

No. 24

Asma Jahingir

22 November 2001

Lord Romsey, Professor Amartya Sen, Members of the Jawaharlal Nehru Memorial Trust and Faculty of the Trinity College, Cambridge, thank you for inviting me and offering me this opportunity to speak on South Asia, a region which deserves attention and care.

I am particularly delighted to speak at this forum, because Jawaharlal Nehru was a leader of the subcontinent and we owe our freedom from the colonial rule to the struggle and sacrifice of such personalities. During my adolescent years, Jawaharlal Nehru turned into a Prime Minister of an “enemy” country, thus depriving many of us of the opportunity to rise above national interests and judge history and those that shaped it without prejudice. After more than fifty years we remain prisoners of our biases. Mr Nehru was a politician, an intellectual and a leader. Such individuals are not expected to sail through their political career without making mistakes – Nehru was no exception. His main contribution in founding and sustaining a democratic and secular system of government in India is remarkable. A vast country with 25 states and now a population of one billion people has grown alongside its democratic process. India’s democracy is faulty but not fragile. It requires deeper democratic roots, but it offers India an umbrella under which its diverse people can find common grounds and aspirations.

South Asia is unique. It has countries, like India, with a population of around one billion and other like Maldives which only has 270,000. Maldives has a system of controlled “democracy”. It has a strong executive, where the president appoints the Cabinet, members of the judiciary and one sixth of the Parliament. The Parliament (Majlis) selects a single Presidential candidate (Sunni Muslim male) who is approved or rejected by national referendum. Islam is the State religion and hence the government interprets this as a requirement for citizenship. The law requires its citizens to be Muslims. Islam too is preached under State supervision and the government selects Muslim theologians leading the Friday prayers. Reports of human rights abuses by the government are fewer compared to the other neighbouring countries of South Asia. They do however indicate a measure of accepted repression by the society itself. Police are not required to obtain warrants of arrest while apprehending a person accused of crime. Foreign workers are not allowed to mingle with the local population. Although not prohibited, there is no active human rights group in the country. Mild criticism of the government is tolerated but not dissent. Justice is not a matter of right but a concession left to the mercy of a benign ruler.

A chief rival of the President, Ilyas Ibrahim, was tried in absentia and sentenced to 15 years’ banishment. He was accused of illegally attempting to become president and for violating his oath as minister. After being put under house arrest, a compromise was reached and a few years later Mr Ibrahim was appointed to the Cabinet.

Law, prohibiting public statements contrary to Islam, public order, or which are libellous, limit freedom of expression. In 1996, a journalist was arrested and convicted for comments made about the 1994 general elections in an article published in the Philippines. After some months of imprisonment the President graciously pardoned him.

The judiciary is subject to executive influence and the president can remove judges. He is credited for exercising this authority with care. Thus only two judges have been removed and that too on genuine grounds. There are strong suggestions that the President does not have to use his powers to dismiss judges on political grounds, as Maldives judiciary is submissive and there have been no incidents of judges trying to assert their authority without the blessing of the executive.

The literacy rate amongst women, in Maldives, is ninety-eight per cent, two per cent higher than amongst men. Women vote, contest elections and in the November 1999 elections six women were candidates to the Majlis and two were returned to the Parliament. At the same time, the testimony of two women is required in place of one man in matters of financial obligations and inheritance. Punishment for extramarital affairs upon confession is public flogging, which are carried out. The man is banished and the woman placed under house arrest. There is hardly any protest against such discrimination.

At a glance, compared to other South Asian countries, Maldives appears to be a calmer place. Social indicators, of Maldives, are sound and fewer abuses of human rights are known. Reports on extrajudicial killings, torture or arbitrary arrest are scarce. However, the government does not tolerate a pluralistic society and the key elements for the protection of human rights norms are not available. There are no independent mechanisms for relief or redress. Courts are subservient to the government, self-censorship is the norm and civil society has voluntarily maintained its silence. The point of this comparison is not to conclude that somehow Indians, Bangladeshis, Nepalese or Sri Lankans are superior to Maldivians but to bring home the point that human rights can best be respected and indeed developed in a society that offers its citizens an opportunity to express, act and believe without fear of being reprimanded by the State. Above all they must be able to monitor the State rather than be monitored by it.

Human Rights cannot alone be measured by the statistical tools or purely by reports of human rights abuses available through local sources. It must also take into account, the measure of freedom allowed in a society and the development of democratic institutions. This reduces the risks involved in creating a space for human freedom and offers avenues of redress against the excesses of the State. Basic human rights remain subject to the government's goodwill unless independent democratic institutions and a vibrant civil society are not permitted to flourish. Therefore there is a strong link between human rights and democracy.

Leading democracies of South Asia, India and Sri Lanka, though far from being perfect, have a greater degree of transparency and accountability than their neighbours. In the last two decades Bangladesh, Nepal and Pakistan made a transition to democratic process. The latter could not sustain it and reverted back to a military rule. The democratic process in Nepal and Bangladesh remains tenuous, but the dynamics of the system has created opportunities for the average citizen. Their judicial system is not as skilful as in Pakistan but it has been able to deliver a better quality of justice. Bhutan and Maldives pretend to be homogeneous and stable societies. Reality is different. The State denies individual and group identities to emerge, and the stability of a country can best be measured through the noises and the voices of the governed.

South Asia is rich with the diversity of its ethnicity, cultures and religions. South Asians remain emotionally tied to these identities. Political and religious leaders have used these as a divisive factor – although diversity could, in fact, be the strength behind the South Asian identity. Our multi-ethnicity and diverse experiences could be creative in setting up systems, institutions and organisation with global appeal. Regrettably, such differences have been used to provoke hatred and abhorrence of other ethnic and religious groups. This gives an open license to extremist groups for violence and repression of their so-called opponents. Contrast this to the leadership of Nehru – whose appeal for freedom was for the whole of India. What was so clear to pre-independence leaders has now become obscure. Discrimination on the basis of culture, relations and ethnicity has engulfed the region in conflicts and violence. It has dehumanised our societies, diminishing the value for human life.

Sri Lanka, a longstanding democracy with an active multiparty system has been engaged in an armed conflict with the Liberation Tigers of Tamil Eelam (LTTE) for the last 17 years. The LTTE, is an insurgent organisation, fighting for a separate state in the north and east for the country's Tamil minority. The conflict has claimed around 60,000 lives. A regional Commission set up by the government of Sri Lanka found that 16,742 persons disappeared after having been forcibly removed from their homes, mostly by security forces, during the 1988-89 period

Nearly 100 people were killed in India, in election related violence, in 1999. Security forces continue to kill militants and civilians in faked encounters in high numbers in the state of Jammu and Kashmir and the north east, where secessionist movements are underway. Human rights organisation reported army officials confirming that security forces are under instructions to kill foreign militants rather than attempt to capture them alive. Security forces killed around 10,000 militants during 1990. Militants too have not spared lives. According to Indian government sources, militants killed 8,000 civilians and 2,000 members of the security forces. Another 2,600 civilians died in crossfire between the security forces and the militants. In the northeast some 632 civilians, 126 security forces and 270 militants were reported to be killed in one year.

Bhutan claims to have a population of 600,000 people, which is denied by unofficial sources, who claim that the actual population is around 700,000. The growth of the ethnic Nepalese in Bhutan was resented by the Buddhist majority, which led the government to tighten citizenship requirements, denaturalising hundreds of ethnic Nepalese living in Bhutan. Over 100,000 Nepalese were forced to leave between 1980 and 1990. Many of them killed or tortured and over a hundred people disappeared. It is difficult to receive reliable information from Bhutan, as human rights groups operate from outside of it and are often labelled as "terrorists" by the government. News is not received in Bhutan either. There is a ban on private television reception and since 1989 the government has dismantled all television reception and satellite receiving dishes.

Sectarian killings are carried out with impunity in Pakistan. Two hundred people were murdered in 1997. Extra-judicial killings continue to be the biggest single blot on the law-enforcement system. More than 350 incidents of extrajudicial killings were reported during 1999. Another 560 people died in police custody. The government flatly denied any abuse by the police and the courts continue to avoid the issue.

In January 1992 a man was killed in Lahore near the Governor House. It was alleged that the victim was driving in a car along the thoroughfare. The police started firing at the car, the driver was dragged out and shot dead. Inquiries conducted by the authorities failed to hold anyone responsible. It was stated that 28 policemen who appeared as witnesses admitted that they had opened fire in an "encounter" with persons who were suspected of being car thieves. A local advocate moved the courts in February 1992 and the court called for the inquiry report. Despite repeated reminders, no report was submitted even after a lapse of nine years.

Two persons were killed in police encounters and their families were pressurized to accept the incident as a genuine affair. The matter was raised in the court with the prayer that criminal cases be registered against the police and jail authorities as they had, on previous occasions, given an undertaking to the court that the life of the victims will be protected. Their trial was being heard in the jail premises and their lawyer, on several occasions, informed the court that his clients apprehended being killed by the security forces. A senior lawyer was in tears as he told the court that on the day the victims were killed, he was going to file yet another application for guarantees against faked encounter. The court took serious notice of the matter. At the next hearing, it transpired that one of the officials named in the petition, the Superintendent of Police, had engaged

the judge's brother-in-law as his defense counsel. The judge declined to proceed further and referred the matter to the chief justice who is still pondering over the matter since 1996.

The police's ability to defy courts' concerns regarding extra-legal killing in Pakistan became evident from the fate of the petition filed by a Lahore lawyer in 1995. The Lahore High Court asked the provincial police to furnish a complete record of extra-legal killings over five years. The case came up for hearing again on October 13, 1998, and then again on December 1, 1999. The report asked for was still not filed.

At least one woman is killed every day for having "dishonoured" her family. Prosecution is rare. Some influential sections of society condone such killings in the name of social tradition. Members of the judiciary have written sermons on the "morality" of the deceased women. Punishment in such cases is virtually impossible, as the law allows family members of the deceased to forgive the murderer. In exceptional cases where such forgiveness was not possible, the courts have awarded token punishment.

The emergence of the militant Maoist movement has claimed more than 1500 lives in Nepal. The Communist Party of Nepal (Maoist) continues to recruit children as young as 13 years of age, to be used in armed activities.

While in Nepal, I had the opportunity to talk to a reporter who, together with other women journalists, had visited the village of Mirule in Ropla, a remote and isolated area where tensions between the CPN (Maoist) and the police are high. Some 265 families live in the village, but all the male members had fled fearing for their lives. Many took to the jungle, others went to Kathmandu, reportedly to avoid being apprehended or killed by the police. According to the women journalists, the female population living in Mirule is squeezed by both sides of the conflict, negotiating for their lives and those of their families with armed Maoists and the patrolling police.

It appeared that the self-declared "people's war" has attracted many women, especially among the young. Ms Hsila Yami, a leader of the Maoists, is reported to have claimed that in the stronghold areas every third Maoist is a woman. In other places up to 10 percent of the activists are women. Explaining their large presence, Ms Yami claimed that "the people's war gives all of them (women) a meaningful life and a meaningful death; it allows them to prove their worth is equal to the men". The CPN (Maoist) also appears to have designed a special campaign encouraging women to join the movement – an indication that the movement draws on social and other grievances to recruit its followers. The position of women is traditionally weak and subordinate in Nepalese society, rendering the CPN programmes, with their strong emphasis on equality, attractive, both among the growing cadre of educated women and those of the disadvantaged in rural areas. In this connection, it is worth noting that in Nepalese society, women, especially the young, who leave their homes, find it very difficult to return and be accepted back by their families and by society in general. The women who join the CPN (Maoist) remain strongly committed to the "people's war" and are often subservient to the demands of its leaders; it was also reported that as the movement becomes more militant, women are being increasingly marginalised at the decision-making levels of the party.

In Bangladesh, political parties routinely use violence to achieve political ends. Twenty-four people were killed during "hartals" in the past one year. Over a hundred people were reported to have been killed during the recent elections this year. The police murder with impunity. A college student, Majiburrehman, tried to escape in a boat, when the police raided his house to search for stolen goods in March 1999. The police chased him and struck him with sticks until he drowned. Such incidents are routinely reported in Bangladesh.

The heightened state of violence across much of the region has marred the growth of South Asia. A continued tension between states (like Pakistan and India) and within the states themselves has deprived South Asians of a collective identity and the ability to work together in a regional spirit. Bloodshed and dead bodies steal the limelight and indeed our concern and attention. An overall movement for rights does continue yet it remains overshadowed and sometimes suppressed by the ongoing conflicts in the region. Peace efforts between India and Pakistan are discouraged on the grounds of national security. Religious minorities in South Asia remain confused. They support secular values where it applies to them as a group, but reject the same values when they are extended to women within their own community.

The rights of Muslim women in India is seen by the Muslims of India as a threat to their identity. The Shah Bano case is an example of this. Pakistan's Hindus remain subdued and Hindu Pakistani women are discriminated on both counts, as women and as non-Muslim Pakistanis. The issue of children being used in armed conflict is brushed aside in Pakistan, as Islamic militant groups depend upon this vulnerable group to fight their "jehads" in the neighbouring countries of India and Afghanistan. The LTTE regularly recruits children for use in the battlefield, some of them as young as 13 years old.

South Asia's women, religious minorities and indigenous people need special mention and attention. Constraints of time only allow me to touch upon this aspect. Religious extremists have forced a large number of Bangladeshi women to commit suicide, after *fatwas* were issued to murder them on account of adultery. There are increasing reports of incidents of vigilantism against women, mostly led by religious leaders. These include humiliating, painful punishment, such as whipping of women accused of moral offences. Some women are disfigured by assailants who fling acid in their faces.

Child prostitution in India is on the rise. Out of an estimated 2.3 million sex workers, some 575,000 are children. Under many tribal land systems, notably in Bihar, tribal women do not have the right to own land. The practice of dedicating or marrying young, prepubescent girls to a Hindu deity or temple as "servants of god" "Devadasis", is reported by Human Rights Watch to continue in several southern states, including Andhra Pradesh and Karnataka. Devadasis, who generally are Dalits, may not marry. They are taken from their families and are required to provide sexual services to priests and high caste Hindus. Reportedly many eventually are sold to urban brothels.

Religious intolerance is common to all countries of South Asia. In India the practice of untouchability is outlawed, but it exists. Dalits ("untouchables") are considered unclean by higher caste Hindus and thus traditionally are relegated to separate villages or neighbourhoods. The majority of bonded labourers in India are Dalits.

In Pakistan a similar pattern is seen. The majority of bonded labourers are either Christians, in the brick kiln industry of Punjab or Hindu Haris in the agricultural sector of Sindh. This is not by chance but because of the continued marginalisation of religious minorities.

Throughout Pakistan's history, the religious orthodoxy kept chipping their way at the system, thereby, increasing their nuisance value for the government in power and other liberal forces. The balance was tipped heavily in favour of the orthodoxy, after the 1977 coup d'etat. The military dictator, Zia ul Haq, got rid of his political adversaries through executions, arrests and intimidation. By introducing discriminatory laws, in the name of religion, he managed to control and depress the liberal lobbies. While he played his cards of Islamisation of laws, the courts obediently followed his game. Amongst other changes, Zia ul Haq facilitated the passage of the blasphemy laws. Since

then, religious zealots for ulterior gains have mostly exploited these laws. The imposition of a mandatory sentence of death coupled with a charged atmosphere, at every level of the trial, has terrified religious minorities and progressive Muslims.

Blasphemy laws were part of the process of Islamisation initiated by Zia ul Haq. During his leadership, a separate electorate system was introduced which was based upon the religious identity of the citizens. Non-Muslim citizens cannot contest as general candidates in the parliamentary elections. They are allocated a quota of seats and their electoral bases are voters belonging to their faith. The territorial area of their constituencies is unlimited. For example, the electorate for a candidate contesting elections to the National Assembly is spread throughout the country. Thus only candidates backed by the administration stand a chance of winning such elections. This had marginalised religious minorities. Criminal laws, based ostensibly on Islamic norms, apply to non-Muslims. A Federal Shariat Court (FSC) was introduced with *suo moto* powers to strike down laws found to be repugnant to the tenets of Islam and as an appellate criminal court. Judges of this court are Muslims and non-Muslim lawyers need special permission to appear before the FSC. Paradoxically cases of non-Muslims are heard in the FSC and judged according to the coded Islamic laws.

South Asians, despite their governments, have met the mounting challenges to the freedom of their societies. In some countries, institutions of the State have taken a lead. The Supreme Court of India revolutionized the concept of judicial review by introducing the system of Public Interest Litigation. It opened the doors of justice to the marginalised classes of India and subsequently of South Asia. This form of litigation is presently under criticism because of some misuse but there is a consensus amongst jurists that the idea is sound and deserves a chance. National Human Rights Commission of India has awarded compensation to victims of extrajudicial killings and torture. They have raised their voice against human right violations in the most difficult of times. A thirty-three percent of elected Panchayat women in India have spawned a silent revolution empowering women. They sought an opportunity and demonstrated that women as managers were fairer and more organised than their privileged counterparts.

Nepal's civil liberty movement transformed the country from an autocratic monarchy to a society in transition towards democracy. Within the last decade and a half, Nepal's civil society has come a long way. Sri Lanka's judiciary, even in times of a polarized political situation has shown remarkable independence. The women's movement in Bangladesh has successfully kept the orthodoxy at bay. Their micro-credit schemes have rescued hundreds of households from abject poverty. The examples are numerous, but I would like to take this opportunity to speak about some of the initiatives taken by the people in Pakistan and by the activists of both India and Pakistan, to create an enabling environment for peace and human rights.

Pakistanis have mostly lived under military rule since 1958, either directly or indirectly. The transition to democracy, lasting ten years after 1988 was weak and civilian rule was under the influence of the armed forces. Our worst period was during the rule of Ziaulhaq, from 1977 to 1988. Lawyers, politicians, trade unionists and journalists were whipped in public, tortured, jailed and killed. Women were terrorized and arrested for opposing the Islamisation of Zia. Islamic militants were supported, protected and encouraged by the government to intimidate and even kill with impunity. This did not deter Pakistan's pro-democratic forces from raising their voices in favour of freedom. Women specially took great risks in exposing the military in their endeavour to misuse Islam in order to oppress the people. It is largely due to the struggle of these brave women and men that we enjoy the freedom of the press and free expression even under military rule.

India and Pakistan's rivalry has cost lives but has not dimmed the spirit of the people. The Pak-India Forum continues to exchange views under the watchful eyes of the intelligence agencies of both countries. Particularly remarkable was the trip of Indian women to Pakistan, after the Kargil War. Tensions were high and there were predictions of an all-out war between the two countries. A bus full of peace activists, led by Gandhian Nirmiladesh Panday arrived in Lahore. They were received by a couple of hundred people, in an emotional atmosphere of music and songs common to both cultures. In return we followed with two buses, with a pair of pigeons, as a symbol of peace, to be set free at arrival, at Delhi's bus station. We too were received with warmth and this exchange of women peace activists did thaw the freezing atmosphere of post-Kargil. This bonding of the human rights activists of the two rival countries has kept dialogue alive. Over the years an understanding between human rights activists has brought us closer, despite visa restrictions and poor forms of travel within the South Asian countries. On a regional basis we organised SAHR (South Asians for Human Rights) to bring all pro-peace and pro-democracy elements under one umbrella. This month we held our first Congress, which was blessed by the most admired South Asian, the Master of Trinity, Professor Amartya Sen. We considered including Afghanistan and Burma in the fold of SAHR. As a first step SAHR's members will visit Afghanistan, when conditions permit, to make our links and assess the support we can lend to our forgotten and shattered neighbours. It was said the Taliban brought peace in Afghanistan, but we now know better that it was one that surrounds a graveyard. South Asia may be poverty ridden, lacking democratic spirit and short on human rights but it has before it strong role models – role models like Nehru himself, Gandhi jee, Mohammad Ali Jinnah, Rabindranath Tagore and many others in recent history. It is the example of these role models that South Asians need to follow if they are to carve out a brighter future for themselves and for the generations that will follow.