15(4) enjoins upon the state that “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”. This provision is irrespective of the fact that Article 15 (1) in clear and categorical terms directs, “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”. Thus, on the one hand, the Constitution clearly directs

the State to not to discriminate among its citizens on any account, but on the other hand, it also orders the State to workout preferential treatment for the weaker sections.

In the same vein, Article 16 (4) enjoins upon the State, “Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State”. This in a sense goes contrary to the provision in 16 (1) “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”. The aspirations of the citizens for gainful employment is a contentious issue, yet, the framers of the Constitution have made a special provision in favour of the backward communities is an indication of the Constitutional measures for equality.

Further, Article 17 enjoins upon the State to make sure, “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law”. Thus, it is argued here that the Constitutional provisions do not leave anything for chance, but it discriminates against discrimination and segregation imposed by caste system. It further, does away with the practice of untouchability.

Article 330 and 332 speaks about *reservation of seats for Scheduled Castes and Scheduled Tribes in Lok Sabha [the Parliament] and Vidhan Sabha [Assemblies]*. “Seats shall be reserved in the House of People for a) the Scheduled Castes and b) Scheduled Tribes. Seats shall be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly of every State”. These articles are to make secure the political participation of the marginalized communities. This notwithstanding, Article 40 speaks about the constitution of Panchayati Raj Institutions as the most desired local form of governance. Going further, the 73rd Constitution Amendment Act 1992, has made the following provisions for the weaker sections: 1) Reservation of seats for the Scheduled Castes and Scheduled Tribes; 2) About 33 percent of the seats are reserved for women; and 3) states may make provisions for reserving seats for the Other Backward Castes too.^{xii}

Dr. Ambedkar having become aware of the debilitating effect of discrimination and inequality imposed on the weaker sections and argued for reservation. “Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts under the state and only 30 per cent are retained as the unreserved, could any body say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of the ... namely that there shall be equality of opportunity. It cannot be in my judgment. Therefore, the seats to be reserved, if the reservation is to be consistent with clause (1) of Article 10 (now 16), must be confined to majority of seats... we have to safeguard two things, namely the principle of equality of opportunity and at the same time satisfy the demand of the communities which have not had so far representation in the State, then”.^{xiii} Based on these arguments reservation policy was introduced in 1950s.

In an enlightened and elaborate discussion on reservation, Mark Galanter argues, 'Preferences are of three basic types: First, there are reservations, which allot or facilitate access to valued positions or resources. The most important instances of his type are reserved seats in legislatures, reservation of posts in government service, and reservation of places in academic institutions (especially in the coveted higher technical and professional colleges). To a lesser extent, the reservation device is also used in the distribution of land allotments, housing and other scarce resources. Second, there are programmes involving expenditure or provision of services-e.g. scholarships, grants, loans, land allotments, health care, legal aid- to a beneficiary group beyond comparable expenditure for others. Third, there are special protections. These distributive schemes are accompanied by efforts to protect the backward classes from being exploited and victimized. Forced labour is prohibited by the Constitution, and in recent years there have been strenuous efforts to release the victims of debt bondage, who are mostly Scheduled Castes and Tribes'.^{xiv} According to Marc Galanter, the rationale behind the reservation policy is that the historically disadvantaged population should be provided with preferential treatment. The constitutional provision proceeded from an awareness of the entrenched and cumulative nature of group inequalities. Against this, equality was embraced as a cardinal value.

However, contrary to common belief, the dalits have not really benefited to the level they were supposed to from reservation packages. For instance, the percentage of members of the weaker sections gainfully employed in the government services is abysmally low [Table 3]. The Scheduled Castes and the Scheduled Tribes comprise 16 and 8 per cent of the total Indian population respectively. But if one pays attention to their presence in public sector, one would be overawed by this fact that even the stipulated 15 and 7.5 percent of reservation fixed for these communities is not filled. There are three inter-related points, which need to be highlighted here. From Table 3 it becomes clear that the prescribed level of reservation in jobs is not filled up. Secondly, at the lower level, their representation is comparatively better. Further, many of these prescribed posts are filled up by the dominant castes at the pretext of non-availability of meritorious candidates.

Table 3: Representation of SCs in Central Government Services –As on 1.1.1997

Group	Total	SC	%
A	60,067	6,135	10.21
B	94,111	11,649	12.38
C	19,59,477	3,14,995	16.08
D (Excluding Sweepers)	8,18,748	1,76,368	21.54
Sweepers	15,51,137	61,149	39.42
Total (Excluding Sweepers)	29,32,403	5,09,149	17.36
Total (Including Sweepers)	30,87,540	5,70,296	18.47

Note: This data excludes information from 7 Ministries/Departments.

Source: Department of Personnel & Training. Quoted in National Commission for

Scheduled Castes & Scheduled Tribes. Fifth Report 1998-99, p 130.

Interestingly, this anomaly is irrespective of the fact that the Union Department of Personnel and Training at regular intervals is supposed to send order to for the implementation of these safeguards. While the Scheduled Castes seem to have fared better, the Scheduled Tribes are at the deplorable stage. If this is the state of affairs with regard to public sector, there is no scope of entry even in private sector.^{xv} It is this obtrusive and blatant discrimination that has mobilised the dalit activists to demand for strict enforcement of reservation, jobs in private sector and access over resources.

Affirmative Action: The Debate

The term “affirmative action” has been used since the early 60s –when President Kennedy employed it in Executive Order # 10925 – to describe public policies intended ‘to overcome the present effects of past racial discrimination’. Also known as the preferential treatment or reverse discrimination affirmative action is based on arrangements whereby the law sanctions special measures or differences in treatment that, when certain condition exists, depart from the differences in treatment that, when certain conditions exist, depart from the principle of formal equality. Usually such special measures aim at protecting or promoting the welfare of the members of a group previously discriminated against, provided that the group desires such measures.^{xvi}

As stated above, affirmative action or positive discrimination is seen as mechanisms to do away with socio-economic, political and cultural inequalities. Further, special provisions are introduced to reduce discrimination or to bridge the gap of inequality between various social groups. It is also pertinent to note that an influential argument is presented against affirmation and that is ‘in the pursuance of affirmative action policies, the least discriminated and least deserving may benefit the most’. In the Indian scenario, this category is referred as ‘creamy layer’ among the weaker sections and backward classes. But this process is not peculiar to affirmative action. Moreover, it is often those who benefit from affirmative action provide leadership to the discriminated communities and also become models to be emulated.

It is of seminal significance to accentuate this fact that it is not only at the national level but at the international level too positive discrimination instruments have been evolved to do away with discriminatory practices. The International Convention on the Elimination of All Forms of Racial Discrimination in Article 1 declares, “Special measures for the sole purpose of securing adequate advancement of certain racial and ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights of fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objective for which they were taken had been achieved”.^{xvii} Thus, both at the domestic front as well as in the global level anti-reservation agitations and movements could be justly termed as the most destructive and vicious campaign.

Article 2 of the same Convention declares, 'State parties shall, when the circumstances so warrant, take in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belong to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved'. Both these articles state that affirmative action is not only legitimate but state need to work out special measures to ensure appropriate representation of the discriminated social groups. Thus, the discourse on affirmative action does not stop at the doorsteps of special provisions but it is inherently related to human rights of the discriminated individuals and groups.

At the level of discourse, affirmative action and human rights are often seen as conflicting political measures. It is frequently argued that affirmative action *prima facie* is anti-thesis to human rights. But if one delves deep into the objectives behind affirmative action and struggle for human rights, one becomes acutely aware of the interface that is being built over the years between these two processes. Affirmative action or preferential treatment, on the one hand, is aimed at extenuating societal disadvantages derived from socio-historical processes of an unjust social order. Human rights on the other hand, are aimed at ensuring the rights of every human being to enjoy the right to live as a human. Further, positive action in favour of the weaker sections is aimed at removing the disadvantages of the social groups, which would in turn lead to individual upliftment. The struggle for upholding human rights while ensuring the right of the individual works to build a right based social order.

The above explicitated facts become more focused when one pays attention to the equality of opportunity in employment policy enacted in Northern Ireland. The Report and the Recommendations of the Working Party on Discrimination in the Private Sector of Employment, 1973 gave directions not only to the removal of discriminatory barriers, but a more 'positive concept' requiring 'deterministic steps - through programmes of 'affirmative action' - to remove the constraints and impediments which at present inhibit the realization of equality of opportunity. For the first time, therefore, affirmative action was proposed as one of the instruments for achieving employment equity in Northern Ireland. The Working Party drew largely on American experience but what in essence what it had in mind was monitoring, the removal of discriminatory barriers where inequity was found, and the setting of target dates for achieving a more representative balance.^{xviii} Having briefly considered the debate on affirmative action, let us scan the remedies to eliminate discrimination and inequality at the global level so as to draw lessons for India.

Remedies: Global Experience

There is going awareness among the policy makers as well as the victims of discrimination and inequality to assess the impact of affirmative actions in other countries so as to learn lessons for one specific situation. In this regard it needs to be stated here

that in Northern Ireland sectarianism, in America race, in Malaysia 'control by outsiders' and in India caste and ethnic principles and practices lead to discrimination. Hence, these countries have opted for affirmative action as a remedy to remove obstacles imposed by discrimination and inequality. This section briefly assesses the success in transferring affirmative action principles into concrete situation.

It is frequently asked whether preferential policies are necessary in countries, which have laws against, discrimination or which have attained formal equality. Nesiiah is of the view, "Laws against untouchability, segregation and discrimination are essential, but they cannot possibly eliminate the impact of prejudice, or compensate for group disabilities caused by environmental or historical circumstances, or otherwise ensure the achievement of equal opportunity as between individuals. The structural obstacles to mobility may be most formidable where there has been a long history of prejudice, discrimination and exclusion sanctioned by law or religion as in the case of Blacks and Native Americans in the USA, Dalits and Tribals in India, and women everywhere. Even if the legal and ideological basis of discrimination and exclusion can be overcome, prejudice and psychological conditioning may continue to hinder progress for a long period."^{xix}

Goldman's views "Affirmative action programme seeks to rectify the consequences of social discrimination. It involves, among other things, discrimination in favour of communities that have been victimized by society and in law. Although policies involving reservations and quotas for members of disadvantaged communities has been the most widely used, and also the most hotly contested, policy within the affirmative action programme, it is by no means the only way of remedying the socially victimized communities. Under the affirmative action programme, governments have sought to supplement positive discrimination in jobs with special economic packages, social facilities and preferential spending"^{xx} Reservation pegged the quantum at 15 per cent for the Scheduled Castes and 7.5 per cent for the Scheduled Tribes. But having seen the tardy manner in which these policies are implemented, one should raise the supplementary question, would it be appropriate to hold on to this principle eternally or more avenues need to be opened for the weaker sections.

Before we proceed to present some of the remedies learnt from experiences of other countries let us briefly review the policy of affirmative action as practiced in Indian and the United States of America. On a comparative note, Thomas Weisskopf states "India and the US are in many obvious ways very different. In some important respects, however, the two nations are similar. Both have functioning democratic electoral systems and are constitutionally committed to preserving civil liberties and individual rights. Both have multicultural populations including significant minorities with a long history of deprivation and disadvantage. And both have sought to address the needs of these minorities via certain forms of positive discrimination, generally labeled 'reservation policies' in India and 'affirmative action' in the US. The policies of positive discrimination in favour of the disadvantaged groups, enacted initially with strong public support, have proven increasingly controversial in both Indian and the United States. In each country the debate over these policies has become sharper, as participants wrestle

with the inherent tension between the individual right to equal treatment and the societal goal of overcoming profound inequalities of opportunity.”^{xxi}

One marked difference in the legal provisions of these countries is that in India discrimination is constitutionally prohibited but within this broad framework, protective discrimination is exercised in favour of the weaker sections. “In the US the term ‘affirmative action’ initially meant not reserved seats, nor any other kind of positive discrimination, for disadvantaged groups. Rather, it meant a systemic and aggressive effort to root out negative discrimination by ensuring that information, opportunities and access in the spheres of education and employment would be made available to under-represented minority groups on the same basis as they were to the majority White population. The major piece of US government legislation linked to affirmative action was the 1964 Civil Rights Act. Based on the Equal Protection Clause of the US Constitution, this Act was designed to ensure that all Americans – regardless of race, colour or creed- would be guaranteed equal opportunity”.^{xxii} Thus, while in the US, any form of discrimination is ruled out, in India, constitutional measures are counter posed to the view, which holds any preferential treatment as ideologically illegitimate.

In the recent past, many of the discriminated communities have been demanding for reparation. William Darity defines reparations as compensatory payment for an acknowledged grievous social injustice to a group. In the case of African Americans the injustices would include the historical experience of slavery, legally sanctioned apartheid practices, and ongoing discrimination. Hence African American demanded for reparation. William Darity presents the following demands by discriminated communities among which most of the demands have been honoured: James Forman disrupted a Sunday service and demanded that churches and synagogues pay \$500 million to black Americans as a first phase of reparations for historic oppression. Realized instances of reparations in the US include the congressional agreement in the late 1980s to pay \$20,000 to each living Japanese Americans subjected to internment during the World War II.^{xxiii}

According to William Darity the Nazi victims too demanded for reparations and their demand was met. In 1988 the German industrial giant Daimler-Benz agreed to pay the equivalent of \$11.7 million to victims of Nazi forced labour policies during the war, as well as to their families. On the basis of an agreement signed in Luxembourg in 1952 between West Germany and the World Jewish Congress, the West German government had paid close to \$50 billion in reparations to Holocaust survivors by the end of the 1980s. In May 1995 the Australian parliament passed a bill to compensate victims of Nazism there as well. Heinrich Neisser, deputy speaker of the Austrian parliament, estimated that the cost of the reparations program will range from \$300 to \$500 million.

Some argued that for the development of Europe Third World countries were underdeveloped. Hence, in the early 1970s a West Indian economist, Norman Girvan argued that the comprehensive pattern of European exploitation of the Third World led to European economic development, and therefore all Third World peoples should receive compensation to the tune of \$448 to \$995 million. In May 1993, at a summit of Africa

and African American leaders held in Libreville, Gabon, Reverend Jesse Jackson proposed that slave reparations be “paid” to the African nations in the form of debt relief. The collective total of African states’ external debt was about \$225 billion to WB, IMF and foreign countries.

The Black Reparation Commission has demanded \$4 trillion in reparation to diverted income. David Swinton in reparation to racial discrimination demanded \$500 billion for the African Americans. Another study indicates that from 1929-1969, the gains to whites from labour market discrimination amounted to approximately \$1.6 trillion.^{xxiv} Taken together, all these demands and their fulfillment go to establish the fact that reparation is one of the means for doing away with historical discrimination.

Remedies in the Indian Context

The following remedies are proposed in the Indian context: a) Strict enforcement of reservation policies; b) Demand for introduction of affirmative action in private sector; c) Demand for compensation and reparation so as to remedy the historical discrimination.

The existing social milieu of the country will not provide easy access to the Scheduled Castes to service sector, where they could be gainfully employed. Keeping this fact in mind, the National Commission for Scheduled Castes and Scheduled Tribes has recommended the following: ‘It is essential to workout short-term and long-term measures to increase the representation of the Scheduled Castes and Scheduled Tribes. The State should make special efforts to make up the shortfall in the reserved quotas by taking steps such as special training and coaching for Scheduled Castes and Scheduled Tribes, passing of central legislations to enforce reservation in Government Services and Public Sector Enterprises, banks, universities, grant-in-aid bodies etc’.^{xxv} These recommendations need to be taken for serious debate and programme of action in the Parliament and State Legislatures.

In the last two decades, the dalits activists and intellectuals have been demanding for affirmative action in private sector. In India while reservation is provided in public sector, in private sector reservation has been denied. The demand for affirmative action in private sector emanates from this fact that this would enable participation of weaker sections in employment and market since they suffer multiple discriminations. Now in the name of rightsizing and optimizing employment rate is going declining. Giving the social milieu the dalits and tribals would loose out. The liberalization, privatization and globalisation processes are ushering the power of market. Since market is a social reality and is discriminatory against the dalits it is essential to ensure reservation in private sector. Moreover, according to 1948 Industrial Act, 18 sectors were reserved as public sector enterprise. Over the years, these have been also converted into private sector and now only half a dozen of these remain as public sector.

Arguably, the demand for affirmative action in private sectors is faced with stiff resistance. For instance, Swaminathan Aiyar argues that ‘Job reservations in government service and educational institutions are subject to minimum cut-off marks. If a Dalit

candidate does not get the minimum marks needed to qualify for admission for the civil service or an engineering college, he will be rejected even if the reserved quota is unfilled. However, jobs in the private sector are not determined on the basis of getting marks in an examination. There are no objective cut-off marks that can be used to establish minimum qualifications. So the analogy with admission into the civil service or educational institutions does not hold up. Nobody can insist that corporations must hold UPSC-type exams. That would not only be inefficient but unconstitutional: it would abrogate the right to carry on business. G.D. Birla and Dhirubhai Ambani never passed any UPSC exam, nor did they go to some fancy business schools, yet were among the finest business brains in the world.^{xxvi}

It is pertinent to point to the solution offered by Swaminathan Aiyar. ‘What about social justice? What should we do about a situation where hardly any SCs, STs or OBCs figure in corporate hierarchies? The answer, surely, is to ensure good education facilities for all, in which case the lower castes can break out of the cycle of poor education and poor jobs. The state is guilty of deplorable failure in its duty to the poor and the downtrodden. But the answer to a third-rate state cannot be to create a third-rate private sector. Nor will the tribulations of hundreds of millions of Dalits be cured by giving a creamy layer among them a few hundred corporate jobs. We need true social justice, not job tokenism.’^{xxvii}

The above presented argument against affirmative action in private sectors needs to be countered by relevant data. Government provides safeguards to private sectors to promote their business, creating better situations for the promotion of business, trade. Foreign Policy, Export-Import policies of the Government contributes in the betterment of the businesses setup by the Individuals i.e. Private Sectors. Foreign investors are investing in Private Sector via purchasing their share; this is possible because of Government’s Policies only. And thus it is expected from the private sectors that they should fulfill their social responsibility. Private sectors use public money via public financial institutions, even then there is no reservation to SC, ST, OBCs in the Private Sector. Uplifting of the weaker sections is a stated objective of our country and thus “Reservation in Private Sector” is part of social responsibility of the Government as well as the private sector. It is nothing but the fulfillment of the Constitutional Agenda of distributive justice enshrined in various articles and clauses of the constitution. If private sectors not fulfilling their social responsibility, then Government should make such provisions by legislative measure.

Against the hue and cry made about the demand for affirmative action in private sector the demand of the dalits for this provision is raised not only in the national forums but also in the international arena. For instance, the Vancouver Declaration has the following demand of the dalits: ‘Private Corporations and Multi-National Corporations operating in India must recognize and accept their social responsibilities. The United Nations and its affiliates, and non-governmental agencies concerned with human rights, social and economic development must recognise that the dalits are a special group and create separate dalit divisions managed by the dalits themselves. Their programmes and projects should have special dalit components as well as special focus in their reports’^{xxviii}

Moreover, there is demand to initiate constitutional amendment to enact affirmative action in private sector too within a stipulated time.

Moving beyond the demand of strict enforcement of reservation policies and affirmative action in private sector, there is also increasing demand for compensation and reparation keeping in view the historical and cumulative discrimination and inequality suffered by the dalits. For this one need to calculate a) the amount the dalits were deprived of from what was their legitimate share; b) for the denial of right to ownership of resources; c) amount of wages denied to them or stolen from them; d) amount of money diverted from the allotment made for their welfare.

Though preliminary in nature, it is appropriate that we identify some of the areas of compensation and reparation. This demand for compensation is made on three actors: state, political parties and society. In the name of planned development for the last five decades the state has denied education, minimum wages and redistribution of land to the dalits. It has also not enforced reservation and thus denied the benefits to the dalits. Above all, the state has diverted lots of money allotted to the welfare of the dalits to other sectors. In the same vein it is demanded from the political parties that they too should make compensation and reparation to the dalits since they continued to use the dalits and the vote bank and street fighters. Finally, the dalits demand from the Indian society that it should make provisions of compensation and reparation for the following reasons: the dalits are agricultural labourers and in that capacity they are the producers but the fruits of their labour is denied to them for ages. The dalits from ages unknown have been construction workers, leather workers, manual scavengers, midwives and drummers etc. But they have been paid just meager amount. It is these kinds of demand for compensation and reparation which is going to become centre of discourse and action in the coming days.

In the final analysis, let us briefly spell out the measures that need to be undertaken by the dalits themselves: 1) Exert pressure on the political establishment to implement backlog in reservation; 2) Carry out a campaign to implement affirmative action in private sectors. This has to be done by identifying the various private sectors in the country and the quantum of affirmative action to be determined in those units and presenting to the government and to the private sector to introduce affirmative action. But a caveat needs to be presented here. Any demand for affirmative action in private sector cannot be left to the discretion of the owners of private sectors units. The educated and conscious individuals and organisations have to workout mechanisms to pursue this goal, devices means to identify the most needy, suggest sectors where affirmative action is possible. 3) Undertake a long-drawn out struggle for access over resources, control over labour, right to dignity and self-determination. 4) A counter argument could be presented by the anti-affirmative action policies that the most deprived and discriminated may be the least benefited out of these positive discrimination schemes. This is part of the social process. But due to this one should not block the entire benefit of affirmative action. Those who are beneficiaries of affirmative action programmes have to work out mechanisms to ensure the greater spread of the benefits. 5) In the contemporary economic

scenario, the dalits have to opt for diversity as a strategy to liberate themselves from the economic dependence of the dominant caste and class.

Let us conclude our analysis by stating that discrimination and inequality practiced by the Indian caste system denies economic, social, political and cultural right of the dalits. Even in the era of liberalisation it denies the dalits the access to market since caste system counters equal income distribution. It further leads to conflict and violence. Hence, to reduce discrimination and inequality the factors behind these need to be unraveled. Some of the remedial measures suggested in this paper are going to engage the dalit intellectuals and activists for the days to come. This is not just to provide relief to them but to reorder the Indian social order.

Dr. Prakash Louis, Executive Director,

Indian Social Institute, 10, Institutional Area Lodi Road, New Delhi 110003

prakash@unv.ernet.in; prakashlouis@hotmail.com

Resisting GATS

A Report on the International Strategy and Action-Planning Meeting
Geneva March 27-31, 2004

Introduction:

Following the ‘Battle of Seattle,’ when global talks on launching a new round of World Trade Organization (WTO) bargaining to further eliminate global trade barriers reached a stalemate in December 1999, the WTO General Council met in January 2000 to formally launch a new stage of negotiations on the GATS, the General Agreement on Trade in Services. Known as GATS 2000, the targeted date for the completion of this set of negotiations on trade-in-services was January 1, 2005. Almost two years later, building on the momentum that seemed to be generated by the GATS negotiations [compared with other pieces of the WTO program], the WTO ministerial meeting held in Doha, Qatar in November 2001 adopted the GATS timetable for the completion of the so-called ‘development’ round. In effect, it looked like GATS 2000 was setting the pace for the WTO.

Nor did this come as a big surprise. After all, the service sector is the largest and fastest growing part of the global economy, accumulating more than \$US 15 trillion a year. For most countries in the global north, services represent over 60 percent of their national economies, as compared, for example with agriculture. Yet, for most countries in the global south, these figures are almost reversed, with a much larger percentage of their national economies being rooted in agriculture than in services. In part, this explains why much of the popular resistance to agricultural trade rules has been rooted in the global south, while what protest has been mobilized against the proposed trade rules on services has largely come from the global north. Yet, it was also becoming clear that the resistance to GATS is both deeply rooted and spreading.

Although the GATS is designed to cover all services, both publicly and privately delivered, it is public services that have become the focus of concern, not only in the north but in the south as well. All over the world, for-profit corporations are moving to takeover publicly funded and delivered services such as healthcare, education, electricity, water, prisons, culture, transportation, postal and social assistance, to name a few. Not only do the GATS rules create conditions to facilitate the privatization of public services, they also reduce the capacities of governments to regulate privately delivered services. Under the Domestic Regulation provisions of the GATS rules, a 'necessity test' may soon be applied in which governments will have to prove that a publicly delivered service is necessary and that regulations are 'no more burdensome' to foreign for-profit corporations. As well, the GATS regime itself already contains provisions designed to protect the rights of foreign investors [e.g. mode 3] and could be expanded to include rules restricting government purchasing powers.

Still, by March 2004, the GATS negotiations were showing signs of being in disarray. The collapse of the WTO Summit in Cancun in mid September 2003, had not only derailed negotiations on agriculture, investment and competition policy, but they also effectively put a damper on progress in the GATS talks as well. In order to hedge their bets the Northern countries scrambled to make sure the GATS rules are incorporated into bilateral trade agreements and regional trade regimes like the Free Trade Area of the Americas. With nine months to go until the 2005 deadline for completion, only 42 countries had responded to the round of 'requests' by putting 'offers' on the table. By all accounts, this number fell far short of the critical mass required to establish a new set of GATS rules.

In order to propel the GATS bargaining forward to completion on time, many more countries from the global south would have to put offers on the table to open-up their service sectors to foreign-based corporations. Yet, as long as the northern industrialized countries, notably the European Union and the United States, refused to make major concessions to the developing countries in terms of agriculture, there was little chance of movement from the global south on services.

Nor did many developing countries have the policy frameworks or the technical capacities required to effectively engage in the GATS negotiations. What's more, the northern industrialized countries had failed to put forward adequate offers in response to the requests of some developing countries for the movement of low and medium skilled workers [i.e. mode 4 of the GATS]. Thus, the reluctance of the developing countries in the global south to fully participate in these negotiations had become the best line of resistance to GATS.

In short, this was the 'state-of-play' in the GATS negotiations in the spring of 2004 when the Polaris Institute proposed that an international strategy meeting of civil society organizations be convened in Geneva, March 27-31, to develop resistance strategies to the GATS. Since the beginning of 2001, Polaris had been working with public service unions and community-based groups in developing education and action programs on the

GATS in several countries. During this period, Polaris put aside a portion of its program resources for the purpose of organizing an international strategy meeting at a critical moment of the negotiations. That moment arrived in the Spring of 2004 when the WTO Council on Services met in Geneva to figure out their next moves, six months after Cancun and nine months before the 2005 deadline.

In planning and supporting the civil society gathering, Polaris was joined by several other organizations — Institute for Agriculture and Trade Policy, Public Services International, Third World Network and the World Development Movement. All these organizations are members of the Our World Is Not For Sale Network, which co-sponsored the event.

We also wish to recognize the financial support of the Ford Foundation, Solidago Foundation, Forum for Development and Environment, and Oxfam International.

The gathering was designed to bring together both policy and campaign activists from civil society organizations in five continents — Africa, Asia-Pacific, and Latin America, plus Europe and North America. The five-day program included a two-day strategy meeting, followed by meetings with a number of government trade missions in Geneva, along with a workshop on other WTO issues. What follows here is a report on the strategy meeting itself and its outcomes.

The Political Moment:

The GATS 2000 negotiations have followed a serpentine and relatively secretive process.

The current situation is that barely 30% of WTO member countries have put forward their initial offers for liberalizing services. The sparse and timid nature of the offers came in the wake of the 2nd failed WTO ministerial meeting held in Cancun.

It has been argued the GATS negotiations were immune to the WTO troubles because the GATS has its own separate track of negotiations. Yet, it's turned out that the opposite is true. The fact that there are only 42 offers (out of 146 members) on the table at this stage of the negotiations, with only 9 months to go to the official deadline shows that the GATS negotiations are in trouble.

The weekly Trade News digest called 'Bridges' reported that WTO members attending the April 2004 Council on Services meetings were disappointed with the results of the ongoing request-offer phase of the services negotiations. While developed countries focused their criticism on the low number of offers, most developing countries stressed that the quality of the offers made was unsatisfactory.

Indeed, Hamid Mamdouh, Director of the Trade in Services Division admitted in a briefing to NGO's on March 27, 2004 "they need offers from another 54 countries,

mainly developing countries, along with a commitment to improve existing offers, if there is to be real momentum on the GATS front.”

In an effort to rally the enthusiasm for an aggressive and ambitious trade deal on services - GATS proponents, Robert Zoellick the United States Trade Representative (USTR) and Pascal Lamy Trade Commissioner for the European Union have since Cancun, been touring state capitals, meeting with trade ministers, courting the World Bank to assist them and rallying their service industry cartels to keep up the pressure on parliamentarians and market the merits of hawking services in order to assuage dissenting popular opinion.

In response, the big business lobby machines — the US Coalition of Service Industries and the European Services Forum — have been turning up the heat to expand the number of countries making offers. In fact, the European Commission went so far as to arrange for a phalanx of 45 major global services companies and industry associations to use the WTO headquarters to boldly petition WTO member countries such as Brazil to improve its offers and remove or change numerous barriers, including constitutional measures their members identified as impacting profitably on trade in services. The Global Services Network, an industry-wide coalition, also sent a joint letter to the WTO ambassadors from about 50 countries that have not yet tabled services offers. The letter followed on 2 days of lobbying WTO leaders, ambassadors and senior officials from key developing and developed countries.

Despite such heavy handed tactics most developing countries maintain that a great deal hinges on what happens in the agricultural negotiations. If the agricultural talks continue to stalemate, then it is unlikely that many developing countries will be coming forward with new offers in services. If, on the other hand, there is a breakthrough in the agricultural talks with a ‘new ag-deal’, then the floodgates may open up with a series on new offers on services in the GATS negotiations.

GATS activists need to be ready for both scenarios. For the moment, the question is

whether or not the so called 'framework agreement' that the WTO members are now trying to hammer out by July, will contain sufficient commitments on agriculture to propel things forward and generate new momentum on the GATS front.

It was against this canvas, that an international gathering of activists came together to strategize on how to resist and derail the GATS regime. More than 50 union and civil society activists from over 30 countries were recruited to attend a 2-day strategy and action-planning gathering in Geneva.

The purposes of this international meeting in Geneva were two-fold:

1. To develop a common plan of action that can be undertaken by a variety of country-based campaigns in order to derail the current round of the GATS negotiations over the next nine months and develop countervailing strategies and mechanisms designed to pose an ongoing challenge to the GATS regime itself;
2. To meet with select country delegations attending the WTO Council on Services meetings especially key developing countries and regions in the global south, with a view to strengthening their resistance to making 'offers' in the current GATS negotiations and providing back-up technical assistance and political support where needed.

Participants came from South Africa, Kenya, Ghana, Uganda, Zimbabwe, Australia, Philippines, Hong Kong, Korea, India, Thailand, Indonesia, Sri Lanka, Bangladesh, Japan, United Kingdom, Belgium, Netherlands, France, Italy, Germany, Norway, Bulgaria, Costa Rica, Bolivia, Uruguay, Argentina, Brazil, Mexico, the United States and Canada. (For a full list of participants see appendix)

The meeting design encouraged the representation of both policy activists familiar with the technical nuances of the GATS negotiations as well as campaign activists who are experienced with on the ground struggles related to services of critical importance to communities and workers.

People's Struggles:

A round table reporting of the struggles facing communities and workers quickly revealed an array of services that are under attack.

Participants from Asia reported that extensive privatization has been underway for some time because of the loan conditionalities of the International Financial Institutions — World Bank (WB) and the International Monetary Fund (IMF). The sectors under attack include; water and waste management services, electricity, postal and education services. Out-sourcing is also taking a prominent foothold in the region.

Participants from Africa also noted the pressure from the World Bank and the IMF constitute an 'extra WTO pressure' that advances privatization across many service sectors — similarly water, waste management along with energy systems and education are key targets. The region is challenged by the fact that some African countries are making liberalization requests of each other, thereby making a unified position difficult. It was also noted that the links between social movements fighting privatization and groups working on related policy issues needed to be strengthened.

Participants from Latin America related with the experiences of those from Asia, noting that liberalization has been underway for some time. Again 'environmental services' such as, waste management systems and the aquifers that supply the regions water systems were identified as prominent struggles for communities and workers. Also pressures of US led militarization of the region compounds peoples struggles. In addition, the region faces numerous bilateral trade and investment agreements with extremely compressed negotiation schedules, which are even more aggressive than what the multilateral GATS negotiations are demanding.

Participants from Europe noted that privatization forces were coveting educational services and pension funds, while in the Eastern portions of Europe, water and waste management systems along with media enterprises are being targeted.

Participants from North America noted the substantial increases in out-sourcing and off-shoring were taking place for a range of jobs. In addition communities continue to be dealing with substantial cutbacks in health, energy, cultural, postal and water and waste management services along with the increased presence of ‘public-private-partnerships.’ Those from Canada noted the pressure to conform to an aggressive US foreign policy agenda that is influencing many federal level services — including customs, immigration and environmental and energy sectors, to name a few.

Across all the regions – participants noted the prevalence of bilaterals agreements or regional Free Trade Agreements being advanced by the EU or the US. These agreements, at a minimum, mimic the GATS agenda. In some cases they go much farther.

Participants acknowledged the GATS threats on services needed to be communicated in more popular ways and that campaigns must be designed to integrate into existing struggles. It was also noted that the tradition of delivery of services by the public sector had been used by Northern countries to achieve developmental advantages for their citizens, which in turn has become an important pre-condition to responsible community development. To now abandon this development model at the expense of the global south countries and for the profitably benefit of northern-based transnational service industries

would be an egregious policy decision.

Potential Scenarios for Strategy Development:

Having sketched the major issues facing workers and communities and following a sharing of the current state of play of the GATS negotiations, the group proceeded to examine scenarios detailing how the GATS negotiations may proceed in order to develop resistance strategies.

The following potential scenarios debated, were as follows:

The Doha Round remains stalled indefinitely due to factors like continuing stalemate in agricultural negotiations and the lack of capacity of a large number of global south countries to meaningfully address the service negotiations. This could entail a deliberate strategy on behalf of developing and 'Less Developed Countries' (LDC) to withhold putting any offers on the table in exchange for a better deal on agriculture.

The major players – particularly the US and the EU are pursuing a strategy of 'competitive liberalization,' that is to say, these players aggressively push bilateral and regional agreements that are WTO plus in terms of commitments. While the WTO negotiations remain stalled, the neo-liberal proponents stealthily manage to secure what they want using strong arm tactics, and compressed negotiations schedules, thereby leaving their opponents behind in a cloud of quick and dirty trade and investment deals.

Other scenarios included focusing attention on the working parties and committees of the GATS, attempting to maintain the stalemate by demanding they complete their work in defining the modalities of the agreement before any substantive commitments can be made. The strategic objective would be to kill the GATS by slow and pedantic measures.

Other possibilities, for the GATS to remain stalled would entail a combination of factors such as — the failure of the WTO members to establish deadlines with achievable benchmarks, or insufficient critical mass of requests and offers, or the successful campaigning for impact assessments before any negotiations could proceed.

While each of these scenarios can be (and was) debated as to the likelihood of becoming real, they served to help frame potential resistance strategies.

It is worth noting that the *Bridges Trade* digest shared some of our collective analysis. The digest reported the lack of progress on services — once termed the "engine of the Doha Round" — is attributed to the fact that WTO members link services to progress in the (stalling) agriculture negotiations, to negotiating tactics, to national political considerations, and to a lack of technical capacity. While no country has blocked the services negotiation process so far, key agricultural exporters, such as Brazil, South Africa, the Philippines and Egypt, have not yet presented their initial offers. These countries feel that, even though, services talks are more much advanced than work in other areas, such as market access for goods and agricultural products, where progress has not even been made on establishing negotiating modalities, despite more than three years of discussions.

Anticipating the aforementioned scenarios of stalled negotiations due to factors such as the inter-dependency with the give-and-take of the agricultural negotiations and a fervent push for a range of creeping bilateral and regional 'Free Trade Agreements' (FTA's). The participants proposed the following continental strategies to help de-rail the GATS regime.

Activists proposed the following continental strategies:

Europe:

- Prepare and disseminate a popular paper that busts the myths of the role of the EU. Particularly expose the inconsistent position the EU is taking on domestic regulation vs. their demands of southern countries.
- Liaise with southern country activists to surface examples of EU arm-twisting of global south countries.
- Research the rules process pertaining to changing commitments in light of the new accession of countries from Eastern Europe. Exploit any precedent as possible to further monkey wrench the GATS regime.

Africa:

- Utilize the Dhaka Declaration as a baseline of demands for the region.
- Demand that no government can engage in the development of a multilateral or regional services trade/investment agreement in the absence of a development strategy.
- Campaign publicly on the right of nations to regulate and/or change their GATS commitments.
- Demand impact assessments as a precondition to advancing any negotiations.
- Demand that no further bilaterals are to be pursued until the working groups on rules have completed their work. Pursue a ‘disclose’ and ‘engage’ strategy – disclose the known requests and offers (including on regional agreements) and engage more of civil society in the debate.
- Call on the G90 to hold and advance the position they advocated in Cancun.
- Conduct more education and preparatory sessions with government and the African Union members.
- Support mass mobilizations through a services rights campaign which links human rights & services as a developmental necessity.
- Expose the role, strategy and track records of service corporations.

Asia:

- Continue to build civil society pressure within respective countries in the region to challenge government's fixation with privatization.
- Link the issue of grassroots movements (agricultural communities/peasants for example) to the issues of GATS by popularizing the debate and increasing general awareness.
- Utilize 'Day's of Action' as awareness and mobilizing tool. Some specific dates in the region such as the World Economic Forum's regional meeting (June) and/or the next WTO ministerial represent opportune moments.
- Increase our focus on sensitive issues such as culture, retail and wholesale distribution and transport services as well as the removal of foreign land ownership restrictions as these areas have potential to mobilize different and sometimes influential constituencies.
- Expose the manipulative manner in which the accession process for new members to the WTO is setting precedents that advance demands governments want to achieve in the negotiations themselves.

Latin America:

- Utilize the current stalled negotiations to increase the education and awareness of popular movements by making more explicit the links between the GATS, including the FTAA provisions, and existing struggles.
- Focus on derailing some critical bilateral agreements to maintain the blockage neo-liberalization proponents are experiencing
- Expose the EU interest in the region has being no better than the North American interests; this will require demystifying the E.U.'s role and better understanding and dissemination of the EU requests to Latin America. This also includes exposure of the changing position of the EU on agricultural policy.

North America:

- Contribute to maintaining the stalemate by supporting countries fighting the agricultural negotiations.
- Work more in solidarity with farm-based groups such as the National Farmers Union.
- Articulate alternatives that support public services.
- Expose how government funding for WTO 'capacity building' is being used and campaign for its use to be applied for impact assessments.
- Demand for the removal of damaging Canadian and US offers.
- Re-forge alliances with local, state, provincial and territorial governments around the impacts on local authority.
- Demand the full disclosure of all requests and share those that are currently covertly available within the network.
- Focus campaign attention on 'hot spots' like out-sourcing and off-shoring of

jobs, that can be exploited as monkey-wrenching opportunities.

- Expose the failure of privatized water or energy systems associated with GATS corporate promoters.
- Utilize the recent WTO gambling decision against the US to expose the contradictory tensions and to popularize how far reaching the GATS agreement can go — e.g. ‘Scratch and Lose.’
- Organize a meeting to forge closer ties between public sector unions in the US and Canada especially in critical or targeted service sectors and thereby generating new momentum.

The report back from the continental strategy sessions revealed points of overlap for coordinated research, systematic information dissemination and educational with domestic allies that would be of collective benefit.

This included:

- A myth busting paper on the role of the EU in the agricultural negotiations. This would include an expose of the EU agricultural formulae of ‘flexibility’ illustrating that no matter what numbers a country used — the global south still gets screwed.
- Debunk the real gains vs. the illusory gains of Mode 4 in the context of the US foreign policy/homeland security and smart borders programmes.
- Expose service corporations — particularly those in the energy & water sector that have failed to facilitate technology transfer.
- Continue and accelerate the pressure on developed country governments — exposing their actions against their rhetoric.
- Pursue coordinated campaigns between groups in the North and South that focus on key service targets for liberalization and privatization. Corporations and/or essential services such as water can be unifying projects.
- Develop and use global slogans – i.e.

Services are Human Rights,

Defend Quality Public Services

Water, education, energy – services for people – it’s a public matter!

Assignments for follow-up were made on several of these tasks. In addition, continental cross cutting strategies were identified. Delegates organized into three working groups to flesh out strategic elements that cut across any number of continental groupings. The groups and the summary of action points are listed below.

North South Working group:

- Compile on the GATSWatch.org site a calendar of strategic dates and moments that can be used to mobilize opposition to the GATS agenda. These moments should be strategic in that they help to expose key institutions, service corporations or parliamentary bodies relevant to the GATS campaign.
- Share popular education tools and materials to better engage grassroots and broader social movements in the campaign against the GATS from the reality of their existing struggles.

Bilateral Working group:

- Identify the content of various bilaterals and FTA's.
- Prepare a short paper exposing key points of concern with different FTA's [NAFTA, CAFTA, EU-Mercusor, US-Thailand]
- Examine what the services components are of these agreements and to what degree they are WTO 'plus'.
- Improve our understanding of where the EU and US differ in their pursuit of bilaterals with the global south. Where possible exploit where they are in competition vs. cooperation.
- Work with the majors parliamentary bodies to defeat some of these bilateral negotiations to further stall the global trade agenda.

Monkey Wrenching-working group:

- Clarifying the purpose of 'monkey-wrenching strategies' in the context of provoking conflict between two or more parties in an effort to derail or change the negotiations;
- Organize a strategy group to explore in more depth what kinds of monkey-wrenching strategies could be developed on the following fronts:
 - [a] —On agriculture, between the US and the EU, by looking more closely at the negotiating positions of Brazil and India plus position of social movements in those countries;
 - [b] — On mode 4, exposing the fallacies of the EU and US positions, use of GATS visas issue to generate debate, work with unions and various diasporas on common strategies;
 - [c] — On outsourcing, between EU that wants to open up government procurement and the US where several states have passed laws prohibiting the outsourcing of publicly funded outsourcing [e.g. computer production in India]
- [d] — Within countries — e.g. the impacts of the recent WTO decision on gambling services where GATS rules were used in a major WTO decision that

effectively strikes down an important source of funding for local governments.

Conclusion:

The fast paced two-day strategy session concluded with a session that identified the following main points for follow-up.

Strategic communication mechanism

- There is an urgent need for a strategic communication system (in addition to the WTO list serve) and activists from GATSWatch.org agreed to set this up.
- The immediate steps included ensuring that all participants would be tuned into www.gatswatch.org
- The site would be updated to include critical information such as strategic dates for action and mobilization that could influence policy bodies, increase public attention and awareness and readily permit widespread corporate campaign information on key service transnationals.
- Succinct monthly updates would be prepared that serve both policy and campaign activists.
- Information on bilaterals and FTA's relevant to services issues would also be featured.

Critical research/analysis

- Research and informed, popular pieces that are succinct and saucy were identified and participants agreed to take the lead on their production. This included;
 - A paper debunking the EU position on GATS and Agriculture (WDM)
 - The role of the EU and US trade negotiating strategy on bilaterals
 - A paper unpacking Mode 4 implications (Public Citizen)
 - Real myths of technology transfer in the service sector (ITDG)
 - An expose of US requests

Slogans & Regional nodes

- Develop slogans that readily communicate broad-based global resistance that are rooted in local realities. Ideas included, ‘our services are not for sale’, ‘services are peoples rights’; water, education, energy –services for people – it’s a public matter!
- Utilize the organizing principle of regional contacts or nodes in each of the 5 continental regions to foster regional dialogue and energy in campaign development and to communicate domestic/regional/continental campaign plans with the global network of the GATS Resistance Movement

Name the dates

- Communicate key dates (via the GATSWatch.org website) that will serve to educate and mobilize communities and unions reflecting national realities and capacities for strategic actions.

Monkey wrenching

- Set up a strategy team to work on proposals for monkey wrenching [see above] — i.e. design and implement tactics that can drive wedges in the areas of the agricultural, mode 4, outsourcing and contradictory tensions of services rulings.

The 2-day strategy meeting shifted gears at this point and participants joined in two days of sessions organized by Third World Network (TWN), Institute for Agriculture and Trade Policy (IATP) Oxfam International, and Public Services International (PSI) that addressed other critical WTO issues.

These sessions shared detailed information on the current state of play in the Agricultural negotiations, the Non-Agricultural Market Access negotiations, the status of the Singapore Issues and Special and Differential Treatment negotiations. The sessions also involved informative presentations from country negotiators in Brazil, India and the Philippines.

Finally, during the last two days, participants organized themselves into teams to meet with government trade missions, many of which were organized by IATP. This included meetings with the following country blocks:

- Brazil Mission
- Canada Mission
- European Commission
- India Mission
- Indonesian Mission

- Kenya Mission
- Philippines Commercial Office
- South Africa Mission
- Japan Mission

These meetings proved useful in demonstrating to WTO delegates that many other countries were monitoring the GATS negotiations and not just representatives from their own countries. In addition we were able to gauge how much traction some resistance strategies may have in areas such as mode 4 monkey-wrenching, strategic alliances with influential southern countries to promote civil society concerns directly to WTO delegates at key moments in the WTO meeting schedule, as well as the value of maintaining pressure on the lack of meaningful public engagement especially in places where elections are about to take place.

The gathering concluded with a strong commitment from all the participants to take back the information they had learned and shared to their communities and to maintain and strengthen our global resistance to the GATS regime.

Report prepared by
 Karl Flecker & Tony Clarke
 Polaris Institute
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GATS, Water Services and Policy Options

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Ensuring Access to Water and Sanitation **The Trade Dimension**

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Prepared By:

Michelle Swenarchuk
Counsel and Director of International Programmes
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CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT
130 SPADINA AVE. _ SUITE 301 _ TORONTO, ONTARIO _ M5V 2L4
TEL: 416/960-2284 _ FAX 416/960-9392 _
www.cela.ca

The current negotiations of the General Agreement on Trade in Services, and the stated goal of the EU and other WTO members to lock in liberalization of water services, raise important questions of water governance and the public interest. I wish to discuss five factors in the GATS and current talks, which may affect the crucial role of government involvement in the provision of this essential service.

1. Does GATS apply to government services?

In an analysis of implications of GATS for governmental services, the Government of British Columbia in Canada noted: In Canada, as in most other WTO countries, "public services" are rarely delivered exclusively by government. Instead, vital public services (including water) are delivered to the population through a mixed system that is funded and regulated by governments (and)...consist of a complex, continually shifting mix of governmental and private funding and governmental, private not-for-profit and private for-profit delivery. An effective exclusion for "public services" must therefore be broad enough to protect governments' ability to deliver services through the mix that they deem appropriate and to preserve their regulatory authority over all aspects of these mixed systems **1**.

As we have found: Although the GATS contains an exemption for government services, (the exemption) only applies to those services that are "neither supplied on a commercial basis nor in competition with private suppliers." (GATS I 3(c) The WTO concedes that the meaning of "commercial basis" is unclear, **2** noting that services provided on a commercial basis are covered by GATS, whether the owner of the business is a public or private entity. ... Since many municipal services are provided by a mix of public and private operators (...including water and wastewater in many countries...), it seems unlikely that they could be classified as both non-commercial and non-competitive. **3** In a comprehensive examination of the uncertainties surrounding this exemption, officials of the Government of British Columbia identified numerous uncertainties regarding its application **4**:

- _ The exclusion is very narrow, given that both excluding criteria must apply; the service must be supplied on a non-commercial basis **and** not in competition with another supplier;
- _ Ordinary dictionary definitions of the terms of both criteria are broad;
- _ A similar exclusion in the European communities treaty has been interpreted very narrowly;
- _ WTO statements about the GATS coverage are not reassuring; some merely reiterate

the text, others use a narrow definition of public services; others suggest that the exclusions are very limited; others (such as the Secretariat paper) confirm the uncertainties.

In summary, the purported GATS exemption for services provided by government authorities is at best uncertain and unreliable, and given the common fee-for-service delivery of water and wastewater services, a WTO dispute panel may well find that the GATS rules apply to these services.

2. Water and the services classification system.

The GATS is based on the complex classification of thousands of services, including a specific one for water services **5**. Some government officials argue that if a country does not list that classification in its commitment schedule, it has made no commitment to liberalize water. However, the provision of water services actually requires elements of many other services, and if portions of those services are committed, the door is open to foreign service suppliers, including water corporations, to contest measures that may exclude them from rights to provide water services.

These related services include (amongst others):

- Engineering and project management services for water supply and sanitation work,
- Sewage services,
- Sanitation and similar services,
- Business services,
- Construction services,
- Technical testing and analysis services including quality control and inspection,
- Urban planning and landscape architectural services,
- Architectural services,
- Nature and landscape protection services,
- Other environmental services.

The myriad problems of service classifications bedevil negotiators and governments. To maintain full governmental authority over water services, decision-makers need to consider all the different services that are part of providing water when determining what effect commitments of them might have on water.

3. The overlap of GATS and GATT obligations

As the Government of British Columbia has noted: WTO trade panels have recently ruled that government measures which cover goods, but which "affect" trade in services, are also covered by the GATS rules. WTO trade panels also ruled that measures designed to cover services, but which affect trade in goods, are covered by the General Agreement on Tariffs and Trade (GATT). This adds another layer of complexity for governments and their citizens when attempting to assess whether or not new measures will be trade consistent **6**.

The EC banana case concerned EU measures for preferential access of bananas from its former colonies. The measures were WTO -inconsistent but protected by a waiver. The

US successfully challenged their impact on US multinationals as service providers in wholesale trade and distribution in Europe 7. The Canadian magazine case concerned a Canadian prohibition on “split-run” magazines which included advertisements aimed at the Canadian audience with editorial content that differed little from the US editions. This allowed lower costs for advertisers. Canada applied an 80% excise tax on advertising in split-run magazines, together with lower postal rates and postal subsidies. All these measures were found WTO-inconsistent, although Canada had not made commitments on advertising under GATS. The panel found that rules on goods and services are “overlapping, ”and that the US products, despite different editorial content from Canadian magazines were “like products” or, as the Appellate Body found, “directly competitive and substitutable products” entitled to equal treatment. This overlap of WTO goods and services provisions adds another element of uncertainty for government negotiators, and provides another reason to avoid commitments which may have unintended consequences.

4. The Working Party on Domestic Regulations: implications of negotiations under GATS VI(4)8

Governments are currently negotiating under GATS Article VI(4) which requires the development of “disciplines” on countries’ domestic regulations over services. Specifically, the article seeks to prevent “unnecessary barriers to trade” in regulations regarding “qualification requirements and procedures, technical standards and licensing requirements” and to ensure that regulations are “not more burdensome than necessary to ensure the quality of the service.”

In our view, this entire exercise is unjustified. There should be no role for the WTO in over-seeing non-discriminatory domestic regulations (those which do not discriminate in standards and qualifications based on nationality.) This exercise represents a wholly unwarranted intrusion of trade law into important domestic public safety laws. We are concerned with discussions of instituting a “necessity” test for domestic regulations over services, as the “necessity defence” has been rejected by GATT and WTO decision panels in all but one case (the *Asbestos* case). In our view, the “necessity” test will not provide a defence to the challenge of services regulations, including those necessary to ensure the safety of water systems. Further, the GATS term “not more burdensome than necessary “ is vague, uncertain, and inappropriate as a criterion of measurement of public protections. It invites decision-making in favour of strictly economic interests. What is the standard for measuring “burdensome?” Does it include measures that add mere inconvenience to potential exporters, or must it entail significant costs or even serious disadvantage? The concept of regulations being burdensome conflicts with the increasing relevance of precaution in regulation-making for the environment and human health. Application of a precautionary principle or approach involves taking steps to prevent or

minimize harm when a risk has become apparent, even though scientific uncertainty exists regarding some elements of the risk and the cause-effect relationships that produce it. Technical standards implemented on a precautionary basis are likely to be particularly vulnerable to a finding that they are unnecessarily burdensome. With regard to water services, a broad range of regulations for the construction and operation of water systems and the quality of water are implicated in these discussions. The attached Annex provides examples from Ontario legislation of the breadth and detail of regulations deemed necessary to ensure safe water. These include technical standards and professional accreditation and training requirements, the types of regulations, which could become vulnerable to challenges under GATS and are the subject of current discussions. Further, GATS XIV, a “General Exception” similar to the GATT Article XX, does not include protection of measures for the conservation of resources, so measures for the conservation of water, land or energy (related to water service provisions) could be vulnerable to challenge.

Water services may require regulations regarding:

- Land use planning to protect water sources,
- Development controls on business establishment,
- Environmental assessment regarding siting of facilities
- Measures to promote water efficiency and reduction of use,
- Measures for energy conservation in water management,
- Subsidies (GATS covers subsidies, so that private water companies may seek access to the subsidies now paid to public water providers)
- Operators’ and engineers’ training and qualifications.

The Federation of Canadian Municipalities has emphasized the need for flexibility in designing water systems. The potential of GATS-based challenges to domestic regulations reduces governments’ flexibility in regulating water services for the benefit of the public, and is an important reason to resist any move toward a necessity test or other WTO disciplines on non-discriminatory domestic regulations.

5. GATS commitments are effectively irrevocable.

GATS Article XXI gives governments the option to modify or withdraw any commitment in its schedule. To do so, however, a government must be prepared to negotiate “compensatory adjustments,” in the form of reciprocal trade concessions, with the governments of foreign service providers who are affected by this withdrawal. If the government withdrawing commitments does not make the agreed compensatory adjustments it may face trade sanctions, which can occur in any sector. However, the extent of the compensation necessary to successfully invoke Article XXI makes this an unrealistic and probably unworkable option for governments.

Since countries may permit the establishment of foreign service providers (including for water services) without making a GATS commitment to do so (autonomous liberalization), that option is preferable. It does not prevent subsequent changes in policy, while a GATS commitment makes the decision effectively irrevocable, and permits challenges to a range of public water services and regulations.

Conclusion

Water is an essential of life and a human right to safe water is increasingly recognized. The Millennium Development Goals and various UN processes and strategies are directed to ensuring access to water for those who lack it. The negative legacy of privatized water services in numerous countries means that governments need to maintain control and oversight over this resource to ensure that people have adequate, safe water. As GATS commitments can undermine these goals, it is preferable that countries not agree to list water services or related services during these negotiations.

Annex

Example of regulation of services related to water quality

A representative example of necessary health and environmental regulations pertaining to water exists in *Ontario Regulation 459/00, Regulation Made Under the Ontario Water Resources Act* entitled *Drinking Water Protection*. The regulation is considered necessary in the wake of the Walkerton, Ontario tragedy, where seven people died and two thousand became ill due to contaminated water

The regulation prescribes the minimum acceptable level of treatment of water, whether from surface or ground water source, and provides standards (parameters) for sampling and analysis, (Sec.7 and Schedule 2)) and for experience , education and /or training of those whose do the sampling (7c ii A and B) i.e. provide these services. Schedule 2, Sampling and Analysis Requirements includes extensive details regarding how samples are to be taken for testing for various factors (microbiological, turbidity, chlorine residual, flouride, volatile organics, inorganics, nitrates/nitrites, pesticides and PCBs) Schedule 6 includes “Indicators of Adverse Water Quality” together with required corrective actions and notifications to relevant authorities.

The Regulation requires immediate reporting of test results that exceed specific parameters to the Ministry of Health and Ministry of Environment verbally and in writing and prescribes corrective actions for excedences including re-sampling and warning notices. There are also requirements for public information, and quarterly reports to the Ministry of Environment. (Sections 11 and 12) Section 13 refers to the professional accreditation of the writers of the reports; the writer: must be a professional engineer “as defined in the *Professional Engineers Act* who has experience in sanitary engineering related to drinking water supplies and who is not an employee of the owner.” (Section 13 (2) There are differing and specific reporting requirements depending on the category of water treatment or distribution system. In summary, Canada has domestic technical regulations regarding services related to water that cover both the method of sampling and inspection, reporting to the government and the public, and who may perform certain functions (engineers with accreditation and experience.)

Regulations pertaining to water and sewage works construction and maintenance

The *Ontario Water Resources Act* (RSO 1990, chapter O.40, Section 75 authorizes Cabinet to make regulations regarding all aspects of construction and maintenance of water and sewage works. Twenty-three different subject matters are regulated for each type of system.

Regulations exist concerning “the location, construction, repair, removal or alteration of mains, service pipes, valves, hydrants and all other works in or upon public property that form part of or are connected with water works” and “the location, construction, repair, removal or alternation of sewers, drain pipes, manholes, gully traps and all other works in or upon public property that form part of or are connected with sewage works.” (Section 75, (a and d)

Requirements for licensing or operators of water and sewage works are also regulated, together with the classification and qualifications of persons who may obtain licences. (Section 75 h) as well as operating standards for the works. Similar complex detailed requirements pertain to construction, maintenance, notices, records and abandonment of water wells and the requirements and standards of qualifications for well contractor and well technician licenses. (Section 75 2).

In summary, the various services required for the construction and maintenance of water and sewage works are subject to detailed regulatory standards.

1 Ministry of Employment and Investment, Government of British Columbia, “GATS and Public Service

Systems,” April 2001, and sources cited in it, originally posted at www.ei.gov.bc.ca/Trade&Export/FTAA-WTO/WTO/governmentalauth.htm, now available at http://members.iinet.net.au/~jenks/GATS_BC2001.html

2 WTO Council for Trade in Services, Environmental Services, Background Note by the Secretariat,

S/C/W/46/ 6July 1998 (98-2690), Paragraph 53

3 Michelle Swenarchuk, *From Global to Local: GATS Impacts on Canadian Municipalities*, 2002, Canadian

Environmental Law Association and the Canadian Centre for Policy Alternatives, www.cela.ca .

4 Ministry of Employment and Investment, Government of British Columbia, Op.Cit

5 CPC 69210, “Water, except steam and hot water, distribution services through mains.”

6 Government of British Columbia, Op Cit.

7 Scott Sinclair, *GATS:—How the World Trade Organization’s new “services” negotiations threaten*

democracy, Canadian Centre for Policy Alternatives, Ottawa, 2000. See the discussion of GATS disputes at

pp. 42-55.

8 This discussion is based on; Michelle Swenarchuk, “General Agreement on Trade in Services:

Negotiations concerning Domestic Regulations under GATS Article VI(4) , submitted to

the Department of Foreign Affairs and International Trade and to Industry Canada, November 24, 2000”, at www.cela.ca.

ⁱ. I am grateful to Prof. S.K. Thorat who supplied me with lots of material for the preparation of this paper and also encouraged me to participate in the workshop organized by Rajiv Gandhi Foundation. I express my gratitude to Rajiv Gandhi Foundation for providing me a chance to present some thoughts on this theme.

ⁱⁱ. A careful examiner would be overwhelmed by the volumes of work done in India on discrimination and inequality based on caste. But to a great extent, these studies have been undertaken by those who are not victims of caste discrimination and inequality. Yet, these studies provided empirical evidences to the exploitation and the oppression, the dalits were subjected to. In the recent past, some of the social scientists from these marginalised communities are undertaking studies which would throw greater light on this reality.

ⁱⁱⁱ. International Encyclopedia of Social Sciences. Vol. 13, The Macmillan Company, New York, 1968, p 144.

^{iv}. International Encyclopedia of Sociology. Volume 1. Fitzroy Dearborn Publishers: London, 1995, p 373.

^v. International Encyclopedia of Sociology. Ibid.

^{vi}. The ILO Discrimination (Employment and Occupation) Convention, 1958 (no. 111).

^{vii}. It is significant to note that while racial, sex-related discriminatory practices have been brought under the purview of discourse, caste continued to remain untouched. This is due to the fact that while racial discrimination was taken to be a global phenomenon, caste discrimination was confined to India at the most to South Asia. But this is not the entire story. Even though at regular intervals there were attempts to raise caste discrimination in the conferences against racism, this remained a feeble voice. All those who represented India in the United Nations came from the dominant castes and on no account would raise the issue of discrimination suffered by the dalits.

^{viii}. Roger Zegers de Beijl. (ed). Documenting Discrimination against Migrant Workers in the labour market. A Comparative Study of four European Countries. International Labour Office: Geneva, 1999, p 5-6.

^{ix}. International Encyclopedia of Sociology. Vol. 1. Fitzroy Dearborn Publishers: London. 1995, p 664.

^x. Prakash Louis. Political Sociology of Dalit Assertion. Gyan Publishing House: New Delhi. 2003.

^{xi}. Report of Committee on the Welfare of Scheduled Castes and Scheduled Tribes, Submitted to Parliament on 15th March, 2000, p 11-12.

^{xii}. Prakash Louis. Scheduled Castes and Tribes: The Reservation Debate. Economic and Political Weekly. Vol. 38 (25):2003, p 2475-2478.

^{xiii}. Dr. B.R. Ambedkar. Constituent Assembly Debate. Vol. VII, p 701-702, 1948-49.

^{xiv}. Marc Galanter. Competing Inequalities: Law and the Backward Classes in India. Oxford University Press: Delhi. 1984, p 43.

^{xv}. Interestingly, the human rights activists and the dalit activists who participated in the World Conference Against Racism in Durban in 2001 demanded that the Scheduled Castes and the Scheduled Tribes should be given reservation in private sector too. This demand has become all the more pertinent due to the privatization and disinvestments policies which would do away with public sector and the dalits and the tribals who used to benefit partially would loose this out too.

^{xvi}. Natan Lerner. Group Rights and Discrimination in International Law. Martinus Nijhoff Publishers: Dordrecht. 1991, p 163.

^{xvii}. Human Rights: A Compilation of International Instruments. United Nations: New York, 1988, p 58.

^{xviii}. John Edwards. Affirmative Action in a Sectarian Society: Fail Employment Policy in Northern

Ireland. Avebury: Aldershot. 1995, p 5.

^{xxix}. Devanesan Nesiah. Discrimination with Reason? The Policy of Reservations in the United States, India and Malaysia. Oxford University Press: Delhi, 1997, p 277.

^{xxx}. Quoted in Gurpreet Mahajan. Identities & Rights: Aspects of Liberal Democracy in India. Oxford University Press: Delhi. 1998, p 143.

^{xxxi}. Thomas E Weisskopf. Consequences of Affirmative Action in US Higher Education: A Review of Recent Empirical Studies. Economic and Political Weekly. December 22, 2001, Vol. 36 (51), p 4719.

^{xxxii}. Ibid, 4720

^{xxxiii}. William Darity. Reparations. In Samuel Myers (ed). Civil Rights and Race Relations in the Post-Reagan-Bush Era. Praeger: London. 1997, p 231-232.

^{xxxiv}. William Darity. Ibid, p 231-241.

^{xxxv}. For more in the line of recommendations please refer to National Commission for Scheduled Castes and Scheduled Tribes, Fifth Report, 1998-99, Volume-I, p 130-131.

^{xxxvi}. Swaminathan Aiyar. Diversity doesn't mean reservation. The Economic Times. (New Delhi). September 3, 2003.

^{xxxvii}. Ibid.

^{xxxviii}. Vancouver Declaration. The International Dalit Conference, Vancouver, Canada, May 16-18, 2003.

“ ON TRACK? DERAILED? OTHER VOICES FOR OTHER ROUTES”

Eric Toussaint, president of the Committee for the Abolition of the Third World Debt (CADTM), made the following contributions to the debate at the *Annual World Bank Conference on Development Economics*, organised by the World Bank at the Palais d’Egmont, in Brussels, on 10th May 2004^{xxxviii}.

The question that the moderator put to me is, what have we learned from the World Bank and the International Monetary Fund, in recent years in terms of evolution.

As far as I am concerned, the World Bank, and more recently the IMF, are evolving in the wrong direction. They are regressing.

Not so many years ago, reformers such as Joseph Stiglitz and Ravi Kanbur^{xxxviii} were expressing themselves, making proposals. And you would have thought moderate Keynesianism was back in the Bank. Clearly, that episode is over; those people have gone.

As far as the IMF is concerned, the election of Rodrigo Rato, once again a European, as Director General of that institution, shows that in spite of the repeated requests of several member countries of the World Bank and the IMF, the intention of good governance is not respected within these two institutions. It is as though they were saying, “Do good governance the way you are told and not the way we do it”.

As regards the Millennium Development Goals^{xxxviii}, it is obvious that they are not going

to be achieved, moderate and timid as they now are.

Poverty, we are told, is on the decrease. Too slowly, perhaps, but still, it is decreasing. Come, come. The two countries upon which the World Bank bases its claim that the total number of poor has decreased are India and China - two countries that, according to the WB, do not fully implement WB and IMF recommendations.

As you very well know, a series of measures to control capital flows, prevent convertibility of Chinese currency, etc. do not comply with WB and IMF recommendations.

You in the WB and the IMF are hoping to change all that, when China joins the WTO, with all the consequences that will entail. And then we will see whether poverty still carries on falling in China, or whether the cost of full integration in world trade on its current terms will not, on the contrary, lead to increased poverty.

In my view there is a great probability that it will increase poverty.

In any case, one thing is sure: the regions of the world which have been the most diligent in applying IMF and World Bank recommendations, namely sub-Saharan Africa, Latin America and the Caribbean, and Central and Eastern Europe are, according to your own figures, the regions that have experienced the most dramatic increase in absolute poverty.

So the poverty reduction goals of the Millennium Round will not be achieved by implementing your recommendations.

Next, let us consider the debt of the HIPC and the so-called emerging countries.

Concerning the HIPC, you will have heard of the extremely worrying and bleak report published by the U.S. General Accounting Office on 20 April 2004^{xxviii} on the funding of this initiative. It mentioned a considerable funding gap. According to the GAO, the initiative will be short of 375 billion dollars to achieve the sustainability goal of the HIPC debt by 2020. So here too, the outlook is a source of utmost concern.

As for the debt of the emerging countries, one may legitimately ask what the consequences of the increase of emerging countries' debt will be in the coming years. Currently, the price of raw materials is increasing slightly. There is high credit renewal and a large amount of government bonds being issued. Thus debt increases while interest rates remain low.

We know that interest rates will increase.

If the prices of raw materials, which are volatile, should fall again, what will happen in a year or two years' time?

This is the question I am raising here. And in my view, it should be a serious source of concern.

I would like to end with two more points.

There is again a negative net transfer on debt^{xxviii}. Indebted countries repay more than they get. This has also been the case for the World Bank since 1998. The amount that you, the World Bank, get as repayments is higher than the amount of new loans you grant. And you must be aware of this since you yourselves publish the figures in the World Debt Tables.

My last point is that as disparities continue to grow, you no longer talk about the redistribution of income, as you did long ago, in the days of Hollis Chenery^{xxviii} in the 1970s.

Since the 1980s you have been talking about poverty reduction without raising the issue of income redistribution. And as long as we do not directly address income and property redistribution in southern countries, in northern countries, and between North and South, the issue of disparities will not be resolved.

Eric Toussaint's Second Contribution to the Debate.

Brussels, 10th May 2004

The regions of the globe which had systematically applied World Bank and IMF policies had seen a rise in absolute poverty.

Firstly, I will begin by answering Mr. Uri Dadush, Director of the Development Prospects Group, World Bank, who has just declared that I was wrong in asserting that the regions of the globe which had systematically applied World Bank and IMF policies had seen a rise in absolute poverty. He claims that countries which have applied World Bank policies have, on the contrary, had positive results in poverty reduction. This is incorrect.

The figures are very simple, you just have to look at the World Keys Indicators published by the World Bank. It's very simple. You add up the estimated numbers of poor people, using the dollar a day threshold and applying your criteria for Latin America, the former Soviet Bloc and Sub-Saharan Africa, and you get 100 million more people living in absolute poverty in 1999 than in 1990.

According to the same source, in China and India the number of absolute poor has decreased by 200 million. From this, you claim that the number of people living in absolute poverty has decreased by 100 million. So this is simple arithmetic: you can say that there are 100 million fewer poor than 10 years ago, thanks to the contribution of China and India.

If you take the former Soviet Bloc, using your own figures, Sub-Saharan Africa using your own figures and Latin America and the Caribbean according to your own figures, the number of poor has increased.

Now you underestimate the actual situation of poverty, of the number of poor, as has been pointed out by the UN Development Programme (UNDP) and UNCTAD in several

studies.

So my statement is serious. This is something I'm adamant about. I'm basing myself on your data which I think fall short of reality.

For my second point, I would like to take history into account. The International Monetary Fund and the World Bank were set up after World War II, after a long period of depression and instability, to regulate the economy.

Since 1980 we have been through 25 years of systematic disbanding of regulatory mechanisms, control of capital flows and labour market rules. This is something that you admit yourselves: you want to undo, you want to take away mechanisms that are an obstacle to the liberalisation of markets. And you've been doing this for 25 years.

I think we can now reasonably draw the lessons of 25 years' work. If it were 5 years, you could say "OK, let us give ourselves time", but you have had 25 years and the results are horrendous. That much is clear.

And I hope that as the neo-liberal agenda is fostered, there is going to be a swing of the pendulum. In other words, there will be a new regulatory movement. Some people have made suggestions in your institutions (such as J. Stiglitz) and they have not been listened to. There are still some reformists here but their opinions are not published; others have just stepped down. And you have not been able to make the necessary changes. Change is bound to happen because the reality is there, pressure is extremely high.

There are movements opposing corporate-driven neo-liberal globalisation and other popular movements. So pressure will be such that you will be bound to acknowledge at some stage that a different approach is needed.

Now I come to my third point. If we take UNDP data and World Bank data, then we need an extra US\$ 80 billion over a period of ten years if we are to see all the populations of the whole world access a range of basic services.

Let us do some simple arithmetic. In terms of external public debt, the Third World countries refund 3 times this amount a year. I am not talking about the whole debt, I am talking about the official, government debts. They reimburse between \$220 and \$240 billion a year.

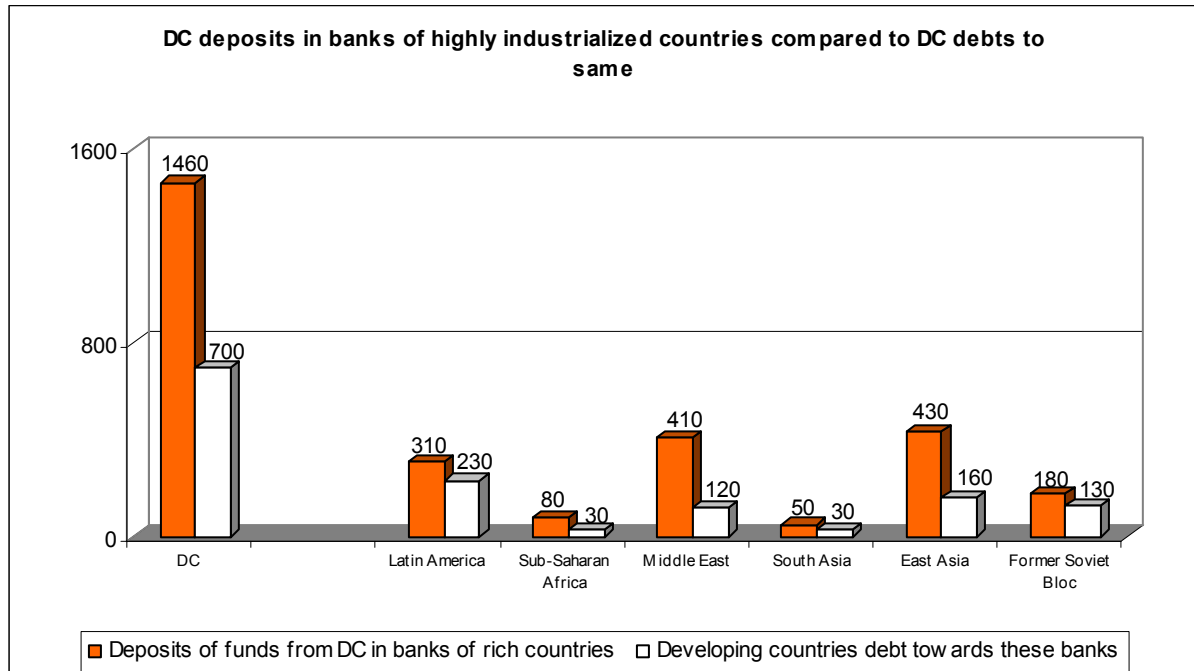
Another comparison: \$80 billion represents 1/5 of the overall US military budget. It is 8% of what is spent on advertising. It is half of the total fortunes of the four richest people on earth. It is 0.3% of the total fortunes of all the millionaires on this planet, who account for less than 0.1% of the world's population.

In other words, if you need money, these are a few avenues that could be explored. Take the money where it is.

I remember being amazed to read in a 1994 World Bank document something to the effect of: "This is great, the poor are willing to pay taxes...whereas the rich do not like paying taxes." And the conclusion that the Bank drew was that the poor should be paying taxes because they are willing to pay them, and we should not charge taxes to the rich.

But this changing situation means that a system of progressive taxation will be set up and put into practice by the citizens' movements that are pressing for it.

And finally, let us look at this chart.



Calculated by Damien Millet and the author, based on BIS 2003

On the white column on the left-hand side here, you have the deposits in Northern banks made by residents of indebted countries. The source of this information is the Bank of International Settlements. So these are Southern nationals depositing money in Northern banks. We are not talking about the poor, we are talking about capitalists living in the South who deposit US\$ 1,470 billion (US\$ 1,470,000,000,000) in cash in banks located in the North. On the white column, you see 700, that is US\$ 700 billion. These are the credits made by the Northern banks to Southern countries, which means that Southern countries are net creditors (net lenders too) and not the reverse. This means that there is a lot of money hidden in the North that none of you mention. At the Bank they do not deem it necessary to investigate capital flows and how to get our hands on this capital.

After 13 years of legal proceedings against the Marcos family initiated by the authorities of the Philippines in the late 'Eighties after the overthrow of the Marcos dictatorship, Switzerland sent \$500 million back to the Philippines. That was last year. Money taken by Fujimori and Montesino was returned to Peru by Switzerland; some money was returned to Mexico. What would be the outcome if we were to actually support investigations aimed at locating the exact origin of the money deposited on Northern bank accounts, and if money that had been illicitly acquired was reprocessed and given back to Southern populations through development funds, managed by Southern

populations?

In short, the money must be taken from those who have it - the super-rich - and returned to the people of the South. Far-reaching measures must be taken to redistribute wealth fairly.

It is only by applying such measures and abandoning the Washington Consensus that the Millennium Goals have any hope of being reached.
