



Vidyavardhaka Sangha ( R ), Mysuru



# Vidyavardhaka Law College

Sheshadri Iyer Road, Mysuru-570 001.

**SRI K. PUTTASWAMY MEMORIAL  
ENDOWMENT LECTURE SERIES-3**

**ON**

**“NEED FOR REENGINEERING  
THE HUMAN RIGHTS REGIME IN THE  
EVOLVING WORLD ORDER”**

**Hon'ble Justice S. R. Bannurmath**

Chairman, Karnataka Law Commission



## *Introduction about Sri K. Puttaswamy*



### **Early life of K. Puttaswamy :**

Sri K. Puttaswamy was born in 1917 at Arakere, Srirangapatna Taluk, Mandy district to an agriculturist family as the son of Kalastawadi Sri Lingegowda and Smt. Lingamma. His father had primary education, but was a good Gamaka (Kavya vachana). He grew up admiring the nature and had influence of many historical places. As a young boy he was not shy and mingled with all kinds of people. He inherited good talent from his parents.

### **Education :**

Sri K. Puttaswamy was a clever boy and voracious reader. He did his schooling at Arakere, Srirangapatna Taluk. His father noticed his talent and sent him to Mysore for further education. He always excelled in his studies and was more innovative in his thinking. He obtained B.A (honors) from the University of Mysore and law degree from Pooana. Besides, being a good student he involved himself in curricular activities too.

### **Legal Profession :**

Sri K. Puttaswamy a child born in Gandhian era was honest person in legal profession. At the outset he worked as an assistant under the renowned lawyer Sri Yathiraj Naydu and Sri Lakshmi Narayan. He also practiced as a lawyer under H.C. Dasappa who was a famous politician and freedom fighter. He had shown great interest in freedom movement. He and other great leaders were arrested and were put behind bars for some years. After coming out from Dasappa's office but in vain, his place was occupied. He then began to practice independently. He practiced law profession till 1962 and throughout his profession he had good acquaintance with well-known writers and great leaders.



### **Political Career:**

Besides a great lawyer, he emerged as a great politician in the province of Mysuru and of Karnataka. He was president of Mysuru City Municipality and during his tenure as president, he took up many development activities and for the first time in Mysore city cement roads were laid. He was also president of District Co-operative Society. He was also a member of Mysore University Syndicate and Syndicate.

He was elected as member of Karnataka Legislative Assembly from 1952 to 1978. He was very active on the floor of assembly and had lot of knowledge regarding legislative assembly. As a member of legislative assembly he roared like a tiger in the assembly and raked up many issues. He had deep concern for the down trodden people. When he stood up to speak in the assembly, his eloquent voice and his vast knowledge put the whole assembly in read silence. He had brought many initiatives in the fields of agriculture, irrigation and land reforms.

His exemplary behavior, promptness, his care towards serving the people made him to rise to the level of a minister under the guidance of the then chief minister Sri S. Nijalingapa. He served as a cabinet minister of Municipal administration, health, co-operative, Housing, Law labor and parliamentary affairs very efficiently, Thus he emerged as an eminent leader in the province of Mysore.

### **Educational visionary:**

Vidyavardhaka Sangha in Mysuru is a dream of Sri. K. Puttaswamy, which made its humble beginning in the year 1949 with an intention of propagating education to the poor sections of the society at a small country in Mysuru. He was a true Gandhian, Social worker, political leader and disciplined person, who dedicated his whole life for the betterment of the down trodden people.

Vidyavardhaka Educational Institutions has since grown by leaps and bounds. It imparts education not only at primary and High School Level but also provides Degree, Law, ITI, Engineering and Diploma Courses, All these have materialized because of the services and contributions by great philanthropist whose main motto was Service before self and Education for all.

Now Vidyavardhaka Sangha stands as one of the prestigious educational institution in the heritage city of Mysuru. This had been possible because of the dedication and programmatic approach towards education by late Sri K. Putaswamy.

Vidyavardhaka Law College was established in 1974. Sri K. Puttaswamy was not only founder secretary but also was a founder principal of law college. This great soul disappeared from the world abode in the year 1978 but, still his contributions are remembered as an indelible print in the history of Indian politics.



# REENGINEERING THE HUMAN RIGHTS REGIME IN THE EVOLVING WORLD ORDER

Hon'ble Justice S. R. Bannurmath  
Chairman, Karnataka Law Commission

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Ladies & Gentlemen,

I offer my humble Pranams to the great visionary late Sri. K. Puttaswamy who was a multifarious personality, who was a Gandhian, a great lawyer, politician and educationist. He was the founder of *Vidyavardhaka Sangha*, Mysore — one of the oldest educational institutes in Karnataka. Not only he was the founder of the *Vidyavardhaka Sangha* but also founded Law College and he was also the founding Principal.

The memorial lecture in his name not only provides an opportunity to remember the great person and his contribution to society, but also the thoughts expressed in these lectures are true tributes to him.

I deem it as my privilege today to address this Sri. K. Puttaswamy Memorial Endowment lecture after many stalwarts and before an elite audience like you.

I will be speaking about the "Need for Reengineering the Human Rights regime in the evolving world order."

Ladies & Gentlemen

## THE PRELUDE

Before I take you to the main subject, I must mention a few things for your kind consideration. The world has undergone tremendous change in every respect. Therefore, we often talk about change management and changing the way we govern ourselves. We have transformed into the information world from



an industrial world. Without getting into more details about a much-known part of our knowledge about changing world order, let me state on record that every one of us today confirms that nothing in history has ever been moved so fast as today and has had a greater impact than today's technologically dominated and driven world. **Ray Kurzweil**, in his best-selling book '**The Singularity is Near**', envisages an exceptional increase in the rate of change. He argues that we will be seeing 20,000 years of change in the next one century alone. Kindly note, my dear friends, that Kurzweil has been proved right in over 87% of his prediction so far. He puts it in his own inimitable style that "few observers have truly internalised the implications of the fact that the rate of change itself is accelerating". Moving further, he estimates that the rate of change accelerates every decade. From now on the rate of change will be 4x than what is it today. Therefore, his estimation is that the youngsters will be witnessing a change of 20,000 years in this century alone.

I still remember my professors, back in law school, emphasising how the industrial revolution has changed not only the world order but also every single provision of law and focus of legal institutions. However, least I realised as a youngster how the social consequences of the industrial revolution went far beyond the individual / manual to factory system of production and mechanization of processes. I could only realise the impact after reading Paul Johnson's "A History of the American People" as late as 1999. He observes that the explosive growth of the steam-engine-based textile industry not only revolutionised the way we manufactured at a rapid pace; but also an equally rapid pace, revived slavery in a new *avatar*. The policy practitioners of the US took their own time to understand this phenomenon, as they all were complacent and believed that they had buried slavery long ago. That's why we witnessed slavery in different names rocking back to life and making American capitalists become super rich during those days. Although I am referring to American history, it can be applied anywhere in the world, including in India.



**Peter F. Drucker** in 1999, wrote that the industrial revolution of yesteryears even impacted family life and disintegrated the family. He says artisans (who existed earlier) were working as a family group within the family and produced. For the first time, they were forced to go out of their family and get involved in the production work out of the family. He calls it a "crisis of the family" before the family could adjust to it long later. The gigantic scale of production manyfold has made the production houses search for a mammoth marketplace and pushed the world to go global during those days.

The first industrial revolution began in 1780 with the introduction of mechanical production facilities using the steam engine. In 1870 the second revolution led to mass production of electricity to support the division of labour. The third industrial revolution commenced in 1970 when the first programmable logic controller (PLC) Modicon 084 was built, which was marked by automation in the production of Information Technology (IT) and electronic systems. The fourth industrial revolution led to the generation of Cyber-Physical Systems (CPS) and the development of technologies such as BD, IoT, 3D printing and AI.

My son, who has been working for Google for a long period now, tells me that CPS, an industry 4.0 tool, is an automated and connected device capable of learning from the physical environment which is responsive and can act independently. According to him we are heading towards the fifth industrial revolution, which is built upon Industry 4.0 achievements, where the society and our living become '**smart**' where the requirements of humans for routine work are almost negligible. The next world will be taken over by Artificial intelligence (AI). Machines/robots/humanoids who would have taken most of our work, and humans functions would be reduced to only using technology or controlling technology. The demand for human labour will be reduced drastically, leading to many social evils. Well, this discussion can go on and on like this. But let me draw



you to the point of interest here. I just wanted to sufficiently emphasise that every revolution be it industrial or information, has brought a lot of socio-political challenges to be addressed by law, legal system and institutions. Therefore 'reengineering' of the legal system is not a one-time affair but should be an ongoing one.

The second point of interest is that this area of reengineering is enormous. Therefore, we need to focus our attention on only one or few points. In this episode of lecture, I would like to restrict my thinking process to reengineering the human rights regime and the enterprises that have adopted these revolutionary changes in the world and have grown in size. We often refer to them generically as Multi-National Corporations (MNCs) or transnational Corporations (TNCs). The hypothesis is that ever since the industrial revolution (i.e., the era of the factory system of production), the private sector has been dominating to grow and is impacting every aspect of our life. Whereas our legal discourse predominantly focuses on regulating the State power - therefore we need fundamental readjustment in our thinking processes while reengineering the systems.

Coming back to the issue of MNCs and their effective regulation, I am attempting to state something which scholars did doubtfully in the 1960s, now doing definitively and soon are going to do desperately. However, one word of caution that I should not be for once taken as anti-development or anti-economic growth. I also make it very clear that I am not against MNCs in any way but do strongly feel that the fruits of economic wealth should be distributed to all without there being islands of prosperity, which in a way is the goal of the law. While our constitution dreams of an equal society and government to own the responsibility of reducing the concentration of economic wealth in the hands of a few, we witness the growth of millionaires as well as people in poverty. Globally also, this phenomenon is being witnessed. According to the latest Global Wealth Report (from Credit Suisse Research Institute), there is exponential growth in the number of



millionaires in the US. There are over 20.2 millionaires in the US. Globally as well, this number has been on rising to 56.1 million people, marking a significant rise from the year before when there were only 50.8 million millionaires a year back (2021). In contrast to this, in India alone, nearly 260.3 million people are living below the poverty line in the country, as per the official estimates alone.

So with this prelude, Ladies and Gentlemen, may I proceed with your leave?

## **PART ONE**

While addressing lawyers and would-be lawyers, I need not have to reinvent the wheel by explaining the human rights recognition, conferment and enforcement scenario. But would dare to simplify and capture the essence of this discourse as follows.

Obscure and mystified anthropogeny tells us the genesis of humans and their rise to the most dominant species on the planet earth. Have you ever realised your physical strength is so limited? You can't run like a cheetah, nor have the might of an elephant, nor the ability to swim like a fish. Realising his limited physical abilities, the man started living in groups to better protect himself from much stronger animals and nature. These groups developed into guilds and naturally arose the requirement for regulation. The long story can be cut short by saying — that this inevitability of man living in a group has further led to the formation of modern societies or nation-states. Obviously, the group or nation-state should have a system of regulation and enforcement agencies to drive that system. The government representing State fit the bill over a period of time. To make State all pervasive and powerful, we endowed it with sovereign power. Needless to repeat, sovereign power would mean illimitable power in the hands of the State. The sovereign is the ultimate overseer or authority in every possible decision-making process of the State for maintaining law



and order in the society. My little sense of pure political science tells me that it is the most controversial concept. In ancient times, word sovereignty was understood to mean the equivalent of supreme power. With the advent of modern nation-states, international law etc., this conservative, dogmatic meaning has undergone sea-change. Mind you; I have consciously skipped the complex transition from feudalism to nationalism discourse for the sake of simplicity.

So along with sovereignty, the art of regulating the State and State agencies has also developed simultaneously. This is where more than Thomas Hobbes and John Locke — philosophers like Rousseau become more appealing. Jean-Jacques Rousseau argues that the state is based upon a formal or informal contract of its citizens, a social contract through which they entrust such powers to a government as may be necessary for common protection. This has further led to the development of the doctrine of popular sovereignty and ultimately finds expression in the American Declaration of Independence in 1776. This has led to the concept of nationalism as well as constitutionalism. Most of the modern constitutions attempted finely balance between conferment of power to the State agencies and limited them to respect fundamental freedoms essential for humans to excel. However, the strength of this philosophy is in its belief and observance. If a mightier state agency attempts to defy this order or even games the system to fool people around, they hardly have any quick remedy. Therefore concepts of human rights were invented and popularised. Ever since their inception, human rights have undergone a long process of evolution.

"No wild beast is more destructive and crueller to man than his own fellow human beings", - observed Dr Sarvepalli Radhakrishnan, a great philosopher and second President of independent India. Unlike other animals, which fight and kill other animals only for food and self-protection, we do not require any such fundamental reasons; rather, we take pleasure in harassing others and fight for flimsy reasons.



In my view, the concept of human rights, which has been in existence since Vedic times, was codified after witnessing the wrath of two world wars. The destruction during that time, especially the ill-treatment and torture of war prisoners, led to the thinking resulting in the establishment of the United Nations Organisation. On December 10, 1948, a historic document, namely the Universal Declaration of Human Rights (UDHR), was adopted by the UNO. "Recognition of inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", read the preamble of the UDHR. In a nutshell, human rights, by their very nature, constitute the minimum rights that are necessary for a human being to live in civil society as a free individual with dignity and respect. The simplest and functional definition of a human right is the "right of human beings to live like a normal human being with dignity and liberty". These rights come by birth, and nobody can take them away. With this declaration, countless people have gained greater freedom, violations have been prevented, apartheid lessened, and independence and autonomy have been attained. When we put our constitution into force, these human rights declared as Fundamental Rights were influenced greatly.

The preamble of our constitution itself reflects the basic philosophy of human rights by promising to secure for all its citizens — Justice: social, economic and political; Liberty of thoughts, expression, belief, faith and worship; and Equality of status and opportunities.

After due deliberations, the United Nations Organization (UNO) felt that each member country should have its own law on the protection of human rights. Accordingly, India enacted the Protection of Human Rights Act, 1993. This law has brought two institutions of significance into force. One at a national level called National Human Rights Commission, and the other at the State level called State Human Rights Commission. These Commissions are required to enquire into complaints of victims of



a violation of human rights by public servants only. The term public servant is defined in Sec. 21 of the Indian Penal Code. Added to the complaints by the victim or any other person, the Commission may *suo-motto* or by itself can take note of the violation and take action. Once the complaint is accepted, the Commission concerned calls for a report of the concerned public servant. After receipt of such a report, the Commission, if found that the report does not indicate any violation, may close the case or send the report copy to the complainant, who can file his objections. Considering both, the case may be closed by reasoned order, and a copy of the order is sent to the complainant. If the Commission feels that the matter requires a detailed hearing, the case is fixed for hearing. For hearing, the commission is empowered as a civil court with powers like summoning, witness recording, documents search seizure etc. the Commission is a statutory body and not a regular court. It cannot pass any executable orders but only recommend that the government take appropriate action against the violator. Precisely for the said reason, some argue that these Commissions are paper tigers, but to remedy such apprehensions, sec. 18 empowers the Commission to approach either High Court or Supreme Court for issuing any writ or directions to the Government, which is then becomes an executable order. At the same time, the commission can award compensation to the victim to be paid by the State within the fixed time limit.

Apart from inquiry, the Commission stands as a watchdog over all police stations, prisons and other institutions under the control of the state like orphanages, beggar homes, rescued children and women Homes, government hospitals etc., where people are detained or lodged for the purpose of treatment. The Commission is required to regularly check and study living conditions therein and take action by making recommendations to the State to improve conditions therein. Another function is to undertake and promote research in the field of human rights. Till date in India, the Commissions have developed working network



and expertise in the following areas like arbitrary arrest and detention, custodial torture, child labour, violence and discrimination against women and children, extrajudicial killings, excessive powers, sexual violence and abuse, LGBTQ community rights, disabled people and other religious minority issues, labour rights and right to work, conflict-induced internal displacement, manual scavenging etc.

But the most striking observation one has to make is that these human rights Commissions have no jurisdiction to enquire into the violation of human rights by private parties. In the post-globalised world, when State activities are taken over by private players, and if they violate these human rights, we do not have effective legal relief. This hypothesis is tested below by taking the instances of MNCs.

I must mention here itself that the fundamental right under Art. 21 - the right to life, though initially restrictive, today has been expanded to newer rights like the right to information, right to education, senior citizen's rights, rights of disabled, right of pollution free environment, palliative care etc. in my view even good governance should also be considered as a human right as we already have right to vote and elect our representatives.

**Ladies and gentlemen,**

This takes me to the need for reengineering human rights regimes in the evolving world order, especially the multinational corporations.

## **PART TWO**

There is a little doubt that MNCs have contributed immensely to the world economy as a whole and particularly the developing economies. They have the ability to participate in the integration of the world economy and promote economic and social development. However, despite their positives, there are critical concerns they have posed to mankind today. Many MNCs



have become at least as powerful as some of the states in which they function and are therefore in the same position as states to violate the full range of human rights. MNCs must therefore be held accountable for human rights violations to the same extent as states. This observation was made by Ms Ratna Kapur (and, of course, many other scholars) in the light of the Bhopal Tragedy. She and other scholars belonging to that school are of the opinion that MNCs have the propensity to impact human casualties and environmental pollution.

However, I am now compelled to observe that the statement must be broadened at least in two respects. The first is to expand the ambit from mere human casualties and environmental pollution issues to all most all human activities in which MNCs attempt to operate; and secondly, to include big national corporate entities along with MNCs. The aftermath of Bhopal has exposed the inadequacies of our legal system in addressing the issues caused by ultra-hazardous activities engaged by MNCs. I can't agree more with Prof. Upendra Baxi when he expresses this in unequivocal terms. I always maintain that the world has witnessed one Bhopal (tragedy), but India has to endure two Bhopal tragedies!! The one caused by leakage of MIC (from Union Carbide India Limited) and the second by inconclusive, long-drawn litigation. Many authors, including Indian scholars like Prof. Baxi, Ratna Kapur etc., have brought to our knowledge how our legal framework is fragile to work out solutions to mass-tort scenarios. I feel still jittery when recollecting the conservative governmental statistics of 3,787 people getting killed and 574,366 people getting injured. They are getting paid cumulatively 470 million USD as compensation, though the claim was 3.3 billion USD which tells the sad plight of things as to how Indian life was calculated cheaper. If we calculate the compensation per every person died and injured permanently anybody will say that the amount is very paltry sum of money. In my view the life of a human being cannot be this cheap.

No doubt, in the aftermath of Bhopal, few experiments



occurred. The Public Insurance Liability Act was passed, and a few statutes were tweaked. I do not get cynical to state that we all have been insensitive to react, but I do believe all that was done was in good public faith to prevent the situations from reoccurring. However, due to the change in the world order, we need to think about it from multiple perspectives.

Public international law has grown, keeping state-centered orientation and growing to regulate the sovereign power of the state and state actors. Which I hypothesise is highly insufficient for understanding the complexities of the modern world led by technological innovations and private players taking the lead role. Post globalisation, the state entities are rolling back. Let me also hastily add that the term globalisation is used in dual ways. The first one, in its broader sense, includes the growing interdependence of world economies, cultures, and populations, including trade and services. Another way is to use the term in a much focused or restricted sense to refer only to international trade, and some of the investment flows among advanced economies to the rest of the world. I would like to use the term in the later (focused) sense. I am of the firm opinion that the wide-ranging effects of globalisation are still to be captured with precision by legal professionals. Major technological advancements with the encouraging incubation of the globalised world order have conferred glorified benefits to society as a whole. However, it has also harmed certain communities in its own way. Understanding the relative costs and benefits of the newly emerged world order would be the new challenge for the legal systems today, especially in emerging economies like India.

### **Ladies and Gentlemen,**

Let me now turn my attention to explaining how do we take stock of the post-globalised world order's ill impacts, especially to a few sections of society and attempt to understand how we as legal professionals attempt to innovate the legal systems to address the issue.



In simple words, it can be stated that when modern states were formed, they enjoyed unlimited power, often referred to as sovereignty. Therefore both modern states as well as governments, entailed in themselves enormous power. Naturally, law chided the government power and regulated its exercise to do public policy and public good without denting its sovereignty. It was believed sovereignty was absolutely essential to protect the nation-state from external aggression. Although there were signs of globalisation starting from the days of colonisation, they did not go as far as we see today. The world wars have pushed the nation states to brace for protectionism, and the depression of the 1930s has also contributed immensely to the move toward protectionism. However, the advent of revolutionary technology has finally pushed the global community to move towards liberal integration of global markets. Naturally, due to higher innovation, more than state entities, the globalising initiatives are promoted, pushed and popularised by private entities. MNCs have the lion's share in this regard. MNCs are growing excessively big and mighty. They have seen a dramatic increase in their size. Obviously, this dream run for the MNCs is by tweaking the global policy environment to their advantage.

### **UNDERSTANDING MONOLITHIC MULTINATIONAL ENTITIES**

The growing perception that the big corporations are threatening the democratic institutions of the nation-states and that they pervert the cultural and social fabrics of nation-states required to be examined a little more deeply and scientifically. Let me do that quickly before moving further.

It has to be noted that skepticism against big corporations was no new phenomenon. During 1960s and 70s, seeing larger resistance to MNCs, especially those of American origin. The resistance to US MNCs started in Europe as they were seen to interfere with their local culture and insemminate American culture, which was perceived to be inferior. At the same time, developing countries were seen to be shunning the MNCs as they



would not care to respect local norms and regulatory frameworks due to the larger economic strength they had. However, there was a paradigm shift from the 1980s onwards. MNCs started to be seen as symbols of progress in an increasingly integrating world. The generations of yuppies were impatient to be hired by the symbols of the success of the day; the large corporations were generally welcomed everywhere, including in developing nations. MNCs have started growing their strength slowly. Let me bring to your notice two interesting literary works published at two different points in time. "The American Challenge" by Jean-Jacques Servan-Schreiber get published in 1969 , and "the Silent Takeover" by Hertz was published in the year 2001.

The first among the books, written by Jean (the French author, a journalist by profession but turned into a politician, opines that if MNCs are encouraged, entire Europe will become a US colony. I do not think there is any need for me to stress that this book became an instantaneous bestseller and was later on translated into more than 20 languages. The second book 'The Silent Takeover: Global Capitalism and the Death of Democracy by Hertz, again a best seller and lauded by The Sunday Time of London, attempts to emphasise how corporations in Thea age of globalisation are changing our lives, our society, and our future, how they are threatening the very basis of our democracy. The young author brilliantly and passionately reveals how corporations across the world manipulate and press government by means both legal and illegal; how to protest, be it in the form of protesters or Seattle and Genoa or the boycotting of genetically altered foods, is often becoming a more effective political weapon than the ballot-box; and how corporations in many parts of the world are taking over from the state responsible for everything from providing technology for schools to healthcare for the community. Both of these titles are not written with scholastic discipline or standards. Therefore, can be categorised as literary works. But I, for one, believe literature, more often than not, reflects the real society and few more occasions, exaggerates the



stark realities. We, lawyers and scholars, have a fetish for evidence-based investigation and often ignore drastic developments around us. Therefore, my earnest request to all, especially my young friends, to keep this concerning development in mind as real and present.

I must confess that being a judge and lawyer all through my life; I am a poor reader of data. However, it requires no expertise to connect the dots to substantiate the point. The sales of General Motors and Ford are greater than the Gross Domestic Product (GDP) of entire sub-Saharan Africa. Apple's turnover is 1.1 times bigger than the GDP of the Netherlands (at \$ 830.6 billion) and 1.1 times bigger than the GDP of 25 countries in northern Africa (at \$ 839.4 billion). Recent reports indicate that Amazon and Microsoft have joined Apple and have formed the elite club of trillion-dollar companies, the measure which puts them economically higher than many of the nation-states of the world. Walmart showed a turnover higher than the revenues of most of the east-European nations States.

The research identifies that out of the 100 biggest 'economies' in the world, 51 are corporations, and only the remaining 49 are nation-states. Not just in terms of their revenue or turnover, the MNCs have really grown bigger in their size as well. World Bank statistics indicate how the top 50 MNCs of the world have grown meteorically since the 1980s to the present day. This growth is incomparable with nation-states. On the other hand, there can be another scale. How many MNCs have grown in number? The literature shows that the MNCs have increased in numbers as well. During 1980s, the MNCs were witnessed in the large manufacturing sector. Thanks to technology today, we have many MNCs going on the bandwagon of giant MNCs. Therefore, I contend the popular perception that multinationals are overwhelmingly large and that their size has increased dramatically in recent times, thereby threatening the integrity of the nation-states, is not completely baseless or mere stereotype. It is also argued by another school of thought that the size and



sales of MNCs are not the criteria to assess their power. Probably they are right in theory. If taken into account their drastic growth in recent times, not just one country or region but the entire globe indicates to bare eyes how powerful the MNC lobby is in bending the policy environment to their advantage. When I was a judge I could understand how human rights discourse is heavily funded and skewed to favour criminals, jail inmates and prison reforms!! Similarly, today, MNCs have developed well-oiled machinery to help their cause by developing many mechanisms like the 'ease of doing business index' and insisting upon total decriminalization of industrial laws indirectly pressurising the nation states to favour them. They are becoming more and more aggressive and sophisticated in their operations of lobbying.

### **A FEW INSTANCES OF MNCS' IMPACT ON HUMAN RIGHTS**

Carl Marx predicted that capitalism would increasingly lead to monopolies. This is coming true in the present post-globalised context. There are multiple reasons why some companies dominate globally and become monopolies. Whichever way a corporation or product become monopolistic would impact civil society as they tend to bestow raw deal to the consumer. Moving further such monopoly concerns would dictate nation-states themselves. Take the example of some medicines and health vaccines, which are essential to protect people from some deceases, and if only one or few corporations produce these medicines, then there is no way such corporations can be mandated by nation-states. There are ample examples we can take from the arena of technology. For instance, Google, with its innovative and confidential algorithm, has emerged as the biggest web searcher and controls more than 70% market share. In addition, the company has grown into a web of services interlinked like maps, Gmail, search engines etc. Presently most of its products (or services) are being offered free to consumers. Due to its effectiveness and also due to cost effectiveness — multiple products, including state services, are being offered



using Google products. At the critical moment, it is theoretically possible for Google to arm-twist the government service providers to agree to their terms of service. This can directly pose a serious challenge to democracy and governance itself.

Social media has emerged as a new medium through which humans interact closely and share their sentiments. I often come across a new generation interacting more comfortably and effectively over social media platforms than physically or verbally. While users are offered free services, the companies earn from the advertising revenue. Facebook is the dominant corporation in the domain of social media. In the recent past, it has acquired other companies like WhatsApp, Oculus, Rift etc. the company is so big that they recently charged it with affecting the users' sentiments on how the elections are fought and inclines them towards a single person or party. This goes to the root of democracy and would have a deeper influence over people and culture. I can't resist to the ongoing legal tussle by Facebook and WhatsApp. They have taken the offensive route to agitate the constitutionality of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Although they contend that such far-reaching regulations are violative of people's right to privacy, as guaranteed under Art. 21 of the constitution. These two social media global giants pray for striking down the traceability requirements as ultra vires the Information Technology Act, 2000 and that no criminal liability be imposed if companies do not implement traceability. In public media, both of these players depicted the present government's attempt to be "ineffective and highly susceptible to abuse", which would effectively mandate "a new form of mass surveillance".

I urge this episode to be elevated to another level of examination. Let me ask you to judge by using your common sense. Due to the constitutional mandate of Justice Puttuswamy and other verdicts, the government can't invade anyone's privacy. I am not for once arguing that the government should do that unless it becomes a case of national security and public order. But



is there any such mandate for tech corporations to forebear from doing that? If social media giants are capable of influencing public sentiment, that can't happen unless they peep into our messages and profile each one of our priorities. Therefore, we have over emphasised the rules to constrain the state entity and, on the other allowed free exploitation of data by tech giants. Modern studies indicate that today, even in countries where data protection laws prevail, the situation is far from satisfactory. There are multiple data leak instances for which tech giants shell out huge fines (in millions and millions of dollars), but I seriously wonder whether commercial gain by such data leak might be far greater than the fine they would pay to become holy cows. Therefore, every growth of MNCs has made markets more opaque and less competitive, which should be a matter of great concern.

Let me continue further to dissect the thesis further. My limited study of management tells me that - maximising profit is the ultimate objective of every enterprise. This obviously includes MNCs as well. I have realised with experience that it is not alone the goal of MNCs when they expand their business. More often than not, MNCs tend to acquire political power rather than profit maximisation. They tend to do so with surplus profits generated out of reduced competition in the market and in the name of IP rights. I remember having read in a news report that corporate donations to political parties have increased in India by 143% compared from 2004 to 2012. Yet another study by Association for Democratic Reforms (ADR), an advocacy body for bringing transparency in election politics, indicate still more provocative facts. All top political parties in India have received more than 93% of their contributions (each contribution above Rs. 20,000) in the form of corporate donations. Out of the five national parties, BJP received the maximum donations of INR 720.40 crores, Indian National Congress received INR 133.04 Crore, and NCP received INR 57.09 Crore. All from corporate donations. Further, the indications state that more than two-thirds of these donations are from MNCs. Therefore we can not



be naive in our thinking that they do not yield political power and only work for profit maximisation. I completely agree with the theory that, in fact, we can't distinguish between profit maximisation and yielding political power from one another as far as well-grown corporations are concerned. This makes me re-emphasise our present legal systems as well as institutions that have reoriented and re-engineered their work to achieve their objective of maintaining the public policy.

The rolling back of state activities has allowed the private sector to dominate in many spheres of life, including essential services and supplies. Education, health, transportation, water, electricity etc., are now in the private domain. These aspects make violation of human rights much more complicated to regulate with the existing framework and institutions. Therefore, innovation and reengineering have become absolutely imperative.

## **CONCLUSIONS**

As accounted above, the world community of global citizens, or to be precise United Nations Commission on Human Rights, created a mandate for an individual expert to look anew into the subject of business and human rights, following years of failing to find common ground between opposing sides. However, the enforcement and implementation of these human rights, I firmly believe, should not only be confined to State governments and governmental institutions alone. It shall be the lookout of all. The global scenario indicates to us that more than nation-states, voluntary agencies and international civil organisations have played a critical role in implementing, popularising and enforcing human rights all over.

It is said that the most difficult part of the task is the beginning. Probably in my case, this is writ large due to the uphill task I have undertaken for myself. I hope you remember, my dear ladies and gentlemen, that I am attempting to say we need to



reengineer the way we are looking at the human rights architecture altogether. If time permitted, I would have placed all these points into perspective by taking segmented issues like national sovereignty, competition among states for markets, investments, and access to resources, and the emergence of new global powers with their own views about both business and human rights, weak or corrupt governments in many countries, the corporate law principle of legal separation between parent company and affiliates, asymmetries of capacity and influence between large companies and many governments, large swaths of conflict zones, few and highly contested based of extraterritorial jurisdictions etc. the list goes on endlessly.

The best way I can proceed is to write in golden lines, the core of the objective while I speak about the process of reengineering. In this post-globalised developments, to which MNCs have richly contributed, how effectively do we protect individuals and communities against corporate-related human rights harm? You can't solve new-age problems with old-age tools !! Therefore, the beginning in this regard requires out-of-box thinking and a combination of solutions, including voluntary initiatives, new management tools, and the dissemination of best practices built on core objectives. The current human rights architecture can be described as 'too much of expectations, with too little space for execution'. If you take Human Right Commissions today, we can't exercise our jurisdictions beyond 'public servants' as stated above. During the recent pandemic, many deserving patients did not get emergency medical care. Is it not the gravest form of human rights violation? The answer is undoubtedly affirmative. If the denial of treatment is by the government-owned establishments, we can look into the matter. However, ever since independence, the state-owned institutions have drastically reduced themselves in providing health care. It is now estimated that nearly 72% of health care is being provided by private establishments. From being the largest provider of health services, the government has become the largest purchaser of



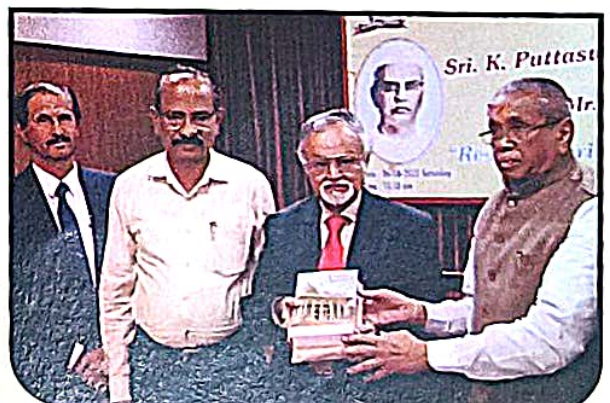
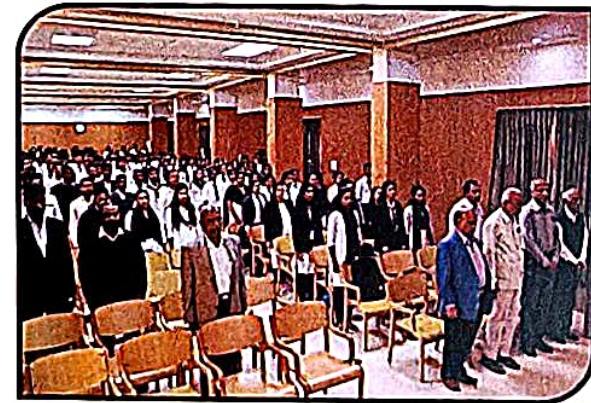
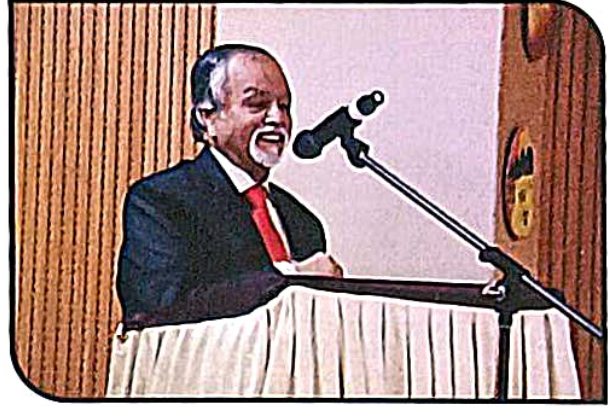
health care for its populations, and it is dependent upon the private players to do the job. Is it not an anomaly that the Human Rights Commission can't do anything about this phenomenon?

This is only a single instance; there are many such instances that can be given. When potable water is not being supplied on regular basis, where the water supply is privatised, is yet another illustration. In my opinion, graver human rights violations can't be imagined. Where the community shall go, and how can the situation be remedied? Privately maintained toll roads, if not maintained properly, lead to a road accident, which can also be other such instances.

This simple and presumptuous model right now that the State Government shall take up the responsibility to protect and promote human rights by taking appropriate action against private third parties does not really work efficiently in real life. Therefore we need to think of new strategies and newer institutions. In this regard, I, too, second the "Protect, Respect and Remedy" framework approach. To begin with, I would expect the legal framework to insist upon the enterprises to conduct periodical due diligence to identify, prevent, mitigate and account for how they would address their adverse impacts on human rights. This, to a great extent, allow — on the one hand, the enterprises to understand how they could work without affecting human rights, and on the other hand, even civil society can attempt to review the sensitisation level with which the corporations work.

The very next step is to undertake massive human rights research to set appropriate standards in our society. The universities, teaching institutions, and both National and State Human Rights commissions may undertake this work. Only when we produce standards, the enforcement agencies can evaluate the gap between prescribed standards and their observance by the enterprises. But the main point here to be noted is that in addition to State and State actors, the entire civil society has to involve in the business of protecting and promoting human rights. I











remember UN Human Rights Council had established a five-person inter-regional working group of experts to follow up on the mandate in this regard. Its work plan for 2012 can be very handy for our reference. The National Human Rights Commission shall act as a nodal agency and probably put the action plan into practice.

The time has come to amend the provisions of the Protection of Human Rights Act, 1993 and the powers of NHRC and SHRCs to have their jurisdiction over private enterprises or have dedicated institutions to do the task. The development and evolution of corporate law is a very big leap in this regard. For instance, till the Companies Act, 1956 (which repealed the Companies Act, 1913), the focus of the law was to protect the shareholder's interests and creation of assured wealth for them. The 1956 law did venture out to address the issues of stakeholders to some extent. But the new Company law in 2013 attempts to bring in corporate citizenship by its enforcement.

However, we do not have capacitated machinery to put this into practice. Therefore, new institutions are to be established.

I stop here, with an earnest appeal to all, and especially my young friends, who are the future of new emerging India, to spare some time to my thoughts. I also profusely thank the management and organisers of Vidyavardhaka Sangha for giving me this opportunity to share a few thoughts of mine. Special thanks to all the audience for your kind patience.

Thank you

May God Bless you all.