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JOURNAL OF THE NATIONAL HUMAN RIGHTS COMMISSION, INDIA

Volume 9, 2010

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CHAIRPERSON

NHRC

PREFACE

The National Human Rights Commission of India (NHRC) came into existence on 12th October, 1993 pursuant to the enactment of the Protection of Human Rights Act, 1993. Since then, it has been making determined efforts to prevent violation or neglect of human rights occurring anywhere in the country coming to its notice. Besides the need for protection and promotion of civil or political rights of the citizens of the country, NHRC is aware of the fact that a large number of citizens also suffer from deprivation of their economic, social and cultural rights. There is inter-linkage between these rights as civil and political rights may be meaningless to a person living in abject poverty.

In an effort to reduce poverty and hunger besides addressing other deprivations and inequities afflicting our global society, in September 2000, 189 Heads of State and Government adopted the UN Millennium Declaration as per which, eight Millennium Development Goals (MDGs) are to be achieved by 2015 that respond to the world's main development challenges. These goals relate to eradication of extreme poverty and hunger; achievement of universal primary education; promotion of gender equality and empowerment of women; reduction in child mortality; improvement of maternal health; combating HIV/AIDS, malaria and other diseases; ensuring environmental sustainability; and developing a global partnership for development.

The protection of human rights of all concerned in extreme situations where the law enforcing agencies are functioning under severe pressure is a big challenge. Civil society has an important role to play in ensuring a balance and maintenance of sanity in these situations.

Indian economy has made significant strides in recent years. Globalization and removal of several restrictions earlier imposed upon the corporate sector has assisted in this phenomenon. It is imperative that the corporate sector, which has grown as a result, makes efforts to give back to the society something in return. If this responsibility is adequately shouldered by our corporate sector, it will go a long way in securing of human rights to large sections of our society.

In order to facilitate sharing of ideas, experiences and information on human rights issues, the Commission started an Annual Journal in 2002. The idea was to create an important platform for building a body of high quality scholarship on human rights. Keeping this in view, the Commission has decided to focus this year's Journal on four important themes namely, Millennium Development Goals, Human Rights in Conflict Situations, Role of Civil Society and Human Rights; and Corporate Social Responsibility and Human Rights.

I sincerely hope that the NHRC's journal for 2010 will assist in new initiatives on research and spreading awareness regarding human right issues.

10 December, 2010



(K.G. Balakrishnan)



SECRETARY GENERAL

NHRC

From the Editor's Desk

The Commission has, under Section 12 (h) of the Protection of Human Rights Act, 1993, a statutory responsibility to "spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means".

The Commission has been undertaking various activities including training programmes, seminars, workshops, publication of special reports and newsletters, etc. covering various issues relating to human rights. In 2002, the Commission started an Annual Journal to facilitate sharing of ideas, experiences and information on human rights issues. It has generated a great deal of interest amongst scholars and practitioners of human rights. The articles from a cross-section of people including jurists, academics, public servants and others, published in previous issues of the journal, have not only enriched the literature on human rights but also helped in bringing into focus some key human rights issues.

This year, the Journal has focused on four major human rights issues: Millennium Development Goals; Human Rights in Conflict Situations; Role of Civil Society and Human Rights and Corporate Social Responsibility and Human Rights. There are contributions from experts having rich knowledge and experience of these issues. There are two book reviews, one on "Mobilizing for Human Rights:

International Law in Domestic Politics" by Beth A. Simmons and the other on "Justice for the Poor: Perspectives on Accelerating Access" by Ayesha Kadwani Dias and Gita Honwana Welch.

I hope the Commission's Journal for 2010 will prove to be useful to all those who are concerned with human rights issues and will inspire better protection of human rights of all.

10 December, 2010



(K.S. Money)
Secretary General

Why is India Lagging Behind in Millennium Development Goals? A few hypotheses

*N.C. Saxena**

Growth, Outlays and Outcomes

In the last decade and a half that India has successfully embraced economic reforms, a curious problem has haunted the country and vexed its policy makers: India's excellent growth has had insufficient impact on its social indicators, and India is likely to miss achieving the Millennium Development Goals in respect of health, nutrition, sanitation and gender. The problem has been compounded by the fact that GOI has adopted more ambitious targets than the MDGs, as the 10th and 11th Plan document strive to achieve the same targets by 2012, that is, three years before other nations do it.

The Eleventh Plan takes cognizance of several shortcomings in policy and delivery, calls for faster and more inclusive growth, and lays great stress on attaining the MDG goals three years before the International deadline

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of 2015 by the end of 2011-12, which is also the terminal year for the Plan period. For this purpose 27 monitorable targets have been identified at the national level. Some of the targets for 2012 are:

- Reduction in the dropout rates of children at the elementary level from 52.2% in 2003-04 to 20%
- Increasing the literacy rate for persons of age 7 years or more to 85%
- Reducing the gender gap in literacy to 10 percentage points
- Infant mortality rate (IMR) to be reduced to 28 and maternal mortality ratio (MMR) to 1 per 1000 live births
- Total Fertility Rate to be reduced to 2.1
- Malnutrition among children of age group 0-3 to be reduced to half its present level
- Anaemia among women and girls to be reduced to half its present level
- Sex ratio for age group 0-6 to be raised to 935 by 2011-12 and to 950 by 2016-17.
- Clean drinking water to be available for all by 2009, ensuring that there are no slip-backs
- Ensure that at least 33% of the direct and indirect beneficiaries of all government schemes are women and girl children
- Ensure that all children enjoy a safe childhood, without any compulsion to work

It is obvious that these ambitious targets cannot be achieved through a 'business as usual' approach, as past performance has not been fast enough to give us hope that we would be able to reach the national goals.

For instance, the MDG target of reducing infant mortality rate to 27 per 1000 births by 2012 and even by 2015 will surely be missed if the present slow rate of decline from 60 in 2002 to 54 in 2007 continues. The progress on immunization has been equally dismal, as it has improved only by one percentage point from 43 to 44% in the last eight years, which is far behind the desired goal of 90% to be achieved by 2012/2015. Despite

GDP rising by eight to nine per cent every year, the NFHS 3 data shows that malnutrition in the age group 0 to 3 years has declined only by one percentage point in the last eight years. More than half of the children 1-5 years old in rural areas are under-nourished, with girl children suffering even more severe malnutrition. Internationally, India is shown to be suffering from alarming hunger, ranking 66 out of the 88 developing countries studied (IFPRI 2008). The gender gap in school attendance continues with 82% of boys attending school compared to 72% of girls at the primary stage, showing that girls are more disadvantaged compared to boys. The decline in the juvenile sex ratio over the last decade, visible in the data from Census 2001, is an indication that the Constitutional assurance of freedom and equality for women is still far from being fulfilled.

Table 1 : Progress towards achieving Millennium Development Goals in India

MDG Goal	Indicator	Year	Value	Year	Value	MDG target	
1	Percentage of population below poverty line (Planning Commission)	1993-1994	42.0	2004-2005	37.2	18.0	Off track
1	Percentage of under-nourished children (< 3 years) (NFHS 1 and 3) (Based on NCHS reference population)	1992-1993	51.5	2005-2006	45.9	25.8	Off track
2	Literacy rate of 15-24 years (Census 1991 and NSSO 2004-2005)	1991	64.3	2004-2005	82.0	100.0	Off track
3	Ratio of girls to boys in primary education (Selected Education Statistics)	1990-1991	0.71	2004-2005	0.88	1.0	Off track
3	Ratio of girls to boys in secondary education (Selected Education Statistics)	1990-1991	0.50	2004-2005	0.71	1.0	Off track
4	U5MR (per 1000 live births) (SOWC 2008)	1990	117	2007	72	39	Off track
4	IMR (per 1000 live births) (SRS 2007)	1990	80	2007	54	27	Off track
5	MMR (per 100,000 live births) (NFHS 1 and SRS 2001-2003)	1992-1993	424	2001-2003	301	108	Off track

MDG Goal	Indicator	Year	Value	Year	Value	MDG target	
7	Households with access to improved drinking water source (%) rural (Census 1991 and NFHS 3)	1991	55.5	2005-2006	84.5	77.8	On track
7	Households with access to improved drinking water source (%) urban (Census and NFHS 3)	1991	81.4	2001	95.0	90.7	On track
7	Households using toilet facilities (%) rural (Census and NFHS 3)	1991	9.5	2005-2006	26.0	54.8	Off track

It is a matter of concern that India's pace of improving social indicators seems to be much slower than countries poorer than India, such as Bangladesh, Vietnam, Myanmar, and Bhutan as shown in Table 2:

Table 2

		India	Bangladesh	Myanmar	Vietnam	Bhutan
Infant Mortality Rate	1990	83	105	91	40	91
	2007	84	47	74	13	56
Underweight children under 5		43	41	32	20	14
Immunized against measles		67	88	81	83	95
Rural population with adequate sanitation		26	35	72	50	70
Attendance ratio of girls to boys in primary school (net) (%)		88	106	102	100	91

(Based on SOWC, UNICEF 2009)

The optimism of the 11th Plan's grand goals would be justified only when there is a shift in the way India prioritizes for social sector and addresses cross-cutting systemic issues like dilatory budgetary flows, M & E of programmes, personnel and administrative reforms, and accountability. Actions are needed along many critical areas, and first and foremost there must be adequate and specific information regarding the reasons for failure. Therefore there is an urgent need for state-specific studies to focus attention on such bottlenecks.

Factors Responsible for Poor Performance on MDGs : Low Allocations for Social Sector

According to the Economic Survey 2009, the total social sector expenditure by the Centre and the state governments combined as a

percentage of GDP has increased from 5.57% in 2003-04 to 6.72% in 2008-09 (BE). This is primarily because of the fact that GOI allocation for education, health and other sectors relevant to MDGs has increased significantly over the past few years. However, part of this increase is illusory because the Pay Commission Award has added to the salary burden. Thus the budget increase may not have resulted in corresponding increase in the number of teachers or doctors. Second, 70 to 80% of the total expenditure on social sector is borne by the states, but they have not been able to arrest the decline in social expenditure as a proportion of total expenditure, as shown in Table 3.

Table 3

Year	Education	Health
2000-01	17.4	4.7
2001-02	16.1	4.4
2002-03	15.0	4.1
2003-04	12.6	3.5
2004-05	12.7	3.5
2005-06	14.2	3.9
06-07 (RE)	14.2	4.1
07-08 (BE)	13.9	4.1

(RBI 2008)

It is likely that as GOI stepped up its share in social sector expenditure, states decided to cut down on the plan schemes that they were running till the last decade. However, this would need further investigation. State-wise figures are given in the RBI report.

Outlays should not be considered as an end in themselves. Delivery of social services requires increasing financial resource, but more important is the quality of public expenditures in these areas. This in turn requires improving the certainty of budgetary flows, monitoring of outcomes, governance, productivity and accountability of government machinery. In contrast, over the last two decades there has been hardly any improvement in the quality of services being provided by government to its citizens, especially the poor. We suggest some of the factors responsible for poor outcomes.

Budgetary Procedures

Despite poor allocations it is ironic that some Ministries such as Health and Family Welfare, and some states such as Bihar, Orissa and Jharkhand are

unable to spend even the meagre funds that are allotted to them. For instance, the budgetary estimates (BE) for Ministry of Health and Family Welfare¹ in GOI was Rs 12023 crore in 2005-06, but it could spend only Rs 9299 crore. Thus more than Rs 2700 crore (almost US \$ 600 million) remained unspent.

To a Rajya Sabha Unstarred question no 1438, answered on 24.08.2007, the Minister for Health and Family Welfare admitted that 'data on the extent of utilization of funds by states reveals that of the eighteen States having weak public health indicators/weak infrastructure, identified for special attention under the NRHM, eight states viz., Arunachal Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Mizoram, Rajasthan and Sikkim have utilized more than 50% of allocated funds while others have utilized funds of a lower order'.

Among the states, the record of Bihar is atrocious in using central funds. In one sector alone, it lost about Rs.540 crore of Central assistance during 1994-2005 in the Accelerated Rural Water Supply Programme (ARWSP).

Table 4
Performance in Bihar: Utilisation of ARWSP Funds (Rs. crore)

Year	Opening balance	Allocation by GOI	Release	Total availability of funds	Expenditure	Closing balance
1994-95	30.58	54.70	28.04	58.62	38.40	20.22
1995-96	20.22	70.99	35.50	55.72	22.74	32.98
1996-97	32.98	77.95	31.13	64.11	34.24	29.87
1997-98	29.87	93.80	00.00	29.87	08.67	21.20
1998-99	21.20	117.69	00.00	21.20	08.50	12.70
1999-00	12.70	93.80	46.90	59.60	08.70	50.90
2000-01	50.90	46.61	0.0	50.90	37.19	13.70
2001-02	13.70	72.74	0.0	13.70	9.32	4.38
2002-03	4.38	74.06	37.03	41.41	33.09*	8.32
2003-04	8.32	63.2	31.6	40.32	24.70*	15.62
2004-05	15.63	74.05	89.41	105.04	62.21*	42.83
Total (upto 04-05)		839.59	299.61		245.76	

* Mostly transferred to panchayats and shown as expenditure, although no firm figures of actual expenditure have been sent by the panchayats to PHED.

Source: Various annual reports of the RD Ministry, and Approach Paper to X Plan, Planning Commission

1 This excludes figures for AYUSH.

In addition to losing out on central assistance, Bihar is not able to use even its own funds. During the three years ending 2005, total state plan allocation for Bihar was Rs 10220 crore, whereas it could spend only Rs 7893 crore. Even salaries are not paid on time in Bihar. An evaluation of ICDS in Bihar in 2007 by Unicef showed that only less than 10% of AWWs receive honorarium regularly, most receive it only twice in a year rather than monthly.

While on tour to Lalitpur (UP), I learnt that the program of promoting institutional deliveries was suffering because there was delay in payment to ASHA workers and pregnant mothers. This was confirmed both in the field as well as in a meeting of ASHA workers from all over the district that we addressed on the 21st August 2007 in the presence of Additional CMO of the district. He in fact admitted the delay was due to the fact that there has been no release of fund from the state government in the year 2007-08. I asked him whether a demand had been sent to the state government this year. We were told that the proposal for demanding funds from Lucknow had been sent only on the 7th August 2007. That explained the delay. Even if funds were to be released quickly by the state government, the district lost the first six months and non-payment has certainly de-accelerated the program.

Reasons for poor utilisation of central funds by the states are many. Some of the common ones that need further investigation are:

- States are not able to contribute counterpart funds because of fiscal constraints
- Delay in the flow of funds (at various stages)
- Rigid conditionalities of Centrally Sponsored Schemes preventing the government staff from addressing all local needs leading to poor expenditure
- Long process of identification of potential beneficiaries under various schemes (e.g. beneficiaries only from BPL families, or SC/ ST communities, etc.)
- Capital expenditure (such as construction of schools) requires preparation of estimates and floating of tenders, which takes time

- Often estimates need to be sanctioned by a competent authority who is not locally available, and files travel up and down; there is insufficient delegation
- Delay in the supply of goods such as medicines, foodgrains, etc
- Poor budgetary allocation for support services, such as travel, telephones, which render supervision ineffective
- Government machinery is used to working in a sequential order, whereas quick completion of projects requires undertaking several activities concurrently
- Inadequate delegation of power to District/ Sub-District level government staff with regard to spending money
- Poor coordination between the Line Departments and PRIs
- Difficulty in decision-making in the Elected Local Bodies due to political differences
- Lack of adequate number of staff to implement schemes
- Funds received from GOI for MDG related programmes are diverted to some other sector
- Insufficient monitoring of delay at the senior level, with the result that remedial action to cut down red tape is not taken promptly

Funds allocated to the departments in the state budgets are not released during the year in an orderly manner and that far too many references have to be made to the finance department (FD) for prior approval for release of funds on ways and means considerations. The same is found to be true in respect of release of funds to ZPs. Large funds are released at the end of the financial year resulting in many irregularities in booking the expenditure.

Release of budget is neither certain nor timely. The budget cycle is too short for full utilisation of funds for capital works. Expenditure budget should be valid for two years, so that capital expenditure can be completed without surrender of funds. Similarly for centrally sponsored schemes, approval of the state legislature should not be necessary for using central funds that are transferred to the state consolidated fund.

Simplifying procedures - GOI issued instructions in December 2004 for increasing ICDS centres, but the states took almost four years in completing formalities. Nine Chief Secretaries had to personally appear before the Supreme Court and apologise for the delay. The state governments could expedite the process and cut down on possible delays by doing activities concurrently in a parallel fashion, rather than do them sequentially. For instance, they can complete several steps (creation of posts, recruitment, selection of villages and sites, advance budget provision) simultaneously rather than do one activity at a time, so that much of the delay can be reduced. Time that was taken by different states in operationalising the new ICDS centres should be studied with a view to identify specific causes for delay and suggesting meaningful modifications in procedures.

Selecting NGOs - Several programmes, such as IEC for sanitation are run by the NGOs. However there is a great deal of wastage, as often the procedure to screen out undesirable NGOs is not in place. A study may assist governments in framing new Guidelines which would help the districts in identifying good NGOs in an objective manner, so that assistance is extended only to those NGOs who have a good track record and proven competence in i) community mobilisation, ii) implementation of development projects through people's participation including expenditure through people's committees, and those iii) who have worked for the empowerment of the socio-economically disadvantaged people. It is of utmost importance that the process of selecting NGOs be completely transparent.

Ineffective M&E Systems

At present officials at all levels spend a great deal of time in collecting and submitting information, but these are not used for taking corrective and remedial action or for analysis, but only for forwarding it to a higher level, or for answering Parliament/ Assembly Questions. Often data on performance reaches late, or is not available district-wise, with the result that accountability cannot be enforced. For instance, no figures are available for district-wise changes in poverty even over a five year period. Had this data been available timely and for each district, it would be easy to fix responsibility and help in outcome monitoring.

Equally, state governments do not discourage reporting of inflated figures from the districts, which again renders monitoring ineffective. As

data is often not verified or collected through independent sources, no action is taken against officers indulging in bogus reporting. For instance, in UP the number of fully immunized children that was being reported by the state government was almost cent percent in 2001-02 and 2002-03. However, the Rapid Household Survey conducted in 2002-03 put the figure of fully immunized children in UP at less than 30%. Such cases of flagrant over-reporting should not go unpunished, otherwise honest reporting would be discouraged.

All Flagship programmes have monitoring mechanisms built in as integral part of these programmes. Elaborate formats have been developed for collection of data from the primary reporting units such as Sub-PHC in case of NRHM/RCH, schools in case of SSA etc. These routine monitoring systems have several shortcomings and do not meet most of the requirements of a typical monitoring system. The major shortcomings are listed

1. Lengthy and cumbersome formats of reporting - errors in compilation
2. Data on delivery of services doctored at the primary unit units (at times at higher levels) to reflect higher performance
3. Incomplete coverage
4. Data flows upward - no questions asked on inconsistencies, no feedback provided
5. Lack of analysis
6. Lack of scrutiny and supervision
7. No ownership and accountability of data at any level
8. Too much data, not enough information
9. Total lack of quality and therefore, unusable
10. Inappropriate system design of computerization
11. Delay in receipt of information at all levels - defeats the purpose of monitoring

There is certainly a felt need for diagnosis of the existing data systems and capacities for rationalizing data collections and improving their quality for monitoring of all the flagship programmes. This is a painstaking process

and will require a lot of effort, time and resources and should be supported by the Panning Commission and GOI Ministries.

Given the increased focus on outcomes, the efficiency of Government departments will increasingly come under scrutiny. Organizational reviews become important in this context to help systems understand the strengths and weaknesses of their recruitment systems, personnel policies, and the way these departments monitor their activities and outputs. Finally, such reviews should suggest systemic changes to bring more efficiency and public satisfaction.

Personnel Issues

All states have recruited a large number of teachers, AWWs, ANMs, and other medical staff in the last five years. Procedure for doing so varies from state to state, and some states are able to complete recruitment with minimum complaints or litigation, because they follow a fair and transparent procedure. If appointment is for a particular post (and not to the cadre), postings to remote and difficult places do not pose a problem. In some states, such as Bihar and Orissa, salary disbursement to contractual staff is delayed by several months leading to demoralization and demotivation amongst the staff. This again can be avoided through more innovative procedures. There is also a great deal of variation in promotions of para teachers to regular posts. Some states, such as Karnataka, evolved a transparent procedure for annual transfers and placement of teachers. However, these procedures were not followed every year uniformly, and may have been totally dissipated by now. Lastly, the procedure for recruiting contractual staff varies from state to state.

In the case of transfers, although some criteria are developed from time to time, they are not necessarily followed in all cases. The transfer of IAS officers, teachers, rural development engineers, and doctors is considered to be one of the most politically sensitive areas. These are powerful groups and transfer is seen as a politician's tool for obliging, reprimanding or exhibiting their influence in the government. For all these reasons, politicians are opposed to having a statutory policy. In Rajasthan, in the late 1990s, a committee under the chairmanship of Mr Bordia had submitted a report recommending a transfer policy based on an objective set of criteria. The then government made a move to make this into an Act but the Assembly did not pass it.

At the same time it must be recognized that some posts would have more attraction for the employees than others. These may be due to better location where good schools or cheap government housing is available, more challenges, the pull of private practice for doctors, or simply more opportunities to make money. Except for the Indian Foreign Service, no other service categorises posts according to its demand so as to ensure that everyone gets a fair chance to serve on both important and difficult (such as in remote and tribal areas) assignments. One should categorise posts in each department according to the nature of duties and geographical location into A, B and C posts, and chart out the kind of mix that should dictate the average officer's span of career. At least for Group A officers, one should be able to know through websites that total transparency is being observed and whether some 'well connected' officials have not been able to get 'plum' postings and avoid difficult areas.

One progressive element introduced by some states relates to the computerised counseling system based on transparent consultation with departments, with decisions on transfer being related to incentives and objective criteria. Based on the recognition that staff transfers in the past have been too frequent, and not sufficiently based on merit criteria, it is important that transparent policies are adopted, which increase employees' morale and faith in professionalism.

Government positions in the social sector should have an adequate representation of women. In some states, such as Rajasthan, the cadre of CDPOs is not reserved exclusively for women, with the result that 88% of the serving CDPOs are male. They are often on deputation from other departments, which reduces their sense of ownership with the ICDS. In most states, avenues for promotion for AWWs and Supervisors are limited, and stagnation sets in their mid-career. It would be better if all Supervisors are selected from eligible AWWs, whereas Supervisors can be promoted as ACDPOs.

Some of the suggestions given here could be incorporated in the form of a legislation on the pattern of Maharashtra to improve the prospects for effective implementation.

It may be mentioned here that countries like Japan and Singapore do not pursue the practice of annual transfers. If an employee is corrupt or inefficient, the traits would get displayed wherever the employee is posted. What is required is effective supervision and the prompt commencement

of disciplinary action against such employees instead of shifting them to another place.

A study of inter-state variation in these personnel issues, as well as study of the same state on a particular issue over a period of a decade or so will show the way to healthy practices in recruitment, postings and promotions.

NRHM Evaluation 2009

The Planning Commission recently (2009) evaluated quantity and quality of service delivery in rural public health facilities under NRHM in four states, UP, Bihar, Rajasthan, and AP. Its finding was that the human resource gap remains the singular most important challenge in strengthening the public health system and meeting the NRHM goals. Medical professionals available in the country, especially specialists, are not joining the public services. Some specialities, such as anaesthesia and psychiatry, have very few professionals being produced in the country. Nursing colleges are far short of requirements, and ANM Training Centres have been non-functional for about a decade in several states, leading to non-availability of staff nurses and ANMs for recruitment. Paramedical personnel such as Laboratory Technicians are again too few, or not trained and registered as per standards. Few of the cadres have an orientation or training in public health planning and management.

Staff at CHCs present at time of visit - Figure 1 below describes the physical availability of staff at the CHCs.

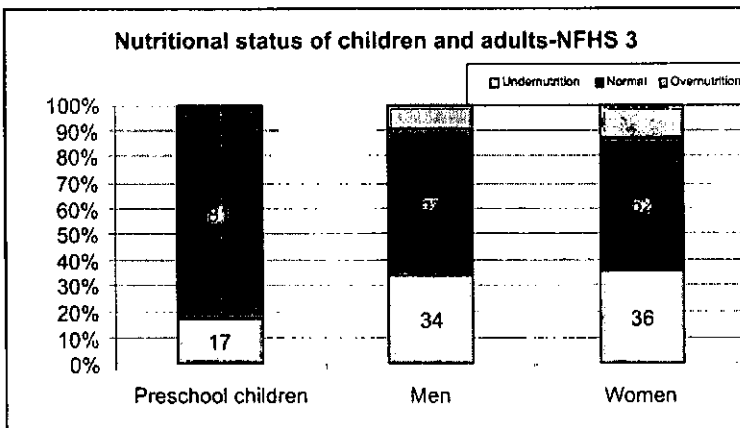


Figure 1

If the Medical Officer in Charge (MOIC) is not present to monitor the attendance of those operating under him / her in PHFs (including not just paramedical staff but also technicians and pharmacists etcetera), it is more likely that they will abscond from their duties altogether.

Concentrate on the excluded groups

It is well known that economic and social progress has generally bypassed the dalits, Scheduled Tribes, women, and people living in remote areas, who have remained voiceless and ignored. The crux of such a hopeless situation for them lies in their inability to access and retain their rightful entitlements to public goods and services due to institutionalised structures and processes of exploitation. This can be changed through dissemination of studies that analyse discrimination and neglect, and suggest practical steps how the situation can be improved.

Excluded groups are disadvantaged in many ways. They are victims of prejudice, are ignored, and are often treated as less than human beings by the village elite and government officials. They live in remote hamlets and are thus geographically separated from the centres of delivery. Their hamlets are scattered so that the cost of contacting them is higher. Finally it is their extreme poverty that prevents them from taking advantage of government schemes, whether it is free schooling (children are withdrawn because their labour is needed at home or for work), or immunization (they migrate along with their parents and therefore not present in the village when ANM visits).

For instance, despite three BPL² surveys (1992, 1997 and 2002) the errors of exclusion and inclusion in the list remain above acceptable limits (Himanshu, 2008). Errors of exclusion are those that misclassify the poor in the non-poor category, while errors of inclusion include the non-poor in the poor category. According to the 11th Plan (volume 2, chapter 4), there are huge exclusion and inclusion errors in identifying the poor, as seen from Table 5.

2 Below the poverty line

Table 5
Distribution of cardholders among poor and non-poor

	% poor with no ration card	% poor with BPL/AAY cards	% BPL/AAY cards with non-poor
Rajasthan	5.0	23.6	65.2
UP	16.4	22.9	48.7
Bihar	25.5	21.2	45.1
Assam	25.7	23.3	56
Jharkhand	22.1	31.9	42.4
Orissa	29.3	54.8	38.1
Chhatisgarh	24.1	47.9	47
MP	30	41.9	46.2
All India	19.1	36	59.8

Thus more than half of the poor either have no card or have been given APL cards, and are thus excluded from the BPL benefits. These must be presumably the most poor tribal groups, women headed households, and people living in remote hamlets where administration does not reach. Thus the people most deserving of government help are deprived of such assistance. On the other hand, almost 60% of the BPL or Antyodaya cards have been given to households belonging to the non-poor category. This needs to be corrected by launching a drive to weed out errors of exclusion and inclusion.

Irrational cultural practices (not starting breast feeding soon after birth) can be corrected through training and advice, but IEC is often not good enough to change household decisions based on economic compulsions (withdrawing girls from school to look after younger siblings). Thus the participation of the excluded groups cannot be secured in social sector schemes on a sustainable basis unless their livelihoods too improve. For instance, the proposed studies by the Planning Commission should document how to ensure that they get access to cheap grains through Antyodaya scheme, or jobs under NREGA, or facilities available to migrant workers. If community pressure can be supplemented with improvement in livelihoods, success is likely to be sustained over a longer period.

Summing Up

It is proposed that GOI may undertake state specific studies to unearth the constraints that are responsible for poor performance. Such knowledge

management will facilitate exchange of ideas, experiences, policies and practices among the states. These studies would not only show how programmes can be better implemented within the framework of prevailing political economy, but will also help in identifying procedural bottlenecks that need to be overcome for better results.

In addition such studies should also focus on the best practices in the states, however limited their impact may have been on the overall movement of MDG indicators. Many of the stand-alone experiments of grassroots intervention have contributed positively to sustainable development but have remained oasis of success. The challenge is to weave these successful stories into pro-active policies.

State governments through the ATIs and SIRDs should be fully involved in this exercise of facilitating such studies and disseminating their results to all concerned.

The problem of poor delivery is a complex one and not easily amenable to solutions. However, GOI can help the states in improving implementation by more meaningful analysis of factors behind limited success on the Millennium Development Goals.

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by 2015. Under-nutrition and malnutrition are still widespread. National Sample Survey (NSS) data show a clear trend of decline in calorie intake. In rural India, the average calorie intake per capita per day fell from 2266 kcal in 1972-73 to 2183 kcal in 1993-94. It fell further to 2149 kcal in 1999-2000, among the lowest 30% of rural households in respect of consumer expenditure; the per capita calorie intake fell from 1830 kcal in 1989 to 1600 kcal in 1998. In 1999-2000, almost 77% of the rural population consumed less than the poverty line calorie requirement of 2400 kcal. The average calorie intake in 2004-05 across the eight States of Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, Orissa, Maharashtra and West Bengal was only 1907 kcal as per provisional data released by the National Nutrition Monitoring Bureau (NNMB), indicating a declining trend. Further, 35.5% adults in these States, suffered from Chronic Energy Deficiency and 54.4% children in the age-group 1-5 years were undernourished with 16.5 % suffering from severe under-nutrition. Maternal and foetal under-nutrition results in the birth of babies with low birth weight, which reinforces itself in the absence of corrective measures.

Hunger Hotspots

The National Institute of Nutrition (NIN) Survey 2002, collected detailed data for different age groups based on the Recommended Daily Allowance (RDA) specified by the Indian Council of Medical Research (ICMR) for specific age and sex groups, including extra energy needed for special groups such as expectant and lactating mothers. There are 7-age and sex groups for which calorie intake data has been collected and compared with the recommended daily calorie intake for that age and sex group. The data is however available for only 9 States of India excluding large populous States such as UP, although UP is in the list of NNMB States for nutrition monitoring and refers only to rural area of these States. The findings of the study in respect of median calories intake of the States for each of the 15 age and sex groups compared to the respective RDA with very few exceptions, is far below the RDA levels in all the States for all groups. In all the age groups of children: 1-3 yrs, 4-6 yrs, 7-9 yrs, the RDA is higher than the median calorie intake in all the nine States, the scenario for pregnant women being the worst in Kerala and West Bengal and for lactating mothers, in Tamil Nadu, Madhya Pradesh and Maharashtra.

Nutritional and Food Security and Human Rights

*Dr. M.S. Swaminathan**

Nutritional security involves ensuring every child, woman and man physical, economic and social access to balanced diet, clean drinking water, environmental hygiene, primary health care and nutrition education. Achieving the goal of nutrition security will involve concurrent attention to food availability, which is function of production, food access, which is a function of purchasing power, and food absorption in the body, which is a function of clean drinking water, sanitation and primary healthcare. Thus, both nutritional and non-nutritional factors are involved in building a national nutrition security system.

In recent years, there is a welcome shift from a patronage to rights approach in areas such as information, education and employment. The latest in the series of rights is the right to food. The draft National Food Security Act, now under political and public consideration, aims to empower the poor with access to food at a highly subsidized rate. If the aim is food security at the level of each individual, concurrent attention will have to be paid to all the aspects of food security, namely availability, access and absorption (see Food Insecurity Atlas of Rural India (2001, 2009) and Food Insecurity Atlas of Urban India (2002, 2010).

The National Commission on Farmers (NCF) in their Report submitted in 2006, dealt with in detail the steps needed to make hunger history. The recommendations of NCF are relevant in the context of the National Food Security Act.

The Mid-term appraisal of the Tenth Plan reveals that we are lagging behind in achieving the Millennium Development Goal of halving hunger

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The NNMB data being partial in coverage (leaving out many States where the hunger situation might be worse) and being State level data, are not particularly helpful in identifying hunger hotspots in the country. Another source of data on food intakes and energy levels is the India Nutrition Profile (INP), last published by the Women and Child Development Department of the GOI in 1998. This also has the limitation of partial coverage, in that it is confined to a few States. However, it has the merit of providing district level data. Since it is unlikely that dramatic changes for the better would have occurred in respect of nutrition between 1998 and now, one may use the INP data to throw light on some hunger hotspot in the country. Using INP 1998 data, a list of the districts of the States of Assam, Bihar, Haryana, Punjab and Rajasthan, which report a mean level of the relevant variable (intake to cereals and pulses in grams per consumption unit per day, energy level in kilocalories per consumption unit per day) below the RDA specified by the ICMR. It could be seen that the situation is especially serious in terms of the intake levels of pulses.

The above findings are forebodings of serious consequence for the future physical and intellectual capital of India and need to be heeded posthaste. The consequences of child under-nutrition for morbidity and mortality are enormous. Child malnutrition is responsible for 22 per cent of the country's burden of disease. The minimal loss to GDP due to Vitamin and Mineral Deficiency (VMD) malnutrition per year is reportedly Rs. 27,720 crore. In such a scenario, addressing food and nutrition security and building a sustainable food and nutrition security system have to be flagged as urgent tasks for sustained economic progress.

Food and Nutrition Security

The concept of food and nutrition security implies that

- i) Every individual has the physical, economic, social and environmental access to a balanced diet that includes the necessary macro- and micro-nutrients, safe drinking water, sanitation, environmental hygiene, primary healthcare and education so as to lead a healthy and productive life.
- ii) Food originates from efficient and environmentally benign production technologies that conserve and enhance the natural resource

base of crops, farm animals, forestry, inland and marine fisheries. (Science Academies Summit, MSSRF, 1996)

This comprehensive definition of food and nutrition security provides guidelines for developing an effective operational strategy for achieving the goal of freedom from hunger.

Hunger has three major dimensions:

- i) Chronic or endemic hunger resulting from poverty-included under nutrition.
- ii) Hidden hunger arising from micronutrient malnutrition, caused by the deficiencies of iron, iodine, zinc and vitamins in the diet.
- iii) Transient hunger caused by seasonal fluctuations in food availability and disruptions in communication and transport arising from **natural or manmade disasters**.

A sustainable national food and nutrition security system should cover all these three categories of hunger. It must also address the three issues availability, access and absorption.

- i) *Availability* of food at the household level depends upon (a) food production, and the operation of a resource-poor consumer-friendly Public Distribution System (PDS) operated with homegrown food grain stocks and or imports
- ii) *Access* to food depends on livelihoods / purchasing power
- iii) *Absorption* of food is influenced by access to clean drinking water, environmental hygiene and primary healthcare.

In recent years, there is cause for concern on all the three counts of food availability, food access and food absorption.

Food Availability

In the Nineties, food-grain growth rate has slowed down drastically to 1.7% and has fallen below the population growth rate of 1.9%, so that per head annual net food-grains output has fallen by about 3.5 kg from peak of 180 kg in the three years ending in 1994-95 to, 176.5 kg by the three-years period ending in 2000-01. (Utsa Patnaik, www.macrosan.org, August 2002). The situation has not improved significantly since then.

The decline in per capita net availability of cereals and pulses over the last 15 years (from 510 grams per capita a day in 1991 to 463 grams in 2004) has been unprecedented. Estimate of requirement of cereals in 2020, ranges from 224 million tonnes to 296 million tonnes.

The high level Committee on Long Term Grain Policy, 2004 arrived at a projection of 260 million tonnes, i.e. production will have to increase by 69 million tonnes from the present level of 191 million tonnes, i.e. doubling of the current rate of production. **The decline in per capita food grain availability and its unequal distribution have serious implication for food security in both rural and urban areas.**

In 1990-00, the average calorie consumption of a consumption unit in urban areas was 2637 kcal/day, not much higher than the norm of 2100 kcal/day, set for an urban adult. It is especially important to note that while there are visible signs of an enormous increase in conspicuous consumption by the urban rich, there are also signs of increasing inequality in urban areas in 1999-00, the bottom 10% of urban population obtained on the average consumption of only 1890 kcal/day. That is, nearly 28 million people in urban areas have unacceptably low levels of calorie consumption. (Food Insecurity Atlas of Urban India, MSSRF-WFP, 2002)

The Planning Commission had earlier estimated the proportion of population below the poverty line at 27.09% in rural areas and 23.62% in urban areas in 1999-2000. However, these highly contested estimates now stand revised. The Draft Approach Paper for the 11th Plan notes that the proportion of household below the poverty line was as high as 28% in 2004-05 as per the most recent NSS full sample round. This is close to 300 million persons. The problem at hand is therefore of enormous dimensions. Besides, there are regional variations as well in the incidence of poverty. Across the nation, the poorest States are Orissa, followed by Bihar, Madhya Pradesh and Assam.

Though official data on poverty suggest a reduction in the percentage of population below the poverty line, there is reason for presuming that the incidence of hunger is increasing. Data on nutritional intakes suggest that income poverty is increasingly divorced from the calorie norm of 2400 kcal per consumption unit per day underlying the original official definition of poverty line. The data show that the percentage of population consuming diets providing less than 2400 kcal per capita per day is much higher now

than the percentage below poverty line as estimated by the Planning Commission. Recent work by Professor V S Vyas suggests that in as many as eight major States, the proportion accessing less than 1800 kcal/day (the level below which malnutrition can cause irreversible damage) exceeds 30 per cent. This is indeed cause for concern.

An important feature of the Indian situation in the area of nutrition security at the level of each individual is that the producers of agricultural commodities, i.e. farm men and women, constitute the majority of the population. Hence, the nutrition security of farmer-consumers becomes important to achieve the goal of hunger-free India. As mentioned earlier, in 1999-2000, almost 77% of the rural population consumed less than the poverty line caloric requirement of 2400 calories. Low productivity and income appears to be the single most important cause of endemic under- and malnutrition among farmer-consumers.

Food Access

Access to food grain is related to the purchasing power of the population and the nature of public distribution system that is prevalent and in urban areas weakening of the PDS has exacerbated the problem of food insecurity.

Rural Food Insecurity

- i) Several studies have shown that the poverty is concentrated and food deprivation acute in predominantly rural areas with limited resources such as rain-fed agricultural areas. Agricultural labour and migrant labour are susceptible to hunger. In India, of the 310.7 million rural workers, 103.12 million are agricultural labourers. Of these, about 48.37 million are women. Female agricultural labourers are especially vulnerable to food insecurity because of lower wages as well as the effects of migration. One-third of the rural work force is dependent on casual employment. This segment faces uncertainties of wage and work and is highly susceptible to food deprivation.
- ii) About 40.14% of the rural workers are cultivators. Of the total 124.68 million cultivators, about 40.64 million cultivators are women with inadequate resources and credit facilities. In hilly areas and rain-fed

under developed areas, often there are more women cultivators than male. Besides rural agricultural and non-agricultural labourers, small and marginal farmers also face food insecurity. Not only do they not get remunerative prices for their produce, they are also affected by the rise in retail/PDS food-grain prices, being net buyers of grain. Input costs are constantly going up, while output does not show commensurate rise.

Urban Food Insecurity

- i) It is often presumed that since urban areas are covered by PDS, food security is not a major issue in urban areas. This is not true. During the 1990s, the PDS has been weakened, both by repeated increases in the prices of food-grains and by the switch to a system of targeted PDS. Studies show that the bottom 10% of the urban population is not really affected by the prevalent system of PDS for accessing food-grains. In 1999-00, average cereal consumption of bottom 10% of urban population was 9.55 kg/month in urban India. Of this, less than one kg/month was accessed from PDS (*Food Insecurity Atlas of Urban India, MSSRF-WFP 2002*).
- ii) This brings out the need to have a system of PDS that is flexible so as to ensure larger coverage. **People should be able to access grains from PDS whenever they want, whenever they want and in any quantity they want, subject to a few ground rules to prevent purchase for hoarding and subsequent sale at high prices.** That is, flexibility with regard to time, place and quantity of purchase needs to be fitted in to the PDS. Accessing subsidized food-grains is absolutely essential not only for the settled urban poor but also for the migrant population from villages.
- iii) As for purchasing power, the quality and quantum of employment of the population determine their income earning ability and therefore their ability to purchase food-grains in the market. Casual employment normally fetches an income that is low and irregular; regular employment on a decent wage ensure a relatively better access to food. In 1990-00, in urban India only 4 out of every 10 workers belonged to the regular wage category; among the bottom 10% of urban population, nearly 4 out of 10 persons are casual labourers. The nature

of the employment problem varies across different size classes of towns. Proportion of casual labour among males as well as female is much higher in small towns compared to the metropolitan cities or big towns. Similarly, the proportion of workers in regular employment is much lower in small towns compared to bigger towns (*Food Insecurity Atlas of Urban India, MSSRF-WFP 2002*).

- iv) Given the magnitude of the employment problem in urban India, particularly in the small towns, there is a strong case for a National Urban Employment Guarantee Programme, as part of the New Deal for Urban Areas. Such an Employment Guarantee Programme could be used for activities like sanitation, pollution control, tree planting and protection, energy generation from wastes and compost making.

Food Absorption

- i) Slums that have inadequate facilities of sanitation and drinking water provide shelter to nearly 22% of urban population in the country. In the early nineties, one third of slums did not have any drinking water facility and nearly half the slums did not have toilet facilities.
- ii) Access to basic amenities like safe drinking water, toilets, electricity, are much lower for household living in small towns.
- iii) In 1998-99, 15.4% of children were severely stunted and 11.6% were severely underweight.
- iv) While there are wide variations in the nature and extent of the problem of food insecurity across urban areas, small towns are especially vulnerable.
- v) Diseases like HIV/AIDS, Tuberculosis and Malaria are spreading.

A National Food Security System should therefore give concurrent attention to the landless poor in villages and to casual and migrant labour families in urban areas.

Hunger-Free India: Components of Action Plan

A six-point Action Plan is suggested below for achieving the goal of Hunger-Free India.

Reform of the Delivery System

The overall approach should be lifecycle based and involve appropriate supplementation programmes. The delivery systems relating to all nutrition support programmes must be restructured on a **lifecycle basis**, starting with pregnant women and 0-2 infants and ending with old and infirm persons. An illustrative list of the programmes, which will benefit from a lifecycle-based delivery system, is given in Table 1 below. Elected Panchayats and local bodies should be involved in restructuring the delivery system. All these programmes should be implemented throughout the country.

Table 1: Current Status of Interventions

S.No	Stage of Lifecycle	Intervention/Action
1.	Pregnant Mothers	Food for Nutrition to avoid maternal and foetal mal- and under-nutrition resulting in LBW children
2.	Nursing Mothers	Support needed for breast feeding, for at least six months
3.	Infants (0-2 years)	Not being reached by ICDS
4.	Pre-School Children (2-6 years)	Integrated Child Development Services
5.	Youth going to school (6-14 years)	Noon Meal Programme
6.	Youth going to school	Not being attended to
7.	Adults (18-60 years)	Food for Eco-Development (Sampoorn Gramin Rozgar Yojana), PDS, TPDS, Antyodaya Anna Yojana, Employment programmes under the REGA
8.	Old & Infirm Persons	Annapoorna and Food for Nutrition Programmes
9.	Emergencies	Food during natural calamities

With regard to PDS, it is high time we went back from the TPDS to a universal PDS with uniform prices. The allocation per household in PDS should be based on the number of consumption units in the household. The cost implications of universalizing PDS are given in the below.

Box I

IS UNIVERSAL PDS ECONOMICALLY FEASIBLE?

- a. Let us assume that PDS is made universal in the sense of reaching around 80% of our population who are either malnourished or at the risk of malnutrition, that is, food insecure. The PDS should only exclude (if necessary by self-selection or voluntarily) the richest 20 per cent of our population. So the target group is about 800 million persons.
- b. Let us assume that 80% of the population is given the present BPL allocation and price, that is, 35 kg. of grain at the subsidized price of Rs 4.15 for wheat and Rs 5.65 for rice
- c. If the economic cost is Rs 1286 per quintal of rice and Rs 983 per quintal of wheat (estimates for 2005-06, in the Million Survey), then the unit subsidy is Rs 7.21 per kg of rice and Rs 5.68 per kg of wheat.
- d. If 800 million persons are to be included, it can be assumed to be 160 million families (average of 5 persons per family).
- e. So, first, the grain requirement for the PDS will be 160 million times 35 kg (ceiling) or 56 million tonnes. In 2005-06, the PDS off take was 49.7 million tonnes (including Antyodaya), so this is quite feasible. (In 2004-05, the off take was 30 million tonnes).
- f. The cost of the food subsidy, assuming all the grain is distributed at the same price will be

For 30 million of wheat	Rs. 17,040 crore
For 26 million of rice	Rs. 18,746 crore
Total	Rs. 35,876 crore

The above estimates of a grain requirement of 56 million tonnes and a subsidy of Rs 35,000 crore is an overestimate since all 160 million households are unlikely to purchase 35 kg of grain a month.

Further, the total subsidy works out to just a little over 1% of GDP. It can tax to GDP ratio, which has fallen since 1991, can be raised by 1 percentage point, then this can be easily financed. This expenditure will be more than compensated by the rise in national income arising from higher productivity as a result of eliminating endemic hunger and malnutrition.

Besides food-grain, other essential commodities such as pulses, edible oil, cloth, salt and other essential items of daily consumption should also be distributed by the PDS. This will also help ensure the viability of the PDS outlet. Ration shops should be strengthened and made viable through the provision of appropriate margin or subsidies. To ensure effective utilization of the PDS by the public, the PDS outlet must remain open on all days. Further, the public must be free to draw their allocation on a weekly basis. Migrants should be able to access PDS allocations in the area where they work.

The centralization that took place under the TPDS should be reversed and State governments should, in the first instance, have the right to determine the required allocation under PDS for their State. PRIs may also be actively involved in the monitoring of the PDS. Women SHGS supported by micro-credit operate the PDS, wherever possible.

Community Food Security Systems

While a universal PDS and appropriate supplementary programmes funded by the government are critical to ensuring food security, there is also an important role for community based food security systems, such as **Community Food-grain Banks (CFB)**. Community food security systems appear especially relevant in socially cohesive communities characterized by limited income inequality and in locations, which find it difficult to access other delivery mechanisms such as PDS. To ensure sustainability, such initiatives may work closely with elected local bodies. Policy must promote the establishment of **Community Grain and Water Banks**, involving Panchayats and other local bodies. This programme should be based on the principle "store grain and water everywhere".

The Community Grain/Food Bank system will help to widen the food security bases by including a wide range of millets, grain legumes and tubers. **While these can be operated by the nearly 240,000 Panchayats and Urban Local Bodies in the country, using flexible implementation mechanisms suited to local needs, the programme should financially supported and regulated by the State to ensure social inclusion and sustainability.** The steps involved in setting up and operating CFBs has been described in detail in Chapter II of the Second Report of the NCF (NCF Second Report, August 2005).

There is an urgent need to promote the growth of **community water security systems** based on a 5-pronged strategy consisting of the following:

- i) Augmentation of supplies through mandatory water harvesting and conservation
- ii) Giving attention to demand management by eliminating all sources of unsustainable use of water and promoting "more crop and income per drop" methodologies of crop cultivation
- iii) Harness new technologies relating to improving domestic water use efficiency, de-salination of seawater, breeding of drought and salinity tolerant crop varieties, bioremediation, etc.
- iv) To begin with, each district in the country could develop a sustainable water security system. Community action should however start at the village level.
- v) Promoting seawater farming through integrated agro-forestry and aquaculture production systems in coastal areas.
- vi) Paying attention to water quality of drinking water which is deteriorating due to pesticide and bacterial contamination in ground water. Equal attention should be paid to the improvement of drinking water quality and the augmentation of water supplies. Bioremediation techniques will have to be used for removing arsenic and heavy metals from tube well water.

Eradication of hidden hunger

Hidden hunger caused by micronutrient deficiencies must be addressed based on natural food cum food fortification approaches. For example, salt fortified with iron, iodine, minerals and vitamins, coupled with the consumption of beta-carotene rich sweet potato or vegetables will be very helpful to fight hidden hunger. Local SHGs can be trained to make nutrient biscuits as an income earning activity. Nutritional literacy should be promoted at the school level. High priority should go to the elimination of iron deficiency anemia among pregnant women. The following basic recommendations are made in this regard:

- Food security is a prerequisite for nutrition security. Hence steps taken for mitigation of micro nutrient malnutrition should also simultaneously address Protein Energy malnutrition.

- While food and nutrition insecurity need to be addressed at all stages of lifecycle, certain groups such as pregnant and lactating mothers, adolescents and children under three years of age need to be given special attention because of their physiological needs.
- Food and nutrition security needs to be addressed through integrated complementary strategies, namely dietary diversification, supplementation, food fortification and community and public health measures, along the following lines:
- *Enlarging the Food Basket* - many millets and other underutilized crops like tubers are rich in micro-nutrients as can be seen in Table 2 below. They should hence be included in the PDS.

Table 2: Comparative Nutritive Value of Millets and other Staple Grains

Grain	Energy k cal	Fiber %	Mineral mg	Ca mg	P mg	Iron mg
Rice	345	0.2	0.6	10	160	0.7
Wheat	346	1.2	1.5	41	306	5.3
Maize	342	2.7	1.5	10	348	2.3
Finger millet	328	3.6	2.7	344	283	3.9
Foxtail millet	331	8.0	3.3	31	290	2.8
Little millet	341	7.6	1.5	17	220	9.3

Compared to rice:

Ragi is > 34x (times) in Calcium, 5x in Iron, 2x in Phosphorus, 2x minerals

Little millet is 12x in iron, 1.5x in calcium and Phosphorus

Foxtail millet is 5x in minerals, 3x in Calcium, 4x in Iron

- *Dietary diversification* - increased availability of fruits and vegetables through horticulture interventions.
- *Supplementation* - rather than neglecting/abandoning the programmes that are poorly functioning (such as iron and folic acid supplementation) we need to strengthen them systematically.

- *Food Fortification* - Iodine supplementation through iodized salt should be strengthened to ensure universal availability and accessibility and should be channelized through PDS, MDM and ICDS. Staple food should be given priority for fortification.
- *Community and public health measures*-Since nutritional security is influenced by healthcare, safe water and sanitation, these must be ensured through adequate public health measures.
- *Special attention to pandemics like HIV/AIDS*- there are indications that the incidence of HIV/AIDS and tuberculosis is increasing in rural India. The supply of free drugs should be extended to villages in order to contain the spread.

The quality of service delivery needs to be improved. The ICDS is a very critical intervention programme and the anganwadi worker plays a key role in the convergence of services for the mother and the child under six years of age. She should be recognized as a regular full time employee with specific skills and her remuneration should be revised accordingly.

Enhancing the productivity and profitability of Small Holdings

Nearly 80% of the land holdings in India are below 2 hectare in size. Unlike in industrialized countries where only 2 to 4% of the population depends upon farming for their work and income security, agriculture is the backbone of the livelihood security system for two-third of India's population. **Therefore, farmers constitute the largest proportion of consumers.** The smaller the farm, the greater is the need for marketable surplus in order to get cash income. **Hence, improving small farm productively, as a single development strategy, can make the greatest contribution to the elimination of hunger and poverty.**

Indian soils are both hungry and thirsty. Hence, soil health enhancement and irrigation water supply and management hold the key to the enhancement of small farm productivity. The following steps are urgently needed:

- i) National network of advanced **soil testing laboratories** with facilities for the detection of micronutrient deficiencies. **As a single agronomic**

intervention, supply of the needed micronutrients in the soil has the greatest impact on increasing yield. Hidden hunger is as widespread in soils as in human beings. In fact, the two have causal relationships.

- ii) Million Wells Recharge Programme
- iii) Restoring water bodies and promoting mandatory water harvesting.
- iv) Establishment of 50,000 Farm Schools to promote farmer-to-farmer learning.
- v) Organisation of Small Farmers' Horticulture, Cotton, Poultry, aquaculture and other Estates, to promote group farming and to confer the power of scale to small producers both at the production and post-harvest phases of farming.

Farming is becoming a gamble both in the monsoon and the market. Hence small farmers urgently need **proactive advice** on land and water use. Land use decisions are also water use decisions. For this purpose, State Land Use Boards should be restricted, retooled and reactivated . *This is a task of the utmost priority.*

The Every Village a Knowledge Centre or Gyan Chaupal movement can help to give farmers dynamic advice on meteorological, management and marketing factors.

We suggest that the following areas may receive priority in technology support:

- i) Short-and medium-term weather forecasting, in order to assist and use Advisory Boards to give protective advice to farmers on crop and varietal choice.
- ii) Rapid and low cost soil testing technologies based on nanotechnology. This will enable the application need based macro-and micro-nutrients. Factor productivity in relation to fertilizer application is low and this enhances the cost of production. The average fertilized response of foodgrain output to NPK utilization works out to 7.8 kg grain per kg of NPK. This is a very low return.

Unless factor productivity is increased, small farm agriculture will become un-remunerative. This is one of the causes for a high percentage of

farmers wanting to quit farming. We must recognize the need for increasing the productivity and profitability of small and marginal farms, in order to eliminate endemic and hidden hunger in the families such farmers. The following specific recommendations are made in this regard:

- Step-up public investment in irrigation and rural infrastructure and provide other forms of State support including credit and post-harvest storage and processing
- Provide credit on reasonable terms; accept NCF recommendation of 4% interest rate on agriculture loans. Target credit to the marginal, small, and medium farmers and adopt an integrated credit cycle approach.
- Strengthen the S&T and R&D systems in agriculture to generate and disseminate small farmer friendly technologies, including with respect to seeds, other inputs, water harvesting and machinery, using the Krishi Vigyan Kendras (KVKs), Village Knowledge Centres (VKCs) etc.
- Ensure the availability of quality inputs at reasonable prices; by putting in place an appropriate regulating system and strengthening extension.
- Expand the MSP system, based on the cost of production including reasonable rate of return on investment and ensuring a prompt and open-ended purchase for all major crops.
- Cover small farmers adequately through effective crop insurance schemes using the revenue village as the unit.
- Encourage research on technology for dry-land farming and make these technologies available to small and marginal farmers. **The recently established National Rain fed Authority can have as its sole mandate the launching of a second green revolution in dry farming areas beginning with pulses and oilseeds.**
- Promote water security through sustainable water use rainwater harvesting.

Designing and Introducing a Food Guarantee Act

We have over a century of experience in organizing relief work, under the provisions of the Famine Code in the colonial period, and Food for work programmes in the post-independence period. It is clear that our

agriculture has reached a stage when farmers will grow more only if we can consume more. A National Food Guarantee Act, combining the features of the Food for work and Employment Guarantee Programmes, will represent a win-win situation both for producers and consumers. Following up on the MGNREGA and recognizing that the right to food and the right to livelihood are intimately related, we need to move towards a comprehensive "Food Guarantee Act".

A National Food Guarantee Act should lead to a decentralized network of grain storage structures and thereby help to prevent panic purchase of food-grains during periods of drought or flood. They will also help to prevent distress sales by producers at the time of harvest. In addition, it will help to enlarge the composition of the food security basket.

Brazil, Kenya and a few other countries have announced, "Zero Hunger" programme. **India can take the lead to give meaning and content to the zero hunger concept, by developing a National Food Guarantee Act.**

The major features of a National Food Guarantee Act were discussed at a consultation held at the M S Swaminathan Research Foundation, Chennai, on 19 June 2005. The participants made the following suggestions:

- The main aim of the proposed legislation should be to integrate the features of Employment Guarantee Acts (National and Maharashtra) and Food for Work Programmes, in order to ensure that every child, woman and man has physical, economic, social and environment access to balanced diet, clean drinking water and primary healthcare. This is fundamental to providing every individual in the country an opportunity for a healthy and productive life. Rural and urban populations as well as migratory labour families will have to be covered. Social inclusion should be the bottom line.
- The National Food Guarantee Act should be gender sensitive. The concept of "Work" should be enlarged to cover also skilled work related to human and social development, such as, for example, establishing and running crèches, balwadis, preparing noon meals, etc.
- Payment of a part of the wage in the form of food-grains has the double advantage of helping farmers in the area of marketing, and consumers in the form of obtaining their basic caloric requirements

in the form of good quality food-grains at a reasonable price. This will also help to enlarge the composition of the food security basket.

- Food guarantee can become a reality only if there is an implementation mechanism characterized by low transaction cost, transparency and freedom from corruption. The Gram Panchayats/elected local bodies may be able to provide such a mechanism. The Gram Panchayat/Local Body can form in the respective villages a Consortium of Agencies like SHGs, Mahila Mandals, Farmers' Clubs etc, to provide oversight to the implementation of the integrated food for work and employment guarantee approach to the elimination of hunger and poverty. **The Panchayat can thus provide a platform for partnership at the grass root level.** However Panchayats will need the necessary legal, financial and technical empowerment. The 73rd Constitutional Amendment assigned several tasks to Panchayats, but the Panchayats have no capacity to discharge these responsibilities. Since they have not been legally or financially empowered to do so. Capacity building of women and men Panchayat members in undertaking such tasks has to proceed concurrently with financial empowerment.
- Information empowerment on entitlement is vital for success. Household entitlement cards can be distributed and full use could be made of Mission 2007: Every village a Knowledge Centre Programme. The Right to Information Act will also facilitate the process of empowering the rural poor (often illiterate) in understanding their entitlements under various pro-poor schemes of Central and State Governments.
- Training and capacity building of all concerned with the implementation of the programme is extremely important. Suitable institutions will have to be identified for imparting training to administrators, Panchayat leaders, SHGs and others who will be involved in implementing the Food Guarantee Act.
- The Act should provide scope for including feasible land reform measures like providing dalits and the poor with space for a homestead garden where the needed vegetables and fruits can be grown. SHGs can also be given space on lease in common property land for raising nutrition gardens and fodder for farm animals.

- Integration with primary healthcare is exceedingly important. For example, de-worming should be made compulsory atleast once in two months. Multiple fortified salts could be used in noon meal programmes in order to attack the problem of hidden hunger caused by micronutrients malnutrition.
- The Act could stimulate a movement for storing grain and water everywhere through community food and water banks. A national network of community food banks could be established.
- Nutrition and education are fundamental to enabling every individual to experience a productive and healthy life. Therefore the enactment of a Food Guarantee Act will be the best method of ensuring that we are able to accomplish the UN Millennium Development Goals.
- Thanks to the extensive work done both within the country and outside on issues relating to "Right to Food", there is considered legal and technical expertise available for preparing a framework for Food Guarantee. We should therefore proceed with this initiative.
- It will be appropriate to operationalise the Food Guarantee Act on August 15, 2007, which marks the 60th anniversary of India's independence.

The twin advantage of this approach will be higher food production inducted by enhanced consumption and the achievement of the UN MDG relating to hunger and poverty.

Road Map for Eliminating Hunger

In a country with a high prevalence of poverty and malnutrition, the Government of India should always retain a commanding position in the management of the food security system. This will call for a grain purchase policy, which takes into account the changes in the cost of production, (such as a rise in diesel price), subsequent to the announcement of a Minimum Support Price (MSP). Tenders will give a price above MSP when they expect that prices with the lessons of the Bengal Famine of 1942-43, where millions died out of starvation not because there was no food in the market, but because the surplus food stocks were in the hands of private merchants. **Building a sustainable food security system will require attention to both the availability of sufficient stocks and control**

them. The global wheat stocks are down this year and the political leadership of the country should decide how to ensure the food security of 1.1 billion children, women and men in an era where much of the food-grain stock will be controlled by national and international grain traders and cartels. National Food Sovereignty should not be lost.

While import of wheat, pulses, sugar and oilseeds may be necessary occasionally in order to prevent rising in prices, we should avoid the danger of making this a habit. Our food budget should be managed with homegrown food, since agriculture is the backbone of our rural livelihood security system. What is important is to recognize that import of pulses and oilseeds serve as indicators of our failure to launch a green revolution in dry farming areas, in spite of having the technologies and resource to do so. Imports of crops of importance to the income security of farm families in rainfed areas imply generating more unemployment and prevents misery in such areas.

Import/export of pulses, oilseeds and wheat should be restored to only when absolutely necessary.

Water is a critically important resource for agriculture. Increasing privatization of our food and water security has important implications for the food, income and work security of small and marginal farmers and agricultural labor. The WTO agreement entered into at Marrakesh in 1994 resulted in an unequal trade bargain. **The growing privatization of food and water security systems is already leading to an unequal social bargain.** We will never be able to achieve the UN Millennium Development Goal in the area of hunger and poverty elimination, if we do not insulate the farmer-consumers from unfair trade and social bargains.

If we are to achieve a second Green Revolution covering rain fed areas, **the first important requisite is opportunity for assured and remunerative marketing for dry land farm products like pulses, oilseeds, millets, vegetables, fruits, milk and meat. The decision to purchase and include ragi, bajra, jowar and other millets in PDS should be a permanent one.** This will help to enhance nutrition security on the one hand, and the productivity and economic sustainability of improved dry land agriculture, on the other. There is a large untapped reservoir of dry land farming technologies and we can see a drastic rise in productivity and production of

crops in these areas if farm families are supported by credit, insurance, a fair price and assured market for their produce.

The six-point action plan outlined below is based on the considerations set out above. The plan recognizes that the problem of food security is both multidimensional and cuts across the rural-urban divide. Since urban food insecurity and deprivation are closely related to rural deprivation, a comprehensive rather than a sectoral approach is required. The six points in brief are:

- Reorganize the delivery of nutrition support programmes on a life-cycle basis with the participation of Panchayats and local bodies.
- Eliminate micronutrients deficiency induced hidden hunger through an integrated food cum fortification approach.
- Promote the establishment of community food and water banks operated by Women Self-help Groups, based on the principle 'Store Grain and Water everywhere'.
- Help small marginal farmers to improve the productivity, quality and profitability of farm enterprises and organize a Rural Non-Farm Livelihood Initiative.
- Introduce support systems to SHGs to make them economically and organizationally sustainable. Establish for this purpose SHG Capacity Building and Mentoring Centres and focus on developing Micro-Credit Banks into Sustainable Livelihood Banks.
- Formulate a National Food Guarantee Act continuing the useful features of the Food for Work and Employment Guarantee programmes and introduce it on 15 August, 2011. The Food Guarantee Act will be a powerful tool in achieving the goal of a hunger-free India. By increasing demand for food-grains as a result of increased consumption by the poor, the economic conditions essential for further agricultural progress can be created.

Organization is the greatest human invention of all time. Organization is the social technology through which human beings accomplish together far more than can be accomplished individually. This is why we have placed great emphasis both on PRIs and SHGs for overcoming the chronic problems of hunger and low productivity.

Assuring Income Security to Farmers through Minimum Support Prices, and Food Security for the Nation through a Universal PDS

We have proposed a comprehensive and integrated Food and Nutrition Security System. Which if accepted and implemented, will help to make hunger free India history. An important requisite for achieving these goals is the development of an income and work security system for small and marginal farmers and landless rural manual labour.

There is ample evidence in the country to show that our farm families will produce not only more food grains, but also horticultural and animal husbandry products provided they have opportunities for assured and remunerative marketing. Progress in the production of milk and poultry products was triggered by access to remunerative prices and markets. We therefore suggest the following operational procedures:

- Announce the MSP for a wide range of crops of importance to PDS before sowing, taking into account the recommendations of CACP.
- Fix the procurement price at the time of harvest, taking into account the prevailing market price. The procurement price will take into account the cost escalation in inputs like diesel, since the announcement of MSP.
- Since government purchases are for ensuring a hunger-free India, issue a Smart Card which will entitle those farmers who sell their produce to PDS, purchase inputs like seeds, fertilizers, veterinary pharmaceuticals etc., at concessional prices (such as ten per cent less than the market price). **This will be an appropriate recognition of the contributions of farm families who have decided to participate in the National Movement for Making Hunger History.**

Through the above 3-pronged strategy, National food security and sovereignty, as well as freedom to farmers to get the best possible price, can be achieved. Large companies who wish to purchase essential commodities at a little higher price than that offered by the Government, in the expectation of making large profits later can also be kept under check. We request that the above three principles may be considered and adopted in an appropriate manner as soon as possible.

Conclusion

The UN Millenium Development Goals (MDGs) represent a Global Common Minimum Programme in the area of sustainable human well-being and security. We should therefore not fall behind in achieving these very modest but important goals. The right to food is a basic human right. Maternal and foetal undernutrition leads to the birth of children with a low birth weight (i.e. less than 2.5 kg). Such children suffer from several defects including impaired brain development and cognitive ability. These children are denied even at birth an opportunity for the full development of his/her innate genetic potential for physical and mental development. This is the cruelest of inequity. Inequity in adult life is caused by chronic and hidden hunger. Thus, the adult person is prevented from enjoying a healthy and productive life. Nutrition and education are the two legs of a human being. Conferring the right to both these vital needs to ensure that the proposed Food Security Act is formulated in such a manner that food for all and forever becomes both an achievable as well as a non-negotiable goal.

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The Unfinished Battle Against Hunger in India

*Harsh Mander**

Hunger lurks unseen and unacknowledged, not just in the distant teeming countryside, but also in the grim shadows of the streets of glittering cities. For millions of people in India, hunger remains a way of life: insidious, furtive, unremitting and unforgiving. Anything between eighty and two hundred million men, women and children go to sleep hungry every night in our country.

In a year-long study of chronic food deprivation, rural destitution and hunger in Andhra Pradesh, Orissa and Rajasthan, among aged people, single women and people with disability¹, we found that these most destitute individuals survive harsh, protracted and hopeless want in many ways, by simply denying themselves and reducing their food intake over prolonged periods; or by foraging for food in forests and eating food other people would normally shun; by sending even small children out to work, even in conditions of bondage, so that they are fed; by selling their scant belongings; and always as a last resort, by begging.

A flourishing intellectual cottage industry has grown up across the planet around the worthy enterprise of measuring and estimating poverty and hunger. Much of the published reams of this debate - to which economists, nutritionists and public planners tirelessly contribute - would, I speculate, appear strangely remote to a person who lives with and battles hunger. The debates would probably seem strangely detached to her from their daily triumphs and defeats, from the profound suffering and powerlessness of watching one's children cry themselves to sleep on a hungry

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1 Mander, Harsh. (2008) 'Living with Hunger: Deprivation among the Aged, Single Women and People with Disability', *Economic and Political Weekly* 43 (17): 87-98

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stomach, from the shame of depending on charity, from moral victories and collapse, from the loneliness of migration, from the helplessness of debt bondage, and from love and longing which is so terrible because it is so hopeless.

Policy makers and economists expend an enormous deal of effort and time on attempting to measure the scale of hunger, poverty and destitution. It is on the basis of such estimates that the States plan ways to combat these and to allocate resources for these exertions, and to assess the impact if its efforts. There is a bewildering and meandering maze of debates about defining and measuring poverty, hunger, malnutrition and starvation.

Most poverty lines are constructed around the severely minimalist premise of the least amount of money that an allegedly 'average' man or woman would require to buy the cheapest food that, when eaten, would metabolise into the minimum calories that he or she requires to lead an active and healthy life. Nutritionists the world over, have experimented with many sets of people (including, I learn, those confined to jails) to construct estimates of the minimum caloric requirements of 'average' populations. The required daily allowance (RDA) of energy has been pegged by Indian planners at 2100 kcal for urban and 2400 for rural persons per day for 'normal' work, based on recommendations by the Nutrition Expert Group to the Planning Commission in 1969. Yet, studies have established that especially poor labouring people need to expend far greater labour requiring substantially higher levels of caloric intake, therefore poverty levels are biased against those who are most deprived.

Utsa Patnaik² finds that even the extremely modest minimal standards of caloric intake prescribed for calculating poverty thresholds, have been quietly (and she believes dishonestly) abandoned by policy planners in India, to mythologise about rapidly falling poverty levels in the era of globalisation and structural adjustment in India since the 1990s. She finds that the nutritional norms of 2100 and 2400 kcal were actually used to assess poverty levels only in 1973-74 (the 28th Round NSS data, which are large-scale sample surveys of household level expenditures). The rural and urban poverty lines were fixed in that year at around 49 and 57 rupees per head per month, because it was found that this money enabled purchase of food to ensure

2 Patnaik, Utsa. (2006) *Poverty and Neo-Liberalism in India*, New Delhi: Centre for Economic Studies and Planning, Jawaharlal Nehru University

the minimum necessary caloric requirements. Since then, the Planning Commission never announced abandonment of this norm. But in practice it assumed that people's consumption basket would remain completely unchanged in a fast changing world (meaning there would be no changes in choices of goods and services purchased, or in the needs and aspirations of the poor), and merely used a price index to adjust upwards the 1973-74 poverty line.

The greatest long-term consequences of prolonged denials of adequate and healthy food are borne by children and infants, and women - not just in terms of prodigious emotional burdens of avoidable suffering including through enormous levels of silent insidious starvation - but also in terms of sheer physiological wasting, avoidable sickness and death. It is what Jean Dreze and Shonali Sen aptly describe as a 'permanent humanitarian emergency'³.

The data from the third round of the National Family Health Survey (NFHS 3), released in 2007, establishes that the rate of child malnutrition in India is a staggering 46%, in other words that almost every second child in India continues to be malnourished, despite galloping economic growth. Even more worrying is the fact that this proportion is virtually unchanged from the time since the NFHS 2 survey of 1998-99 was undertaken, which also estimated the percentage of malnourished children at 47% (which was a period of accelerating growth in the Indian economy). This is double the rate of malnutrition for Sub-Saharan Africa, which has some of the poorest countries in the world. Poorer neighbouring countries like Bangladesh have been more successful than India to combat child malnutrition. About 2.1 million deaths occur annually in under-5 year-old children in India. Seven out of every 10 of these are due to diarrhoea, pneumonia, measles, or malnutrition and often a combination of these conditions.

If we use the Body Mass Index (BMI) to calculate the nutritional adequacy of the Indian population, and take a 20-year trend analysis, we find that nearly 40% of the adult population in the country have a BMI of less than 18.5. The World Health Organisation classifies such a situation as 'alarming'.

3 Dreze, Jean., and Shonali Sen (2004) *Universalisation with Quality: An Agenda for ICDS* (mimeo), New Delhi: National Advisory Committee

In contemporary India, large-scale famines have been overcome. The nightmare of the calamitous decimation of enormous populations because they are denied access even to the minimal food necessary for their bare survival, has mercifully passed into the yellowing pages of history. The last major famine that brutally swept away 3 million lives was in Bengal in 1943. Since Independence in 1947, there have been many moments when the country has tethered precariously at the edge of calamity, such as the great Bihar crop decimation of 1967, and large-scale failures of harvests in Maharashtra in 1973, West Bengal in 1979, in Madhya Pradesh and Gujarat in 1987. The country has always demonstrated its resilience and capacity to pull back from the brink. There have been repeated droughts in many States like Rajasthan, Orissa, Chhattisgarh, Bihar, Andhra Pradesh, Jharkhand. Small farmers in large parts of the country remain critically dependent on the monsoons, and floods have racked farmers with unfailing regularity in States like Assam, Bihar, Uttar Pradesh; but the impacts have been localised and whereas smaller numbers of persons have succumbed to these calamities, the majority of people have tended to cope and survive - but with intense avoidable suffering - with migration, debt, relief, bondage, access to subsidised food in the public distribution system and employment in public works.⁴

However, the battle against hunger has by no means been won. Public pressure and State action have been far less successful in overcoming endemic hunger or enduring denials to adequate nutrition necessary not just for survival but a healthy and active life, than it has been in averting famines. It is estimated that although much more dispersed in time and geography, and far less visible and politically combustible, contemporary deaths by hunger and hunger related diseases far outnumber erstwhile deaths by famine.

Innumerable individuals, families and communities, in both villages and cities, continue to struggle with chronic hunger, which is for them embedded as a way of life. These tend to come from the informal

4 As observed by Sen, 'India has been successful in preventing famines - there has been no substantial famine in India since independence in 1947... (T)here have been many occurrences of substantial crop failures, often covering large regions, and sometimes sharp declines in national food availability, but the threatening famines have been stopped'. This, according to him, was made possible 'by public action before they could become major killers. While this has happened throughout the post-independence period, there is evidence of increased efficiency in averting famine conditions. For example, the threatening famines in Maharashtra in 1973, in West Bengal in 1979, in Gujarat in 1987 have all been prevented much more speedily - with relatively little adverse impact on mortality rates - than happened in the earlier case of near-famine in 1967 in Bihar.'

unorganised working class sectors, such as landless workers and artisans, socially oppressed groups like dalits and adivasis, single woman headed households, destitute persons, persons with disabilities and old people without caregivers, migrant workers and urban street children. The silent daily tragedy continues to play out in many homes and on the streets in our country, that masses of people sleep hungry, and within most families, women are the last to eat, and if food is scarce, they are likely to eat the least.

The puzzle of hunger amidst plenty has deepened further, because the government in India has larger, more extensive and more elaborate food security schemes than most countries of the world, covering most stages in the life cycle of a poor person, from birth to date.

The experiment of free India is that its central and state governments have undertaken a variety of programmes, to enable people to feed themselves, and assist them to where they cannot. The major duties of national and state governments are to facilitate the realisation of the right to food for people by assuring that there are enabling conditions that allow people to provide for themselves, and where people are not able to feed themselves adequately, for economic, biological or social reasons, to directly provide for them.

One way of appreciating the sheer scope and ambition of the food schemes in India is to recognise that the extend food support in virtually every phase in the life cycle of person who is impoverished, from the cradle (and even before this from the womb) to the cremation ground. Even before a child is born, the mother should be getting supplementary nutrition from the ICDS centre, and maternity benefit support from the nearest Primary Health Centre. After birth, the mother is entitled to continue to receive supplementary food as well as nutrition advice from the ICDS centre, including for exclusive breast feeding until the age of six months, and the supply of suitable weaning foods for the infant after that. From the age of three, the child can benefit from pre-school education as well as a hot meal daily at the ICDS centre. When in primary school, the child will continue to get a nutritious hot meal every day she or he attends school, and if she is a girl, this will continue even into adolescence, again at the ICDS centre. In adulthood, food is available for wage work in government public works programmes. The Public Distribution System ration shop is an important

source of subsidised food grains for the entire family. If the family is still short of food, they can demand now as a legal right 100 days of work a year at statutory minimum wages, close to their homes. In old age, the individual would be supported by a State pension. If the bread winner dies early, then there is also a family insurance to help the family to survive the economic shock.

Yet this government seem spectacularly incapable of actually reaching food to its hungry and malnourished mass of girls and boys, women and men.

Democratic governments the world over guarantee all people who live within their boundaries the most essential and basic of all rights, and this is the right to life. The fundamental right to life is understood to imply that, for instance, if a person is detained by the state, and dies while in its custody, either because of torture or extra-judicial killings, state authorities are criminally liable for the death. The actual realisation of this right, especially by powerless and disenfranchised people, remains of course flawed and often bitterly contested in many countries. But the theory of such state accountability is rarely contested within the framework of liberal democracy.

The right to enough and assured food to live an active and healthy life with dignity is in principle also an essential component of the fundamental right to life, because life itself is impossible without food. Yet, state authorities are conventionally not held responsible when a person loses her life because she cannot access sufficient food for her survival in the same way as a person who dies because the state directly takes her life without resort to due process of law. The death of a citizen by starvation is seen a moral failure of the state, but rarely one that entails direct punishable criminal or even civil liability of public authorities who were charged with the responsibility to ensure that every man, woman and child in their jurisdictions have access to sufficient food for their survival with dignity.

Courts and Constitutions have held back from making socio-economic rights like that to food, shelter and health care legally binding, because of the finite availability of fiscal resources. It is believed that decisions regarding the amount of tax that should be imposed, on who these burdens should fall and how these resources are to be invested, are all legitimately political decisions of the executive, in which the law and courts should take care not to tread. Therefore, even when social and economic rights are acknowledged

by courts and Constitutions, it is mostly with the caveat that rights involving substantial state expenditure such as for food and housing should be realised only to the extent that it is considered fiscally feasible by the elected government of the day to raise resources for these. However, while public resources are certainly finite and limited, States need to be constrained to raise sufficient resources and to prioritise its expenditures to ensure the survival of all of its people with dignity, and this can be ensured only with the intervention of the law and courts:

Therefore, a legally enforceable regime of socio-economic rights must lay a floor of human existence and dignity below which no person can be permitted to slip. It establishes the scaffolding for humane governance, which sets limits to the enormous avoidable human suffering entailed by want of food, a roof to protect one from the extremes of climate, and health care when one is afflicted. It demands state officials to be accountable both for what they do and not do for the most vulnerable and defenceless in society. It affirms that no human being is dispensable, regardless of age and wealth, gender and ability, and of what they are deemed to produce and contribute to society.

The unique experience in India since 2001 demonstrates the practical ways in which a right as fundamental as the right to food can become legally enforceable, and have extraordinary impacts on the massive redeployment of state expenditures in favour of the dispossessed, and the coverage with State supported food supply to millions of children and women and men who live routinely deprived of adequate and assured nutrition. The recent Indian experience of the right to food is an extremely important illustration of how a combination of civic and judicial activism has helped elaborate an important socio-economic right, and progressively made segments of it judiciable. This experience of Indian courts and civic action in enforcing the right to food is useful also to illuminate the vexed and as yet unresolved debate about the justifiability of socio-economic human rights like the right to food, or in simple terms whether a person who is denied this right can go to court both to get the right enforced and to ensure punishment to those in authority who denied her this right.

When the Indian Constitution - a luminous and exceptionally progressive document - was written in the late 1940s, it accepted the prevailing accepted received wisdom of those times, that civil and political

freedoms alone like protections against illegal detention and freedoms of expression and association can be enforced through courts. It listed these in a chapter on Fundamental Rights. It reserved another chapter for social and economic rights, which it called Directive Principles of State Policy, which were morally rather than legally binding. In a literal sense, it is only in this chapter that we find mention of rights such as to food and shelter. The most explicit reference to the right to food can be found in the first part of Article 47 of this chapter of the Indian Constitution.

However, the highest courts of the land over the years established that the right to food was implicit, even if not specifically mentioned, in the chapter on enforceable Fundamental Rights. Article 21 included in the Fundamental Rights of the Constitution, entitled 'Protection of life and personal liberty', guarantees that 'No person shall be deprived of his life or personal liberty except according to procedure established by law'. Over the years, a series of judicial interventions and interpretations have vastly expanded the frontiers of this right to include several other socio-economic rights, including the right to food, right to housing and right to work.

Even this judicial acknowledgement of the right to food as a fundamental right did not until recently have practical impact on the actual realisation of this right by girls and boys, women and men who were routinely deprived of adequate and assured food for an active and healthy life. Indeed this was the experience even of countries like South Africa which explicitly included the right to food in their Constitutions. This was, in practice, because a great deal of ambiguity continued to surround the actual justiciability of this right, or whether a person whose right is denied can seek redress from courts. This depended ultimately on the discretion and interpretation of individual judges. In the event of progressive and responsive judges hearing these matters, judicial intervention has cumulatively strengthened the realization of this right.

In the year 2001, a group of activists under the banner of the People's Union for Civil Liberties (PUCL), Rajasthan, filed a case in the Supreme Court, demanding that the right to food should be recognized as a legal right of every person in the country, whether woman or man, girl or boy. The petitioners in this case claimed that the people of India are confronted with an unconscionable situation of rampant hunger and recurring droughts on the one hand, and governments that fail to prevent hunger although

they have the means to do so including overflowing warehouses of rotting food-grains, on the other.

The Supreme Court accepted the petition as one that it would consider, with the observations (made on July 23, 2001) that:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.

The Government of India and various states responded to the Supreme Court with claims that they already were implementing a range of schemes that adequately secured the right to food of all people. In reply, the petitioner requisitioned information from a still incipient civil society network which called itself the Right to Food Campaign to establish the grave flaws and gaps in the coverage and implementation of these programmes.

The learned judges of the Supreme Court were convinced by the burgeoning evidence placed before them, and they then took several highly significant steps. The first of these was to direct all governments that they could not withdraw or abridge any of the benefits that were provided by the range of eight food, livelihood and social security schemes that were vital for all people to secure their right to food. In other words, what the court did was to firstly convert food, livelihood and social security schemes which are vital to food security of vulnerable citizens, into entitlements or rights. By this, the State no longer has the option to withdraw or reduce any of these schemes as they had become legal rights. It is obliged to at least retain, or preferably enhance these entitlements, and raise the necessary fiscal resources to provide for them. This order thus paved the way for an enforceable right to food for the first time. It has been very effective in preventing governments to remove or dilute these schemes, under pressures to reduce fiscal burdens. For instance, the union cabinet passed a resolution

to raise prices of subsidised food grains available under the public distribution system and to reduce allocations, which would have amounted to gravely enfeebling the public distribution system. However, the Commissioners appointed by the Court immediately informed the cabinet that this would be a violation of the orders of the highest court, and the government ultimately withdrew this order.

Next the Supreme Court established its own independent monitoring mechanisms to ensure compliance with the courts orders and to track both hunger and the performance of food, livelihood and social security programmes of all governments across the country, through the device of appointing its independent Commissioners. (Initially, the Court appointed SR Sankaran and NC Saxena as Commissioners. Mr Sankaran subsequently resigned, and since then I have been working with Dr Saxena for the Court). Apart from the pleadings of the petitioner and replies and reports of the Union of India and several State Governments, the justices of the Supreme Court have relied significantly on a series of Reports submitted by the Commissioners appointed by the Supreme Court, to assist it in its deliberations in this case. In their Reports, the Commissioners have attempted firstly to monitor the implementation of various interim orders passed by the Supreme Court in the course of the hearings in the case. They have further reviewed and analysed the performance of Central and State Governments in implementing various schemes and programmes related to the food security of the people of India, particularly vulnerable people. They have investigated and reported on complaints and reports of local failures in food programmes, including starvation deaths and finally, they have from time to time, made recommendations to both governments and the Supreme Court of India for possible steps that they may consider to defend and promote the food security of the people of India, particularly vulnerable people.

The third category of orders passed by the Court has been to expand the content and modes of implementation of the various schemes, which it had converted into entitlements. For instance, again on the advice of its Commissioners, it ruled that school meals should be locally produced, hot and cooked (and not dry snacks or grain which many governments distributed until then), hygienic, nutritious (of a prescribed minimum caloric level) and with varied menus for every day of the week. It also recognised that school meals are an instrument to teach children social

equality, therefore it ruled that preference be given to dalit cooks. In the ICDS (Integrated Child Development Scheme), it banned contractors from supplying ready-to-eat food to pre-school children, and again required hot cooked meals for children, at least those above the age of 3 years. This was a blow against centralised procurement and the possibilities of large-scale centralised corruption. The powerful biscuit manufacturers lobby saw an enormous opportunity for profit in the Court-expanded programme and recruited members of parliament across party lines and an influential cabinet minister to demand that locally produced and monitored hot meals be replaced by the 'empty calories' of biscuits. This proposal was fought by an informal alliance of conscientious public servants, the national media, concerned professionals and the court Commissioners, and although it was a bloodied battle, victory at the time of writing seems to be with Court orders for decentralised hot cooked meals prevailing in the overwhelming best interests of millions of our young malnourished children. Likewise, the court and Commissioners recommended higher pensions for the aged, distributed on time every month at the doorsteps of the impoverished elderly.

And finally the Court ordered the universalising of many of these schemes. Until now, governments covered only a fraction of the potential recipients of food, wage or social security benefits provided by these programmes. The Supreme Court not only converted the schemes into enforceable entitlements, it also ordered that every potential beneficiary in the country must be covered by the programme within a defined time frame period. This meant in every instance the expansion of the programme several times beyond what it was before the intervention of the Court. It is highly significant that the Supreme Court refused to concern itself with the 'fiscal feasibility' of its orders to universalise various entitlements. It entertained no caveats that its orders depended on the ability of the governments to raise sufficient resources, or left no escape door open for governments to default in complying with its directions on the plea that it failed to raise adequate resources.

The first such order of the Court was to universalise for all children in State and State-aided schools one hot and nutritious mid-day school meal. These today benefit one hundred and forty million school children daily, making this the largest school feeding programme in the world. When the

executive had to find ways to raise the revenues needed to operationalise the universalised entitlements, and to finance mid-day meals, it actually imposed initially a special education cess of two percent on all federal taxes for education including school meals. A second order is that every habitation of every village and slum must have a feeding centre to serve every child below 6 years, and all pregnant and lactating mothers and adolescent girls. The legislature passed a law for a national employment guarantee scheme which legally guarantees all rural families which seek work 100 days of wage employment a year at statutory minimum wages and the executive relented in expanding the coverage of old age pensions from half to every aged person who is identified to subsist 'below the poverty line'.

In more than seven years of hearing, the Supreme Court has passed a number of significant orders to advance the right to food of specific food-deprived populations. The effectiveness of civil and judicial intervention in securing the people's 'right to food' can be assessed from the range of the interim orders of the court so far. (At the time of writing, 51 interim orders passed and hearings of the court in this case continue). These orders have improved significantly the food security of literally millions of people living with hunger.

This experience illustrates that although the right to food already existed as a fundamental right implicit in the right to life (as do other rights such as to shelter, health care and social security), for these rights to be actually operationalised, courts in response to civic action had to elaborate the right in terms of a series of specific and explicit entitlements. It was not enough to declare that every citizen enjoys the fundamental right to food. Each category of people has varying food needs, denials and vulnerabilities, and the Court has in effect 'explicated' or unpacked the right in relation to each segment of people. For an infant, the right to food translates itself into the entitlement of supplementary nutrition of defined specifications in feeding centres. For a school-going child, the right implies hot cooked school meals at State expense. For pregnant women, it means supplementary nutrition and maternity benefits. For designated poor families, it means 35 kg of State subsidised rice or wheat every month. For the able-bodied, it means guarantee of food through wage work. For the aged, it means pensions. The unfinished agenda of the Court, I believe, is to secure the rights of individuals who are *excluded* from all these schemes as they are

currently designed, such as a child who cannot go to school, school or of malnourished women who are not mothers or of migrant workers and their families.

In summary, schemes that cater to the socio-economic rights of dispossessed populations need undergo a metamorphosis from programmes that can be withdrawn or reduced at will by the executive, into non-negotiable entitlements which can be expanded, not reduced. Second, the content of some of these rights need to be enhanced, such as the quantum of pensions, or the features of the hot cooked mid-day meals. Third, the entitlements need to be universalised, such as through its rulings that every child in State or State-aided schools across the country must get hot cooked noon meals. And an independent mechanism needs to be created to monitor the actual realisation of these rights. The lessons from this experience would resonate even with other basic social and economic rights, such as to shelter, work, social security, education and health care.

Conclusion

Until that day dawns - when the equal intrinsic human worth of every person is fully acknowledged and realised - in the long dark shadows of this land, the silent tragedy would continue to play out furtively, of millions of women and men, boys and girls, who sleep hungry. The experience of chronic hunger in distant villages as much as on city streets is one of intense yet avoidable suffering; of self-denial; of learning to live with far less than the body needs; of minds and bodies stymied in their growth; of unrealised potentials; of unpaid, arduous devalued work; of shame, humiliation and bondage; of the agony of helplessly watching one's loved ones - most heartbreakingly children - in hopeless torment; and of the defeat and the triumph of the human spirit.

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India's Food and Nutrition Security

*Dr. Prema Ramachandran**

Introduction

The term "food security" was first used in the international development literature of the 1960s and 1970s, and referred to the ability of a country or region to assure adequate food supply for its current and projected population. Meeting the energy requirement of the populations was the major goal. Food security measured by food grain production, availability and access to food at affordable cost to ward off famine, meet the energy requirements, and prevent chronic under nutrition. However this definition does not take into account the need for of micronutrients essential for health. Over decades there has been increasing recognition that the micronutrient deficiencies are very common and have to be corrected. This has led to the use of the term "hunger" to denote energy deficiency and term "hidden hunger" to denote micronutrient deficiency¹. Health professionals stress on the importance of safe drinking water and environmental sanitation for preventing infections and appropriate health care for reducing loss of nutrient due to illness. Over years there were several attempt to make the definition of food security more comprehensive and include supply of good quality food stuffs to provide balanced diets and ensure that the populations remain healthy. The World Food Summit in 1996 defined food security as a situation in which "all people, at all times, have access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life". This definition encompasses a whole lot of pre-requisites for food security and also brings into focus the linkage between food, nutrition and health. These newer

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comprehensive definitions are yet to become widely used and the term food security is still used mainly to denote adequacy of food grains to meet the energy needs of the population¹.

Framework for Assessment of Food Security

Having defined food security, it is essential to create a framework for assessing food security. FAO has advocated the approach to analyse food security in the framework of 'AAA' - **Availability** (production factors, i.e. agricultural production, its determinants and availability to households); **Access** (household and individual's access to food and factors determining it, i.e. poverty and literacy levels, vulnerability of populations); and **Absorption** (ability to absorb food - health conditions, availability of potable water and sanitation).

Food insecurity, (the absence of food security) can be either chronic or transitory. Food insecurity can lead to famine during which acute food scarcity affects large population groups; or it can manifest at household level as chronic or periodic hunger and worry about safety or security of food among poorer segments of population due to poverty and lack of purchasing power. FAO has advocated use of some well defined health and nutrition indicators as 'Food Insecurity Outcome' indicators; under five and infant mortality, under five underweight rates and low BMI among adults, are taken as manifestations of food insecurity. FAO has set up a global mechanism for measurement, grading and mapping of food insecurity and vulnerability using food grain availability, hunger, and child under-nutrition rates. As the relationship between food and hunger is direct, there is good correlation between available affordable access to food and hunger. Under five mortality and underweight in under five children do not have a one to one relationship with food intake; they are influenced by weight at birth, illnesses and access to health care. It is therefore possible that under certain circumstances the inspite of food adequacy underweight rates in children continue to be high.

Initiatives to Improve Food Security in India

When India became independent, the country faced two major nutritional problems: one was the threat of famine and the resultant acute starvation due to low agricultural production and the lack of an appropriate

food distribution system; the other was high prevalence of chronic energy and micronutrient deficiencies due to:

- low dietary intake because of poverty and low purchasing power;
- high prevalence of infection because of poor access to safe-drinking water, sanitation and health care;
- poor utilization of available facilities due to low literacy and lack of awareness.

India had recognized the importance of optimal nutrition for health and human development. Article 47 of the Constitution of India states "the State shall regard raising the level of nutrition and standard of living of its people and improvement in public health among its primary duties". India's five-year plans^{2,3}

- enunciated the policies,
- laid down multi-pronged strategies
- outlined multi-sectoral programmes to improve food security and nutritional status of the population
- laid the goals to be achieved in specified time frame and
- provided the needed funds to implement the programmes.

The comprehensive, multipronged strategy for combating acute and chronic food insecurity consisted of the following components:

- efforts to improve availability of food by providing adequate priority and support for improving productivity, increasing food production and reducing wastage
- efforts to improve access to food through
- creation of adequate buffer stock to tide over seasonal/regional shortfalls in food production improving household food security through
- economic growth, poverty reduction, improving purchasing power interventions aimed at reducing poverty and improving purchasing power through employment programmes, e.g. food for work programme in the earlier years and currently the National Rural Employment Gaurantee Scheme

- effective food distribution of essential foodstuffs at subsidized cost to the food insecure population through efficient and effective public distribution system (PDS)
- direct or indirect food subsidy for the poor such as providing subsidized food grains through public distribution system (PDS) to poor (Targeted PDS) and providing food at heavily subsidized cost to the very poor (Anthyodaya Anna Yojana)
- providing food supplements for bridging the gaps between nutrient requirements and dietary intakes for vulnerable groups such as preschool children, pregnant and lactating women (Integrated Child Development Services Programme) and school children (Mid day meal programme)
- efforts to improve nutritional status through
 - reducing morbidity by improving environmental sanitation and access to potable water supply
 - efforts of the health sector to tackle adverse health consequences of under-nutrition adverse effects of infection and unwanted fertility on the nutritional status micronutrient deficiencies and their health consequences
 - provide nutrition and health education so that the people optimally utilise the available goods and services to improve their health and nutritional status.

Food Production and Food Security

Adequate food grain production is the essential prerequisite for food security in any large country. India was a net importer of food grains in the fifties and sixties; the country's dependence on imported food was reflected in the picturesque term a "ship to mouth" existence. Those who had lived through that era, consider the green revolution as the best example of what the country can achieve, when it strives for attaining a cherished goal. However, the technology of high yielding varieties provided the necessary impetus, policy initiatives such as land reforms, investment in irrigation, fertilizer subsidy and program initiatives such as investment in lab-to-land agriculture extension education, farm level procurement of food grains and

minimum support price played a major role in the country achieving self-sufficiency in food production within a decade. Considering that the agricultural land in the country is privately owned, becoming self sufficient in food production, is a good example of mission mode public-private-partnership to achieve a national goal within a decade. Over the last five decades, increase in food production was higher than increase in population. The last century ended with the country's output of food grains crossing 200 million tonnes, a fourfold increase since 1960-61.

Emerging Problems in Food Security

The very success of the drive to achieve self-sufficiency in rice/ wheat production brought with it some major problems. Intensive monocropping led to deterioration of soil health. Many states attempted to increase production through subsidies on inputs such as power, water and fertilizers, rather than by building new capital assets in irrigation and power. Unsustainable practices like excessive use of water and imbalanced use of fertilizers, especially in northern and northwestern parts of the country, have adversely affected soil health and environment. Many of the erstwhile high producing states are experiencing green revolution fatigue. Very little attention is paid to achieve integrated farming systems that will ensure sustainable evergreen revolution essential for appropriate dietary diversification to achieve nutrition security. Poor monsoon and global food-grain price rise had an impact on food prices in the country. Last two years witnessed huge food inflation with all its attendant adverse consequences on the quantity and quality of food consumed, especially, by the poorer segments of the population.

Pulses are the major source of protein in Indian diets. Pulse production does not require too much water and is not very labourintensive. Growing pulses enriches soil. Pulses command reasonable price. In spite of all these favourable factors, pulse production has been stagnant for five decades. Gap between demand and supply necessitated import of pulses. The cost of pulses soared. In spite of continued expenditure on pulses, household consumption of pulses has come down. Reduction in pulse consumption will have adverse effect on nutrient intake and nutritional status of the population.

National Food Security Mission (NFSM)

National Food Security Mission (NFSM)⁴ was launched in August 2007 with the objectives to:

- increase production of rice, wheat through productivity increase and increase in pulses through area expansion and productivity enhancement in a sustainable manner;
- restore soil fertility and productivity at individual farm level;
- enhance farm level economy (i.e. farm profits) to restore confidence of farmers of targeted districts

The Mission focused on states / districts with higher yield potential and large yield gaps. The implementation of the NFSM is expected to result in increasing the production of rice by 10 million tonnes, wheat by 8 million tonnes and pulses by 2 million tonnes by 2011-12.

National Horticultural Mission

Fruits and vegetables provide essential micronutrients vital for nutrition and health. India is first or second in production of vegetables. Export earnings from fruits and vegetables are growing but per capita vegetable and fruit consumption continues to be low in all segments of Indian population including families with no economic constraints. This is the major factor responsible for widespread anaemia and micronutrient deficiencies in the population. Nutrition education for increase in vegetable consumption will succeed only when vegetables are available throughout the year at affordable cost. This can be achieved if the horticultural mission focuses attention on production, processing and marketing of low cost, nutrient rich vegetables.

The National Horticultural Mission⁵ was setup to meet the increasing need for fruits and vegetables and simultaneously to facilitate diversification for making agriculture more profitable through efficient land use, optimum utilization of natural resources (soil, water and environment) and creating skilled employment for rural population. Some of the major interventions needed include:

- Creation of essential infrastructure for preservation, cold storage, refrigerated transportation, rapid transit, grading, processing, packaging and quality control of fruits and vegetables;
- Providing necessary investment to enable the horticultural sector to achieve its full economic potential;
- Focusing on appropriate technology to reduce waste will prevent distress sale at low cost by the farmers and provide remunerative employment to the rural youth.

All these efforts would make horticulture more remunerative for the farmer, reduce losses due to wastage and increase availability at affordable cost throughout the year for the consumers thereby improving food and nutrition security.

Poverty and Food Security

In the seventies, income was one of the major determinants of food security; over 70% of households were food insecure, in spite of household expenditure on food being over 70% , and 70% children were undernourished. All-India rural and urban poverty line baskets (PLB) were derived for rural and urban areas separately, anchored in the per capita calorie norms of 2400 (rural) and 2100 (urban) per day. The existing all-India rural and urban official poverty lines were originally defined in terms of per capita total consumer expenditure (PCTE) at 1973-74 market prices and adjusted over time and across states for changes in prices. However, the consumption patterns underlying the rural and urban PLBs remained tied down to those observed more than three decades ago in 1973-74. Alterations in income, lifestyles and consumption pattern of all segments including the poor has not been reflected in the poverty line computations. Consumption expenditure on food has decreased and expenditure on other items such as transport, education and health care have increased. The earlier poverty lines assumed that basic social services of health and education would be supplied by the state and hence, although private expenditure on education and health was covered in the base year 1973-74, no account was taken of either the increase in the proportion of these in total expenditure over time or of their proper representation in available price indices.

Planning Commission constituted an expert group to review the methodology for estimation of poverty. This committee⁶ had recommended that actual private expenditure per capita on food, education and health consistent with optimal nutritional, educational and health outcomes should be used to define poverty line. The new definition of poverty is broader in scope and fits well with the current definition of food and nutrition security. Using the new poverty line definition, the people near the poverty line in urban areas continue to be able to afford the original calorie norm of 2100 per capita per day, but their actual observed calorie intake from the 61st Round of National Sample Survey Organization (NSSO) is 1776 calories per capita⁷. This actual intake is very close to the revised calorie intake norm of 1770 per capita per day currently recommended by the Food and Agriculture Organization (FAO) and ICMR. Actual observed calorie intake of those near the new poverty line in rural areas (1999 calories per capita) is higher than the FAO norm.

At present, the government provides 35 kg of food grains, including wheat and rice, to 65.2 million families classified as living below the poverty line (BPL). These subsidised rations are made available at a price of Rs 4.15 per kg for wheat and Rs 5.65 per kg for rice. For the 24.3 million families classified under the Antyodaya scheme (also part of the BPL category), the price of these grains is further reduced to Rs. 2.00 for wheat and Rs. 3.00 for rice. The proposed National Food Security Bill will be using the new methodology for poverty estimates and would cover a larger proportion of the population

Recommended Dietary Allowances for Indians

Advances in technology has enabled nutrition scientist to measure requirements of energy and other nutrient accurately under free living conditions. These data now clearly indicate that actual energy (and many other nutrients) requirements are lower than what has been computed earlier⁸. The Expert Group of ICMR⁹ has published the Report on nutrient requirements and recommended dietary allowances for Indians. Reference body weights for adult man and woman were computed on the basis of average of the 95th centile weights of the age categories 18-19, 20-24 and 25-29 years obtained from National Nutrition Monitoring Bureau (NNMB)¹⁰ and INP¹¹ surveys. Reference body weight for boys and

girls were computed similarly from the 95th centile values of body weights of rural India from NNMB and INP surveys. For infants and young children the data from WHO standards which correspond broadly to the 95th centile of the weight of Indian rural children were used. The ICMR Expert group had recommended that actual requirement in specific population groups should be adjusted for the actual weight and physical activity of that population especially when computing the gap between energy requirement and actual intake that needs to be filled by supplementation programmes. Energy requirements for the current weight were computed based on energy requirements per kg bodyweight given in the draft RDA, compared with the actual intake and gap between dietary intake and requirements were worked out and shown in Table 1.

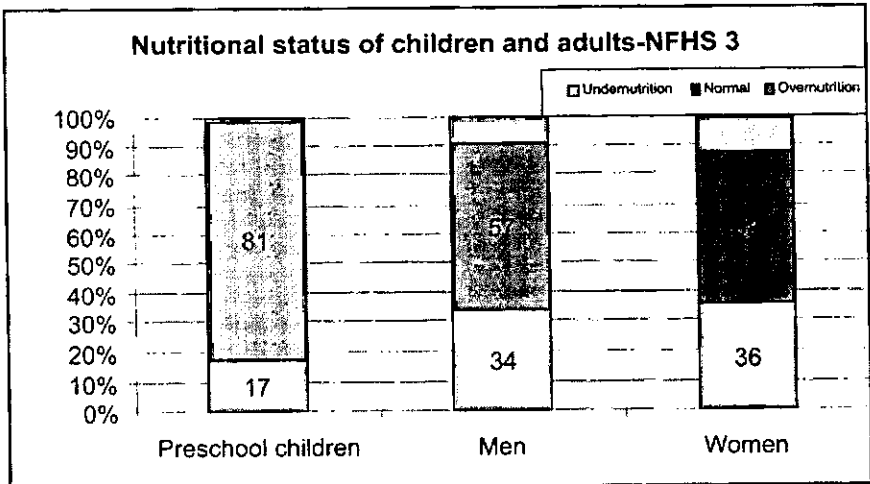
Table 1 Energy requirements, actual intakes and gap between intake and requirement

Group	ref wt	RDA	RDA per kg	current mean wt	Requirement for current wt	Actual intake	Gap
Adult man	60	2730	46	51	2346	2000	-346
Adult woman	55	2230	41	46	1886	1738	-148
Pregnant		+350			2236	1726	-510
lactating		+500			2386	1878	-518
1 - 3 y	12.9	1060	80	10.5	840	714	-126
4 - 6 y	18	1330	75	14.6	1095	978	-117
7 - 9 y	25.1	1690	70	19.7	1379	1230	-149
Boys							
10 - 12 y	34.3	2190	65	26.6	1729	1473	-256
13 - 15 y	47.6	2750	60	36.8	2208	1645	-563
16 - 17 y	55.4	3020	55	45.7	2514	1913	-601
Girls							
10 - 12 y	35	2010	55	26.7	1469	1384	-85
13 - 15 y	46.6	2330	55	36.9	2030	1566	-464
16 - 17 y	52.1	2440	50	42.6	2130	1630	-500
Infants							
0-6 m	5.4	497	92	4.1	377.2		
6 - 12 m	8.4	672	80	6.7	536		

Source RDA for Indians ICMR 2010

* all computations are for moderately active persons

Data on energy gap in different age and physiological groups from this computation indicates that energy gap is widest in pregnant and lactating women, adolescent girls and boys ; next highest among men and relatively low in preschool and primary school age children and women. This at first sight may appear counter-intuitive and contrary to the belief that the gap is widest in preschool children. It is well recognised that as a result of gap between requirement and actual intake and nutritional toll of infections, there growth faltering and steep increase in stunting between 3 and 23 months of age. Stunting is an adaptation to insufficient energy intake and cannot be reversed. The gap between the intake and requirements is lower in preschool children because stunted children have lower body weight. The wide gap between intake and requirements in the adolescents is because of the increasing demands for adolescent growth spurt. Data from NFHS 312 has clearly shown that if BMI is used as the indicator for assessment of undernutrition, undernutrition rates in preschool children is 17% while undernutrition in men is 34% and in women is 36% (Figure 1). The higher undernutrition rates in adults as compared to preschool children clearly imply that there has been a deterioration of nutritional status during adolescence and emphasise the need for improving dietary intake in this group.



Under Five mortality and undernutrition

In spite of self-sufficiency in food production, adequate buffer stock and relatively low food prices over the last three decades at the national

level, reduction in undernutrition rates in India have been very slow. Data from India show that undernutrition rates in preschool children are comparable to those in Sub-Saharan Africa with substantially lower GDP. However, infant and child mortality rates in India are much lower than that in Africa - so called South Asian Enigma. Low birth weight rates in India are higher than Sub-Saharan Africa, but majority of Indian low birth weight neonates are mature; they have better access to health care and so under-five mortality in Indian children are lower than Sub-Saharan children. However, birth weight is an important determinant of growth in childhood. The Indian low birth weight children have a lower growth trajectory and hence have comparable under nutrition rates (as assessed by underweight and stunting) as Sub-Saharan children. Data from India suggest that that in countries undergoing health and nutrition transition, improvement in health and nutritional status may not happen simultaneously; in situations where access to health care is better, reduction in under-five mortality may be faster than decline in under nutrition rates.¹

Large-scale surveys in India have shown that there are substantial interstate differences in dietary intakes, under nutrition rates and infant mortality rates. Within the states, there are large inter-district disparities in food security and nutritional status of the population. Some pockets in some states continue to experience high levels of food insecurity as reflected by the periodic reports of hunger, inadequate dietary intakes, high under nutrition rates and occasional deaths due to under nutrition. While Orissa is an example of state with low GDP, high poverty, food insecurity and under nutrition rates, Maharashtra, is an example of a state where high per capita income and economic growth co-exists uneasily with severe food insecurity and under nutrition in some districts of the state¹. Data from surveys carried out by the National Nutrition Monitoring Bureau (NNMB)¹⁰ indicate that even in food secure households, preschool children often do not get adequate food. Surveys carried out by the NNMB¹⁰, National Family Health Survey (NFHS)¹²⁻¹⁴, District level Household Survey (DLHS)¹⁵ have shown that under nutrition in all age groups remains a major public health problem, especially, among poorer segments of population. In all segments of population, majority are anaemic and have micronutrient deficiencies; substantial proportion of the affluent segments of the population also suffers from micronutrient deficiencies.

Monitoring Progress Towards Food Security

Tenth Five Year Plan 2 emphasised holistic food and nutrition security as the goal and suggested that there should be a paradigm shift from mere food (grain) security at national and household level to food and nutrition security at the household and individual level. India has set up several mechanisms to map food security and monitor progress towards food and nutrition security through multiple indices ranging from food production, availability, access at affordable cost, and dietary intake of individuals, their nutritional status and prevalence of micronutrient deficiencies. Swaminathan Foundation in collaboration with the World Food Programme has brought out the Rural and Urban Food Insecurity Atlas in 2003 and 2004 and in 2009 and 2010. The Atlases were based on qualitative information as well as extensive analysis of secondary data (Census, NSSO, NFHS, DLHS). Ministry of Health and Family Welfare has initiated the Annual Health Survey for providing district wise data on health and nutritional status of the population. It is expected that this survey will provide information for decentralised district specific planning of intervention programmes and also provide baseline information for assessing improvement in terms of process and impact indicators.

Summary and Conclusion

Review of the progress over the last six decades shows that with Green Revolution, the country rapidly attained self-sufficiency in food production and built up adequate buffer stocks. Famines no longer occur, though pockets with periodic severe food insecurity persist even today. The country had relatively low gross domestic product (GDP) growth till the nineties but GDP growth accelerated in the last two decades. Over years, there has been a slow but steady decline in poverty. Universal access to PDS, ICDS, health services is a reality today but coverage, content and quality of services provided is sub-optimal. In spite of these relatively favourable circumstances, the improvement in the nutritional status of the population has been slow. There has not been any reduction in low birth weight rates and anaemia; decline in under-nutrition rates is slow.

Experience in India and other countries undergoing economic and nutrition transition, shows that self-sufficiency in food production is an essential prerequisite but by itself will not result in improvement in

nutritional status of the population. The country should continue the multi-pronged efforts for improving awareness and access to low cost balanced diets, safe drinking water, sanitation, education and essential primary health care. Convergence and coordination between all these programmes at village / urban areas can result in substantial reduction in under nutrition and improvement in nutrition security especially among vulnerable groups of population.

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The Right to Food

*Dr. Amrita Rangasami**

In this enquiry into the Right to Food in India, it is necessary to acknowledge the role of the Courts at the State level and at the level of the Supreme Court of India and the role of the National Human Rights Commission (NHRC). It is important to recognize that the NHRC initiated the enquiry into starvation of its own accord. This enquiry attested the prevalence of starvation, i.e. in the Kalahandi region of Orissa, where the enquiry was conducted. The reference by the Supreme Court to the NHRC of the petitions submitted to it brought about an enquiry that had several dimensions: the first of these, was the enquiry into the premise that the plan for the development of the region envisaged would bring about an end to the prevalent starvation. What followed during the years 1999-2000 to 2003, was that the NHRC primarily reviewed the progress of the implementation of the development plan. This shift in focus, to an extent, implied justice delayed.

The second dimension was the Centre for the Study of Administration of Relief's (CSAR) plea that the prevalence of destitution in the Kalahandi region, be recognized. The CSAR submitted that the destitution prevalent in the region could not be taken note of by the State Government under the rules laid down by the nodal ministry, i.e. the Ministry of Agriculture that relief could be assured only if a natural calamity could be declared. Therefore, the State of Orissa was constrained to declare 'drought' almost on an annual basis for a period of nearly 20 years to secure the scant relief that the Government of India provided. It was not until 2001, when the NHRC agreed that there was need to recognize the continuum of distress in the region that could not be addressed under a start-halt-go scheme of relief and decreed that relief should continue from year to year, that the

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charade came to an end. Further, the CSAR raised the basic issue that although, a Constitution was framed and Rights of citizens recognized, the rules of governance were replicated from those of the British period.

This paper on the Right to Food is divided into four sections. The first offers the introduction; the second, the history of the litigation on Economic Rights initiated by the Supreme Court of India; the third, the investigation by the NHRC into starvation; and the fourth, the evaluation of the development program as remedy for starvation; the fifth, the considerations of the CSAR's report on elimination of destitution. The State of Orissa not only considered the Report sympathetically, it agreed at a meeting between the petitioner, CSAR and the State of Orissa - a meeting addressed by the petitioner at which the Special Rapporteur of the NHRC was also present in Bhubaneswar on December 2, 2002. It must be acknowledged that the State of Orissa, in a response that may be considered rare in the annals of litigation, came forward to file an affidavit at the NHRC almost immediately. The affidavit, case no. 37/3/97-LD, December 12, 2002 on behalf of the State of Orissa, was filed by Shri R. L. Jamuda, IAS, Commissioner-cum-Secretary, Revenue Department, Government of Orissa.

The affidavit summing up the petitioner's argument stated that the petitioner's report sought

- (i) A basic change in relation between the governing and the governed that there should be a paradigm shift from the domains of State benevolence to that of citizens right.
- (ii) That the relief which is made available to the affected community now falls under two main heads, i.e. 'Gratuitous Relief' which distributed free and the Food for Work Program (FFWP) that is food in exchange for work. These two issues are very much in contradiction to the notion of Right to Food and Right to Work. Therefore, the Right to Relief and Right to Work should be given the status of law.
- (iii) The anchoring of commencement of the relief operation due to 'drought' situation is linked to the assessment of crop-loss at the time of harvest, be shifted to the lean season: the months of hunger.
- (iv) It referred to the continuum of crisis for distress prevailing in the KBK districts year after year.

- (v) Total ban on engagement of contractor in relief works should be enforced.
- (vi) The identification of the wage earners and marginal farmers and that these people should be given identity cards.
- (vii) It praised the monitoring mechanism adopted by the Special Rapporteur, NHRC in the implementation of different "poverty alleviation" schemes in the KBK districts.
- (viii) It referred to other issues like the inability of the relief system to monitor or taking into account migration of entire family or the credit relations imposed on them which leads to loss of control over own labour, land and produce from the land, informal alienation of land which is not reflected in the records of Right. The petition sought changes in forest laws to confer the right of using minor forest products by the forest people, decline of forest which has affected the access to food and liability depended upon them. The procurement of food and the system of procurement by the FCI and the harnessing of labour through the contract system etc.
- (ix) The changes in the nomenclature of gratuitous relief and deletion of some objectionable words, sentences from the ORC will be considered.
- (x) As to the suggestions made with regard to putting a permanent monitoring system in place of the State Government, steps should be taken to introduce a Management Information System (MIS) to monitor and track cases of malnutrition.
- (xi) The State Government constituted a committee headed by the Agriculture Production Commissioner (APC) and deliberated on the suggestions made by the petitioner on amendment of Orissa Relief Code.

The affidavit submitted by the State of Orissa can be looked upon as a precedent in the annals of law. It evoked response from the NHRC as well. In its proceedings it acknowledged that starvation be deemed 'injury' in law (January 13, 2003) and that such 'injury' must evoke penalty. That the Right to Life enshrined in the Constitution implied the Right to a Life free from Hunger. The NHRC created a precedent in recognizing Group Rights. It acknowledged that if one starving citizen should go to the Court, a hundred may not do so. But by acknowledging group Rights, it made it

mandatory for the State to examine the special connotations of the prevalence of starvation.

Dichotomy

It is necessary to commence with the postulate that there is a dichotomy between the Constitution of India and the Rules of governance. The Rules of governance continue to replicate laws that prevailed during the British period with little questioning of their relevance. What is important to emphasize is that the Rules of governance embodied the crown-subject relationship even while the Constitution laid down the Rights of the citizens of India. This dichotomy has to be considered with reference to a range of aspects of governance. For example, the Rules of governance state that relief, where it is provided without work in return - such relief given to "the elderly," "the sick," "the idiot and the lunatic" will be termed 'gratuitous,' a term which takes away all notion of Right. The basic contradiction was brought to the notice of both the State Government of Orissa as well as the NHRC. A consensus arrived at between the petitioner, CSAR, the State Government and the NHRC that such terms those such terms will be deleted. It followed that the basic changes in the relief manual needed to be considered.

An important focus of this enquiry was regarding the prevalence of destitution. It is in this context that the Supreme Court of India's order (Kishen Pattanayak and others versus the State of Orissa A.I.R. 1989 S.C. 677), at once exposed the nature of the crisis and the lacunae in the relief system acquires importance. The First Order of the Supreme Court in India in the Public Interest Litigation on the 'Food Petitions case' epitomizes the 'famine process' as well as the inability of the State to apprehend it. The case filed against the Government of Orissa pleaded that the State had failed to intervene in famine conditions in Kalahandi and Koraput districts.

The First Order Read

The people of Kalahandi in order to save themselves from starvation death, are compelled to subject themselves to distress sale of labour on a large-scale resulting in exploitation of landless labour by the well-to-do landlords. It is alleged that in view of the distress sale of labour and paddy,

the small peasants are deprived of the legitimate price of paddy ... the people of Kalahandi are sometimes forced to sell their children ... that the starvation deaths, drought, diseases and famine have been the continuing phenomena in the said two districts since 1985.¹

The State Government of Orissa had not merely failed to prevent the transfer of assets from the starving. It had upheld the legality of such transfer.

We begin our enquiry into the nature of the Right to Food by referring to the Society within which this right is sought to be invoked. In 'modern' society, as distinct from the 'primitive,' the 'traditional' society where membership to the society acknowledges a title to the food produced by the society, the term 'food' does not have shared meanings.

To the non-poor it implies a range of food, meat and grain, fruit and wine, while to the poor it may only imply cereal and salt. What needs to be emphasized is that even the access to scant food is insecure. To the first, the term 'food' evokes a range of goodies. The role of advertising at the present time now to promote the food industry is to dress those goodies in a colorful array of offers that tempt the viewers. In a society titillated by sights and smells of food, the perception of starvation is hard to come by. In early modern history, foods consumed by the non-poor were forbidden by law for the poor. Terms such as 'poaching' and 'trespass' were introduced in England to forbid access to the game, trout and fruit to the poor. It was deemed treason to hunt the King's venison. The 'Legend of Robinhood and his Merrie Men' who were deemed to be outlaws with a price upon their heads reinforces the fact that the term 'food' never had shared meanings and it was enforced by harsh laws.

The coming of the East India Company to India brought about the implementation of the 'Lord of the Manor' rules in India. This implied that Right to Access to the forest, the trees and the fruit thereof, the streams, the seas and the fish therein, and the grain that was brought to harvest came under the purview of the 'New Lords of the Manor.' What the East India Company introduced even in the early years were the Rights over Labour. The term 'coolie' meant the wage to be paid in return for labour.

1 The Court was referring to the districts of Koraput and Kalahandi in the State of Orissa. See Pande, B.B., 1989, when they came to the Court seeking basic needs: Alternatives to the 'flawed' response, in *Journal of the Indian Law Institute*, Vol 31:3 pp 360

Indeed it has to be acknowledged that the term, symbolic of colonial rule, continues to be in use in India at the present time. What needs to be emphasized is that the wage hardly fetched the price of subsistence.

We are called upon to examine the nature of the society in which there can be no Right to Food and indeed, the wage can hover precariously near subsistence. The decline into mass starvation and mortality that has been noted in history as 'famine' has been well documented. What is relevant to our present enquiry are the rules that obtain in terms of cognizance of hunger, as well as the quantum of relief that may be prescribed to assuage starvation.

Suffice it to state that the NHRC directed one of the petitioners, the CSAR to submit a Report on the elimination of starvation. The focus of the Report was on the rules of Public Administration, rules that altogether evaded any cognizance of starvation. It is important to emphasize that the reports sought to establish that the rules of the British period imposed a crown-subject relationship. Relief was an act of State charity. The Report established that the norms of governance in use in India were anachronistic, no right could be envisaged under that framework; leave alone the right to Food. It is of considerable significance, that the State of Orissa came forward to agree to review the terms in use and to delete terms such as 'gratuitous' which embodied the crown-subject relationship. More important, it agreed to re-evaluate the Orissa Relief Manuals even with the view to enable consideration of the decline into destitution of the rural community. The shift from the approach dictated by the term 'natural calamity' and that which cognizance of destitution would imply has to be emphasized. There has been no acknowledgement of this proposed reformulation. The Ministry of Agriculture, the nodal ministry for provision of relief, has continued to use the terms of cognizance that prevailed during the British period, terms which can take note of starvation only in association with 'drought' or other 'calamity.'

Consider the facts: the State of Orissa in order to secure even the scant relief has had to declare 'drought.' That the region of Kalahandi being a forest region could hardly be deemed to be chronically drought affected - from the years 1981 onwards - for 20 years thereafter - was never examined. In order to secure the scant relief, the State of Orissa was constrained to close the distribution of relief when the rains came and recommence relief

operations when the rains ceased and it was not until 2001, when the NHRC appealed to the Government of India to continue relief, terminating the halt-stop-go system and the Ministry of Agriculture agreed to continue the relief that the farce ended. The dichotomy between what is termed 'natural calamity' and the 'agrarian crisis' is yet to be conceded. How far this has been a factor in the rise of agrarian unrest, has yet to be assessed.

Right to Food and International Law

The brief summarizing of the Right to Food case has been offered, if only to establish that in India the questioning of the prevalence of starvation and the means to take cognizance of such starvation in law has been a matter of judicial enquiry during the last two decades. Let me now juxtapose the exercises undertaken at the University of Oxford during the years 1987 to 1991-92 into the Right to Food as a mere Human Right for those who were dependent on international relief. Such relief was extended during periods of famine, war, movements of population during the decade 1980 onwards. That the movements of population implied movement from one country to another and the temporary shelter of refugees in camps were a phenomena of that period. What came under this scrutiny was the suffering that was imposed upon these refugees as the ration that was provided to them could hardly sustain life. What is of significance are the research studies initiated for Centres for Disease Control, a US department of Public Health, into the nutritional status of Refugees. The remarkable documents that provide data on the impact of starvation on the human body and its decline into mortality need to be widely studied.

The Research Studies initiated by the Centres for Disease Control, Atlanta, USA together with the accounts of the non-governmental organizations who were responsible for the distribution of the relief to the affected communities were drawn together in a symposium, initiated by the CSAR and the Refugee Studies Program, at Oxford in 1991. It must be emphasized that the International Agencies, i.e. UNICEF as well as the relevant departments of the United Nations participated in that meeting. The report titled, 'The Right to Food,' is relevant for our consideration. (Keen, David: 1992: Refugee Studies Program, University of Oxford)

Basic Dichotomy

The Right to Food that is sought to be evaluated even as a preliminary to any Food Security Act being passed needs to be examined in the context of the society as well as the polity within which it needs to be exercised. While it is acknowledged that the Economic Rights enshrined in the Constitution of India have been enunciated in the United Nations Covenant of 1948, it has been acknowledged that the Indian declaration preceded that of the United Nations'. We need to set ourselves the question why, thereafter, the implementation of the Economic Rights has made little progress.

The postulate that is offered in this paper is that while the Constitution of India including the Directive Principles enshrined the Rights of Citizens, the terms of governance continue to be anchored to that of the colonial Government. While the Constitution of India celebrates the Rights of free citizens, the terms of governance do not acknowledge them. This dichotomy has led to a range of issues, many of them explosive, contributing to unrest that is being recognized although belatedly in Kalahandi. The studies undertaken by the CSAR across the country have indicated that there are a number of communities facing seasonal as well as chronic starvation.

The NHRC not only established the prevalence of starvation on the basis of its own enquiry. It offered to test the postulate that substantive investment in development - can offer a remedy. The exercise was indeed unique. The NHRC appointed a Special Rapporteur who would monitor the impact of the development programmes on the economy of the starvation affected communities.

What has also to be brought within the scope of the evaluation of the Right to Food concept is that the Government of Orissa even as it had since 1981 to seek provision from the Government of India for provision of relief in areas affected by natural calamities. This implied an enquiry into the "crop failure" and declaration of the 'drought.' It must be emphasized that the rules of the Government of India could provide for relief from starvation only if 'drought' or other 'calamity' could be declared. It is acknowledged by meteorological scientists, administrators as well as academics that the forest regions need gauges different from those used in the plains of India. That the State of Orissa had to comply with the rules is

only one indicator of the rigidity with which the Union Government applied the drought formula. The administrative record established that the State of Orissa was constrained to declare drought although the meteorological evidence could hardly sustain it. This is pointed out because the contradiction between the nature of the crisis that enveloped that area as summed up by the Supreme Court (*Pattnayak vs. the State of Orissa: 1981*) as well as the NHRC and that enunciated by the Government of India rules was never wholly acknowledged. The declaration of 'natural calamity' as well as the relief system had been ordained by the British. The Ministry of Agriculture continues to use the old terminology. In other words, the crown-subject relationship was captured not only in the terms and conditions under which citizens could seek relief; and the Economic Rights enshrined in the Constitution of India for its citizens remained unimplemented. One of the outcomes of the long-drawn litigation was the acknowledgement of the State of Orissa that those terms and phrases of colonial times were obsolete and there was need to replace them (*State of Orissa: Affidavit dated December 12, 2002*).

Right to Food in a Surplus State

Tragically, the Supreme Court whose prime duty was to consider the proceedings of January 2003 of NHRC findings which had come at an end of a four-year exercise of the NHRC to which the Supreme Court itself has referred the case. The Supreme Court turned its back on the case, disengaged itself from the enquiry into destitution and admitted a fresh writ petition which fell back on a notion which economists had set aside decades ago, namely the prevalence of starvation even during the period of surplus. What was more serious, the Supreme Court was no longer addressing the issue in terms of Rights. It no longer derived legitimacy from the Constitution of India and the Economic Rights enshrined. It overlooked the acknowledgement of the State of Orissa of the dichotomy between the terms of governance and the Constitution of India. Sadly enough, the Supreme Court turned its attention to the programmes that were introduced and implemented by the number of States in India even in the 1950s, programmes such as the Mid-Day Meal (MDM) Schemes. The enquiry into starvation was not set aside. The Supreme Court in a sublimely ridiculous gesture threatened to impose penalty upon the Chief Secretary of the State if starvation deaths would occur. This implied that the State

Governments would take ample care, if necessary even through a postmortem, to establish that the starving person has consumed 'something' which could be passed off as 'food.'

Issue is what has been acknowledged within the Human Rights mandate by the NHRC, should be brought within the framework of law accompanying that, even as a corollary, would be the necessary fiat to the Union Government as well as the State Governments that those rules and provisions that date back to the British period that do not acknowledge the people of India as citizens with Rights and continues to impose the status of subjects, needs to be deemed unconstitutional.

Draft National Food Security Bill, 2010

The Right to Food Bill that is being proposed epitomizes the issues that have been raised during the submissions to the Supreme Court and the NHRC. To those who starve it can only mean cereal and salt, doled out in homeopathic doses. We need hardly to emphasize that such a Food Security Act will reinforce the growing acknowledgement by the large number of Citizens in India that the Rights which they derived from the Constitution and the Directive Principles, Rights that have been upheld by the Court, cannot be reflected in the terms of governance. It will perhaps even reinforce that the miniscule portions of food that they are able to secure under the National Food Security Act are not ordained by their poverty but are being legitimized by the fiat of the State.

The 'Draft National Food Security Bill, 2010' seeks to put the clock back. It not only imposes upon the local authority to abide by the rules and implement what is termed 'food security.' While paragraph 3 speaks of assured food security to Below Poverty Line (BPL) families, para 4 talks of a targeted (emphasis added) public distribution system. It should be useful for a Government to consider the application of the principal of targeting in social security Schemes in England and the questioning of the same. What needs to be emphasized is that it takes away those notion of 'Right to Food'. In other words, the Act as it has been framed in the present time, needs reformulation. Guidelines for identification of BPL families would be laid down by the Government.

The Union Government will fix the number of the identified BPL family for each State on the basis of poverty estimates notified by the Planning Commission of India and the relevant Census data of the Registrar General of India. It appears that the Draft National Food Security Bill is a contradiction in terms where the sieving and sifting of the population in order to determine the 'eligible poor' would impose at once hardship and humiliation and reinforce the exercise of power by village officials. It should be mentioned here that the exercises undertaken in West Bengal where the political parties had to provide the list of beneficiaries for what was termed 'gratuitous relief.' Gratuitous relief imposed public humiliation of the members of the village communities. 'Targeting' can be equally embarrassing. It is necessary for the Bill to be redrafted after a preliminary discussion in the rural communities of India. It is also necessary to learn of the experience of targeting gained in countries where it had to be withdrawn.

The National Food Security Bill needs to be redrawn. Even as a preliminary, the rigorous exercise undertaken by the NHRC with the cooperation of the State Government of Orissa and the CSAR may perhaps be needed to be considered. The exercise of determining the numbers on the one hand, targeting them according to a poverty line which in turn might depend on parameters laid down on the other, do not appear to take into account the citizens whose Right the Bill seeks to fulfill. It appears that the reliance on exercises undertaken to assess the numbers under the poverty line can hardly take note of the conditions under which wages/ access to food is obtained. If the 'needy' below the poverty line have to be identified, it is necessary to understand the condition under which wages are secure at the present time.

Poverty of those at work

The poverty of those at work is determined even by the terms of access to food and nutrition reflected in terms such as minimum wage, basic needs, off season wage casual labour, daily wagger etc. They ordain a degree of insecurity in access to food and a condition of permanence in

such insecurity. India's contract labour system and the tasks laid down in the manuals of the public works department in the British period dictate even at the present time the minimal access to food that 'coolies' may receive in return for the fulfillment of the task. 'Food for Work' programmes in all States have their versions of the 'coolie' register.

Poverty in this context is the anxiety that accompanies the daily wage quest. The poverty of those at work is determined by the terms of access to food and nutrition reflected in terms such as minimum wage, basic needs off-season, casual labour, daily wager etc. They ordain a degree of insecurity in access to food and a condition of permanence in such insecurity.

Definitions under the Act

In Para 2, Section (c), there is a reference to a "Central Pool" means the stocks of foodgrains procured by Central and State Governments through minimum support price operations, domestic procurement and imports, and maintained for allocations under TPDS, OWS, calamity relief, etc and kept as reserves.

It would be necessary to point out that the framers of the Act take into account the exercises undertaken during 2002-03, there was transfer of huge surplus stock of foodgrains to the State Governments. The evaluation of the Scheme did not entirely provide reassurance. For instance, one of the States which was one of the highest beneficiaries utilized the stocks against payment made for relief works. In other words, the State Government made a profit out of the grain that had been given free by the Government of India. The grain sold to the persons on relief works was at the price determined for fair-priced shop, i.e. Rs.8/kg. So it will be useful to evaluate the experience of transfer of the substantive surplus of foodgrains to the State for free.

Poverty - A Redefinition

In this context, 'poverty' can be defined as a continuing negotiation between the poor and the non-poor for the exchange of labour or goods or both for the means of existence. The terms of the negotiation exclude

access to nutrition, taste and choice in foods, health, education and habitation. The National Food Security Bill appears to have been drafted within the terms of governance of the colonial period where the citizens had no Right.

It is in this context that we turn to the long-drawn enquiry by the NHRC into the conditions under which not only is there food insecurity, starvation may prevail. It must be emphasized that the NHRC had itself initiated the enquiry into starvation and found that the facts that were being urged by the petitioner through the Supreme Court, were true. What was put on trial was the 'belief' that development programmes can put an end to starvation. The package with the substantial budget was tested in the Kalahandi region and it was subjected to scrutiny and monitoring by a Special Rapporteur appointed by the Court.

What the Commission as well as the State Government, were constrained to acknowledge was that the development programmes could not put an end to starvation. What emerged as critical was that terms of cognizance of starvation needed to be evolved. What also had to be emphasized was the legal cognizance of starvation as 'injury' needed to be admitted. What the Commission also founded necessary was that such starvation could hardly be looked upon as conditions of individuals. Starvation had a special connotation. It could affect the group or a 'basti' or even a 'tehsil.' It is for this reason that NHRC acknowledged in its proceedings of January 13, 2003, not only the citizens Rights to Food it also acknowledged Group Rights.

The Supreme Court, tragically enough, after an enquiry into starvation deaths in Orissa which began in 1987, a writ petition admitted by the Supreme Court itself, now changed to a new tact and asked when there is a grain surplus in the country why should men starve? Further, it also threatened the Chief Secretaries of States with dire consequences should a starvation death occur, a condition that made it well-nigh impossible for the acknowledgement of starvation death.

Any exercise seeking food security for the people of India must take into account the acknowledgement of the prevalence of starvation in various

parts of the country during the last 30 years and acknowledge that Indian Citizens have yet to be enabled to claim food as a Right.

The 'Draft National Food Security Bill, 2010' begins with reference to rules of "allocation norms, the identification of families below the poverty line, the targeted public distribution system that has to be ushered in, which explicitly annuls the principle of Right to Food."

Chapter 2, Para 2 refers to the guidelines for the identification of BPL families under the targeted public distribution system on the basis of poverty estimates notified by the Planning Commission of India and the relevant census data of the RGI taken from the purpose from time to time (emphasis added).

It is clear in the Food Security Bill that "the list of BPL families shall be placed in the public domain and shall be displayed prominently in such manner as may be prescribed under the rules. The number of identified BPL families shall be reviewed through periodical surveys and the BPL lists shall also be subject to updating, in such manner as may be prescribed in the Rules."

The notion that the 'beneficiary' might feel humiliated that his name is included amongst a large number which might include beggars, lunatics and other, does not appear to have occurred to the framers of the Bill.

What appears to be conspicuous is that this is hardly a Right that has been claimed by the free citizens of India. It is an act of charity even as it was during colonial times. The 'Draft National Food Security Bill, 2010' needs redrafting, if it is to be consonance with the Constitution of India and the directive principles enunciated in the Constitution. It is an imperative that the crown-subject relationship which is implicit with the terms of governance in the present time, needs to be expunged. A Food Security Bill in consonance with the Rights of free citizens can thereafter be drafted.

The questions that emerge from the study of the norms of governance as well as social transactions that impose limits on access to food and to livelihood might contribute towards a new paradigm for the study of poverty.

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Achieving the Millennium Development Goals (MDG) of Eradicating Poverty and Hunger: Thinking Beyond PDS System in India

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Introduction

Poverty is a universal phenomenon and persistence of poverty is regarded as violation of Human Rights. Poverty is not only a denial of specific rights such as right to life and right to decent standard of living etc. but also a denial of Human Rights as a whole. India is under obligation to consider right to food as human right both under the Constitution and also within the framework of International Law. However it is easy to conceptualize the right to food within International Law rather than in the Constitution. The United Nations Millennium Declaration¹ emphasizes that "We will spare no effort to free our fellowmen, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected" and it was resolved to create a national and global levels conducive to development and to the elimination of poverty.

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1 General Assembly Resolution 55/2 of 8th Sep 2000.

The UN World Summit for Social Development, 2006 described poverty as follows:

"Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihood; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by a lack of participation in decision-making and in civil, social and cultural life."

To achieve the goal of eradicating extreme poverty and hunger, India must reduce by 2015 the proportion of people below poverty line from nearly 37.5% in 1990 to about 18.75%. As on 1999-2000, the poverty headcount ratio is 26.1% with poverty gap ratio of 5.2%, share of poorest quintile in national consumption is 10.1 percent for rural sector and 7.9% for urban sector and prevalence of underweight children is of the order of 47%². Recalling the development goals and commitment emanating from the Millennium Declaration and the outcome of the World Summit in 2005, the General Assembly³ assessed the progress made since 2005 and reaffirmed the commitment to work together for the promotion of the economic and social advancement of all peoples.⁴ The summit was concluded with the adoption of Global Action Plan to achieve the eight anti-poverty goals by 2015 and announced the new commitment for women's and children's health and other initiatives against hunger and disease. The Human Development Index (HDI) measures the average progress of a country in human development. The Human Poverty Index (HPI-1), focuses on the proportion of people below certain threshold levels in each of the dimensions of the human development index - living a long and healthy life, having access to education, and a decent standard of living. By looking beyond income deprivation, the HPI-1 represents a multi-dimensional alternative to the \$1.25 a day (PPP US\$) poverty measure.⁵

2 See, The First Millennium Development Goals-India Country Report for the Year 2005 released on 13th February.

3 Official Meeting of General Assembly held at the UN Head Quarters in New York from 20-22 Sep 2010.

4 See the Report of the UN General Assembly, Sixty -Fifth Session, (Agenda Items 13 and 115) Follow up to the outcome of the Millennium Summit, New York from 20-22, Sep.2010.

5 http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_IND.html

The HPI-1 value of 28.0% for India, ranks 88th among 135 countries for which the index has been calculated. The HPI-1 measures severe deprivation in health by the proportion of people who are not expected to survive to age 40 and India ranks 105 with the value of 15.5%. Education is measured by the adult illiteracy rate calculating ages from 15 and above and India ranks at 120 with the value of 34.0%. And a decent standard of living is measured by the unweighted average of people not using an improved water source and India ranks 76 with value of 11%. And India ranks at 137 with 46 % when the proportion of children under age 5 who are underweight for their age is taken in to account.

As of 2010, more than 37% of India's population of 1.35 billion still lives below the poverty line. More than 22% of the entire rural population and 15% of the urban population of India exists in this difficult physical and financial predicament. India rank 64th position out of 85 nations on the Global Hunger Index. India has the world's highest number of children with stunted growth. At least 50% of children in India are underweight and 75% of women are anemic⁶ However, in India, Jean Dreze observed that there is evidence of a steady decline of extreme hunger and severe under nutrition in recent years. Hunger and under nutrition are intrinsic deprivations and severely diminish the quality of life. Further, under nutrition is associated with reduced learning abilities, greater exposure to disease, and other impairments of individual and social opportunities⁷.

India is following a target program approach for eradicating poverty and hunger by concentrating on various sections and communities with the help of various actors including the civil society. This paper argues that India need to follow a comprehensive multi pronged approach (both targeted and right based approach) to achieve the Millennium Development Goals to eradicate poverty and hunger by the year 2015. It is also viewed that there is a gradual shift from targeted approach to right based approach in the recent years. The experience reveal that a combined effort from all the three wings of the Government, the legislature, executive and judiciary is essential to achieve the Millennium Development Goals of eradicating poverty and hunger. The attempt is to show that the International declarations for eradicating poverty has made a positive impact up on Indian society.

6 Mohammad Anees. "Give them the Right to food," *The Hindustan Times*, Oct 17, 2010.

7 Dreze Jean, *Democracy and Right to Food*, (2004), EPW, April 24, at p 1732.

Right to Food: International Initiatives

The initiatives under the Human Rights regime, concentrating on the Right to food came into limelight in 1980's⁸. The UDHR(Art 25)⁹, the ICESCR(Art 11)¹⁰ recognizes the right to adequate food and fundamental right to be free from hunger as Human Rights. The World Summit for Social Development (WSSD), held in 1995 in Copenhagen called for an integrated approach to poverty eradication, sustainable livelihood and social integration. The World Food Summit, 1996 held at Rome also recognized the right to food as part of the state obligation and proposed an action plan towards its implementation. In the year 2000, the commission on Human Rights appointed a special Rapporteur on the Right to Food. In response to the severity of the food crisis and the need for prompt action, the World Bank Group set up the Global Food Crisis Response Program (GFRP) in May 2008 to provide immediate relief to countries hard hit by food high prices. The Bank response has been articulated in coordination with the United Nations' High-Level Task Force on food security. Through its response, the Bank is supporting the implementation of the joint Comprehensive Framework for Action (CFA). The World Bank Group's Board of Executive Directors has approved extending the life of the Bank's Global Food Crisis Response Program (GFRP) to June 2011.

At the international arena, the civil and political rights were given more emphasis rather than social and economic and political rights due to lack of political will among nations. So right to food as a basic/fundamental right was not adequately addressed in the international sphere till recently. But the existence of fact that without the legal guarantee right to food(right to survival) no other right can exist in reality, compelled the international community to recognise 'right to food' as a second generation right. Right to food has always been observed as a long professed neglected right.

8 See. *The UN Report on the Right to Adequate Food as a Human Right, 1983*.

9 Article 25 of the Universal Declaration of Human Rights, 1984 provides for everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social services.

10 Similarly Article 11 of the International Covenant on Economic, Social and Cultural Rights stipulates: The states parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. And that recognizing the fundamental right to everyone to be free from hunger, they shall take the measure, for securing these rights.

Constitutional Obligations and Right to Food

The right to life guaranteed under Article 21 of the Constitution was initially interpreted in a very narrow, literal and restrictive sense to mean a protection against arbitrary deprivation of life. The Supreme Court in the post-Emergency era interpreted right to life and liberty to include every aspect that made life meaningful and worthwhile. Commenting on *Francis Coralie v. The Union Territory of Delhi*, Justice P.N. Bhagavathi said; "we think that the right to life includes the right to live with human dignity and all that goes along with it namely, the bare necessities of life such as adequate nutrition, clothing and the like. Further the objective of the directive principle is to achieve a welfare state (among others, ensuring basic-needs) by supplementing fundamental rights. Article 37 of the Constitution states that the 'state shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to adequate means of livelihood'. Further Article 47 of Indian Constitution calls upon the state to raise the level of nutrition and the standard of living and to improve public health. It shows that these Articles of Part-IV of India Constitution obligates that the right to food is important for right to live with dignity.

In *Olga Telis v Bombay Municipal Corporation*¹¹ the court opined that the right to livelihood is evidently implicit in the right to life. It was opined that "Deprive a person of his right to livelihood and you shall have to deprive him of his life". In this case the court extended right to life to include right to livelihood. However nothing categorical was pronounced about the right to housing of the poor. In the Constitution Bench in *Delhi Transport Corporation v DTC Mazdoor Congress*, the Supreme Court held that the right to life also includes the right to work and observed that "Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental."

In *Samatha v. State of Andhra Pradesh*¹² while recognizing a right to socio-economic empowerment, the Supreme Court held:

Right to life enshrined in Article 21 means something more than survival of animal existence. The right to live with dignity with minimum

¹¹ (1985) 3 SCC 545.

¹² AIR 1997 SC 3297.

of sustenance and shelter and those rights and aspects of life which would go to make a man's life complete and worth living would be part of right to life.

However in *Kapila Hingorani v State of Bihar*¹³ the matter of denial of right to food and means of livelihood was brought to the attention of the Supreme Court by way of PIL based on a newspaper report stating that several starvation deaths and suicide cases were reported due to the nonpayment of salary resulting in the starvation of employees of Bihar State Agro-Industries Development Corporation. The Supreme Court, holding the public sector liable in terms of Art 21, directed the State of Bihar to deposit Rs. 50 crore with the High Court for the disbursement of salaries of the employees.

The Directive Principles of State Policy under the Constitution of India aims to promote social and economic democracy. Art 47 of the Constitution reads that the state shall regard the raising of the level of the nutrition and standard of living of its people and improvement of public health as among its primary duties. The National Human Rights Commission in its report dated Jan 17, 2003 expressed the view that right to food should be recognized as a guaranteed fundamental right with the following observations:

"The reading of Art 21 together with Art 39(a) and 47, places the issue of food security in the correct perspective, thus making right to food a guaranteed fundamental right which is enforceable by virtue of the constitutional remedy under Art 32 of the Constitution. It follows, therefore that there is a fundamental right to be free from Hunger."¹⁴

Thus, on the basis of above observations it can be said that the Supreme Court has indirectly conceded a right to food as an aspect of right to life. But such an implied recognition may not be sufficient to protect the interest of vulnerable groups of people suffering from hunger and malnutrition. Ironically, these judicial interpretations cannot be treated as assurance for right to food unless and until it has been guaranteed through constitutional provisions in the form of fundamental rights that can be enforced against the state. In fact, the primary responsibility should be with the state as the state alone is entrusted with the economic and institutional resources to

¹³ (2003) 6 SCC 1.

¹⁴ NHRC Order dated Jan 17, 2003, Case No.37/3/97.

protect its subjects from hunger with a view to safeguard their constitutional rights.

Social Security Legislation to Support the Poor

The term 'social security' does not find any place in the Constitution. However the principle of social justice and the right to social security are enshrined in Art 38, 39, 41, and 47 of the Constitution of India¹⁵. Though there were several social security legislation in India there are only a few laws governing with right to food. The Essential Commodities Act, 1955 was enacted with an objective, "to ensure equitable distribution and availability at fair prices of essential commodities". Essential commodities are those that the Union Government may notify and declare to be essential for the purpose of the Act. The reduction, supply and distribution of any essential commodity can be regulated or prohibited by the Union Government by an order under this Act. A supporting legislation is Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act 1980. Another important legislation is the Food Corporation of India Act, 1964 (FCI). The object of the Act is to ensure minimum prices to primary producers, and to protect consumers from the vagaries of speculative trade. The primary function of the Food Corporation of India is to undertake the purchase, storage, movement, transport, distribution and sale of food grains and other foodstuff. Besides this, there were other labour legislations¹⁶ enacted primarily with the objective to ensure social security to people.

Recently, the government enacted the unorganized workers, Social Security Act, 2008. The act is enacted with an objective of providing social security to unorganized workers. The unorganized workers social security rules 2009 have also been framed. It provides for constitution of a National Social Security Board and State Social Security Boards, which will recommend

15 For a detailed analysis, See Michael Von Hauff, 'Human Rights, Informalisation of Employment and social security system in India: An Assessment', in *Human Rights and Basic Needs, Theory and Practice*, Mahendra. P. Singh et al, Universal Law Publishing Company, New Delhi, 2008, pg. 245-274.

16 The supporting legislations of this nature were to provide social security to the workmen including the Employees State Insurance (ESI) Act, 1948, Employees Provident Funds Act, 1952 and the Gratuity Act 1971. The ESI Act enlarge the scope of the Workmen's compensation Act and Maternal benefit Act, 1961 by providing medical care, cash benefits and partial/total disability pension in case of industrial injury.

social security schemes for these workers. The National Social Security Board has made some recommendations regarding extension of social security schemes to certain additional segments of unorganized workers.

Explaining the problem of policy making in our democracy, Jean Dreze concluded that "Indian democracy is trapped in a vicious circle of exclusion and elitism. Because the underprivileged sections of the population are excluded from active participation in democratic politics, their aspirations and priorities are not reflected in public policy. The elitist orientation of public policy, in turn, perpetuates the deprivations (poverty, hunger, illiteracy, discrimination, etc) that disempower people and prevent them from participating in democratic politics" He called for the revival of economic and social democracy in the country through the Directive Principles of State Policy.

Poverty Alleviation Programmes (PAP)

Since independence India, was following a planned development process. The Fifth Five Year Plan (1974-79) was concentrated on eradication of poverty¹⁷. Several approaches¹⁸ and programmes were adopted and developed for the eradication of poverty both at the rural and urban centers in India.

1. Public Distribution System (PDS)

Amartya Sen has observed "...starvation depends 'not merely' on food supply but also on its 'distribution'..." The public distribution system, popularly known as PDS is the most important pro-poor welfare measure initiated at the administrative level. The PDS is under the purview of the Union Government, which provides subsidized food grain, kerosene, cloth etc., to the targeted beneficiaries in which the state governments are required to implement it through their food and civil supplies departments. The FCI provides the administrative framework for procurement and distribution of food through the PDS. The distribution is done through the PDS and the beneficiaries or every citizen was entitled to get a fixed

17 Marina R.Pinto, "India's Poverty Drive against Poverty", *Federal Frame*, 150-165 at p 150.

18 These programmes can be broadly divided into three major categories. 1) programmes to equip the poor through subsidized credits 2) special programmes for targeted groups 3) employment generation programme.

amount of food and other items, provided they/their family had a ration card. The PDS operates through mostly privately owned fair price shops (FPS) and consumer co-operative fair price shops. For the purposes of the identification and targeted distribution, the families are categorized into three (1) families above poverty line (APL) (2) families below poverty line (BPL) and (3) a special category representing the poorest of the poor, known as Antyodaya. The Antyodaya families are given food at highly subsidized prices through fair price shops, while the BPL (ordinary) families are given food items at higher rates, although subsidized and the APL families are not entitled to subsidized food. Thus the PDS is being implemented by the central government in coordination with the state government¹⁹. However there were serious lapses during the implementation.

2. Other Schemes and Programmes²⁰

Pradhan Manthri Gram Sadak Yojana (PMGSY) is a centrally sponsored scheme launched in the year 2000 with the objective to provide connectivity to unconnected habitations having population of more than 500 persons through roads in rural areas by the end of 2007. In the case of Hill States and Desert and Scheduled/Tribal Areas, the objective was to connect habitations with the population 250 persons and above. At the end of 2007 about 142750 KM long road works have been completed with the expenditure of Rs 27382.24 crore. Further Bharat Nirman provides to connect habitations with the population of more than 1000 in plain areas and population of 500 or more in hilly and tribal areas to be completed by 2009. In addition to this, the Drought -Prone Area Programme (DPAP) was launched in 1973-74 to be applied in selected areas to reestablish the ecological. Several committees²¹ were constituted by the Government to look into the problems of poverty. The Committee gave the following recommendations regarding Poverty Line.

19 In 1957 as many as 18,000 fair price shops were part of the PDS.

20 The other mega projects introduced to secure food for poor are: Integrated Child Development Scheme- addresses nutritional needs of children below the age of six years that requires more than 7,000 crore, MidDay Meal Scheme- provides for mid day meals to children in order to keep them in schools, National Social Assistance Programme- provides for Pension for old age, widows, and disabled people. 5,000 crore required, Public Distribution System subsidized food through ration shops at lower rates, over 55,000 crore required and National Rural Employment Guarantee Scheme 100 days of work to the poor, over 40,000 crore required.

21 The major Committees were: 1) S.D Tendulkar Committee 2) N.C Saxena Committee 3) Arjun Sengupta Committee.

They are:- 1) The poverty estimates to continue to be based on private household consumer expenditure of Indian households collected by the National Sample Survey Organization(NSSO).

Poverty Eradication: Problems of Implementation

There were serious lapses at the level of implementation of various schemes designed by the Central Government. The Supreme Court was initially reluctant to interfere with the functioning of the executive. In *Kishen Patanayak v State of Orissa*²² on a petition against the starvation death in Orissa, the Supreme Court disposed of the petition based on the assurance given by the state government that they will take appropriate action to prevent starvation deaths and the state did not carry out its legal obligation. However in *PUCL v Union of India*²³ a petition was filed in the Supreme Court in view of the starvation death arising from drought situations in the state of Orissa, Madhya Pradesh and Rajasthan. The petitioner also alleged the breakdown of PDS system and other schemes in these states. The Supreme Court issued several directions to the state governments. It was directed to identify the families below poverty line (BPL) and issuance of ration cards to them. It was further directed to distribute 25 kg of grain per family per month, supply of grain to the poorest of the poor at Rs 2 per kg under the Anthyodaya Anna Yojana(AAY), supply of cooked mid-day meal in all schools with a minimum content of 300 calories and 8 to 12 grams of protein on each day of school for a minimum of 200 days etc. The Supreme Court had to issue several orders for the implementation of the directions given in 2001²⁴. In this case the court was trying to fix obligation up on the state government for the violation of human rights and at the same time recognized that hunger was a violation of human rights. In *PUCL v Union of India*²⁵ in a petition under Art 32 regarding the implementation of the Sampoorna Grameen Rozgar Yojana, Mid day Meal Scheme and Anthyodaya Anna Yojana, the Supreme Court directed the state governments to complete the process of identification of persons falling under the scheme and directed them to

22 AIR 1980 SC 677.

23 (2001)7 SCALE 484.

24 See *PUCLv Union of India*,(2003)9 SCALE 835, (2004)5 SCALE 484.

25 (2005) 10 SCC 481.

issue red card by the end of 2004 in order to commence the supply. Those who have already been issued a red card shall be supplied the benefits as per their entitlement. It was also directed that 'red card holders should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken and with that in mind central government is directed to file affidavit within 8 weeks placing on record guidelines in this regard'.

In *UP Roller Flour Mills Association v Government of India*²⁶ considering the alarming increase in diversion of food stock meant to be supplied under the PDS on a petition under Act 32, it is stated that highly subsidised wheat stock supplied by the Central Govt. for distribution through PDS under several schemes have been diverted to Roller Flour Mills of different states these stocks have been procured by the central Govt. from FCI. Giving special reference to the state of West-Bengal and North-Eastern states, it is alleged that instead of supplying them to the needy consumers and intended beneficiaries they are being diverted to the open market. The Assam Government was of the opinion that the beneficiaries were not interested in taking the whole grain and so continued milling at the request of the Govt. of India. However, the petitioner argued that there is a possibility of manipulation and lack of accountability. However considering the intention behind the programme the Supreme Court the gave following directions:

- (1) The Associations/Gram Panchayats/Local Bodies concerned shall assess the need of wheat for the intended beneficiaries. The need shall be indicated to the State Government.
- (2) They shall indicate the quantum of wheat, which is to be converted into *atta* to be given to the beneficiaries on the basis of their option. In other words, those beneficiaries who want to take wheat shall indicate to them and those who want to take *atta* shall similarly indicate their option. On the basis of such intimation as noted above, Associations/Gram Panchayats/Local Bodies shall convey the requirement to the State Government.
- (3) The quantity indicated for conversion into *atta* shall be given to the mills, who after converting wheat into *atta*, shall supply it to FPS so

26 (2007)13 SCC 461.

that the intended beneficiaries can get them from FPS at rates fixed by the Governments concerned.

- (4) The State Governments shall ensure that the actual requirement is being projected by the Associations/Gram Panchayats/Local Bodies and similarly whether after milling the supply is made to FPS to be supplied finally to the consumer.
- (5) The State Governments shall quarterly submit the necessary data for the information of the Central Government who shall also ensure that all possible steps are being taken by the State Governments to fulfill the intended objectives.

Right to Food vis-a-vis Right to work

The right to food is inextricably linked with other rights such as right to work, alleviation of poverty, livelihood and several other sets of rights. According to Jean Dreze, the natural extension of implementation of right to food will be to demand the right to work and the right to work is the best protection against hunger and poverty. The second component of the Sixth Plan Strategy for poverty alleviation was by providing additional employment opportunities to the rural poor and the landless. Subsequently programme like National Rural Employment Program (NREP) and Rural Landless Employment Guarantee Program (RLEGP) was introduced during the Eighth Plan. The NREP was started in 1980 and RLEGP was launched in 1983. The objective of the NREP was to generate employment opportunities create durable community asset and to improve the quality of life. The NREP suffered a setback because of bureaucratic bungling in the field of planning and implementation at the state level. Keeping the employment opportunities in view, the Central Government introduced the National Rural Employment Guarantee Act, 2005²⁷ and later the name was changed to the Mahatma Gandhi National Rural Employment Guarantee Act which aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a financial year to a rural household whose adult members volunteer to do unskilled manual work. The National Rural Employment Guarantee Scheme (NREGS) was launched in 2006 in 200 most backward districts in the first phase

²⁷ NO. 42 OF 2005 [5 September, 2005.]

and was expanded to 300 districts during 2007-2008. At present, 619 districts are covered under the scheme and more than 4.51 crore households were provided employment under the scheme. However, the National Rural Employment Act is a positive step to reduce the poverty ratio from the existing figure.

Thinking beyond PDS: Recent Reforms in Poverty Eradication Programms

(1) The Food Security Bill, 2010

The Food Security Bill²⁸ was introduced by the Central Government²⁹ to provide a statutory framework to entitle families living below the poverty line to certain minimum quantities of food grains per month through targeted public distribution system. Chapter 2 of the Bill provides Assured Food Security to BPL families through Targeted Public Distribution System (TPDS). Sec 3 provides that every identified BPL family within the number fixed under the Act will be entitled to receive every month from the Government 25 kg food grains such as rice and/or wheat at subsidized issue prices fixed from time to time in a manner as may be provided under the Rules. Chapter 3 vests the responsibilities with the Central Government³⁰, the State

28 <http://www.indiatalkies.com/2010/10/food-security-bill-brought-sonia-gandhi.html>. Food security bill to be brought soon: Sonia Gandhi, Nagpur, Oct 15, addressing the 'Sadbhavana Rally' in Wardha District at Maharashtra declared to introduce Food Security Bill as a welfare policy measure of the United Progressive Alliance (UPA) government.

29 The Empowered Group of Ministers (EGoM) cleared the draft Food Security Bill. *India Today*, 18 March 2010. See <http://indiatoday.intoday.in/site/Story/88925/India/EGoM+clears+draft+food+security+Bill.html>

30 Sec 6. of the Responsibilities of the Central Government is (1) The Central Government shall be responsible for i) procurement of wheat and rice for the central pool through its own central agencies and State Governments and their agencies, ii) allocation of wheat and rice to the States; iii) transportation of wheat and rice as per allocation to the State level designated depots; (2) allocation of wheat and rice in accordance with the accepted number of families for each State. The Central Government, in an event of inability to deliver the required allocation for any State, shall compensate by funds to the State equivalent to the shortfall. A dedicated Central Food Security Fund will be set up for this purpose.

Government³¹ as well as the local authorities for implementing and monitoring the whole scheme under the Act. Chapter IV provides for a Central Food Security Fund for payment of compensation to State Governments in the event of failure of the Central Government to make available the required quantity of food grains to State Governments in respect of BPL families as provided in section 3 of the Act. It also mandates for the establishment of State Food Security Allowance Fund for expeditious payment of food security allowance to identified BPL families. Chapter V provides penalties for non-compliance as provided under Sec 7 of the Essential Commodities Act 1955. Currently about 4 crore BPL card holders are provided 35 kg of wheat at a subsidized rate of Rs 4.15 per kg and rice at Rs.5.65 a kg. Further 2 crore poor families are being provided with food grains under 'Antodaya Anna Yojana Scheme' at a rate of Rs.2 per kg or rice at Rs 3 per kg respectively.

31 Sec 7. Responsibilities of State Governments:

(1) The State Governments shall be responsible for implementation and monitoring of schemes of various Ministries of Government of India as well as their own schemes for ensuring food security to the citizens in their respective States. (2) Under the TPDS, it shall be the responsibility of the State Governments to identify, without inclusion or exclusion errors, eligible BPL families as per the number fixed by the Central Government as provided under clause 4 (2), review such status of each identified family at periodic intervals as may be prescribed in the Rules, take delivery of foodgrains from the Government of India, organize intra-state allocations up to the level of fair price shops, deliver the allocated foodgrains through their dedicated agencies at the door-step to each fair price shop and ensure actual delivery/supply of the foodgrains to identified BPL families. (3) For efficient operations of TPDS, each State Government shall create and maintain required scientific storage facilities at the district and block/taluka level, which should be able to accommodate allocations of foodgrains under TPDS of such quantities and for such periods as may be prescribed under the Rules. (4) For the purposes of section 7 (3), State Governments shall suitably strengthen capacities of their Food & Civil Supplies Corporations/other designated agencies. (5) The State Governments shall establish institutionalized licensing arrangements for fair price shops as per provisions made in the Rules framed hereinafter. (6) Each authorized fair price shop licensee shall be free to sell or trade in additional essential commodities/articles other than the TPDS commodities. (7) To make TPDS operations transparent and efficient, State Governments shall introduce use of information and communication technologies in all TPDS transactions. (8) The concerned State Government shall also be responsible for making payment of food security allowance to identified BPL families in case of failure to supply in any month the entitled quantities of food grains to such families. Each State/Union Territory shall set up a dedicated Food Security Allowance Fund for the purpose.

(2) Reforms in PDS: Food Coupons System

The Economic Survey 2009-10³² has recommended reforms in the food management system in the country by replacing the Targeted Public Distribution System (TPDS) by food coupons for the poor by 2012. Under the new system, instead of grains being supplied at subsidized rates to the PDS shops, the ration card holders will get a food coupon worth the subsidy amount which can be redeemed from the PDS shops. The idea is that, as stated by Kaushik Babu, the chief economic advisor to the Govt. of India, 'in the current system, the subsidy is with the shopkeeper whereas in the coupon system, it will be directly with the poor'³³. Another important factor is that 'these shop keepers 1) sell off this subsidized grain on the open market, and ii) then adulterate the remaining grain and sell the diluted product to the BPL and APL households, who have no choice in the matter'³⁴. The Economic Survey 2009-10 suggested an alternate system thus:-

"The two planks of this system are i) the subsidy should be handed over directly to the households, instead of giving it to the PDS store keeper in the form of cheap grain and then have him deliver it to the needy households and ii) the household should be given the freedom to choose which store it buys the food from. Suppose the BPL household gets a net subsidy of Rs. for wheat each month. Instead of giving this by charging the household less than the market price for wheat, it should be given coupons worth Rs, which can be used at PDS stores in lieu of money when buying wheat. Under this new system no grain will be given at a subsidized rate to the PDS stores and they will be free to charge the market price when selling grain irrespective of who the customer is. The only change is that the PDS are now allowed to accept these coupons which they can then take to the local bank and change to money. Further, households that get these coupons should be allowed to go to any PDS store of their choice"³⁵.

The basic idea of the food coupon system is that it will weed out corruption and will help the better management of PDS system. The BPL

32 <http://indiabudget.nic.in/es2009-10/chapt2010/chapter02.pdf>.

33 <http://indiabudget.nic.in/es2009-10/chapt2010/chapter02.pdf>.

34 A Thought for today, *The Times of India*, New Delhi dated 28/10/2010. at p 20.

35 *The Economic Survey 2009-10* at p 25.

cardholders can go to any shop with their coupons to get the grain and have a better choice in selecting the shops.

(3) UID (Unique Identification) System

The UID system³⁶ is a unique Identification programme launched by the Union Government to create database of all residents in the country. The authorities are called the Unique Identification Authority of India (UIDAI). This can also be used to identify the poor. Much of the benefits of this programme will accrue to the PDS system. PDS system, with the integration of UDI programme will lead to better identification of target groups, both individuals and families. The UDI will also help the government to get a more authentic data of the beneficiaries from multiple sources. The UIDAI envisages full enrollment of residents, with a focus on enrolling India's poor and underprivileged communities. The authority plans to partner within its first phase, the NREGA, RSDY & PDS will help to bring large number of poor and underprovided into the UID system. The better identification might further lead to the expansion of the net of beneficiaries and will create a supporting environment for better delivery mechanism.

(4) Linking PDS with GPS

In addition to all the above efforts to reform the PDS system, the Government is committed to use the Satellite -driven Global Positioning System (GPS) to ensure Food security for the people. This will help the Centre and State Government to manage food grains buffer stock, procurement, and distribution through GPS data centres. This will enable the Central and the State Governments to monitor the transfer of food grains throughout the country.

Conclusion

India has been persistently trying to tackle the problem of poverty alleviation for several decades and has been able to eradicate it to a certain extent. The Millennium Development Goals (MDG) has provided a time-frame at the international level to achieve the target for eradicating poverty.

³⁶ *The Economic Survey 2009-10* at p 26.

This has improved the pace of eradication of poverty at the national level. India is progressing towards achieving the MDG within the targeted time-frame to fulfill its international commitment. The efforts are made at the legislative level and at the Policy level. The Central Government continues to play a dominant role in the formation and implementation of policies. The role of the State Governments in promotion and implementation of various centralized schemes cannot be undermined. The local self governments are also instrumental in implementing various schemes. However the experience reveals that the poverty eradication programmes actually failed at the implementation level. There are several occasions where the Supreme Court itself had to intervene for the proper implementation of various poverty eradication programmes. There is a serious need for reforming the PDS system in the country to prevent PDS leakages, scale and quality of issue, transparency and accountability and there is a serious need to implement the Grievance Redressal Mechanism. However the Food Security Bill, 2010 drafted by the Central Government, Satellite -driven Global Positioning System (GPS) to ensure Food security and the UID program and several innovative schemes adopted by the government give a strong indication that India is committed to implement the MDG and will achieve its target by 2015. There is also a gradual shift in the approaches in poverty eradication programme from the targeted approach to the rights based approach. This shift or change is due to the overall change in the approach towards poverty eradication at the International arena.

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The Dream of a Healthy World Miles to go...

*Alok Mukhopadhyay**

In recent history, health has not received as much importance as it has received over the last few years. The initiatives like Macroeconomics Commission on Health, Global Fund, World Bank's and private foundations' considerable investments in the health sector in developing countries and the Millennium Development Goals are some of the sincere expressions of concern to improve the health status. "Favourable wind is of consequence if the direction of the boat is right."

Perhaps the most satisfying definition of health in the public domain is in the Declaration of Alma-Ata, *"Health is a state of complete physical, mental and social wellbeing, and not merely the absence of disease or infirmity, is a fundamental human right and that the attainment of this highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector."*

Unfortunately, the progress reports of the health sector do not encompass this broad definition. We, therefore, can only look at the achievements and shortcomings from a narrower perspective. We have obviously made significant progress in the communicable diseases front, particularly tuberculosis, water-borne diseases and even in HIV/AIDS. One is convinced that continued energetic investment and intervention will make a significant dent in this arena in the years to come. However, a bane of the current programmes in tackling these diseases has been a vertical selective approach. Quite often on the overall health impact front they land up in a situation of *"operation is successful but the patient is dead."*

* Chief Executive, Voluntary Health Association of India

We watch with considerable consternation, the emerging problem of a huge burden of lifestyle related diseases all over the world. According to WHO, by 2030, non-communicable conditions are expected to cause more than three-fourths of all deaths; almost one-third of all deaths will result from cancer, heart diseases and traffic accidents. In developing countries, including India, the number one cause of preventable deaths is tobacco. More than eight million tobacco related deaths have been predicted in 2030 with 80% of them in the developing countries. In addition, lifestyle ailments such as diabetes, cardiac problems and cancer are expected to cost India income losses of about \$236 billion by 2015.

Our response to this huge problem has been half-hearted and casual. This is particularly in the context of aggressive promotion of the products of health destroying industries like tobacco, junk food, etc. A small unit containing a few people in WHO Headquarters and even fewer in the Regional Offices trying to spearhead the battle on this front is a reflection of the situation. In chronic disease prevention, effective tools are proven, they are inexpensive and have other intrinsic values, but we are yet to adopt them with the seriousness and urgency that they deserve. In the tobacco and substance abuse arena, the recent initiatives of WHO, the Bloomberg Foundation and others have been impressive, but we have a long way to go in seeing the impact of these measures.

It is heartening that now in all health forums, the social determinants dimension of health is well recognized. Millennium Development Goals are a very important move in that direction, but unfortunately "we have only 7 and a half years left and one billion people still live in extreme poverty." More than one billion people lack access to safe drinking water. About 2 billion people have no regular access to reliable energy services. 750 million adults cannot read. And one of the most striking statistics is the odds that "a woman will die from complications in pregnancy in sub-Saharan Africa are 1 in 16 over the course of her lifetime, compared to 1 in 3800 in the developed world." Until we have made significant progress on these critical areas, health will remain a distant dream for millions of people all over the world.

There can be little doubt that the greatest economic force now sweeping through the health care system worldwide is that of the market. Health is a vital human good and Medicare plays a key role in promoting

it. Totally commercializing it even for the sake of choice and efficiency runs a potent risk of submitting it to the market-forces. The integrity of medicine itself is at stake. Thankfully for the poor in most developing countries the State still remains a principal provider in the Health Sector.

The framework to ensure quality health care at a reasonable cost from the private sector remains an unfulfilled agenda. Although it has become an existing reality in other service sectors like telecommunication, airlines, etc. The mechanism of the involvement of the private sector in the prevention and promotion of health is yet to be tried out. The significant contribution of the non-profit sector in complex and in difficult settings is impressive, but remains limited. Creating the enabling atmosphere and adequate resources for the upscaling of this sector should be an important agenda for the future.

We need to look at the financial outlay that is required to meet the unfinished agenda of "Health for All". Most developing countries, including well performing economies like India and China, invest far less than is required to meet their health goals. Although the situation has started changing recently with the realization that growing economies can not be sustained without an appropriate public health infrastructure, as was borne out by the outbreak of SARS and Avian Flu. It is estimated that the cost of providing basic health care to the world's unreached population will be a \$25 billion. This is about what Western Europe spends on cosmetics and fraction of \$400 billion that the world spends on armaments annually.

Global warming and environmental degradation are huge impediments to a healthy world. The only home that we have, the Earth, is being treated not like a mother, but an object available for eternal exploitation. This is eloquently captured in Al Gore's documentary, 'An Inconvenient Truth'. If we do not wake up quickly and act urgently, perhaps it will become too late. Gandhi said, "*The world has enough for everybody's need, but not for everybody's greed.*"

It is obvious that we have all the necessary tools of reaching the goal 'Health for All', but we need to fully utilize the existing favourable climate, secure clear direction and put all our energies to make it happen. We need

a health care far removed from the current biomedical model and closer to a socio-political and spiritual model. We need to develop a health system where people are not passive recipients but active participants. The germs theory need to be replaced by a model where the human being is regarded as central and helped to regenerate a sense of wellbeing and fitness in his or her life situation. Interestingly, most of the traditional systems approach health from this holistic perspective.

Millennium Development Goals of Achieving Universal Primary Education-The Road Travelled by India So Far

*Prof. J.S. Rajput**

I will give you a talisman. Whenever you are in doubt or when the self becomes too much with you, apply the following test:

Recall the face of the poorest and the weakest man whom you may have seen and ask yourself if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions?

Then you will find your doubts and your self that emerged out of the courage of conviction and firm belief in the melting away.

Mahatma Gandhi

Context

India's freedom struggle shall be remembered for several of its unique features that emerged out of the courage of sustained conviction and firm belief in the inevitable victory to all those who truthfully adhere to the path of nonviolence. Gandhi was humiliated and thrown out of the railway compartment in Pietermaritzburg in South Africa. His personality has already begun to blossom and instead of taking this incident as humiliation of himself, as an individual, he extended its canvas to all the colored people who were being discriminated and insulted on a daily basis for centuries

* Former Director, NCERT

together around the world. From a person he transformed himself into a personality and every human being became near and dear to him, he was concerned about all, particularly the deficient, deprived, weak, neglected and socially, culturally and economically ostracized. Comprehensively, all those who were exploited and ignored became his priority concern. He resolved to strive to make India free from the alien rule. He persistently nurtured the dream that in free India, everyone shall get his/her human rights irrespective of any diversity of any conceivable variety. His India would be fully literate where no one would be deprived of equity, equality and social justice.

How shall these lofty goals be achieved in free India? He knew it was tough and real tough. One may like to recall a letter Gandhiji wrote on 24 January, 1922:

"We should remember that immediately on the attainment of freedom our people are not going to secure happiness. As we become independent, all the defects of the system of elections, injustice, the tyranny of the richer classes as also the burden of running administration are bound to come upon us. People would begin to feel that during those days, there was more justice, there was better administration, there was peace, and there was honesty to a great extent among the administrators compared to the days after independence. The only benefit of independence, however, would be that we would get rid of slavery and the blot of insult resulting therefrom.

"But there is hope if education spreads throughout the country. From that people would develop from their childhood qualities of pure conduct, God fearing, love. Swaraj would give us happiness only when we attain success in the task. Otherwise India would become the abode for grave injustice and tyranny of the rulers."

Post-independence policies in India were influenced by several factors of socio-cultural and economic traditions, practices and international considerations. Consequently, India did not follow many of the ideas that Gandhi had given for 'Sarvodaya' - Upliftment of all - none excluded. However these ideas are now remembered appreciated and recalled practically all around the globe. Mahatma Gandhi's public life was a unique pursuit to give every human being what is his/her natural gift; human dignity and human rights. Independence was only one of the necessary ingredients to march on the path of progress. The other one was universal education.

One could recall Gandhi a hundred times if one recalls the deliberations of the Jamtien Conference of March 1990 and the Dakar Declaration of 2000. Dakar gave the Millennium Development Goals (MDG). The Jamtien Declaration expressed the global resolve to universalize education is the duty of every individual and every nation, including those which had already universalized education. Everyone can be happy only when no one is unhappy. That is the essence of universalization of human rights.

Goals and Targets

Intertwined Articulation

It was in April 26-28 at Dakar, Senegal where the World Education Forum was organized. It issued the 'Dakar Framework for Action'; 'Education for All, Meeting our Collective Commitments'. All 191 United Nations Member states pledged to meet by the year 2015 the following goals. It would be worthwhile to have a glance at the identified goals.

(1) Eradicate extreme poverty and hunger

Halve, between 1990 and 2015 the proportion of people whose income is less than \$1 a day; reduce by half the proportion of people who suffer from hunger

(2) Achieve universal primary education

Ensure that all boys and girls complete a full course of primary schooling

(3) Promote gender equality and empower women

Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015

(4) Reduce child mortality

Reduce by two thirds the mortality rate among children less than five years of age

(5) Improve maternal health

Reduce by three quarters the maternal mortality ratio

(6) Combat HIV/AIDS, malaria and other disease

Halt and begin to reverse the spread of HIV/AIDS;

Halt and begin to reverse the incidence of malaria and other major diseases

(7) Ensure environmental sustainability

Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources; Reduce by half the proportion of people without sustainable access to safe drinking water

Achieve significant improvements in the lives of at least 100 million slum dwellers by 2020

(8) Develop a global partnership for development

- Develop further an open trading and financial support system that is rule based, predictable and non-discriminatory, include a commitment to good governance, development and poverty reduction both nationally and internationally.
- Address the least developed countries' special needs. This includes tariff and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries, cancellation of official bilateral debt, and more generous official development assistance for countries committed to poverty reduction
- address the special needs of landlocked and small island developing states.
- deal comprehensively with developing countries, debt problems through national and international measures to make debt sustainable in the long run
- In cooperation with the developing countries develop decent and productive work for youth

- In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.
- In cooperation with private sector make available the benefit of new technologies-especially information and communication technologies

The genesis of the goals identified above and the targets fixed with pragmatism, precision and urgency becomes evident when one takes a comprehensive look on all of the eight MDG's as one complete lot. These centre on the child, mother, nutrition, health care, and all such other inputs that are necessary towards the preparation of children and young persons for a creative and the contributing adult life. Every child has an inherent natural right to healthy pre-natal care, a healthy birth and proper infant health care. To support his/her growth, the country requires a certain level of resources and functional support systems nationally and internationally. Developing and least developed countries are mostly those which were exploited in one or the other in the colonial era. It is now well established that so long as ignorance, illiteracy, exploitation and deprivation remain present in any part of the world, no nation can really remain aloof and secure. The international community had realized it and the Jamtien Declaration arising out of the 'World Conference on Education for All' gave a very concrete realization of this critical need for global mutuality. When a child grows up in any part of the world, he/ she deserves to get good quality education and skill orientation during initial years. As young persons, they need work places to be able to live a decent life on their own and contribute effectively in the national and international efforts to march ahead and achieve the goals of growth and development. Individual development is the key to the social and national development. All the eight MDG's could be seen as centered on the 'Child'. And that is how it should be.

In his Foreword to "The Millennium development Goals Report 2010" of the United Nations, the Secretary-General Ban Ki Moon summarizes these goals very comprehensively:

"The Goals represent human needs and basic rights that every individual around the world should be able to enjoy - freedom from extreme poverty and hunger, quality education, good health and shelter, the right of women to give birth without risking their lives, and a world where

environmental sustainability is a priority, and women and men live in equality."

The Secretary General recalls the commitment of leaders of all the member nations of the United Nations to "forge a wide ranging global partnership for development to achieve these universal objectives.". While he mentions that the 2010 Report shows how much progress has been made, "it is clear that improvements in the lives of poor have been unacceptably slow, and some hard-won gains are being eroded by the climate, food and economic crises." MDG's are a blueprint which, if concretized and given the right shape, could pave the path for every individual everywhere to lead a life of dignity, self-respect and equality. It could illustrate the universal unity of mankind on the one hand and establish the necessity of maintaining the sensitive and sacrosanct mutuality of man and nature and, on the other. Non-achievement or even a delay would be disastrous not only for the weaker countries and sections of population but to everyone, irrespective of the social, economic or geographical location.

Elementary Education in India

The Constitution of India has very specific provisions on universal education. The pre-independence period leadership of India knew it very well that even after independence; the greatest challenges would appear in the shape of removing illiteracy, ignorance, poverty and hunger. At a literacy rate of just around 20%, India's Constitution makers inserted a very bold and courageous provision in the shape of Article 45 under the Directive Principles of State Policy:

"Provision for free and compulsory education for children - The State shall endeavour to provide within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete fourteen years of age."

As is well known, the goals indicated in this very significant provision could not be achieved within the stipulated period. These, in fact, still remain unachieved for a very large number of children in the specified age group. There were serious concerns expressed on various facets of elementary education in terms of access, participation and learner attainments at various stages of policy formulations and implementation during the last six decades. There was a great clamor for including the provisions of free and compulsory education

under the fundamental rights guaranteed under the Constitution. The 86th Constitutional amendment was inserted in 2002 in the following format:

*21 A. The State shall provide free and compulsory Education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

Now, the Right to Education (RTE) Act which was cleared by the Parliament of India in 2009 has been implemented with effect from April 01, 2010. The RTE Act provides the legal framework for universalisation of elementary education as a fundamental right of children in the age group 6-14 years of age. It clarifies that 'Compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen year age group. (Annual report, MHRD 2010, P20). It makes provision for a non-admitted child to be admitted an age appropriate class. Only time will tell how much difference it can make in bringing around ten million children to schools and providing good quality education to them and also to those who are in school but are getting below average quality education. Apparently, the implementation of the Right to Education Act and is great achievement in the sector of elementary education and it fits in very well with the spirit of the Millennium Development Goals and the global concerns articulated from time to time.

In India the term used for compulsory education for all is Universal Elementary Education (UEE). It fits in the MDG 2. As already indicated it has been part of the constitutional directives, educational policies particularly the National Policy on Education 1986 and its revised version of 1992. Now it finds a place amongst the fundamental rights. If one takes a cursory look on the remaining seven MDG's, it would be very clear that practically all are relevant to the most prominent of the Goals: good quality UEE with a strong component of skill orientation and value development and nurturance. So long extreme poverty and hunger continue to inflict misery on billions of people, achieving UEE would remain a distant dream. Same applies to the prevailing gender discrimination practices and traditions. Child mortality and maternal health are critical components to education as well. HIV/AIDS /Malaria and other diseases leave millions of families and children in dire straits of conditions that make survival of children

tough. Innumerable children all over the globe have suffered for centuries when the traditional habitations of the tribals, forest communities and ethnic groups suffered displacement, snatching their traditional sources of livelihood and exploitation in various forms and formats in the name of progress and development, the fruits of which has generally remained confined to a select few. Such disparities have greatly retarded the progress in achieving UEE on the one hand and, on the other, have greatly emphasized the urgency of bringing every child in the fold of UEE at the earliest.

It would be relevant to recall the following from the National Policy on Education NPE-1986 as revised in 1992, which is still being implemented by the nation:

2.4 In sum, education is a unique investment in the present and the future. This cardinal principle is the key to the national policy on education.

4.1 The new policy will lay special emphasis on the removal of disparities and to equalize educational opportunity by attending to the specific needs of those who have been denied equality so far.

4.7 Education will be used as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be a well conceived edge in favour of women. The national system will play a positive, interventionist role in the empowerment of women.

5.5 The thrust in elementary education will emphasize three aspects; (I) universal access and enrolment, (II) universal retention of children up to 14 years of age; and (III) a substantial improvement in the quality of education to enable all children to achieve essential levels of learning.

It is evident from a mere glance on the extracts from the NPE-86/92 that it takes into account all the pre-requisites that are necessary to enable children and young persons, more particularly the girls and women to know their rights and develop attitudes to ensure that no one or any of the systemic or social practice is permitted to usurp these any more. Essentially, the Indian Education Policy and its regular revisions have always articulated the spirit of the Constitution of India that assures equality and social justice to all irrespective of any diversity of caste, creed, religion, region, social practices or gender. On the global level the articulation and delineation of the MDG attempts the same.

Initiatives in Elementary Education

As far as the support systems and the achievements in elementary education are concerned, the MHRD Annual Report- 2010 gives details in terms of figures and achievements which indicate that 99% of the rural population has a primary school within one kilometre. 3,00,895 new schools opened till December 2009. The Gross Enrolment Ratio (GER) increased in 6-14 age group to 114.61 in 2007-08 from 96.3 in 2001-02 at the primary level and to 77.50 in 2007-08 from 60.02 at the upper primary level. In the context of the MDC it should be considered a big achievement. Gender parity ratio has also shown considerable positive change. From 0.83 in 2001-02 it has risen to 0.98 in 2007-08 at the primary level and from 0.77 to 0.92 at the upper primary level. For decades the Indian education system has struggled with the stupendous task of reducing the dropout rates particularly in the initial years in schools. It got reduced by 13.48% to 25.55 in 2007-08 from 39.03% in 2001-02. Dropout rates for girls declined by 15.06 points. The pupil-teacher ratio at the national level was 46.1 for primary and 35.1 for upper primary in 2007-08. Obviously it needs further improvements even in official claims.

As indicated earlier, Indias achievements in terms of increase in the number of children in schools is really commendable, particularly when one examines these in the light of paucity of resources in the initial years after independence and over threefold population increase in the last six decades. Take one simple example; enrolment figures in the year 2000-2001 were 926 lakh in primary classes (class I to V; age group 5 to 11 years) and 342 lakh in upper primary (Classes VI-VIII; 11 to 14 years of age). The corresponding figures after five years in 2005-06 rose to 1308 lakh and 511 lakh respectively. The Scheme of Sarva Shiksha Abhiyan (SSA) was launched in 2001 and it aimed to bring all children in the age group 6-11 years to schools by 2007 and those up to 14 years of age by 2010. The goals also included universal retention and bridging of gender gap by 2010. It also aimed at providing elementary education of satisfactory quality and emphasis on education for life. What more and better a society in a developing country with a large population below the poverty line and suffering diverse deprivation and deficiencies could ask for? "The programme covers the entire country with special focus on educational needs of girls, SC's/ST's and other children in difficult circumstances". To ensure the achievements of these objectives, several schemes were launched to look

after the needs of children in remote areas and in small habitations. Alternative intervention strategies were designed for specific categories of very deprived children, e.g. child labour, street children, migrating children, working children, children living in difficult circumstances and older children in the 9+ age group, especially adolescent girls. Two of the schemes; Education Guarantee Schema (EGS) and Alternative Innovative Education (AIE) have received a special place in these efforts. The SSA has a special focus on girls and children of weaker sections. Several incentive schemes have been operationalized to bring the weakest and most deprived on par with others. SSA includes computer education in villages and tribal areas also. The National Mission for the SSA is headed by the Prime Minister and the Minister for the Human Resources Development chairs its executive committee. The Mission monitors the progress of the different components of the SSA has specially targeted low female literacy pockets and particular efforts are made to bring out-of-school girls to schools, particularly girls from disadvantaged sections of the society. Towards this two special programmes namely National Programme for Girls Education and Kasturba Gandhi Balika Vidyalaya, both of which are subsumed under the flagship programme SSA (MHRD Annual Report 2010, p.22).

The most significant intervention in the initiatives to give every child the right to basic education was in terms of the Mid-day Meal Scheme which has been revised on several occasions and has been in place for around two decades. The coverage was expanded and extended gradually and today around 120 million children are supposed to be benefiting under this scheme. The criticality of such an intervention can be judged from one single fact: over 44% children in this country suffer from malnutrition! The scheme has been revised on a couple of occasions. At present the objectives include improving the nutritional status of the children in all government, local bodies and government aided schools and also the EGS and AIE centres. It is expected to encourage children from poor families and disadvantaged groups to attend school more regularly. It also intends to provide nutritional support to children of primary stage in drought affected areas in summer vacations. Towards this at present the provisions have been made to provide cooked mid-day meal with a nutritional content of 450 calories. It also lays down the norms for protein content and micronutrients. There are elaborate monitoring mechanisms but the implementation of the scheme continues to suffer from several deficiencies and inadequacies.

MHRD sponsors evaluation of Mid-day Meal schemes in various states by 'independent agencies'. Several of these reports and their findings are cited in the ministry's annual report of 2010. Some of the observations culled out from different state reports indicate the ground level situation in terms of achievement:

- It has made positive intervention in universalisation of primary education by increasing enrolment and attendance. This increase was particularly marked in case of girls and children from SC/ST community. It has also contributed to the reduction in teacher absenteeism and narrowing of social distances (Birbhumi, West Bengal).
- It has positively impacted enrolment and attendance of children. It has contributed to social amity as children sit together and share a common meal irrespective of caste and class (Rajasthan).
- There was a 15% increase in the enrolment. It was more marked; 43% in case of the SC/ST children (Madhya Pradesh).

It would be seen that this scheme has made a very tangible impact in efforts to give children their right to education. When around 12 crore children are to be covered on daily basis, the management and administration could invariably be under severe stress. It is generally acknowledged that the implementation of the scheme has shown visible signs of improvements over the years.

The Gaps

The Indian education system represents a vast and diverse canvas that extends not only in huge geographical dimensions but integrates diversities of all possible varieties. Providing UEE to all children is a tough task in India, as it is in the developing countries taken together. The UN Millenniums Development Goals Report of 2010 indicates that enrolment in primary education has continued to rise, reaching 89% in the developing world. This further indicates that "But the pace of progress is insufficient to ensure that by 2015, all the girls and boys complete a full course of primary education". While numerical figures may indicate encouraging progress, people's expectations from education have now changed. They are no more satisfied if their wards complete eight or ten years in schools and get a certificate to that effect. They want 'good quality' education with

sufficient orientation in skills". There is one more very significant development that impacts quality of education in schools run by local bodies, governments and aided private schools. Over the years the rise of public schools that charge high fees has created two distinct groups: those who can afford to go to a private high-fee charging school try their best to get in there. The upper strata of the society are gradually moving away from schools that offer free elementary education resulting in considerable decline of the credibility of these schools. It is a well acknowledged 'fact' that private schools function better, have a superior work culture and hence provide better quality education. In government system, teacher absenteeism, indiscipline, vacant positions and tendency to avoid rural tribal and remote areas is predominant. It results in poor functional efficacy and hence, lower levels of learner achievements. The ultimate sufferers are the children and thereby, the reduction in the overall cognitive and vocational capital of the country. As the government systems generally focus on expansion, which too is a must, the schemes and action points to improve the quality often get ignored at the implementation stage though it may find a prominent mention in the policies and programmes. Unfortunately, certain external factors are also responsible for the dilution of work culture in schools. In the long run even if the figures of increment and dropout rates are encouraging, the long-term impact of education becomes suspect. It poses a big challenge in achieving the MDG-II in its real spirit. That is also the spirit of the RTE-2010. And finally it is spirit contained in the Constitution of India that ensures equality to all in their human rights.

There are serious ambiguities on the estimates of out-of-school children. Different surveys give varying percentages which can be understood in such a vast system and large numbers. The NER (net enrolment ratio) was estimated at 94.5% by the 7th All India Educational survey. Another independent survey conducted in 2009 estimated 4.28% children in the 6-14 year age group being out of the school; 3.92% boys and 4.71% girls (ACSR--2010). There are regional variations as well as those amongst different groups like Muslims, SC/ST and others. 20% of Indian children are grouped as from migrant families and claims about their enrolment and retention may be suspect. Overall, 3.72% children are enrolled in single teacher-schools. The National PTR figure is 1:32 but it far exceeds this in large number of schools. The most important issue is - number of children who complete eight years of education! In a survey giving data for

2007-08) shows a survival rate till class V of 72% only. (ACSR2010). The rate of transition of children from primary to upper primary education in 2006-07 was 81.13%, meaning thereby that 19 out of every 100 children are lost to schools between classes V to VI. The ratio of primary to upper primary schools stood at 4.41 in 2007-08. Non-availability of upper primary schools and the facility of smooth transition also makes a negative impact, particularly for girls (ibid., p.36).

When it comes to teachers and their professional preparedness, things appear to require far more additional inputs than are available at present. The quality of teacher preparation at pre-service stage has deteriorated and the arrangements to provide good quality in-service education are inadequate. The management systems have yet to transform their approach and style. Table 1 below gives an idea of the challenges that lie before the planners and implementers in achieving the MDG-II.

Table 1
Quality of Schooling in India: Some Insights

Schools without head teacher (but with enrollment of over 100 children)	45.1%
% Single teacher primary schools	13.25
% schools with PTR >= 60	12.96
% schools without female teachers	26.4%
% schools without drinking water	22%
% schools without common toilet	33%
% schools without girls toilet	46%
% schools without computer	86%
% schools without a ramp	60%
% schools not electrified	64%
% schools not receiving teaching learning material grant	27%
Number of districts where PTR is over 40 (all schools)	146
% Professionally trained teachers	71%
% teachers who received in-service training during previous year	35%

DISE Flash Statistics 2008-09

(Millennium Development Goals in India - A Civil Society Report; 2010; Page 37)

It has often been pointed out (Rajput-2009) that the Indian system of education needs to focus on aspects that are normally considered as matters of details by the national level planners. Every school is unique in its requirements and motivational ingredients that could achieve the desired levels of efficiency and efficacy. For example, non-availability of a toilet or drinking water or both may become the deciding factor in the life of hundreds of children. Official documents do signify the criticality of these factors but in actual practice, these often get ignored. Over the last twenty years, considerable attention has been paid to basic facilities like classrooms, play material, teaching-learning materials etc. but the situation has not been uniformly attended to.

Conclusion

Target setting, both nationally and internationally, helps in many ways, particularly in sharing of experiences and through collaborations of varied kinds. Over the last two decades, India has accepted international support and assistance in its elementary education programmes and also in several other of the MDG's as were articulated in Dakar. The fact also remains that several internal factors can be handled and taken care of only when a thorough understanding of the local context is arrived at and each one of these is specifically responded to. Diversities abound in India on practically every aspect of life and education of children is no exception. It is far more complex at the elementary stage. One of the greatest achievements of the post-independence period is that there are no groups or social set up which oppose education of boys or girls. Education is only one part, though extremely necessary, of the initiatives to give human rights and dignity to every individual as promised in the Constitution of India. The challenges are many. India is home to 42% of underweight children under the age of five years in the world (*Times of India*, October 12, 2010). The Global Hunger Index-2010 for China, Pakistan and Sudan are respectively 6.0; 19.1; and 20.9 respectively. For India; it is 24.7 (*ibid*). It is only one example that establishes the necessity of a comprehensive approach. In a broader perspective it can be stated that the world possesses enough resources and sufficient knowledge to ensure that even the weakest of the weak gets what nature has apportioned for him/her but which has not reached them because someone in between has grabbed more than his/her due share. Education, and more importantly, the universal elementary education opens

up the gates to knowledge, understanding and appreciation of the heritage of a common planet that loves all its children equally and fully. Huge efforts on the part of everyone are needed to realize the dream contained in the Dakar Declaration.

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Recent Issues Concerning Violence Against Women

*Brinda Karat**

Recent developments point to a disturbing trend of a backlash against women's movements against violence, particularly domestic violence. The seventies and particularly the decade of the eighties had seen a sweep of protests and agitations led by women's organizations against crimes against women leading to several new laws and legal reforms to protect women. The process of legal initiatives slowed down thereafter. It was only in the last few years that some of the lost momentum was regained through the enactment of the Protection against Domestic Violence Act and the reform in the Hindu Succession Act giving equal rights to women. However, in the same period there has been aggressive campaigning by opponents of the reforms and an offensive to reverse the earlier achievements. While the reasons underlying these developments require serious analysis, it is certainly linked to economic and political developments. The politics generated by neo-liberal economic policies that downplay and disarm democratic mobilizations based on universal rights and values of equality has certainly something to do with it. The domination of narrow caste base politics and caste based theories of social justice sans gender justice have also weakened progressive mobilizations of women for social change thus weakening the pressure on Governments to enact gender just laws. Communal right wing mobilizations have constructed theories of tradition and culture which seek to imprison women in subordinate roles. These are not separate categories, but each plays on and strengthens the other leading to an environment where socially reactionary forces can thrive. Certainly there is a red alert on for struggles in defence of women's dignity and her rights.

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An illustration of the current environment is the concerted offensive against a provision in the IPC, Sec. 498A, which recognizes mental cruelty along with physical cruelty against a wife by her husband or relatives as a crime. It was introduced in the IPC in 1983 as a result of women's struggles against domestic violence. The clause itself is badly phrased and certainly requires to be amended with a view to strengthening it. However, even the small redress it offers to women is now under attack. Thus, there is an apprehension that if one were to demand an amendment in Parliament to improve the clause, it may just open up a space for those who want it scrapped altogether! The clause has become the target of husbands who believe it is their birthright to maltreat their wives. They have been aided by the retrograde understanding reflected in some judgements of the courts including the Supreme Court. In a recent such judgement the learned judges held that kicking a daughter-in-law, denying her food, threatening her with divorce, abusing her verbally did not amount to cruelty under Sec. 498A of the IPC. If this utterly insensitive and outrageous interpretation of cruelty becomes legal precedent, which it will, unless challenged by the Central Government, an important provision of law, won after sustained struggles of women's organizations and groups will become more or less defunct. In response to a request that the Government should urgently move in the matter, the Union Law Minister did assure some action, but no review petition has as yet been filed.

Many parliamentarians also subscribe to the theory that Sec 498A should be reconsidered. The Standing Committee of Home Affairs then headed by Sushma Swaraj of the BJP had recommended that Sec. 498A should be made bailable and compoundable, which means that even after a case is registered two parties can reach a settlement without going through court procedures, as it becomes a case between the two parties not involving the State. This amendment would reverse the efforts of women's struggles to gain legal recognition of domestic violence as a social crime. The compoundable provision would abet the usual pressure brought against the woman to withdraw the case. In cases of domestic violence it would amount to dilution of the provisions to protect women. But better sense prevailed and this recommendation was not accepted by the Government. However, that such a recommendation should be made at all, even as Government statistics show a rise in crimes, including domestic violence against women, is unfortunate. It also indicates that there is no consensus

even about minimum legal protections required to uphold a woman's right to live a life free from violence and abuse within her home.

It may be true that some women do misuse Sec. 498A, but is there any law which is not open to misuse, and does misuse of a law validate a demand to scrap it? The son of the Chairman of the National Commission for Scheduled Castes has been charged of misusing the Prevention of Atrocities against Scheduled Castes Act to file false cases against individuals and then extort money from them to withdraw the case. Does that mean that the Act itself should be scrapped? There have been cases where political parties have used women to file false charges of rape against their political opponents. But does that mean that anti-rape laws should be scrapped? Obviously not. If there are specific cases of misuse of an Act, the courts do take action. Social organizations working for the rights of women or other oppressed sections of society rarely support fraudulent cases as they are aware that such cases defame the very cause of justice that they are fighting for. Yet the voices against laws which protect women against domestic violence like 498A are getting louder or at least more reported, because these challenge the very core of so-called tradition and culture, the patriarchal family and impermissible masculine behaviour.

Some commentators have argued, that without a social consensus, laws remain on paper and therefore struggles of women for legal reform are misplaced and misdirected. They believe that social change is required before such laws are enacted. Such an argument actually feeds into and strengthens those who would like to go back to the good old days when dowry burnings were swept aside as stove bursts and when the context for the suicide of a newly married woman was not investigated even though she was driven to suicide by acts of domestic violence against her. Of-course there is a link between social consciousness, consensus and the legal frameworks. There is no conflict between progressive laws and efforts to raise social consciousness, change human behaviour and create a social environment friendly to women's independence. More often than not, a progressive legal framework itself acts as an accelerator for the development of social consciousness and consensus.

If some judges and parliamentarians continue to hold on to views which should have little place in a democratic society there has to be immediate protest and outrage expressed otherwise those hoping for a

reversal of achievements in the legal framework concerning women's rights will certainly get the upper hand. Unfortunately the absence or dispersal of such responses, and the contrasting proactive interventions from what can be, for convenience, called 'the other side' is leading to a situation where sane voices for equality get drowned out. This is why Supreme Court judgements like that referred to above can constitute a backlash.

Sec 498A and Sec 304B were included in the IPC precisely because violence within the domestic sphere which sphere, which was hitherto invisible, was visibilised by women struggles. Today there are other crimes which are not being recognized.

The recently concluded session of the Rajya Sabha was instructive in revealing the gap between the perception of Government and the reality as far as violence against women and the framework of legal rights is concerned. One of the major issues was the spate of honour crimes particularly in Haryana and the Government response to them. In the month of July, in the course of just a week there were as many as five such murders quite well reported by the media.

It is common sense that one has to recognize a problem to be able to address it. Yet the Government and other authorities are in a state of denial as far as this particular crime is concerned. In response to a question tabled in the Rajya Sabha about the number of honour killings and crimes in the country, the Government replied that there was no separate classification of crimes under this category and that such killings were registered as murders. It was further stated that "it is extremely difficult to identify or classify an honour killing as such in any community since the reason for such killings often remain a closely guarded private family affair." Thus you don't collect statistics because you do not have a special law and you do not have a special law because you cannot collect the statistics to show that it is required!

In 2002, the UN appointed Special Rapportuer's report on violence against women in the world, included India among the countries where honour killings occurred, There was a strong protest from the Government of the day, that since there was no data to prove this, the reference to India must be removed. It was also stated obliquely at that time that India should not be equated with Islamic countries where such crimes are known to occur. Under pressure, even though they knew the truth lay elsewhere, the

report writers had no other choice but to erase references to India. But However, the erasing of a sentence in a report, does not erase the reality of the crime. But However, it does reveal the utter insensitivity and callousness of successive Governments in their refusal to recognize the very specific nature of so-called honour crimes.

The main factor in such crime in India is a combination of the caste system and patriarchal cultures. Its targets are young people who have made own choices about their partners. Prevailing patriarchal notions of women as "repositories" of the community's honour are linked to control of her sexuality. In many parts of the country if an upper caste girl marries a lower caste boy it is considered a crime against the community and it is not only legitimate that she be punished but it is the duty of all to protect the community's honour by doing so. The crime goes beyond the immediate savagery and brutality associated with the public lynching of young couples, to an outright assault on the very nature of a democratic society where the freedom of choice is guaranteed to all adult citizens by the constitution and the law.

Self declared guardians of the caste/community operating through all male caste panchayats (sometimes called Khaps) pronounce verdicts in such cases depending on the "extent" of the crime committed and how much the honour of the community has been violated. The crime of marrying into a lower caste for a woman is certain death. But other crimes even include marriage into a neighbouring village which is considered taboo by some caste panchayats. Marriage into one's own gotra though permitted by law, is considered a crime by some and so on. The punishments range from public humiliation, externment from the village, to death. In one terrible case, the head of the caste panchayat declared a reward of 50,000 rupees for the killing of a young man who had defied the panchayat and married a woman of a neighbouring village. A few days later the young man was killed. But the caste leader who had pronounced his death sentence was not arrested.

It is because this crime is "a closely guarded family affair" when the family extends to the caste panchayat, whether through choice or coercion, that you require a law that will take into account the different dimensions of this crime where there are no complainants, no witnesses and often no corpses. In India the numbers of so-called honour crimes are increasing as

young men and women with increased opportunity to meet each other in co-ed schools or colleges, cross caste barriers in self determined relationships. There is an urgent need for a law to protect their choices from the mindless and savage violence inflicted on them in the name of honour.

But finally when a discussion was held in the Rajya Sabha earlier this year the Government refused to accept a near unanimous demand cutting across party lines for a special law against honour crimes and for a ban on the issuing of such dictates by the caste panchayats. Pakistan has such a law adopted in December 2004 during General Mussarraf's time in the teeth of much opposition from fundamentalist forces. Recently women's organizations in that country reviewing the law found it extremely inadequate and are pressing for further amendments. But in India the Home Minister with the mistaken notion that he has a monopoly of understanding over the issue, opposed such a law outright. According to him, murder laws in India can suffice to deal with the crime. This is so utterly wrong and displays an ignorance of ground realities. Besides there are other crimes connected with honour which will not be covered under the clause Sec 302 connected with murder. But apart from ignorance and insensitivity, there is also of course the issue of vote bank politics. Elections in Haryana where recent crimes of this nature have been committed are to be held soon. The Chief Minister is on record to say that those who want action against Khap panchayats do not understand Indian culture. His son, the twice elected MP from Rohtak and reportedly a close aide of Rahul Gandhi is also on record saying that such cases have to be dealt with very sensitively as they involve social sentiments. Thus, social sentiments become the reason to protect those responsible for the killing of young men and women.

Yet the system is not shamed. For this brand of politicians it is business as usual. For the learned judges of the Courts who are so alert about daily developments that they take suo moto notice if workers go on strike to ban such strikes, these killings do not constitute enough reason for intervention.

The All India Democratic Women's Association under the courageous leadership of its President in Haryana Jagmati Sangwan has continued to mobilize people against such crimes. She has received ugly threats and warnings to stop the protests. Women's organizations did recently organize a big convention in Rohtak in solidarity with the survivors of honour crimes.

These are timely and appropriate steps which need to be carried forward if the present hostile environment against women's right to independent choices in personal relationships is to be challenged. There must be a concerted movement to demand a specific law against so-called honour related crimes.

A defensive posture in the face of gender and caste based prejudice, discrimination and sanction to violence whether it emanates from the caste panchayat or from the benches of the Supreme Court will just not do. Social consensus should not become the by-word for a regression to socially and legally sanctioned injustice against women.

Child Sexual abuse

Yet another crucial issue which requires more attention is that of social mobilization against the increasing cases child sexual abuse.

At a recent conference on the rights of children, voices from across the country were heard focusing on the need for the abolition of child labour. Today there are over 140 lakh children out of schools, a large number of them working in different sectors. There is in fact a gross underestimation of the numbers of working children. The right to education Bill introduced in parliament is an attempt to make education for all children both free and compulsory and is welcome, provided of course that the funds are made available by the Central Government to implement it.

An equally important right for children is the right to security. Parents of children who have to travel long distances to go to the nearest school are fearful of the security of their child, particularly if the child is a girl. In such conditions in many rural areas parents often decide to take the girl out of school for fear of their security.

In India the number of sexual assault cases against minor girls is increasing. According to recent figures given to Parliament, the number of registered cases of child rape has increased from 4026 cases in 2005 to 5045 in 2007, an increase of 25 per cent in just two years. At the same time, studies on sex trade point to a most disturbing trend of an increasing demand for pre-puberty children and adolescent girls. This type of sexual crime against children is growing in our country. The most stringent social,

political and legal measures are required against this ghastly and heinous crime.

But what are we doing about it? India is among the few countries in the world that does not have a separate law or protocol to deal with cases of child rape. The conviction rate in these cases is shockingly low. Between 2005-2007, the rate of conviction in relation to those arrested in child rape cases was just 21 per cent. The cases sometimes go on for years and the child victim grows up with the persistent threat of court appearances hanging on her head.

In 1996 the Law Commission had made certain recommendations in child sexual abuse cases. It has taken twelve long years for the Government to approve and legislate on some of those recommendations. The delay is itself a reflection of the scant concern of Governments to the plight of child rape victims. It is only recently that the Rajya Sabha approved amendments to the Criminal Procedure Code to ensure that the cases of child rape were completed as far as possible within a time period of three months. However, since this timeframe is not mandatory, given the huge backlog of cases in most courts, this welcome amendment may just remain on paper. The amendment also protects the child by allowing her statement to be recorded at home in the presence of her guardians instead of at the police thanas. This will certainly save the child from the trauma of often crude and insensitive procedures of investigation in the police thanas. But these are only piece meal amendments.

One of the most glaring weaknesses in the law pertains to the definition of child sexual abuse. The present laws do not take into account the gruesome nature and the different dimensions of the abuse, and limits it only to rape, which is itself narrowly defined. This negates the seriousness of the crime letting the criminal get off scott free or with a lighter sentence. In a large number of cases of child sexual abuse the perpetrators are individuals known to the child including in some cases male members of the family. This makes handling of the case extremely difficult and complex as many factors start to operate to conceal the crime. At the same time the terribly traumatized child also requires sustained support and counseling. There are very few such centers. To overcome this gap, women's organizations had drafted a comprehensive legislation against child sexual abuse and measures required to help the child. It is typical of this

Government's lopsided priorities that the recommendations have been lying in cold storage. Compare this indifference to the unseemly haste with which the Government pushed through 8 legislations in just 17 minutes on the last day of the Parliament session.

While social opinion and mobilization are often the key to push forward progressive legislations, in the case of child sexual abuse, such opinion is sadly lacking. On the contrary prevailing dominant cultures, victimize the victim of rape as being "impure." Thus, the victim is victimised over and over again. Often she herself is blamed for the crime against her.

In the case of children, the mother is often blamed for not looking after the child well enough. In cases of working class families where the mother is going out to work, society points a finger at the working woman for going out to work and leaving the child alone. The terrible Nichari case is one such example. Most of the mothers of the children were domestic workers who had no choice but to leave the children at home since there was not a single creche in the area. I heard people who were outraged by the crime blaming the women for being "irresponsible" about their children. The women were the sole breadwinners but that mattered little to those pointing fingers. Does the State have no responsibility in providing child care centers?

The absence of a collective will to deal with the crime of child abuse is a tragedy visited on our children. Apart from the need of a comprehensive law, surely the issue should be considered serious and important enough to figure in the agendas of political parties. Instead of campaigning against the crime, most leaders and elected representatives prefer to remain silent presumably on the understanding that such issues should not be discussed in public as it is against "our culture." Thus culture becomes an abettor in the conspiracy of silence that surrounds child sexual abuse.

This narrowing of political agendas is a serious weakness in our present political scenario. Political parties and representatives must increase their sensitivity on such issues and make public commitments to fight this growing scourge in our society. They must take the lead to break the conspiracy of silence.

Gender Equality and the Millennium Development Goals

*Dr. Ranjana Kumari**

Gender Quality and Women Empowerment

We are living at a time where gender equality is acknowledged as an imperative to achieve development goals nationally and internationally. Governments have ratified several international conventions and agreements pertaining to protection of women's rights and gender equality. Most crucial agreements of this time are Millennium Development Goals (MDGs), eight goals and 18 time-bound targets for developing countries agreed to be achieved by 2015. These are addressing the most pressing areas of development: poverty, hunger, inadequate education, gender inequality, child and maternal mortality, HIV/ AIDS and environmental degradation. Goal 3 of MDGs is specifically addressing gender equality and women empowerment. The target is to eliminate gender disparity in primary and secondary education, preferably by 2005, and eliminate gender disparity at all levels of education by 2015 and empower women.

By giving gender equality a special emphasis, the global community has recognized its' crucial role in achievement of other MDG targets.¹ Advancing gender equality through empowerment promotes overall human development, not solely the advancement of women. Gender equality and the empowerment of women are a precondition for overcoming the barriers for development. Hence, gender is a cross cutting theme in all the MDGs. Yet, the progress has been slow in all areas. From education to access in political decision-making, girls and women have been marginalized to the detriment of society.

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¹ UNDP publication; Gender and the Millennium Development Goals. http://www.undp.org/women/mdgs/gender_MDGs.pdf

Eliminating gender differences in access to education and educational attainment are key elements on the path to attaining gender equality and reducing the disempowerment of women. The Millennium Development Goal report 2010 indicates that despite the progress there is still a wide gap in school enrolment in many regions of the developing world and that women continue to be employed in the vulnerable informal sector.²

Regardless of international conventions, national policies and rights, women in India continue their struggles for equal opportunities in different spheres of life. As per Millennium Development Goals, India has achieved significant progress in terms of enrollment in primary and secondary education.³ However, much progress still needs to be made regarding the disparity between urban and rural. In urban areas, about equal proportions of boys and girls attend school at each age; however, in rural areas, gender inequality in attendance is evident in every age group and increases with age.⁴

India's ranking in the primary, secondary and tertiary enrolment rates are 113th, 123rd and 103rd respectively.⁵ Almost twice as many girls as boys are pulled out of school, or never sent to school. For every 100 boys out of school there are 122 girls out of school the world over.⁶ In India this gender gap is much wider; there 426 girls out of school for every 100 boys.⁷ The female literacy rate in some parts of the country is abysmally low, around 20 percent, and the main thrust for improvement is female education.⁸

Additionally, there exists a large gender gap in literacy. India ranks 121st under the educational attainment index of the global Gender Gap Index as the female literacy rate (53%) is two thirds of that of men (76%).⁹ 245 million women in India lack the basic capability to read and write.¹⁰

2 The Millennium Development Goals Report 2010. United Nations.

3 Millennium Development Goals: Country Report, India. http://mospi.nic.in/repr%20-%20pubn/ssd04_2009_final.pdf

4 Millennium Development Goals in India: A Civil Society Report, 2010, http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/MDG_issues/MDG_in_India_2010_-_Dalit_references.pdf

5 The India Gender Gap Review, 2009, page 4: <http://www.weforum.org/pdf/gendergap/IGGR09.pdf>

6 Id.

7 Supra note 5.

8 Supra note 5.

9 Gender Gap Index. 2007. <http://www.weforum.org/pdf/gendergap/report2007.pdf>

10 Id.

Literacy has, however, been increasing over time for both women and men as measured by changes across age groups. In fact, literacy among women is almost twice as high in the 15-19 age groups as in the age-group 45-49 that is 30 years older¹¹. Nonetheless, even in the youngest age group, one in four women and one in ten men are not literate. Although the gender differential in literacy has declined over time, the differential remains high even in the youngest age group: among those 15-19 years of age, the percentage of females who are literate (74%) is 15 percentage points less than the percentage of males who are literate (89%).¹²

II. Employment

In addition to education, employment can also be an important source of empowerment for women. Employment, particularly for cash and in the formal sector, can empower women by providing financial independence, alternative sources of social identity, and exposure to power structures independent of kin networks. Nonetheless, early ages of marriage and child bearing and denied access to education limit women's ability to participate in the labor market, particularly in the formal sectors. By contrast, male gender roles are compatible with employment and men are typically expected to be employed and be breadwinners for their families. Not surprisingly, men dominate most formal labor markets. Equality of women is gradually becoming a reality in India for the educated middle-class owing to changes in the social, economic, political and legal spheres. Asian Development Bank defines India's middle class as those able to spend between \$2 and \$20 a day in 2005 purchasing power parity dollars.¹³ Middle class has higher living standard with regard to rural/urban residence, geographical location, family size, and education as compared to poor population in India.¹⁴

Women of today have more say in domestic spheres due to their rising economic independence. In the 13 years the proportion of households with a woman designated as the household head has risen by more than half, from 9% to 14%.¹⁵ Notwithstanding the emerging new opportunities for

11 *Supra* note 9.

12 *Supra* note 9.

13 Asia Development Bank Report 2010: Key Indicators for Asia and the Pacific 2015

14 Martin Ravallion 2009. The Developing World's Bulging (but vulnerable) "Middle Class"
"The World Bank Development Research Group. Policy Research Working Paper 4816.

15 National Family Health Survey. <http://www.nfhsindia.org>

middle-class women to build their career, the equation is not that simple. The recently published research by Centre for Social Research on Women Managers indicated that the new errands open to women in working life cause them the double burden.¹⁶ Working women are overburdened with long hours of working, commuting and the expectations at home. This implies that changes in economical opportunities do not automatically result in changes at private spheres.

III. Health

In India, the post neonatal mortality rate (the number of deaths to children age 1-11 months per 1,000 live births) for females is 21, compared with only 15 for boys.¹⁷ A similar pattern in gender differentials is also observed in the child mortality rate (the number of deaths to children age 1-4 years per 1,000 children reaching age 1 year). In India as a whole, the child mortality rate for girls, at 23 per 1,000, is 61% higher than for boys, at 14 per 1,000.¹⁸ Inequalities result in high infant and maternal mortality rates, malnutrition and hunger as well as high poverty figures. India tops the world hunger chart. It had around 230 million undernourished people in 2009 and over 46 percent of Indian children are undernourished.¹⁹ The number of hungry people in India amount up to 50% of the world's hungry. The persisting problems in maternal and child health have not caught the attention of the government despite the Eleventh Five Year Plan's (2010-11) commitment to address the same for which only two years are left.²⁰

Women in India are often extremely physically undernourished. It is estimated that pregnancy related deaths account for one-quarter of all fatalities among women aged 15 to 29, with well over two-thirds of them considered preventable.²¹ Two thirds of Indian women go through pregnancy and childbirth without any trained birth attendant (TBA), in

16 Centre for Social Research 2009. Study on Women Managers in India: Challenges and Opportunities

17 Sunita Kishor and Kamla Gupta. 2009. Gender Equality and Women's Empowerment in India. National Family Health Survey (NFHS-3), India, 2005-06.

18 Id.

19 Supra note 17.

20 India Budget 2010-11: Social equity takes back seat. OneWorld South Asia. <http://southasia.oneworld.net/todayshadlines/india-budget-2010-11-social-equity-takes-back-seat>

21 Pamela Philipose, 2010, Will India catch the MDGs bus? <http://southasia.oneworld.net/opinioncomment/will-india-catch-the-mdgs-bus>

unhygienic conditions.²² The maternal mortality rate (MMR) remains among the highest in the world (410 per 100,000 live births). By estimation the country will achieve by 2015, a Maternal Mortality Rate (MMR) of 135 per 100,000 live births as against the required 109 per 100,000 live births.²³ Infant Mortality Rate (IMR) shall be of only 46 per 1000 live births, as against the required 26.7 per 1000 live births.²⁴ Maternal sickness and death may be triggered by pregnancy but are frequently conditioned by medical and socio-economic factors affecting a woman's life before pregnancy. 88% of pregnant Indian women are anaemic and 33% of infants are born with low birth weight.²⁵ Epidemiological data shows that this doesn't need to be the case: reproductive health (RH) services can reduce maternal mortality and morbidity and contribute to women's RH. It is essential that these problems are addressed to make women healthier, and consequently empowering them. State, society and women's organisations should take every step to improve women's reproductive health.

IV. Violence Against Women

Discrimination and unequal treatment in the form of gender violence continues to occur. For example, 15,000 dowry deaths are estimated to occur each year.²⁶ There has been an increase of 5.7% in crimes against women in India in 2008 as compared to 2007.²⁷ According to NFHS-3 freedom of movement is also severely curtailed for a large proportion of women in India for lack of safety in public spaces. In addition to these concerns, violence in the form of female foeticide, honor killings and domestic violence are prevalent issues in India.

The question of missing daughters is of serious concern globally. The elimination of the girl child in India through the rampant practices of female infanticide, female foeticide and sex selective abortion is a crime of enormous proportion. Sex selective abortion is responsible for the death of

22 Id.

23 Supra note 21.

24 Supra note 21.

25 Supra note 21.

26 Partha Banerjee. 'A Matter of Extreme Cruelty: Bride Burning and Dowry Deaths in India'. Injustices Studies. Vol. 1, November 1997

27 National Crime Records Bureau <http://ncrb.nic.in/>

almost 7,000 unborn baby girls in India every day.²⁸ Bias against women and girls is reflected in the demographic ratio, with only 927 females for every 1,000 males.²⁹ As a result, the sex ratio in the 0 to 6 age group in some northern areas is amazingly skewed: 793 females for every 1,000 boys.³⁰ In some areas it is 754, and in parts of Punjab and Haryana, the figure is about 600.³¹ Despite the establishment of the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 and the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act) 2003 illegal sex determination tests occur every year. An of stated fact is that these activities are confined to rural and backward sections of the society, which is grossly untrue as female feticide and infanticide are still practiced in educated, respected and upper class family. Much of the discrimination is to do with cultural beliefs and social norms which need to be changed.

The central notion of honour of killings is that a community's or family's 'honour' is inextricably linked with a woman's behavior, and specifically her chastity. The non-classification of such crimes in Indian records, the patriarchal lens under which they are viewed by those in authority and the fact that the perpetrators are rarely brought to justice ensure that these crimes, which occur more often severely go underreported. In fact, the National Crime Records Bureau does not have a classification for 'honour killings' and does not therefore, have any records or data on the number of such killings in the country.³² The All India Democratic Women's Association (AIDWA) conducted a survey and found that in cases where the girl belonged to an 'upper' caste, it was her family that initiated the violence.³³ AIDWA also estimates that Haryana and Punjab alone account for around 10% of all honour crimes in the country.³⁴ While increasing attention has been focused on such crimes in the recent past by both the media and human rights activists, there are still no records of such crimes.

28 UNICEF, *State of the World's Children*, 2007.

29 Sunita Kishor and Kamla Gupta. 2009. *Gender Equality and Women's Empowerment in India*. National Family Health Survey (NFHS-3), India, 2005-06.

30 *Ibid*.

31 *Supra* note 29.

32 National Crime Records Bureau <http://ncrb.nic.in/>

33 "No Honour in Murder," 2010. <http://mediacoalition.wordpress.com/category/human-rights/>

33 *Id*.

One of the biggest legislative victories against gender violence is the enactment of the Protection of Women from Domestic Violence Act, 2005. However, enforcement of the law has been inefficient in many ways. For example the factors that have been impeding the effective implementation of the Act are: lack of awareness on the new legislation; unavailable civil infrastructure including well trained protection officers, medical and shelter facilities for aggrieved women, free and accessible legal aid, and well trained police and service providers; and insufficient allocation of funds.³⁵ These problems illustrate that just the creation of gender targeted legislation is not enough. Rather, effective implementation is of utmost importance for women to use the laws and policies as effective tools of empowerment and to bridge the existing gender gap. In addition, capacity building for judiciary in gender sensitive law enforcement enhances the effectiveness of the law implementation and access to justice for women.³⁶

V. Political Empowerment

The gender discrimination and inequality is also reflected in the political sphere. The discrimination they face hinders them from unleashing their full potential and excludes them from benefiting equally from development process. Equally, the allocation of seats to women in most political parties falls short of an acceptable standard. Empowerment is considered a key principle of good governance.

The Constitution, via Articles 325 and 326, assures political equality to all men and women.³⁷ Yet the representation of women in Parliament and State assemblies is extremely low in India. Whereas women are nearly 48 % of the population and out of the registered voting population, nearly 42% are women; only 7% contested the recently held 2009 Lower House (Lok Sabha) General Elections.³⁸ Only 59 women were elected to the Lok Sabha, for the first time crossing 10% in 62 years of India's independence.³⁹ There are only three women cabinet ministers out of 33 and only 1 minister of state in the present government.⁴⁰

35 *Staying Alive: Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005)*. Lawyers Collective. <http://www.unifem.org/in/violenceagainstwomen.html>

36 *Ibid.*

37 Constitution of India.

38 *Journey Towards Empowerment. Women's Reservation Bill*. <http://library.fes.de/pdf-files/bueros/indien/07176.pdf>

39 *Ibid.*

40 *Supra* note 38.

It is to be understood that for Indian women participating in politics it is not a simple matter of taking up a new activity. Rather, it is participating in activities and institutions designed and populated primarily by men.⁴¹ In this context, it is critical to enhance the capacity of the women to fight elections reduce or remove the preventive barriers and to introduce new affirmative steps, such as quotas, that can enhance the participation of women in the state and national parliaments. In India, there is a strong need to lobby for passage of 33% Reservation of Seats for Women in Parliament Bill (Women Reservation Bill or WRB). This bill has been pending for more than a decade and its passage is a must to ensure seats for women in state assemblies and National Parliament.⁴² The existing networks, which are working on the issue of gender parity in politics need strengthening to support and help sustain women in politics.

Women will have to transform politics before they can attain any measure of equality with men in the political field. There is however a growing acceptance of the notion that women's entry into politics will be generally beneficial and make the administration more responsive not only to certain agendas that women typically are concerned about but that women will organically change the way we are governed at present. The World Bank emphasizes the importance of political and economic empowerment of women as a contribution to sustainable growth and responsible government.⁴³ Women are still lacking in opportunities to play a part in this however, and this is costing society at large, as we are not benefiting from their contribution.

Gender Dimension in Other MDGs

The MDG goal on gender equality and empowerment alone is not enough. Although it measures important outcomes in education, employment and political participation, it misses critical variables such as violence against women and asset ownership. Four out of the eight goals now have at least one indicator relevant to gender equality, but this is still not sufficient to capture the range of gender-related issues that influence the MDGs, and gender equality has yet to be placed at the front and centre

41 Ethnic Studies Report, Vol. XVIII, No. 2, July 2000 © ICES

42 Journey Towards Empowerment, op. cit.

43 Governance and Gender Equality. <http://siteresources.worldbank.org/INTGENDER/Resources/BriefingNoteGenderGovernance.pdf>

of global efforts to reach these targets. This research provides evidence for the role that these missing dimensions play in influencing the development outcomes measured by the MDGs, and points to the need for more efforts to be targeted at addressing them.

Ownership rights are critical to securing a sustainable livelihood and income, and the lack of these rights is one of the main sources of women's economic insecurity.⁴⁴ When women own and control resources and family assets, they have increased decision-making power in the household and are more likely to allocate resources to support the welfare of all family members, including by reducing poverty and hunger.⁴⁵ Discriminatory attitudes and practices regarding the role of women in society, such as the low status of female-headed households or the limited inheritance rights accorded to women, are significant barriers to their control over resources. Countries where women lack any right to own land have on average 60% more malnourished children.⁴⁶ Where women lack any access to credit the number of malnourished children is 85% above average.⁴⁷

The lack of women's decision-making power in the family and household limits their ability to make choices to safeguard the health, education and welfare of their children. In particular, where women and girls have a very low status in the household, they may have few alternatives or limited negotiation power to avoid social pressure to enter into an early marriage.⁴⁸ Early marriage has a negative impact on MDG of education, since it reduces the likelihood that women will be able to ensure that their children receive an education, as well as decreasing the chance that they will attend or complete school themselves.

Where women's roles and decision-making power in the household are restricted, they have less ability to influence decisions regarding their children's welfare and well-being. This is reflected in the fact that under-5 mortality rates are, on average, higher in countries with family codes that

44 Investing in Women and Girls: The Breakthrough Strategy for Achieving All the MDGs. <http://www.oecd.org/dataoecd/45/55/45704694.pdf>

45 Ibid.

46 Supra note 44.

47 Supra note 44.

48 National Family Health Survey. <http://www.nfhsindia.org>

discriminate against women.⁴⁹ This low status and limited decision-making power also influences women's ability to control their own bodies and protect their reproductive rights. Research finds that the prevalence of HIV in the population aged 15-24 years is on average greater in countries where women have few rights in relation to inheritance or parental authority, and where polygamy is more prevalent.⁵⁰ These findings illustrate that simply measuring gender inequality in health, education, and political participation or employment outcomes fails to capture the underlying dynamics that influence the likelihood of countries achieving the MDGs.

Gender Focused Government Schemes

In India, women are constitutionally equal to men. Empowerment of women has been outlined in national policies and programs like Poorest Areas Civil Society (PACS) Program and the National Policy for the Empowerment of Women (2001).⁵¹ India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.⁵²

National schemes acknowledge the need for uplifting the lives of poor women at the grassroots. Self-help groups (SHG's) have emerged as an important strategy for empowering women and alleviating poverty by ensuring the entitlements of women. SHG's are the central component of national 'Swayamsidha' scheme, which strives towards the holistic empowerment of women through awareness generation, economic empowerment and convergence of various government schemes.⁵³ Goal is to reach about 9 lakh 30 thousand women, with the formation of about 53 thousand SHGs, about 26 thousand 5 hundred Village Societies and 650 Block Societies.⁵⁴ The component of granting micro-loans to SHGs has proved to be successful.

49 Investing in Women and Girls: The Breakthrough Strategy for Achieving All the MDGs. <http://www.oecd.org/dataoecd/45/55/45704694.pdf>

50 Id.

51 Ministry of Women and Child Development. <http://wcd.nic.in/empwomen.htm>

52 Convention on Elimination of All Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

53 Department of Women and Child Development. http://wcdhry.gov.in/SWAYAMSIDHA_F.htm

54 Ministry of Women and Child Development: <http://wcd.nic.in/>

Another national scheme, Mahatma Gandhi National Rural employment guarantee Act 2005 (NREGA) aims at enhancing the livelihood security of people in rural areas by guaranteeing hundred days of wage-employment in a year to a rural household whose adult members volunteer to do unskilled manual work.⁵⁵ For women NREGA entitles the equal treatment with men, also in terms of salary. However, the effects of the scheme on women are debatable: "Some states such as Kerala and Andhra Pradesh have registered high percentage of women workers getting enrolled in the scheme whereas others have registered a very low percentage of women availing benefit under NREGA."⁵⁶ Women are still facing discrimination in many rural areas.

One challenge is the lack of awareness among the rural people about their basic entitlements such as job cards, minimum wage amount, minimum number of employment days and unemployment allowance.⁵⁷ To increase the level of awareness at grassroots and hence the effectiveness of NREGA, Harsh Agarwal suggest that people should be trained to use RTI.⁵⁸ Right to Information Act (RTI) mandates timely response to citizen requests for government information.⁵⁹ The scheme can be used effectively by the rural women to assert their rights to livelihoods and demand accountably from representatives and administrative officials.

To narrow the gender gap in literacy the Government of India launched in 2009 the new literacy programme "Saakshar Bharat", which focuses on making women in India literate by 2012.⁶⁰ Special focus is on women from backward, Dalit and minority communities. Aim is to reach 70 million non-literate adults which include 60 million women. Program targets districts where the literacy level is less than 50 per cent.⁶¹ Other schemes of the government for common man include: the Rural Health Mission, efforts to universalize elementary education by community-ownership of the school system, and the National Mid-day Meal Programme to enhance the enrollment and school attendance of children.⁶²

55 Ministry of Rural Development. <http://nrega.nic.in/netnrega/home.aspx>

56 Harsh Agarwal 2010. National Rural Employment Guarantee Act - A review. Policy Proposals for India. http://www.policyproposalsforindia.com/article.php?article_id=169&languageid=1

57 Id.

58 Supra note 56.

59 Right to Information. <http://righttoinformation.gov.in/>

60 Ministry of Human Resource Development. <http://164.100.12.157:14000/sb/>

61 Id.

62 Ministry of Health and Family Welfare. <http://mohfw.nic.in/NRHM.htm>

Gender budgeting is seen as a crucial affirmative measure to increase the government expenditure on the schemes targeted for women. In India gender sensitivity towards the allocation of resources started with Seventh Year Plan (1997-98). However, statement in Approach Paper to 11th Plan (2010-11) reveals that the government exercise still needs fine tuning. According to the analysis executed by The National Institute of Public Finance & Policy in 2007-08 results, the share of women specific programmes in several departments including education, agriculture, tribal affairs and social justice was only around one percent.⁶³ Further, proper administrative mechanism for execution and monitoring of the expenditure was lacking.⁶⁴ A look at the government spending in fiscal year of 2007-2008 reveals the slim expenditure for social sector as of GDP.⁶⁵

Conclusion

Historically, women have faced unique challenges in all spheres of life, be it social, economical or political. Despite the decisive measures taken internationally and nationally to guarantee the social, political, economical and legal rights to women, the challenges are still very much to date in India and other developing countries.

The focused interventions need to be located to bring about a change not only in the position but also the status of women in a global scale. Women need to be aware of their status, of how they are excluded, of their rights, of the need to be included and its implications. Decisive measures have to be taken by national governments in order to further the process of women empowerment and ensure that the goals for gender equality are met. This is of utmost importance if we are to reach the other development goals facing the developing nations. Unless these measures are taken, the pervasive nature of gender discrimination will result in high social, economic and political losses in developing nations.

With only five years remaining until 2015, it is more critical than ever to identify the bottlenecks, address ongoing obstacles and advance progress on the MDGs. According to research, factors linked to women's lack of

63 National Institute of Public Finance & Policy. <http://www.nipfp.org.in/>

64 Lekha S. Chakraborty 2007: Gender Responsive Budgeting and Fiscal Decentralisation in India: A Preliminary Appraisal(Working paper No. 46)

65 Id.

control over resources, their limited decision-making power and status in the family and household, and the violence that compromises their physical security will continue to be obstacles to achieving the MDG targets over the next five years. In short, discrimination against women matters.

Empowerment of women benefits the whole nation and hence, national development strategies, policies and programs should reflect in their full power the pressing issue of inclusiveness. Commitments to international conventions in gender equality and achievement of Millennium Development Goals (MDG's) of universal education, gender equality and maternal health are the benchmark for development and need to be kept at the forefront of public consciousness.

Climate Change, Sustainability and the Millennium Development Goals in India

*Dr. R.K. Pachauri**

Human rights relate to specific rights of individuals and communities to water, food, shelter and property; rights associated with livelihoods and culture; with migration and resettlement; and with personal security in the event of conflict. The poor of the world are often the ones who are deprived in this regard. The purpose of the Millennium Development Goals (MDGs) is to reduce global poverty and to translate the concept of these human rights into specific actions that could be measured against targets and achievements, the progress of which needs to be monitored by nations. The intent behind elevating the MDGs to the level of global programmes is to ensure that nations protect and provide these basic human rights to their own populations. The challenge of climate change is clearly an issue which has direct relevance to the attainment of the MDGs specifically and the practice of sustainable development in general. The MDGs can be seen to be affected by the impacts of climate change, since these would limit the ability of governments and communities to attain them within the time frames envisaged. The MDGs are basically time bound and measurable goals agreed on for combating poverty, hunger, disease, illiteracy, discrimination against women and environmental degradation, and as explained in the following sections all of these can be affected by the impacts of climate change.

At a very basic level, if we have to explore the nexus between climate change, the primacy of human rights within a legal and policy framework

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and the attainment of the MDGs, then the scientific evidence of climate change has to be fully comprehended particularly in respect of the impacts of climate change. The Intergovernmental Panel on Climate Change (IPCC) has clearly concluded that warming of the climate system is unequivocal as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice and rising global average sea level. Also most of the observed increases in global average temperatures since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations. When we use the term very likely we are referring to the probability of 90% or above. Despite these extremely important findings, the world has continued to increase its emissions of greenhouse gases with an increase of 70% having taken place during the period 1970 to 2004. However, the impacts of climate change are not merely confined to an increase in temperature. Some systems, sectors and regions are likely to be specially affected by climate change, and these can be listed under each category as follows:

- Systems and sectors:

Particular ecosystems which would be affected include

- terrestrial: tundra, boreal forest and mountain regions because of sensitivity to warming; mediterranean-type ecosystems because of reduction in rainfall; and tropical rainforests where precipitation declines
 - coastal: mangroves and salt marshes, due to multiple stresses
 - marine: coral reefs due to multiple stresses; the sea ice biome because of sensitivity to warming
- Other impacts could affect:
 - water resources in some dry regions at mid-latitudes and in the dry tropics, due to changes in rainfall and evapotranspiration, and in areas dependent on snow and ice melt
 - agriculture in low latitudes, due to reduced water availability
 - low-lying coastal systems, due to threat of sea level rise and increased risk from extreme weather events
 - human health in populations with low adaptive capacity.

Regions

- the Arctic, because of the impacts of high rates of projected warming on natural systems and human communities
- Africa, because of low adaptive capacity and projected climate change impacts
- small islands, where there is high exposure of population and infrastructure to projected climate change impacts
- Asian and African megadeltas, due to large populations and high exposure to sea level rise, storm surges and river flooding.

Within other regions, even those with high incomes, some people (such as the poor, young children and the elderly) can be particularly at risk, and also some areas and some activities.

Since the MDGs and their relationship with human rights is an issue of considerable significance to the developing countries, it would be useful to assess the impacts of climate change where the MDGs are expected to have direct applications. The IPCC has come up with certain assessments of impacts in Africa, Asia and Latin America, which hold relevance to the ability and capacity of communities on these continents to be able to pursue livelihoods that would ensure the maintenance of human rights and the feasibility of meeting the MDGs. It also needs to be considered that, as the IPCC has clearly brought out, altered frequencies and intensities of extreme weather together with sea level rise are expected to have mostly adverse effects on natural and human systems. It was also concluded that human induced climate change could lead to some impacts that are abrupt or irreversible depending upon the rate and magnitude of climate change. For instance, the partial loss of ice sheets on polar land could imply metres of sea level rise, major changes in coastlines and inundation of low lying areas with greatest effects in river deltas and low lying islands. Of course, such changes are projected to occur over millennial time scales but more rapid sea level rise on century time scales cannot be excluded.

Climate change is also likely to lead to some irreversible impacts. For instance, approximately 20 to 30% of species assessed so far are likely to be at increased risk of extinction if increases in global average warming exceed 1.5 to 2.5°C. If temperature increases go above 3.5°C, then model

projections suggest significant extinctions from 40 to 70% of species assessed around the globe. Some of these impacts could be of crucial significance to the poorest communities in the world, who have high dependence on ecosystem services. These could also have very serious implications for the stability of food production because species loss could result in consequences related to agriculture, fishing and forest produce. The ability of small island states to meet the MDGs and ensure protection of human rights would be particularly vulnerable to the impacts of climate change. Table 1 provides a summary of the impacts of climate change assessed for the regions of Africa, Asia and Latin America as well as small islands.

Table 1

<p>Africa</p>	<ul style="list-style-type: none"> • By 2020, between 75 and 250 million of people are projected to be exposed to increased water stress due to climate change. • By 2020, in some countries, yields from rain-fed agriculture could be reduced by up to 50%. Agricultural production, including access to food, in many African countries is projected to be severely compromised. This would further adversely affect food security and exacerbate malnutrition. • Towards the end of the 21st century, projected sea level rise will affect low-lying coastal areas with large populations. The cost of adaptation could amount to at least 5 to 10% of Gross Domestic Product (GDP). • By 2080, an increase of 5 to 8% of arid and semi-arid land in Africa is projected under a range of climate scenarios (TS).
<p>Asia</p>	<ul style="list-style-type: none"> • By the 2050s, freshwater availability in Central, South, East and South-East Asia, particularly in large river basins, is projected to decrease. • Coastal areas, especially heavily populated megadelta regions in South, East and South-East Asia, will be at greatest risk due to increased

	<p>flooding from the sea and, in some megadeltas, flooding from the rivers.</p> <ul style="list-style-type: none"> • Climate change is projected to compound the pressures on natural resources and the environment associated with rapid urbanisation, industrialisation and economic development. • Endemic morbidity and mortality due to diarrhoeal disease primarily associated with floods and droughts are expected to rise in East, South and South-East Asia due to projected changes in the hydrological cycle.
Latin America	<ul style="list-style-type: none"> • By mid-century, increases in temperature and associated decreases in soil water are projected to lead to gradual replacement of tropical forest by savanna in eastern Amazonia. Semi-arid vegetation will tend to be replaced by arid-land vegetation. • There is a risk of significant biodiversity loss through species extinction in many areas of tropical Latin America. • Productivity of some important crops is projected to decrease and livestock productivity to decline, with adverse consequences for food security. In temperate zones, soybean yields are projected to increase. Overall, the number of people at risk of hunger is projected to increase. • Changes in precipitation patterns and the disappearance of glaciers are projected to significantly affect water availability for human consumption, agriculture and energy generation.

<p>Small Islands</p>	<ul style="list-style-type: none"> • Sea level rise is expected to exacerbate inundation, storm surge, erosion and other coastal hazards, thus threatening vital infrastructure, settlements and facilities that support the livelihood of island communities. • Deterioration in coastal conditions, for example through erosion of beaches and coral bleaching, is expected to affect local resources. • By mid-century, climate change is expected to reduce water resources in many small islands, e.g. in the Caribbean and Pacific, to the point where they become insufficient to meet demand during low-rainfall periods. • With higher temperatures, increased invasion by non-native species is expected to occur, particularly on mid- and high-latitude islands.
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Source: Table SPM.2. Examples of some projected regional impacts. IPCC Synthesis Report 2007

Careful reflection on some of the impacts highlighted in the table above would reveal that populations whose rights are currently protected poorly would likely to be less well equipped to adapt to the impacts of climate change, as they are also least effective in mobilizing action at the level of national governments or international bodies. They are likely to lack the critical resources required to adapt to the projected alteration of their environmental and economic conditions. In some countries, particularly where democracy provides different sections of society access to redressal of problems which would imperil the protection of human rights, action is being taken, even though not necessarily at levels that are required. The Government of India, for instance, has initiated several schemes to improve current conditions, and their progress is being monitored through carefully defined indicators. India's Foreign Minister, Mr. S.M. Krishna, in his speech at the UN MDG Summit held in September 2010 highlighted the country's growing concern on the impacts of climate change and their effects on vulnerable communities and regions in India. He appropriately mentioned the reality that rainfed agriculture accounts for 60 percent of the crop area in India, and climate change has

aggravated the situation in those regions of the country which have traditionally been affected by droughts and floods. The IPCC AR4 has clearly brought out the fact that the impacts of climate change in those areas which have existing stresses of various kinds would see these stresses being exacerbated as in the case of stresses related to water availability. The Foreign Minister rightly emphasized the growing awareness in the country on the challenge of climate change and the commitment of the government and the people to mounting appropriate national and regional responses.

A major development in India has been the National Action Plan on Climate Change (NAPCC) led by the Prime Minister himself. This Action Plan was announced on the 30th of June 2008, and since then efforts have been in hand involving the Prime Minister's Advisory Council on Climate Change, to provide substance to each of the eight missions, which are part of the Action Plan. In order to arrive at the NAPCC, state governments were also called on to provide valuable inputs. It is essential that particularly in respect of adaptation measures, capacity is created at the local level to ensure that communities and individuals right down to the grassroots level take active part in adaptation. At the national and state levels, governments also have an important part to play. For instance, given the large number of farmers dependent on rainfed agriculture in this country, a careful evaluation and assessment of projected impacts of climate change in different parts of the country becomes imperative. This requires detailed scientific work involving downscaled projections using global models that incorporate climate change and the major drivers that are bringing it about. These include both natural as well as human induced factors.

TERI is currently engaged in working with a number of state governments to ensure that downscaled impacts are assessed and projected for different parts of the country. The states of India are large enough and often very diverse in agro-climatic and ecosystem characteristics, and, therefore, require impacts to be studied for specific sub-regions in each state, since these are bound to show significant differences. The use of sophisticated models requires powerful computer capacity and capability and it is for this reason that TERI has installed a super computer on which models are run for different states of India.

Once quantitative estimates of projected impacts are available, these are then estimated in terms of their socio-economic implications. It would

then become possible to see how the achievement of the MDGs would be affected as a result, and how these might also influence the protection of human rights by implication. In general, a partnership between those involved in the physical science aspects of climate change and social scientists who could study the social and human dimensions of the challenge associated with climate change, has really not materialized to an adequate extent for working on these issues.

One important imperative that underlies all the actions included in the NAPCC and the eight missions which have to be implemented now with a sense of urgency is the need for adequate research on the physical science and social science aspects of climate change. Such research should ideally precede any assessment of the human dimensions and policy aspects of the problem, but at a minimum a vigorous programme of research should be undertaken immediately even as the missions of the NAPCC are being implemented. Refinements in projects and activities can then be made based on new knowledge that keeps emerging from research that is carried out. This matter, of course, raises a general issue, which is pertinent to the formulation of strategies and policies in areas where change is imperative. If we have to take decisions that make the best use of financial and other resources then intellectual efforts of a high order should define the design of any course of action. In respect of the MDGs, while governments and other organizations have taken some very desirable steps to help achieve the goals and targets which have been set, there is need for a strong partnership between all stakeholders, involving civil society, research and academia, business and industry (to the extent possible) and, of course, governments. This would ensure that timely and appropriate feedback is available for midcourse corrections and refinements in actions currently in hand. This would also be important for coming up with innovations and changes that could actually help in achieving the MDGs at minimum cost and with maximum benefits.

Sixty three years since India became independent and with adequate experience of functioning with a democratic form of government have brought about signal achievements and satisfactory rates of growth and development, but the country still has widespread poverty, which could get exacerbated with the impacts of climate change. At any rate, some sections of society would prove to be more vulnerable than others to climate change impacts, and it is important that science, social science, research, government

policy and people's participation come together effectively to deal with this challenge as we move forward in this century. Even in the most advanced societies the plight of the poor could merit some special attention and efforts to ensure that their rights and abilities to pursue sustainable livelihoods is not affected adversely as a result of climate change. In a country as diverse as India and with poverty widespread, including the growth of number of the poor in some of the most prosperous cities, the impacts of climate change would be as relevant to the slum dwellers of Mumbai, who may have to deal with frequently occurring extreme precipitation events, as the communities in the Sundarbans who are living under the threat of sea level rise. The rights of these vulnerable communities has to be treated as an important priority in our policies at every level of the government and as an important challenge for those who are involved in the study of climate change and its effects on society in various parts of India.

Status of Achieving Millennium Development Goals of Ensuring Environmental Sustainability in India

*Prof. Satish C. Shastri**

A Native American proverb states that "we do not inherit the planet from our ancestors but borrow it from our children", this is the next significant component of sustainable development - the principle of intergenerational equity.

"[The MDGs] also embody basic human rights-the rights of each person on the planet to health, education, shelter and security. The Goals are ambitious but feasible and, together with the comprehensive United Nations development agenda, set the course for the world's efforts to alleviate extreme poverty by 2015."

- United Nations Secretary-General Ban Ki-moon

Recent reports gives a very dismal picture of the world environment when they mention 'seven cities are about to sink',¹ or that year 2010 was the hottest year of last 100 years, that glaciers are melting very fast², and that countries are facing worst kind of drinking water³ and other problems threatening the existence of human being on Planet Earth. Therefore, the "International Decade for Action, 2005-2015", has been declared to promote the central importance of freshwater, quality of life, and other basic needs

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1 7 Cities About to Sink, <http://travel.yahoo.com/p-interests-35998698>

2 Glaciers Are Melting Faster Than Expectation-UN Report, Science Daily, March 18, 2008

3 Solutions for a Water-Short World, available at <http://info.k4health.org/pr/m14/m14print.shtml>

of the society for their survival and sustainable development. It has rightly been declared these and many environmental issues have assumed threatening dimensions and brought the world is at the point of disaster.

Millennium Development Goals and Environmental Sustainability

When 189 Heads of State and Government from the North and South, as representatives of their citizens, signed the Millennium Development Goals at the 2000 UN Millennium Summit⁴, there was a palpable sense of urgency to reduce poverty by half and achieve equitable and sustainable development for all. The Millennium Development Goals (MGDs), 2000 has declared 8 goals⁵ and 21 targets to be achieved by all the States by 2015. They were agreed upon by world leaders and other stakeholders at different UN Summits and Conferences. In the Millennium Declaration it was rightly pointed out the “We must spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs”. It was also resolved “to adopt in all our environmental actions a new ethic of conservation and stewardship”. The UNO and various agencies is vigorously pursuing all the countries to achieve these goals. The seventh goal is 'Ensure Environmental Sustainability' which is very significant in the present day situation. The above declaration of UNO speaks loudly about the importance these goals have assumed. By linking the MDGs to the Internationally Agreed Development Agenda (IADA)⁶, world leaders and development partners have recognized the synergies among various development goals and targets, and the need for an integrated approach for achieving them. It has also been recognised and realised that these eight goals are not independent of each other, rather they are linked with each other. Like demographic goals

4 MGDs were adopted by U.N. General Assembly on 8 September, 2000, which were endorsed by 189 countries.

5 These 8 goals are- 1. Eradicate Extreme Poverty and Hunger, 2. Achieve Universal Primary Education, 3. Promote Gender Equality And Empower Women, 4. Reduce Child Mortality, 5. Improve Maternal Health 6. Combat Hiv/Aids 7. Malaria and Other Diseases, 8. Ensure Environmental Sustainability.

6 Originated from the series of global conferences held since 1990, the IADGs are a product of broad-based processes of consultations that involved civil society, government and multilateral organizations at country, regional and global levels.

are closely connected to poverty and human health, eradication of poverty and hunger will ensure the environmental sustainability. Lastly, the global partnership will help developing and under-developed countries to achieve these goals. Thus these goals are interconnected and inter-dependent and complementary/corollary to each other.

But it has been felt that ten years on from the original adoption of the MDGs at the 2000 Millennium Summit, and despite remarkable progress in some countries, collectively we are falling short in their achievement. In the review meeting held at New York on 20-22 September, 2010, the Secretary-General remarked in terse words that '(B)etween now and 2015, we must make sure that promises made become promises kept. The consequences of doing otherwise are profound: death, illness and despair, needless suffering, lost opportunities for millions upon millions of people'⁷. The UN Review Summit on the Millennium Development Goals concluded on 22 September with the adoption of a global action plan to achieve the goals by 2015 and the announcement of major new commitments for women's and children's health, as well as other initiatives against poverty, hunger and disease.

International Declarations on Environment vis-a-vis Human Rights

In September 2010, the member states of the United Nations met in New York to discuss what progress has been made towards the MDGs and agree which actions will need to be taken to ensure that the goals are met. This is in sequel to the Stockholm Conference of 1972 which was a reveille; sounding man's awakening to the sensitive relationship with the nature. Much concern was shown not only about the present need but to make the Earth a much safer place to live in for the progeny and the fate of mankind as a whole. Mrs. Indira Gandhi, the then Prime Minister of India, while addressing the Conference indicated that "population, pollution and poverty are inter related problems and there must an integrated approach to solve them together." The second principle of the Stockholm Declaration made it clear that "The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic

7 New York, 22 September 2010 - Secretary-General's closing remarks at High Level Plenary Meeting of the General Assembly on the Millennium Development Goals.

development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments." A word of caution was also mentioned in the following words-

"A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes... To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development."⁹

This Declaration made it very clear that man has a right to a healthy environment and a solemn responsibility to protect and preserve the natural environment. "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations."¹⁰ Since India was a participatory and signatory of the Stockholm Declaration, it passed myriad laws to give effect to the principles agreed upon therein. From this Declaration, it was recognised that a healthy environment and pollution-free environment is a fundamental right available to all human beings. Therefore, various laws were passed by world governments relating to various aspects of the environment. India became the first country to incorporate specific provisions relating to protection and preservation of the environment.¹¹ Some specific laws were also passed to achieve this objective like-the Wildlife (Protection Act of 1972, Water (Prevention

8 The Stockholm Conference was held from 5 to 16 June, 1972 and was attended by the representatives of 114 countries. It was the first International Conference on 'human environment' and its Declaration of 26 Principles is known as the Magna Carta on Human Environment.

9 Proclamation 6 of the Stockholm Declaration of 1972

10 Principle 1 of the Stockholm Declaration of 1972.

11 Article 48A and Article 51-A (g) were incorporated in 1976 by the 42nd Constitutional Amendment. Article 48A- 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country'. Article 51A (g)- 'All the citizens of India shall have fundamental duty to... protect and preserve the natural environment including wildlife, forests and lakes and have compassion for living creatures.'

and Control of Pollution) Act, 1973, Forest (Conservation) Act, 1980, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act of 1986. Similarly, the USA passed the National Environment Protection Act in 1969 and UK passed the Pollution Control Act in 1974.

The World Commission on Development and Environment in its report 'Our Common Future' (1987) was first to use the term 'sustainable development' and defined it as that which meets the needs of the present without compromising the ability of the future generations to meet their own needs.' This Report declared in unequivocal terms that right to a pollution free environment is a human right and to make proper and rational use of the natural resources is the fundamental duty of all. Right to development cannot be exercised at the cost of environmental degradation as the future of human being largely depends on the natural environment. It also linked environmental problems to social and economic systems. As a sequel to it, the U.N. Earth Summit was held at Rio de Janeiro in 1992 and produced very important three documents: Agenda 21, Convention on Biological Diversity and convention on Climate Change. Agenda 21 also included 'sustainable development, poverty, human health, development of women and children, conservation of natural resources as prime objectives to be achieved by the member states. At its close, Maurice Strong, the Conference Secretary-General, called the Summit a "historic moment for humanity". In the year 2000 a significant development took place and Earth Charter was declared. In its preamble it declared that -

We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations

It was also made clear that “The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth’s vitality, diversity, and beauty is a sacred trust.” The Charter placed human dignity at the top and that with “increased freedom, knowledge, and power comes increased responsibility to promote the common good.” It is the duty of the community to ‘to prevent environmental harm and to protect the rights of people’¹². Principle 1-3 has, in explicit terms, declared that

“Ensure that communities at all levels guarantee human rights and fundamental freedoms and provide everyone an opportunity to realize his or her full potential”.

‘Promote social and economic justice, enabling all to achieve a secure and meaningful livelihood that is ecologically responsible.’

In 2002, the World Summit on Sustainable Development was held at Johannesburg. It also ensured its commitment to implement the United Nations Millennium Development Goals of 2000¹³. The Declaration also focused “on the indivisibility of human dignity and are resolved, through decisions on targets, timetables and partnerships, to speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity...”¹⁴ It also pledged to fight against widespread problems of humanity in the following words-

“We reaffirm our pledge to place particular focus on, and give priority attention to, the fight against the worldwide conditions that pose severe threats to the sustainable development of our people, which include: chronic hunger; malnutrition; foreign occupation; armed conflict; illicit drug problems; organized crime; corruption; natural disasters; illicit arms trafficking; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia; and endemic, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis”.¹⁵

12 Principle 1(2)(a) of the Earth Charter.

13 Principle 20 of Johannesburg Declaration on Sustainable Development, 2000.

14 See Principle 18 of the Declaration made on Sept. 4, 2002.

15 See Principle 19 of the Declaration made on Sept. 4, 2002.

Thus it can be said that after the declaration of the Millennium Developmental Goal, 2000, was recognition of the basic human needs of mankind and first international joint vow to fulfill the eight goals and twentyone targets to be achieved by world states. A cursory reading of the Declaration makes it clear that it was a commitment to building a humane, equitable and caring global society, cognizant of the need for human dignity for all. In a way it was another achievement in the journey of human rights. It also reveals that these declarations have taken care of almost all the declarations on human right- ranging from the Universal Declaration on Human Rights of 1948 to UN affirmation of the Right to Safe and Clean Drinking Water on July 28, 2010¹⁶. Thus right to safe and drinking water has become a part of the Universal Declaration of Human Rights, 1948. Since India was a participatory in almost all the conventions and declarations, it has ratified these international agreements. As a result of which, the Supreme Court has based its decision on many international declarations/ conventions to recognize and implement various human rights¹⁷.

MDG 7 - Ensure Environmental Sustainability

MDG 7 which aims to ensure environmental sustainability encapsulates a broad array of key environmental issues including biodiversity, air pollution, forests, climate change, fish stocks, lack of clean and drinking water, sanitation and improvement of slums. It was also committed by the world states to pursue sustainable development, in accordance with the principles contained in the Rio Declaration on Environment and Development of 1992, including the principle of common but differentiated responsibilities, and taking into account the respective capabilities of countries. Other related areas of concern were identified as (a) implementation of the United Nations Convention to Combat

¹⁶ Other important Declarations are- Convention on the Prevention and Punishment of the Crime of Genocide, 1948; Convention Against Torture and other Cruel, Inhuman and Degrading Treatment, 1985; Covenant on Civil and Political Right, 1966; Covenant on Economic, Social and Cultural Rights of 1966; Elimination of All Forms of Discrimination Against Women of 1979; Convention on the Rights of Child, 1989; Declaration on Right to Development, 1986; Beijing Declaration on Rights of Women, 1995; International Convention Against Transnational Organized Crimes (with Special reference to Trafficking in Women and Children), 2000; Declaration on the Rights of Disabled Persons, 1975; U.N. Declaration on the Rights of Indigenous Peoples, 2006; And many others

¹⁷ See *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011; *Lakshmi Kant Pandey v. Union of India*, 1984 Indlaw SC 159; *Sakshi v. India*, AIR 2004 SC 3566.

Desertification, (b) forest and the sustainable forest management, (c) new and renewable energy sources and low emission technologies, (d) new and renewable energy sources and low emission technologies, (e) integrated waste management systems, (f) marine biodiversity and ecosystems, including fish stocks, which contribute to food security and hunger and poverty eradication efforts, (g) to preserve fragile mountain ecosystems as an important source of fresh water and as repositories of rich biological diversity, (h) Promoting sustainable consumption and production patterns, (i) reducing slum populations and improving the lives of slum-dwellers, with adequate support of the international community, by prioritizing national urban planning strategies with the participation of all stakeholders, (j) promoting equal access for people living in slums to public services, including health, education, energy, (k) water and sanitation and adequate shelter, and promoting sustainable urban and rural development, and (l) to take urgent global action to address climate change as per principles of Kyoto Protocol of 1997¹⁸ to control and contain the greenhouse gases. The Convention on Biological Diversity, 1992 recognizes, for the first time, that the conservation of biological diversity is "a common concern of humankind" and is an integral part of the development process. The main goals of this Convention, besides the conservation of biological diversity, were (a) Sustainable use of the components of biodiversity, and (b) Sharing the benefits arising from the commercial and other utilization of genetic resources in a fair and equitable way.

India and MDG 7 of Environmental Sustainability

India has age-old environmental ethics and always believed in the philosophy that 'we should live in harmony with nature.' Ancient Indian literature (Vedas, Upanishads, Smritis and the Epics Ramayana, Mahabharata, and Gita) has preached to respect Nature and has believed in conservation of natural resources rather than their annihilation¹⁹. Many verses in Rig Veda and Atharva Veda are totally dedicated to the praise of Lord Surya (Sun), Varun Devta (God of Water), Van Devi (Goddess of Forest), Prithvi Mata (Mother Earth) and others. Thus natural forces have been identified as Gods and Goddesses so as to develop a reverent attitude

18 The Kyoto Protocol (entered on 11.12. 1997) aimed to reduce overall emissions of the greenhouse gases by at least 5% below 1990 levels in the commitment period 2008 to 2012 in order to promote sustainable development.

19 See Shastri S.C., Environmental Law, 1 (2008).

towards nature. The destruction of various resources of nature was declared as a sin in the above mentioned ancient literature. This philosophy was able to protect and preserve the natural resources and maintain the ecological balance. Even Emperor Ashoka was declared 'Ashoka- the Great' as he believed in planting trees and digging wells in the country, in other words he believed in preservation and protection of the environment. As a result this age-old philosophy, vegetation cover of India was well guarded, river Ganga and other rivers were very clean, atmosphere was pollution free and we had a very rich flora and fauna. But the scenario has changed with the advent of foreign culture in India. The English people did very little to protect our vegetation cover. Rather by passing the Forest Act of 1927, they regulated the cutting of the forest cover of India- a great loss to the nature its habitat. Industrialisation also added fuel to the fire and damaged the natural environment extensively, irreparably and unthinkably. The ancient philosophy of harmonious relationship with Nature has been destroyed altogether. Today we have forgotten that ecosystems and biodiversity are the fundamental building blocks on which we all depend for our existence and development. Now time is ripe when we should take concrete steps to shape our future and to secure the future of our progeny.

Due to unprecedented, unscientific and unbridled exploitation of natural resources and gigantic unhealthy industrial advancement has created myriad environmental problems. Some of such problems are change in climate pattern all over the world, greenhouse gases causing global warming, and ozone depletion. Other general problems which we are facing everywhere are water pollution, atmospheric pollution, radiation, noise pollution, disposal of e-waste, municipal and industrial waste, sanitation and human settlement etc. The side effects of such environmental problems have given rise to the problems of safe potable water, slums, health and hygiene, exponential growth of population and scarcity of food and housing. Rising of sea level, melting ice-caps, backlash of Tsunami, Katrina, Rita, drought in various areas of the world, expansion of deserts are some of the representative samples of after effects of degrading environment. India is no exception to these consequences and facing problems of ecological imbalances and environmental degradation. Various parts of India has experienced hottest days of the last two decades, rainfall in desert areas, smog and worst atmospheric pollution in metropolitan cities, frightening backlash of the sea in the form of Tsunami, rise of big slums and other

related problems. Destruction of biological diversity will deprive us of food, timber, fiber, fuel, medicine and freshwater and also essential services such as water purification, air and soil quality, pollination, pest control, climate regulation, flood control and protection against natural hazards. This is all the result of a deteriorating environment and disrespectful attitude of mankind for natural resources. Expanding desert in the west, shrinking vegetation cover of India, contaminated water, sprawling slums and vanishing rarest of rare species of flora and fauna declares loudly that our environment is not sustainable and its requires therapeutic treatment immediately before it is too late. It must be remembered that while we all depend on natural services, the poor are usually the most vulnerable to environmental degradation, lack of clean water and fertile land, leading to increased hunger, illness and poverty. Therefore, sustainable development is the crying need of India to save its successive generations from the scourge of environmental destruction.

The then Prime Minister of India Mrs. Indira Gandhi voiced her deep concern in the First International Conference on Human Environment held at Stockholm (5-16 June, 1972) and indirectly advocated for taking immediate and integrated approach to solve three Millennium Development Goals -poverty, pollution and population. Since than India is making every effort to achieve the goal of environmental sustainability and other related problems like poverty, slum dwelling, unbridled population growth and health and hygiene. Now it is an accepted fact that these all problems are inter connected, inter related and inter dependent, and interwoven with the concept of human rights. The Stockholm Declaration of 1972 declared in unequivocal terms that healthy and pollution-free environment is a fundamental right of all human beings²⁰ and it is sine qua non for the wellbeing of the people world over²¹. The Declaration also suggested to all world governments to evolve legal and administrative mechanisms to achieve these objectives. As a sequel to it the Indian government has adopted various statutory and administrative steps to contain and control environmental degradation and ecological imbalances.

20 Principle 1 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations...'

21 Proclamation 2 'The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments'.

Legislative Mechanism

Constitutional Mandate

As envisaged by the Stockholm Declaration of 1972 and other international declaration²², India has adopted many legislative and administrative measures to achieve the objective of sustainable development and environmental sustainability. It also important to note that a very significant step has been taken by the Indian Parliament to give constitutional protection to environment. The Parliament incorporated Articles 48A and 51A (g) by passing the 42nd amendment in the Constitution of India in the year 1976. Article 48A has declared it a duty of the State to protect and improve the environment, whereas Article 51a (g) has made it a fundamental duty of the citizens of India to protect and improve the natural environment including forest, wildlife and lakes²³. Thus India became the first country to give constitutional protection to environment. It was a very significant step towards the environmental sustainability as it became a foundation stone to build the environmental jurisprudence in India. Now it is the imperative duty of the state and central government and local bodies to ensure and safeguard the environment—manmade and natural. The Supreme Court of India has based its many significant judicial pronouncements relating to environment on the basis of these two constitutional provisions.²⁴

Though Chapter III of the Indian Constitution, which has narrated fundamental rights, has not mentioned right to a pollution free or healthy environment as one of the fundamental rights, the Supreme Court of India has inferred it from Article 21²⁵ of the Constitution. The Court has declared that right to life provide under Art 21.

22 Our Common Future, (1987), or Report of the U.N. Commission on Development and Environment.

23 Article 51a (g) 'All the citizens of India shall have fundamental duty to protect and improve the natural environment including forest, lakes, and wildlife and have compassion for living creatures.'

24 See Hinch Lal Tiwari v. Kamala Devi, (2001)6 SCC 496; M.C. Mehta v. Union of India, AIR 2002SC 1696; Bobay Dying & Mgf. Co. v. Bombay Environmental Action Group, 200603 SCC 434; Intellectual Forum, Tirupathi v. State of A.P., AIR 2006 SC 1350; Sushanta Tagore v. Union of India, (2005)3 SCC 16; S. Sachidanand Pandey v. State of W.B., (1987)2SCC 594; Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P., AIR 1986SC652; M.C. Mehta v. Kamal Nath, (2000)6 SCC 213; Essar Oil Ltd. v. Halar Utkarsh Samiti, (2004)2 SCC 392 and others.

25 Article 21, 'No person shall be deprived of life and personal liberty except according to the procedure established by law.'

“encompasses within its ambit the protection and preservation of the environment, ecological balance, freedom from pollution of air and water, and sanitation, without which life cannot be enjoyed. Any contract or action which would cause environmental pollution ...should be regarded as amounting to violation of Article 21 ... Therefore, there is a constitutional imperative on the state government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect, and improve both the manmade and the natural environment.”²⁶

In a case dealing with limestone quarries causing deforestation, soil erosion, and river siltation, the Supreme Court mentioned “the right of the people to live in a healthy environment with minimal disturbance of the ecological balance”.²⁷ This case was the first and unique case of India dealing with environmental degradation and ecological imbalance.²⁸ The court also made it clear that there cannot be development at the cost of the environment. Both have to go hand in hand. Thus it was an implicit declaration of right to sustainable development and sustainability of the environment.

In *N.D. Jayal v. Union of India*²⁹ and other cases, the Supreme Court has made it clear that sustainable development and right to a pollution-free and healthful environment is a fundamental right.

Hundreds of cases have been decided by the Supreme Court and high courts on the basis of, or influenced by the right to healthy environment. Among the environmental issues addressed by these cases are:

- air pollution in Delhi caused by motor vehicles³⁰
- water pollution of the Ganges River by tanneries³¹

26 *Virender Gaur v State of Haryana* 1995 N2Q SCC 577

27 *Rural Litigation and Entitlement Kendra v. Uttar Pradesh* AIR 1987 SC 359

28 *Rural Litigation and Entitlement Kendra v. Uttar Pradesh*, (1985)2 SCC 431

29 *AIR 2004 SC 867; Subhash Kumar v. State of Bihar*, AIR 1991 SC 420. In this case the Court declared that 'the right to live is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life'.

30 *M.C. Mehta v Union of India*, (2002)4 SCC 356.249

31 *M.C. Mehta v Union of India* AIR 1988 SC 1037; *M.C. Mehta v Union of India*, AIR 1988 SC 1115.

- protection of the Taj Mahal, about 292 industrial plants ordered to either switch from coke/coal to natural gas or relocate and shift from Taj Trapezium³²
- industrial air pollution³³
- groundwater management³⁴
- the right to water³⁵
- mining and quarrying activities³⁶
- forest conservation and displacement³⁷
- disasters caused by hazardous activities³⁸
- large dam projects³⁹
- sentencing for environmental crimes⁴⁰
- genetically modified organisms⁴¹
- smoking in public places⁴²
- closure of mines in Aravalli hills and protection of wildlife⁴³
- noise pollution⁴⁴
- right to potable/sweet water⁴⁵
- proper disposal of bio-medical waste⁴⁶
- right to shelter⁴⁷

32 M.C. Mehta v. Union of India N(Taj trapezium case) AIR 1997 SC 735.

33 M.C. Mehta v. Union of India (1997) 11 SCC 327.

34 M.C. Mehta v. Union of India (1997) 11 SCC 312; M.C. Mehta v. Union of India 2004 (12) SC 118

35 AP Pollution Control Board v M.V. Nayudu AIR 1999 SC 812, 2001 (2) SCC 62,; 2001 (9) SCC 605.

36 M.C. Mehta v. Union of India 1996(8) SCC 462

37 T.N. Godavarman Thirumulpad v Union of India AIR 1999 SC 43,(1998) 6 SCC 190 (1998) 9 SCC 632 2000 (7) SCALE 380.

38 Indian Council for Enviro-Legal Action v. Union of India AIR 1996 SC 1446

39 Narmada Bachao Andolan v Union of India ADR 1999 SC 3345

40 UP Pollution Board v. Mohan Meakins Ltd. (2000)3QSCC 745

41 Aruna Rodrigues v. Union of India, hP. No. 260 of 2005, Order dated 22/09/2006.

42 Murli S. Deora v. Union of India, (2001) 8 SCC 765

43 Tarun Bharat Sangh, Alwar v. Union of India ADR 1992 SC 514

44 Church of God (Full Gospel)In India v. K.K.R.M.C.Welfare Association, (2000)7 SCC 282

45 E.A. Hussain v. State of Kerala, AIR 1990 Ker. 321

46 Dr.B.L. wadhera v. Union of India,(1996)2 SCC 594

47 Intellectual Forum, Tirupathi v. State of A.P.,AIR 2006 SC 1350;Olga Tellis v. Bombay Municipal Corporation 1985)3 SCC 545

In the forest conservation case, the original writ petition focused on illegal logging in one forest region, but the Court expanded the case to cover the forests of entire country and forest policies⁴⁸. On the basis of this single lawsuit, the Supreme Court has addressed deforestation, illegal logging, timber pricing, licensing, and transportation of timber, mining, and planning. The Court also created its own committee to investigate and report on illegal mining in state forests. More than 2,000 interlocutory applications related to forestry have been adjudicated pursuant to this single writ petition. Since 1996, the Supreme Court of India has assumed the role of the principal decision maker so far as issues relating to forests and wildlife are concerned. It has more than 110 reported judgments of the Supreme Court relating to various aspects of forest, forestry and forest produces. Since the cases relating to forests are being heard for the last nine years by the Court, therefore they have a part of what is termed as continuing mandamus; The Court keeps on passing orders and directions with a view to monitor the functioning of the executive, rather than passing final judgments. It has led to fundamental changes in the pattern of forest governance and decision making. In view of continuing pronouncement of judgments in the form of orders and directions in this case, it has become a guiding force in the conservation of the vegetation cover of India. The Court has strictly interpreted the clause which cautions that forest land cannot be used for non-forest purposes without the prior approval of the Central Government.

The Supreme Court has affirmed that 'sustainable development' is the part of our environmental jurisprudence⁴⁹. And precautionary principle⁵⁰ and polluter pays principle⁵¹ are the parts of sustainable development. As a

48 T.N. Godavarman Thirumulpad v. Union of India, AIR 1997 SC 1228

49 Vellore Citizens' Welfare Forum v. Union of India, (1996)5 SCC 647

50 'Precautionary Principle' envisages that the State Governments and statutory authorities must anticipate, prevent, and attack the cause of environmental degradation; and when there is a serious and irreversible threat of damage, lack of scientific certainty should not be as a reason for postponing measures to prevent environmental degradation.- M.C. Mehta v. Union of India N(Taj trapezium case) AIR 1997 SC 735; AP Pollution Control Board v.M.V. Nayudu ADR 1999 SC 812, 2001 (2) SCC 62,2001 (9) SCC 605; Vellore Citizens' Welfare Forum v. Union of India, (1996)5 SCC 647; Fertilizer and Chemicals Travancore Ltd. Employees Ass. v. Law Society of India, (2004)4 SCC: 420

51 This principle makes it clear that the polluter has to pay the loss to the man and material and has also to pay the loss caused to the ecology of the area. Expenditure in reversing or repairing the of the affected area is also to be paid by the polluter. Indian Council for Enviro-Legal Action v. Union of India (1996)5 SCC 281 ;Research Foundation for Science v. union of India, (2005)13SCC 186

sequel to this, Supreme Court has adopted doctrine of 'Intergenerational Equity' and 'Public Trust Doctrine'. The Public Trust Doctrine declares that "State is the trustee of all natural resources which are meant for public use and enjoyment. The state as a public trustee is under a legal duty to protect the natural resources... The aesthetic use and the pristine glory cannot be permitted to be eroded for private, commercial or any other use .."⁵² The court further declared that "our legal system..includes the public trust doctrine as a part of its jurisprudence, The state is the trustee of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of sea-shore, running water, air, forests and ecologically fragile land. The state as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."⁵³

The United Nations General Assembly voted overwhelmingly to affirm "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."⁵⁴ This has been declared as one of the fundamental rights—a part of right to life by the Supreme Court in many cases.

In *Research Foundation of Science v. Union of India*⁵⁵ the Court declared that "The legal position regarding applicability of the precautionary principle and polluter-pays principle which are part of the concept of sustainable development in our Country is now well settled. In *Vellore Citizens' Welfare Forum v. Union of India* (1996) 5 SCC 647 a three-Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter-pays principle have now emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in *Vellore Citizens' Welfare Forum* case that these principles are accepted as part of the customary international law and hence there should be no

52 T.N. Godavarman Thirumulpad v. Union of India (2002)10 606

53 M.C.Mehta v. Kamal Nath, (1997) 1 SCC 388, at 413

54 U.N.General Assembly Resolution dated July 29 ,2010

55 2007(11)SCALE75

difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999) 2 SCC 718 where, after referring to the principles noticed in *Vellore Citizens' Welfare Forum* case the same have been explained in more detail with a view to enable the courts and the tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises the rule of law, effective State institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the Working Group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary "legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed on the same pedestal as human rights concerns, both being traced to Article 21 of the Constitution. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the court can refer scientific and technical aspects for an investigation and opinion to expert bodies".

The precautionary principle in its turn had led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed is placed on those who want to change the status quo. 'The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution which are major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. It requires anticipatory action to be taken for the likely risk. In *Tirupur Dyeing Factory v. Noyyal River Ayacutdars Protection Association*⁵⁶, Justice Chauhan also explained that 'The principles of 'polluters pay' and 'precautionary principle' have to be read with the doctrine of 'sustainable development'.

The Supreme Court has decided many cases relating to various aspects of environment with the help of the Stockholm Declaration, 1972, Rio-de Janeiro Conference Declarations of 1992 (known as Earth Summit) which includes Agenda 21, Convention on Biological Diversity and Convention on Climate Change, and Report of the International Commission on Development and Environment known as Our Common Future (1987) Johannesburg Conference Declaration on Sustainable Development, 2002. The above mentioned principles/doctrines have been adopted or borrowed from them.

Coastal Zone Management

The coastal zone has played a significant role in the development of world civilization. Besides aesthetic beauty of coastal area and its aquatic life, it provides food and livelihood to the nearby dwellers. Fishing is the main means of livelihood. Thus, aquatic life is the main food of the area. These both (food and livelihood) are connected to human rights. It is proved that coastal areas are very rich of minerals, oil and gas. Various commercial activities have started exploiting coastal zones. Such areas are with swimming, boating and sea side hotelling business.

Therefore they are very important and have different ecological characteristics. Coastal zones are the meeting point between land, sea and inland waters and extends up to 12 nautical miles in the sea. Since India has a coastline of about 7500 km (Lakshadweep coastal line is 132 km. and Andaman & Nicobar Island 1900 Km). It is also important to note that coastal line have very significant ecology with wide ranges of mangroves, coral reefs, sea grasses salt marshes, sand dunes, estuaries, and lagoons. Mushrooming hotels, colonies, high rise building and other commercial constructions have put coastal ecology in danger and causing large scale destruction. Similarly, dumping of municipal and other toxic and chemical wastes in this area, spilling of oil in large scale and many other human activities have put coastal zones at the point of extinction. It requires immediate attention as clean coastal zones eco-system provides food, livelihood and healthy environment to the nearby dwellers. After a great debate, in 1991 the Central Government issued the Coastal Regulation Zone (CRZ) Notification exercising its powers conferred under section

5(3) (c) of the Environment (Protection) Act, 1986). This has designated a coastal area of 12 nautical miles as Ecologically Sensitive Area (ESA). Now, no activity including shrimp aquaculture industry⁵⁷, mining, can be performed dumping of toxic waste, multi-storied construction⁵⁸ and other activities without the approval of the Central Government performing the other formalities of the Environment Clearance Regulation of 2006. The Supreme Court has also directed the Central Government to appoint an 'authority' to look after the ecology of coastal zone of India. But some constructions were permitted as they were found in the interest of public as the need for development has to be harmonized with the values of ecology⁵⁹.

The principle of sustainable development has also been made applicable in the management of the coastal zones by the Supreme Court as activities like construction of railways cannot be prohibited all together. In *S. Jagannath v. Union of India*⁶⁰, the Court explained that

“The 'Polluter Pays Principle'... means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but to the cost of restoring the environmental degradation. Remediation of the damaged environment is the part of 'Sustainable Development' and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged economy.”

Thus the Court declared 'the purpose of CRZ Notification is to protect the ecologically fragile coastal area and to safeguard the aesthetic qualities and uses of the sea coast. The setting of the modern shrimp aquaculture farms right on the sea coast constructions of ponds and other infrastructure there are per se hazardous and bound to degrade the marine ecology, coastal environment and aesthetic uses of the sea coast'. Therefore shrimp culture within the prohibited area was not permitted by the Court. The High Courts have declared in other cases the development initiatives in these

57 *Indian Council for Enviro-legal Action v. Union of India*, (1996)5 SCC 281; *Jagannath v. Union of India*, AIR 1997 SC 811; *Gopi Aqua Farms and Others v. Union of India*, AIR 1997 SC 3519; *Goa Foundation v. The Konkan Railway Corporation*, AIR 1992 Bom. 471; *Goa Foundation v. Diksha Holding Pvt. Ltd.* AIR 2001 SC 184

58 *Citizens' Consumer and Civic Action Group v. Union of India*, AIR 2002 Mad. 298:

59 *Goa Foundation v. Diksha Holding Pvt. Ltd.* AIR 2001 SC 184; *Goa Foundation v. The Konkan Railway Corporation*, AIR 1992 Bom. 471

60 (1987)2 SCC 87, at 145

area must wisely planned and designed as they directly make impact on coastal zone areas⁶¹.

The Swaminathan Committee Report of 2005 (which was appointed to review the CRZ Notification, 1991) has recommended a paradigm shift from regulation of the CRZ to sustainable management of coastal zones. The Report has taken into consideration the population intensity in the area, resulting in need for housing, hotel, mining and other commercial activities, expanding tourism and industrial project in this area. It has recommended integrated progress of the area and to expand the role of Zone manage authority from regulation of activities to sustainable and integrated management of the coastal zones. A Draft CSZ Notification, 2008 has been circulated to examine and to invite the suggestions. It is hoped that things will improve by its strict implementation and we shall be able to achieve our objective of environmental sustainability.

Vegetation Cover of India

Vegetation of a country is very significant and 33% vital for environmental sustainability. It is said that there must be at least vegetation cover. This cover went down to 12-14% before twenty years and now it is claimed that it has risen to 19-21%. Scientifically it has proved that widespread deforestation has contributed to global warming-a green house effect, which in turn, has resulted in melting of ice caps, rise in sea level, climate pattern change and above all rise in the temperature world over. Forests not only give us food, fodder, fruits, fertility of land, furniture, medicine, rainfall but also keeps the environment clean, produces oxygen gas and absorbs carbon dioxide. Therefore they are known as 'pools of carbon dioxide', the moment a tree is cut, tons of carbon dioxide is being released in the atmosphere, and it contributes to global warming. Thus it is an integral part of right to clean and healthful environment.

The Forest Act was passed in 1927 which failed to save the forests of India and the Indian Parliament passed the Forest (Conservation) Act in 1980⁶² to attain the object of environmental sustainable forest conservation. Section 2 of the Act prohibits any use of forest land for 'non-forest purpose'

61. *Sneh Mandal Co-op Housing Society Ltd. v. Union of India*, AIR 2000 Bom. 121

62. It is a very small Act consisting of five sections only.

without the prior approval of the Central Government. The Supreme Court has banned such 'non-forest activities' including mining⁶³, thermal power projects⁶⁴ and construction of Road, industries, sawmills⁶⁵ hotels and resorts⁶⁶ etc. It was also declared that even the licenses issued before the Act of 1980 cannot be renewed without the prior approval of the Central Government⁶⁷. The Godavarman Thirumulpad case has become a torch bearer and landmark case in the preservation and protection of the forest of India as it has provided detailed guidelines for sustainable development of vegetation cover. The Court has pronounced about 110 judgments in this case by taking up various aspects of forest and non-forest activities. It will not be out of place to mention that a few years back, environment Minister of the State of Maharashtra and Secretary of environment was sent to jail for not abiding by the prior approval clause of the Act. Afforestation and the concept of compensatory forestation were also introduced by the Court.

In the light of these developments the Central Government has come out with a Notification and has constituted Compensatory Afforestation Fund Management and Planning Authority⁶⁸ to manage money received towards compensatory forestation and net-present-value in pursuance of the orders of the Court. In a form, this fund is meant for the regeneration of eco-system of that area. It was also clear that forests are not assets of and ownership of a State but nature's gift to the nation. Therefore State is the trustee and public is the beneficiary.⁶⁹

'Damage to the environment is damage to the country's assets as a whole. Ecology knows no boundaries. It can have impact on climate. The principle and parameters for evaluation of the damage have to be evolved also keeping in view the likely impact of activities on future generation'.⁷⁰

63 Tarun Bharat Sangh, Alwar v. Union of India, AIR 1992 SC 514 ; T.N. Godavarman Thirumulpad v. Union of India, AIR 1997 SC 1228 T.N. Goda K.N. Chinnappa Reddy v. Union of India, AIR 2003 SC 724

64 Banvasi Seva Ashram v. State of Gujarat, AIR 1987 SC 374

65 Jawaharlal Sharma v. Div. Forest Officer, U.P., AIR 2002 SC 769

66 M. C. Mehta v. Kamal Nath, (1997)1 SCC 388; Union of India v. Kamath Holiday Resorts Pvt. Ltd., (1996)1 SCC 774

67 T.N. Godavarman Thirumulpad v. Union of India, AIR 1998 SC 769; Ambika Quarry Works v. State of Gujrat, AIR 1987 SC 1073

68 Notification dated April 23, 2004 issued under Section 3 of the Environment (Protection) Act, 1986

69 T.N. Godavarman Thirumulpad (87) v. Union of India, (2006)1 SCC 1, at 34

70 Ibid. at p.39

Wildlife Preservation and Protection

Wildlife is also a beautiful gift of nature to the mankind which must be preserved and protected by all of us. There is also a constitutional mandate and 'fundamental duty' to 'have compassion for living creatures.'⁷¹ This philosophy is inter-connected with the public trust doctrine. We have two major central Acts to preserve and protect wildlife-(a) The Wildlife (Protection) Act, 1972 and (b) the Prevention of Cruelty against Animals Act, 1961.

The Wildlife (Protection) Act has set up National Parks, National Game Sanctuaries, Game Reserves and other things to preserve the wildlife of the country. It has been done with a view to stop poaching and to preserve various species of fauna like white tigers, bustards, lions, leopards, rhino, wild zebra, elephants and others. Illegal hunting, killing, breeding of animals in captivity, possession of Trophies⁷², and ivory⁷³ and construction of building in forest area is an offence under the Act. It is also true to say that wildlife is the guardian and protectors of forests. And the Prevention of Cruelty against Animals Act almost put to an end to circus animals and animals kept by the madaris and others for activities performing various acts. Now it is an offence to keep any animal be it monkey or bear or black buck or deer or birds etc.⁷⁴

The concept of sustainable development came into question in the case of Consumer Education and Research Society v. Union of India⁷⁵. The State of Gujarat used the area of Chinkara Sanctuary for mineral exploitation. The Court observed that if there is material to show that irreversible reverse damage/effect on wildlife is the likely result of the human activity, the Court must intervene. Similarly, in Tarun Bharat Sangh, Alwar v. Union of India⁷⁶ the Court ordered for the closure of mining activity for the conservation forests and wildlife of Sariska Tiger Park. In some case the

71 Article 51a (g) of the Indian Constitution

72 Pyare Lal v. State (Delhi Administration) AIR 1995 SC 1159

73 Indian Handicrafts Emporium v. Union of India, AIR 2003 SC 3240; Balram Kumawat v. Union of India, AIR 2003 SC 3268

74 Navin M. Raheja v. Union of India, (2001) 9SCC 762; Chief forest Conservation, wildlife v. Nisar Khan, AIR 2003 SC 1867.

75 AIR 2000 SC 975

76 AIR 1992 SC 514; The State of Rajasthan also has the Rajasthan Wild Animals and Birds Protection Act of 1951 and the Rajasthan Forest Act, 1953. Both the Acts were also applicable in this case.

Court has taken a cautious approach while permitting persons to collect forest produce and to live inside the forest areas.⁷⁷ In *State of Bihar v. Murad Ali Khan*⁷⁸ it cautioned that

“the preservation of fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last-ditch battle...”⁷⁹

Indigenous People and Environmental Sustainability

It is a well established fact that indigenous people or persons are the real owners and stockholders of forests and its produces. The Supreme Court quoted the Mother Earth of Red Indians in *S. Sachidanand Pandey v. State of W.B.*⁸⁰ which praises Nature and that mankind is part of the eco system. Persons who were living in forests from time immemorial were managing the 'commons' efficiently without causing damage to the nature.

Though the Constitution of India promises to improve the status and conditions of the indigenous people of India, the promise was fulfilled in 2006 when the Parliament passed the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Right to forest) Act and it came into force on Jan. 2007. The Government declared it to be a 'rectification of a historical mistake'.

Since indigenous / tribal people living in forests, developed special knowledge of medicinal plants, traditional medicines and knowledge to preserve the natural habitat. They believed in living in harmony with nature. Because of this reason the pristine glory of nature and natural aesthetics was properly protected. They never learnt the principles of environmental sustainability, but they passed on to us a clean and healthful environment. But by making big dams, unprecedented industrial advancement and over and unscientific exploitation of the natural resources have resulted in sharp decline of environmental quality. In this process, the worst sufferers have been the indigenous/tribal people. They have been displaced from their natural habitat and the right to use forests and forest produces. Their original

77 *Pradeep Kishen v Union of India*, AIR 1997 SC 2040; *Animal and Environmental Defense Fund v. union of India*, AIR 1970 SC 1040

78 (1988)4 SCC 655

79 *Ibid* at p. 662

80 AIR 1987 SC 1109

places of living have been snatched and they have been forced to migrate from their land- place of habitat. This alone is a flagrant violation of human rights as it deprived them of their source of livelihood and medicinal plants. The loss of traditional knowledge is the violation of intellectual property rights. A cursory study of this Act makes it clear that this Act is merely an eye wash as it has failed to grant absolute right to manage the forests and right to use it. It has not been able to rectify the historical mistake and grant and recognise basic right to forests. As they have been displaced, they who are-friends of nature, have lost the right to manage the critical habitat, right to live and livelihood. They are also faced with the problem of slow disappearance of traditional knowledge and medicinal herbs and plants. Therefore it is necessary to protect the friends of nature and preserve intellectual property rights.

Besides the above mentioned Act of 2006, the Biological Diversity Act of 2002 has also recognised the intellectual property right of the indigenous people and developed a mechanism to protect the traditional knowledge of the indigenous people. The Act aims at to provide biological diversity, sustainable use of its component and fair and equitable distribution or sharing of benefits arising out of the use of biological resources. The act has defined the term 'sustainable use' as 'the use of components of biological diversity in such a manner and at such rate that does not lead to the long-term decline of the biological diversity maintaining its potential to meet the needs and aspirations of present and future generation.'⁸¹ It is to be remembered that this Act was passed to fulfill the obligations under the U.N. Convention on Biological Diversity signed at RiodeJaneiro in June, 1992. Thus it is a big and appreciable step toward achieving the objectives of environmental sustainability.

Energy and Natural Resources

As we finish finite resources of energy, we evolve new and renewable and clean and green energy sources and low emission technologies like wind energy, solar energy, energy from human and animal excreta and energy from biomass. Since we have desert in the western part of India, we can and harness this solar energy which will be clean, cheap and green energy. Similarly, wind energy be harnessed in the coastal areas of India. Experiments

81 Section 2 (e) of the Biological Diversity Act, 2002. it came into force on February. 5, 2003

in various parts of world and India- have proved it beyond doubt. Electrification of Patna is based on the energy produced by human excreta. Solar energy is also used nowadays in governmental offices and hospitals etc. This is also a step in the direction of environmental sustainability.

A plethora of laws has been passed by the Indian Parliament to protect and preserve various components of the environment preserve and preserve the present environment⁸² and to safeguard it for our progeny. The Environment (Protection) Act, 1986 alone has seven Schedules and eleven Rules. These Rules have provide detailed procedures to contain and control various problems relating to environmental pollution which includes rules on Hazardous Wastes (Management and Handling) Rules, 1989, Hazardous Micro-Organisation Rules, 1989, Bio-medical Wastes (Management and Handling) Rules, 1998, Municipal Solid Waste (Management and Handling) Rules, 1999, Ozone Depleting Substances (Regulation and Control) Rules, 2000 etc. It speaks of the intention of the Indian government to safeguard the representative sample of nature we have with us to pass it on to the coming generation. It is true that thousands of rarest of rare species of flora and fauna have been destroyed by the developmental activities of mankind. Therefore the present species of animals, vegetation and birds are the representative samples of nature. We, as trustees of them, have to hand them over to our children and to successive generations. We are duty bound to manage them properly so that our progeny can know, enjoy and take advantage of their presence as they are the real beneficiaries of this trust. Much has been done and much more has to be done in this direction. It has rightly been observed-

'We stand at a critical moment in Earth's history, a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future at once holds great peril and great promise. To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family

82 E.g. the Wildlife (Protection) Act, 1972; the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) Act, 1981; the Forest (Conservation) Act, 1980; the Environment (Protection) Act, 1986 With 11 Rules; the Public Liability Insurance Act, 1991; the Mines and Minerals (Regulation and Development) Rules, 1957; the Factories Act, 1948; the Biological Diversity Act, 2002; the Atomic Energy Act, 1962 and Radiation (Protection) Rules, 1971; the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; the National Green Tribunals Act, 2010;

and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.⁸³

Therefore it is suggested that we have to make aware of this dangerous problem and create awareness amongst all. We have to act *now* as mankind is on the verge of extinction. 'The resilience of the community of life and the well-being of humanity depend upon preserving a healthy biosphere with all its ecological systems, a rich variety of plants and animals, fertile soils, pure waters, and clean air. The global environment with its finite resources is a common concern of all peoples. The protection of Earth's vitality, diversity, and beauty is a sacred trust.'

Now, it has become apparent that environmental and human rights are inextricably linked. As we increasingly recognize the serious impact of a degraded environment on human health and well being, we are better placed to adjust our policies, cultural practices and laws to reflect our enhanced understanding of environmental problems. As a result of which we should be able to protect human rights and human dignity. This will eventually lead to the articulation of a more integrated approach in dealing with socio-economic and environmental problems, encouraging the development of a sustainable model for the preservation of biological resources and natural ecosystems, for the use and enjoyment of both present and future generations.

In the end I quote a few lines by Elwyn Brooks White⁸⁴ which reiterate the age old principle of 'live in harmony with nature' -

"I would feel more optimistic about a bright future for man if he spent less time proving that he can outwit Nature and more time tasting her sweetness and respecting her seniority....."

83 Earth Charter. Preamble- para2

84 Elwyn Brooks White, *Essays of E.B. White*

Armed Forces Special Powers Act: Theory and Practice

*Chaman Lal**

The seemingly intractable situation in Kashmir Valley arising from the street protests by stone-pelting youths has re-opened the debate over the Armed Forces Special Powers Act (AFSPA). The Act had come in for strong criticism in Manipur in 2004 in the wake of the rape and murder of Thongjum Manorama allegedly by the men of Assam Rifles. It was being condemned publicly for widespread human rights abuses and demand for its repeal was also being pressed through the hunger strike of nose-fed Irom Sharmila since 2002. Prime Minister Manmohan Singh had, then, promised to the people of Manipur that the Government would consider its replacement by a more humane law. A committee headed by Justice B.P. Jeevan Reddy was accordingly appointed to examine the operation of the Act in regard to the purpose behind its enactment and widespread complaints of abuse of its provisions by the armed forces. The Committee studied the matter in depth with public consultation involving various segments of society including the Army and security organizations. The Committee's report submitted in June 2005, says that 'the Act has become in the North East a symbol of oppression, an object of hate and an instrument of discrimination and high handedness'. It particularly assailed the immunity provision (section 6) by asking the question. 'Whether the armed forces need extraordinary protective guarantees and immunity in line of duty more than the ordinary people need the constitutional protection'. Noting the way in which the special powers given under the Act to the armed forces to

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"arrest, search and shoot any one on the basis of mere suspicion" were being abused, the committee recommended its withdrawal and replacement by an amended version of the unlawful Activities (Prevention) Act.

A crucially significant fact of the Justice Jeevan Reddy Report which adds to the complexity of the issue can be read in the Committee's finding that "the overwhelming desire of the people of the North East is that the Army should remain though the Armed Forces (Special Powers) Act should go."

The report has remained quietly shelved because of serious objections from the Defence Ministry. The Army is not prepared to accept any dilution of the law which was enacted for the purpose of enabling the armed forces to effectively discharge their duties as aid to civil power in areas afflicted with serious problems of internal security such as terrorism, insurgency, left-wing extremism etc. The heads of other armed forces of the union - BSE, CRPF, ITBP etc. - hold the same view and consider the special powers granted by the Act as essential for the performance and morale of their troops engaged in internal security operations. The resurgence of mass protests in Kashmir Valley with demand for withdrawal of the AFSPA is seen to have evoked a response suggesting the possibility of initiating action on the recommendations of Justice Jeevan Reddy Committee. I therefore consider this juncture as the most appropriate time for the people of this country particularly the members of the armed forces and advocates of human rights to have a good perceptual clarity about the important features of the AFSPA and their actual application.

The AFSPA was first enacted in 1958 for the Border States / UTs constituting North East India. Parallel Acts were later passed for Punjab and Chandigarh in 1986 and Jammu & Kashmir in 1990. The Act comes into play only after the issuing of notification by the Governor/ Administrator of the state / UT under Section 3 of the Act declaring whole or any part of such state/ UT as a 'Disturbed Area'. The Act provides no definition of 'Disturbed Area'. It has to be judged according to location, situation and circumstances of a particular case. As per the provisions of section 3 of the Act, it means 'disturbed or dangerous situation necessitating the deployment of armed forces in aid of civil power'.

Sec. 4 of the AFSPA confers powers of arrest, search and use of force to the extent of causing death on every commissioned officer, warrant officer,

non-commissioned officer or any other person of equivalent rank in the armed forces in a disturbed area in certain well specified situations connected with maintenance of public order. The wording of the section clearly implies that the use of deadly force in order to neutralize a threat to maintenance of public order has to stand the tests of necessity and proportionality which Human Rights' instruments accept as justifiable grounds for derogation of fundamental human right to life. The powers given by the Act cannot justify the shooting of unarmed civilians or a killing in force custody.

Section 5 of the AFSPA says: Any person arrested and taken into custody under this Act shall be made over to the officer incharge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

This provision requires that the person arrested and material seized from his custody or premises has to be handed over to the local police with the least possible delay. Although no time limit has been put on the 'least possible delay', it has come to be accepted to mean that the arrested person should be handed over to local police well in time to enable it to produce him/her before the magistrate within 24 hours of actual arrest in accordance with the provision of the Criminal Procedure Code.

Section 6 of AFSPA says :

No prosecution, suit or other legal proceedings shall be instituted except with the previous sanction of the central Government against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

The provision of previous sanction follows the logic behind Section 197 criminal procedure code and prohibits prosecution of a member of armed forces accused of misusing the powers under the Act unless the Central Government grants sanction. The provision is meant to protect the armed forces engaged as aid to civil power for maintenance of public order against frivolous and vexatious prosecution.

I have explained above the salient provisions of the AFSPA so that readers understand exactly what AFSPA says while considering popular criticism of its operation.

My experience of working in the North East, first as IG, BSF, Shillong (1990-91) with jurisdiction over Assam, Meghalaya, Manipur, and Nagaland and later as the Director General of Police, Nagaland (1993-96) tells me that the criticism of AFSPA is rooted largely in the widespread violations of the provisions of the Act rather than their legitimate use in serious situations demanding tough handling. It is not the extraordinary powers given to the armed forces that invite public ire but the total disregard of the safeguards provided in the Act to prevent abuse of these powers.

The conferment of powers under Section 4 of the Act to fire or to use force upon public or to destroy any arms dump or to arrest without warrant any person or to enter and search any premises without warrant on low ranking officials like a Havildar (NCO) has been a major ground of widespread criticism of the AFSPA since the enactment of the Act. Although Delhi High Court has rejected the plea to strike this provision as 'bad and unjustified' [AIR 1983 Delhi 513 (533, 534) : 1LR (1984) 1 Delhi, (DB)], this extraordinary provision with proneness to abuse is responsible for the perceived anti-people character of the Act.

I have found the misuse of provisions of Section 5 and 6 of AFSPA to be the main cause of its unpopularity and mass rejection particularly in the North East. The armed forces have been dishonouring the obligation of Section 5 requiring the transfer of the arrested person and the seized material to the nearest police station. A good number of persons from among those taken into custody during operations are let off after questioning without bringing their arrest on record. Those who are formally arrested are detained and tortured in army camps for days together and handed over after fudging the period of their detention. Clarifying that the satisfaction as to existence of grounds for arrest u/s 4 (c) by the armed forces must precede arrest and cannot follow it, the Guwahati High Court- (1982) 1 Gauhati LR 756 (DB)- has held that the person arrested cannot be interrogated after arrest but must forthwith be handed over to police as per Section 5. The Guwahati High Court has dealt with a number of complaints on this count as Habeus corpus petitions.

The illegal practice of keeping the seized weapons, arms and ammunition and other such material and exhibiting them as 'War trophies' widely prevalent in units of the armed forces deployed in disturbed areas is a blatant violation of the provisions of the AFSPA

which is not only overlooked but openly encouraged as a morale booster by senior officers.

Reckless misuse of the provision of previous sanction for prosecution of offending officials has given credence to the argument that AFSPA has immunity scripted into it. The protection offered by Section 6 is meant for bonafide acts of the armed forces performed in line of duty which often result in collateral damage to the population trapped in exchange of fire between the armed forces and terrorists /insurgents. It has, in actual practice, become a protective shield from trial for those accused of heinous offences like kidnapping and murder of unarmed civilians. Withholding of sanction for prosecution in cases like the Pathribal incident of J&K where the CBI investigation has established killing of innocent civilians in cold blood can only mean conferment of de facto immunity on all transgressions of the AFSPA.

The constitutional validity of the AFSPA was confirmed by the Supreme Court of India in 1997 in deciding a PIL filed by the Naga peoples movement for Human Rights. The apex court accepted the assurances given by the Army chief about scrupulous adherence to the safeguards provided in the AFSPA to ensure protection of HRs in the operation of AFSPA in the affected areas. The court perused and endorsed the list of Ten commandments- Do's and Don'ts issued by the army for the guidance of its officers and men involved in the operation of AFSPA. While the intention of the army establishment cannot be doubted and thoroughness of drafting of the guidelines is also beyond question, what is really required but is seldom seen is the strictly lawful application of the AFSPA on the ground. This calls for a radical change in the mindset and functioning style of the armed force personnel. My long experience of working with the armed forces including army officers offers little hope that it can be achieved and AFSPA can be allowed to stay unaltered obviating the need to dilute the fearsome provisions of the AFSPA.

I have found most officers I have come across in the Army and Central armed forces such as BSF, CRPF, ITBP, etc. unwilling to admit mistakes and apologize to the aggrieved citizens. Most of them consider themselves duty bound to protect their personnel in all operational situations including those involving killing of innocent persons in what is always treated as line of duty. Some may go even to the extent of viewing incidents of rape or

killing of a child as professional lapses worthy of official protection. They stubbornly believe that admission of mistakes and initiation of action against the wrong doers would hurt the morale and weaken the combat capabilities of their units. I wish to narrate in this connection an unpleasant and unforgettable experience from my Nagaland days.

A convoy of the Rashtriya Rifles (RR) moving from Imphal to Dimapur on 5 March 1985 got panicky when a tyre of one its heavy vehicles burst right in the middle of Kohima town. Thinking instinctively that they had come under fire from insurgents, the jawans opened fire using short and medium range weapons including 2" Mortars. Seven civilians including two a month old infant were killed and 24 others injured. The poorly supervised contingent unleashed a reign of terror on the National Highway passing through Kohima, stopping all movements of people and herding a group of civilians including many women at one place. They refused to talk to the local DIG of Assam Rifles, a serving Army Brigadier, but somehow allowed me and D.C. Kohima to reach the scene of incident after displaying a good deal of disrespect to 'civilian authorities'. It took us a couple of hours to secure release of the detained civilians, arrange evacuation of the dead and injured to the Govt Hospital and persuade the convoy to move to the Assam Rifle campus. The incident, duly publicized by the national media, brought Rajesh, Pilot, the then Minister of State for Home, to Kohima the next day. I conducted him and a couple of senior Army officers who had come from the Army Corps Head Quarters, Dimapur around the scene of tragedy and convinced them that the incident was a major blunder caused by panic reaction of a body of professionally incompetent and poorly led men crossing an area of perceived danger in an edgy state of mind. The government ordered a commission of inquiry headed by justice D.Sen, a retired judge of the Supreme Court. I deposed before the Commission at Dimapur a little while after I had finished my tenure in Nagaland and joined the BSF HQs at Delhi. My evidence marked by gruelling cross-examination by the Army lawyers and later corroborated by the deposition of SP, Kohima, a Chakesang Naga officer proved clinching in enabling the Commission to give its finding against the RR unit. The army HQs, still determined to present the awful incident of 5 March as a counter insurgency action succeeded in shelving the matter by taking the case to the Supreme Court. A parallel approach can be seen in the Pathribal and a number of other recent cases from Kashmir where the

CBI investigation has proved involvement of army officers in the killing of innocent civilians but the trial cannot take place because the Central Government has refused to give sanction for prosecution under section 6 of AFSPA.

As brought out by Justice B.P. Jeevan Reddy Committee, the people of North East view the continued presence of army indispensable to their safety and security although they are opposed to AFSPA and want it to leave. Same is the case, in varying degrees, in other parts of the country where police is finding it difficult to cope with increasing challenges to internal security on its own and has become heavily dependent on central armed forces for maintaining public order. Special laws like the AFSPA, made in relaxation of certain norms of the basic human right to fair trial, are an operational necessity. They are designed carefully to suitably enhance the powers of law enforcement agencies including the armed forces in proportion to the new threats to internal security on the one hand and pass the test of Constitutional validity on the other. Viewed from this perspective AFSPA is an essential piece of legislation which gives power of arrest, search, seizure and use of deadly force including fire power to the armed forces to enable them to effectively discharge their duties as aid to civil power. The safeguards provided in Section 5 of the Act are meant to prevent misuse of these powers. The provision of previous sanction provided in Section 6 is a just and reasonable protection extended to the members of the armed forces for lawful acts performed in the line of duty. The Act, in my understanding, has come in for criticism not for the contents of its provisions but the fact that these provisions have only been misused and abused. As regards the North East, I have no hesitation in stating that the Act has achieved hardly anything other than causing hardships to the civilian population and consequent alienation of a vast majority of people. It would be wise on the part of the government to examine the recommendations of the Justice B.P. Jeevan Reddy Committee from the angle of, (a). the high possibility of the provision of the Act to be misused (b). the massive extent of their actual misuse resulting in gross violation of human rights in areas of operation of the Act (c). hardly any contribution has been made by the Act to the overall effectiveness of the armed forces in combating insurgency and then decide whether we really need this Act which is a question mark on our claim to a liberal democracy governed by rule of law.

The Civil Society and Human Rights

*Prof. Yogesh Atal**

Ever since the Universal Declaration of Human Rights, way back in 1948 in Paris, the Civil Society has been on the forefront of this movement. In a message to the International Conference held in September 2008 in Paris to celebrate the 60th anniversary of the Universal Declaration of Human Rights, Secretary-General Ban Ki-moon, highlighted the role of the Civil Society in these words: "For six decades, human rights defenders have sacrificed liberty, comfort and even life to ensure that all human beings can enjoy the rights enshrined in the Declaration - irrespective of their race, religion, ethnicity, gender, or other status". Several other speakers at this Conference eulogized the important role that the NGOs have played in putting human rights at the centre of humanity's agenda. The Civil Society continues its mission to advance human rights around the world.

The need for emphasising human rights was intensively felt in the aftermath of the Second World War. It is the ravages of Second World War, destroying the enormous cultural heritage of the countries directly involved in it, and taking toll of hundreds of innocent lives - not only from the warring countries but also from the allied countries, that led to the creation of the United Nations, and the adoption, under its aegis, of the Universal Declaration of Human Rights.

The devastations caused by the Second World War led the international community to devise ways and means to forestall any such war in future so as not to jeopardise the path of progress of the humanity. The United Nations created to "Reconstruct" the institutions demolished by the war in the developed world, and to help accelerate the process of development

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of the Third World that suffered the pangs of colonialism and was dragged into the world war by colonial masters. It was realized that the process of industrial revolution not only brought countries of the world closer but also unevenly divided them as rulers and the ruled. The latter became the slaves of the former. Slavery of that era came to be regarded as the worst form of violation of Human Rights. The demand for freedom raised by leaders like Mahatma Gandhi was, in fact, a war against all forms of oppression, unequal treatment, and torture and exploitation, and was the strongest assertion of human rights.

It was South Africa, and not India, where Gandhi began his tirade against such atrocities. This very fact underlines the emphasis on universal brotherhood, so central to the concept of human rights. Gandhi gave the clarion call to all humanity to non-violently raise the voice against all forms of oppression and despotism.

It is the key features of such movements waged against the oppressive regimes that got incorporated into the movement for human rights. However, human rights were not only intended to oppose the regimes but to spread a culture of amity and non-violence. Gandhi was as much opposed to the alien rule as to the practice of untouchability associated with the Indian caste system, and to the widespread poverty.

Although the United Nations Declaration on Human Rights was made in 1948, soon after the end of the Second World War, and the setting up of the United Nations Organization, the concept can be traced back to various religions and civilizations. In all cultures and traditions there are elements that correspond to the concept of human rights as defined in the Universal Declaration.

These ideals of a civil society form the core of human rights. The Declaration recognizes: the inherent dignity and the equal and inalienable rights of" all members of "the human family for "freedom, justice and peace in the world. It highlights the fact in its Preamble that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind." Human rights are regarded essential "if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". It was hoped that this principle would permit friendly relations between the governments as well.

The universality of the Declaration lies in the fact that the rights are claimed for all peoples of the world, and decries oppression, subversion, and underdevelopment. United Nations became the name for the international effort for reconstruction and development - reconstruction of the devastated Europe by restoring the signposts of culture and achievements of humanity, and development of the countries of the Third World suffering from poor infrastructure, illiteracy, isolation, and abject poverty. To do all this, is in accord with the high ideals of human rights that are endorsed by all cultures, religions, and civilizations.

This Declaration is endorsed practically by all the member states of the United Nations. The various institutions under the United Nations umbrella have passed conventions and covenants in their respective areas of specialization to promote the cause of human rights. For example, UNESCO is mandated to "to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations". In its Preamble it is said:

"since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed."

Understood in this manner, it can be said that the entire work of the UN is geared towards the protection of human rights and promotion of peace and development. As an example, UNESCO has developed its programme for Education in Human Rights at the school level. It has also created University Chairs in Human Rights, and has passed Declarations or Conventions regarding the rights of the indigenous people, bioethics and human genome; it has also promoted the concept of tolerance. The list of the UNESCO Declarations and Conventions to human rights is given in Appendix 1.

Human rights are the joint concern of the (i) International community, mainly the United Nations, also the international NGOs; (ii) the member-States; and (iii) national level NGOs.

The international community -- community represented in the fora of the United Nations and international Non-Governmental Organizations-

has the promotional role in regard to human rights. The task of the United Nations is to diffuse the information related to human rights, educate the people and the governments in regard to the human rights, and to intervene in appropriate manner in situations where these rights are violated - with the obvious limitation that the UN is not a policing agency; it has no teeth to enforce on the governments the implementation of the human rights provisions. The NGOs operating at the international level serve as the watchdogs, and use the resources at their command to publicise violation of human rights and to create world opinion against the oppressive regimes. It is the member-states that have the obligation to respect their commitment to the Universal Declaration of human rights and to demonstrate it in their governance. It is the task of the governments to ensure respect for human rights and suitably amend the ways of the violators. Like the international NGOs, the national level NGOs become the mouthpiece of the civil society of the country and perform the function of giving wide publicity to the cases of human rights violations, and raise voices on behalf of the victims for their redressal.

The Concept of Civil Society

The concept of civil society, currently in vogue, is somewhat vague and ill-defined. There is some section of scholarship which regards civil society as a broader concept applicable to the society as a whole, or to the entire humanity. Such people think that civil society marks the advanced stage of humanity leaving behind savagery and barbarism. On the other hand, this term has come to be used more narrowly for the action groups outside of the government at the national level - and particularly those that are anti-status quo, and the international non-governmental organizations at the regional or national level. These international NGOs are recognised by the international organizations such as the various UN agencies, the World Bank, etc., and are given advisory status allowed to address the intergovernmental gatherings without having a right to vote. Somehow, these are now regarded as representatives of the civil society - and are just called Civil Society. This is not accepted by all for a variety of reasons. Since these organizations are privately created by like-minded individuals they are treated as self-proclaimed representatives. Most such NGOs are run by retired UN officials or government bureaucrats or senior leaders. Without doubt their intentions are good and they have a useful role in

promoting the right cause, questions are generally raised about their representativeness. There are also many bogus NGOs. Then there are NGOs that are in good books with the government; in fact, they are created by the government to perform the tasks that the government machinery is unable to carry out because of several bureaucratic or political restraints. Similarly, national level NGOs are also created by some international foundations, or some powerful governments to serve as their "unsuspected" arms to carry out, in addition to their manifest activities, some "hidden" agenda. Also, doubts are expressed about the constituency served by them. I am personal witness to an international meet of youth NGOs, held in an Asian country some two decades back, in which most international NGOs working in the area of youth were from Europe, and the participants in majority belonged to the "senior citizen" category. More surprising was the fact, that very few Asians attended that jamboree.

Some also raise a question mark on the prefix "Civil". How is it that only the NGOs are civil? If not all governments are "military-ruled", what are they-un-civil? In the British times, cities in India had military cantonments and civil lines, where the latter referred to the non-military administration. But in the new usage, civil has become a narrower concept.

This prefatorial is necessary here to say that the use of the word Civil Society in the context of human rights is currently used as a synonym NGOs.

I shall, therefore, confine myself to this limited connotation of the concept of Civil Society.

The work of International NGOs in the area of Human Rights

Over the years, several international NGOs have contributed to the cause of human rights. The NGOs working for women, children, youth, indigenous people, refugees etc. are also seen as working for this cause. The office of the High Commissioner for Human Rights (OHCHR) has compiled a list of those organizations that represent Civil Society and contribute to the cause of Human Rights. They are divided into two categories: (1) Human Rights Defenders, and (2) those working for Anti-Discrimination.

I. Human Rights Defenders

1. Human rights organizations (NGOs, associations, victim groups)
2. Related issue-based organizations
3. Coalitions and networks (women's rights, children's rights, environmental rights)
4. Persons with disabilities and their representative organizations
5. Community-based groups (indigenous peoples, minorities)
6. Faith-based groups (churches, religious groups); Unions (trade unions as well as professional associations such as journalist associations, bar associations, magistrate associations, student unions)
7. Social movements (peace movements, student movements, pro-democracy movements)
8. Professionals contributing directly to the enjoyment of human rights (humanitarian workers, lawyers, doctors and medical workers)
9. Relatives of victims
10. Public institutions that carry out activities aimed at promoting human rights (schools, universities, research bodies).

II Agencies Working against Discrimination relative to

1. Children
2. Climate change and the environment
3. Economic, social and cultural rights, including the rights to health, housing, food and water
4. HIV/AIDS
5. Human rights country assessment and planning
6. Human rights and business
7. Human rights and counter-terrorism
8. Human rights and disability
9. Human rights education and training

10. Human rights mainstreaming
11. Human rights monitoring and investigations
12. Human rights in peace operations
13. Indigenous peoples and minorities
14. The Millennium Development Goals and the right to development, including poverty reduction
15. Racism
16. The rule of law and democracy, including the administration of justice, good governance, accountability, impunity and anti-corruption initiatives
17. Security policies
18. Trade and globalization
19. Trafficking
20. Transitional justice
21. Women's human rights and gender.

"These programmes seek to inject expertise and fresh thinking into selected cross-cutting themes that are of particular importance to the United Nations human rights programme such as equality and non-discrimination. They address groups and issues deserving special attention, such as victims of racial discrimination, minorities and indigenous peoples, women's rights and gender, disability, trafficking and people affected by HIV/AIDS."

'The United Nations Brochure suggests that "A strong and autonomous civil society, able to operate freely, and knowledgeable and skilled with regard to human rights, is a key element in securing sustainable human rights protection at the national level. Civil society actors are therefore essential partners in the United Nations human rights system." The Un brochure defines the civil society actors as "individuals who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the United Nations."

There are, however, international Non-Governmental organizations which specifically work for Human Rights such as Amnesty International, Human Rights Watch, and International Peace Research Association (IPRA)

- the latter has regional chapters as well. Amnesty International also has its representatives in different countries who supply to it information relative to the violation of human rights. Over the past six decades there has been an explosion of Human Rights NGOs, at the international, national and local levels, from small local community groups to large international organizations.

These organizations promote and monitor human rights by translating complex international instruments into intelligible language and propose activities to be undertaken by concerned citizens in their own community". human rights organizations engage in lobbying and advocacy and make efforts to convince the United Nations and other international Associations and agencies of the need to continually exercise moral pressure on the national governments to respect human rights. Many such human rights NGOs enjoy "observer" status in inter-governmental bodies. NGOs specifically devoted to human rights also convene conferences under the auspices of Oslo Freedom Forum. This forum is regarded by many as human rights, equivalent of the Davos Economic Forum."

Achievement of Some International NGOs

1. Amnesty International (AI)

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights for all. Amnesty International's supporters are those who feel outraged by human rights abuses, who work to improve human rights through campaigning and international solidarity. AI has more than 2.8 million members and supporters in 150 countries from different regions. It coordinates this support to act for justice on a wide range of issues.

Amnesty International claims that all its campaigning and research is fact based.

Among the many activities AI carries out, the following need a specific mention:

- send experts to talk with victims
- observe trials

- interview local officials
- liaise with human rights activists
- monitor global and local media
- publish detailed reports
- inform the news media
- publicize our concerns in documents, leaflets, posters, advertisements, newsletters and websites

It makes serious efforts to stop human rights abuses by mobilizing the public to put pressure on governments, armed political groups, companies, and intergovernmental bodies via:

- public demonstrations
- vigils
- letter-writing campaigns
- human rights education
- awareness-raising concerts
- direct lobbying
- targeted appeals
- email petitions and other online actions
- partnerships with local campaigning groups
- community activities
- co-operation with student groups

Set up in 1960s, the Amnesty International celebrated its 40th anniversary in the year 2001. On that occasion, Amnesty International changed its statutes to incorporate into its mission work for economic, social and cultural rights.

Irene Khan, Secretary General, Amnesty International said in a public lecture delivered on 19 January 2005:

"Using investigative research, the techniques of naming and shaming, the power of astute lobbying and media work, we have challenged the absolute power of the sovereign state. We have insisted that governments must be accountable not only to their people but also open to international scrutiny. Thanks to lobbying by human rights groups, there is now a

plethora of treaties and laws that, for instance, outlaw torture, abolish death penalty, recognize the equality of women, and the rights of children. Thanks to the work of human rights groups, treaty monitoring bodies, the office of the UN High Commissioner for Human Rights and the International Criminal Court have been established. At the domestic level, human rights groups - international and national - have played a major role in the disbanding of apartheid in South Africa, in developing democratic governments in Latin America, Eastern Europe and parts of Africa and Asia, and in turning the tide against impunity in some parts of the world."

Amnesty International claims that as a result of its worldwide campaign "From Brazil to Bulgaria, governments have adopted laws, set up national human rights institutions, introduced constitutional provisions incorporating fundamental principles of human rights, and made human rights education a part of the curriculum." Irene Khan expresses her satisfaction over the achievements of AI by saying that "For better or worse, human rights are increasingly becoming the vocabulary of other movements. Women's groups captured the human rights agenda at the Vienna World Conference. Development organizations have begun to speak of a rights-based approach to development. Indigenous peoples, landless peasants, the disabled, are all plotting their own place in the landscape of human rights."

2. Human Rights Watch

Human Rights Watch was founded in 1978 under the name Helsinki Watch for monitoring the activities of the then Soviet Union particularly to see whether the State complied with the Helsinki Accords.¹ Helsinki Watch adopted a methodology of publicly "naming and shaming" abusive governments through media coverage and through direct exchanges with policymakers. By throwing the international spotlight on human rights violations in the Soviet Union and its vassal states in Eastern Europe, Helsinki Watch claims to have contributed to the democratic transformations of the region. On the pattern of this Accord, Americas Watch was founded in 1981 to arrest the pattern of bloody civil wars in Central America. This

1 It is an international agreement signed in 1975 in Helsinki. Its aim was to reduce tension between the Soviet and Western blocs. It was an attempt to secure common acceptance of the post-World War II status quo in Europe, including the division of Germany. This instrument was signed by all the countries of Europe (except Albania) as well as the US and Canada. However, it was non-binding and as such it lacked treaty status.

agency not only addressed perceived abuses by government forces, but applied international humanitarian law to investigate and expose war crimes of the rebel groups, and examined the role played by foreign governments, particularly the United States, in providing military and political support to abusive regimes. In later years, Asia Watch (1985), Africa Watch (1988), and Middle East Watch (1989) were added, and this cluster was widely known as "The Watch Committees." Soon after, somewhere in the late 1980s, all these committees got merged under one umbrella to form Human Rights Watch.

Human Rights Watch is engaged in opposing violations of basic human rights, and in raising its voice against capital punishment and discrimination on the basis of sex. It has advocated freedom of religion and freedom of the press. It has raised issues such as social and gender discrimination, torture, military use of children, political corruption, abuses in criminal justice systems, and the legalisation of abortion.

Human Rights Watch produces research reports on violations of international human rights norms with a view to drawing international attention to abuses and pressuring governments and international organizations to take effective steps to halt them and to reform their structure.

Assessment

From the brief account of these two major international organizations, outside of the United Nations, and treated as NGOs, it is clear that the past efforts of these organizations have primarily focused on the abuse of power and violence inflicted by the State, particularly in the dictatorial regimes, but not shutting their eyes from atrocities committed on the citizens by regimes that claim to be democratic. It has also criticised, the countries from the developed world - and claiming to be reference models for democratic governance -- for giving support to the dictatorial regimes of the Third World countries.

It is only recent that these organizations have turned to the issues of social and economic rights. Reflecting on the past achievements of AI and suggesting a future course of action, Irene Khan said: "We believe in a vision of a world in which the powerful and the powerless have equal

rights and equal protection, a world that is safe and fair not only for the privileged but also for the poor.”

NGOs operating at the national level are, it must be said, not all engaged in the protection of human rights per se. In most countries, Human Rights NGOs have followed the "naming and shaming" methodology and raised their voices whenever the governments have become violent in handling the opposition. Since most of the time, NGOs take side of the so-called "victims" of the alleged "state terror" they are seen as anti-government, and many are discredited for this. The fact that the word Non-Governmental is employed for them they are seen as anti-government. Debates continue about the role of such NGOs. The common man is, at times, puzzled when such groups take the side of the rebel groups, terrorists, and leaders of the movements such as the Naxalites. On the one hand, concerns are expressed about the manner in which such groups destroy public property, kill innocent people, and demand stern government action to curb them; on the other hand, when such actions are taken against them, and some of these result in killings of the rebels or the terrorists, or their incarceration, the Human Rights activists raise their fingers at the defence and the police personnel for the "excesses" committed by them. How then a State ensure law and order? Sadly enough, the actions of the "outlaws", rebels, and revolutionaries are hardly mentioned as violations of human rights, but actions taken against them for such behaviour are viewed as HR violations. This is not to say, however, that the arms of the government do not violate HR; but every case of strong and decisive action taken by the government against them cannot be excused under the pretext of HR.

Poverty and Human Rights

Since NGOs are changing in their emphases and are increasingly turning towards the social and economic rights, it will be advisable to examine how the HR framework helps the Civil Society to contribute to overcome the deficits of development.

In this section, an attempt is made to analyse the role of the Civil Society in combating poverty.

Increasingly, people are coming round the view that the prevalence of poverty is an indicator of gross violation of human rights.

The Problem of Poverty

Poverty is regarded as the main stumbling block to social development. All countries of the world openly admit the existence of poverty in them, and all have shown their commitment to eradicate it. Poverty was one of the main issues discussed at the World Summit for Social Development, held in 1995 in Copenhagen. It is interesting to note that many speakers at the Summit discussed the problem of poverty in the framework of human rights.

The Copenhagen Declaration and Programme of Action calls for an integrated approach to poverty eradication, sustainable livelihoods and social integration. Following the Summit, the United Nations observed the Year 1996 as the International Year for the Eradication of Poverty (IYEP). The United Nations General Assembly, in its resolution 50/107 of 20 December 1995 declared to observe the First United Nations Decade for the Eradication of Poverty (1997-2006). Quite naturally, all the agencies within the United Nations system assigned priority to poverty and developed action plans to combat it from their respective vantage points. Human rights organizations and activists also joined the campaign and declared poverty as a serious violation of the fundamental human rights.

Who are the Poor? This is still a vague concept. There are several ways in which the poor can be identified: 1. Poor are those who could not meet their daily needs; 2. Poor are those who are socially deprived; 3. Poor are those who feel relatively deprived.

Since poverty is multifaceted, it manifests in several ways. For example:

1. Poor income and dearth of resources (income poverty). This has four types: it may be
 - (i) Absolute income poverty
 - (ii) Low income
 - (iii) Relative income poverty and
 - (iv) Subjective income poverty.
2. Starvation and malnutrition
3. Poor health and sanitation causing diseases and decreasing longevity

4. Lack of access to education and other related facilities. In the community context, it may mean non-existence of a school in the neighbourhood; but for a household it may also mean lack of paying capacity for sending a child to school
5. Homelessness -- people without homes or the community with poor housing, such as slums. People can be rendered homeless because of a natural disaster such as an earthquake or a typhoon and may not be in a position to incur expenses in building a shelter for them. Even the well-to-do can become paupers because of disasters - natural or man-made
6. Unsafe environment
7. Social exclusion and negative discrimination

The above listing would suggest that poverty could be caused not only by low income but also by non-availability of, or denial of access to, other facilities and services. Poverty can be caused both at the level of a community or nation, and at the level of the individual family. Population growth, environmental deterioration, depletion of resources, natural hazards, hard living conditions, and wrong policies of the government are, inter alia, factors that have caused poverty in different contexts. Certain types of poverty situations are attributed to the denial of human rights - for example, slavery, totalitarian regimes, colonization, etc.

The Connect between Human Rights and Poverty

Many people regard the persistence of poverty as violation of Human Rights. Since Article 2 of the Universal Declaration of Human Rights declares discrimination unacceptable, and since the two international covenants explicitly condemn discrimination based on social origin or property, people living in conditions of extreme poverty are seen as deprived of their human rights.

While pleading for the elimination of poverty, human rights activists invoke the fundamental principles of human rights, namely, (i) the equal dignity of all human beings; and (ii) the principle of equality and non-discrimination. It may be recalled that the Universal Declaration of Human Rights begins with the words: "whereas recognition of the 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..."

Similarly, Article 1 of the Universal Declaration affirms that "all human beings are born free and equal in dignity and rights". It is rightly contended that people living in absolute poverty are victims of de facto or de jure discrimination that, in a way, violates the principle of equality. Poverty leads, it is argued, to all kinds of discrimination, including racial discrimination and apartheid.

Those who invoke human rights in the context of poverty, argue that the poor are deprived of the following specific rights:

1. The right to a decent standard of living. (Article 25 of the Universal Declaration that says: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family")
2. The right to housing. (Refer to Article 11 of the International Covenant on Economic, Social and Cultural Rights)
3. The right to health. (Refer to Article 25 of the Universal Declaration of Human Rights, and Article 12 of the International Covenant on Economic, Social and Cultural Rights. The latter says: "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.)
4. The right to education. (Refer to Article 26 of the Universal Declaration and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights). Guided by this, the world community adopted the famous 1990 Jomtien Declaration on Education for All (EFA), which is the prime focus of the work of UNESCO.²
5. The right to work. (It figures in Article 23 of the Universal Declaration and in Articles 6 through 9 of the International Covenant on Economic, Social and Cultural Rights.)
6. The right to protection of the family. (Refer to Article 16 of the Universal Declaration, which says: "the family is the natural and fundamental group unit of society and is entitled to protection by

2 For the Asia-Pacific region, UNESCO developed its programme APPEAL - Asia-Pacific Programme of Education for All. Incidentally, I chaired the group that drafted the Programme document, and gave the acronym.

- society and the State". It also figures in Articles 7 and 10 of the International Covenant on Economic, Social and Cultural Rights.)
7. The right to privacy. (Refer to Article 12 of the Universal Declaration and Article 17 of the International Covenant on Economic, Social and Cultural Rights.)
 8. The right to recognition as a person before the law and to be registered. (Refer to Article 6 of the Universal Declaration and Articles 16 and 24 of the International Covenant on Economic, Social and Cultural Rights.)
 9. The right to life and the right to physical integrity. (See Article 3 of the Universal Declaration, and Articles 6 and 9 of the International Covenant on Economic, Social and Cultural Rights.)
 10. The right to justice. (See Articles 10 and 11 of the Universal Declaration, and Articles 14 and 15 of the International Covenant on Economic, Social and Cultural Rights.) Apart from other obstacles such as illiteracy, complexity of the procedures, mistrust of the judicial system, it is the indigent condition that prevents the poor from taking recourse to law.
 11. The right to take part in political affairs. (Article 21 of the Universal Declaration and Article 25 of the International Covenant on Economic, Social and Cultural Rights refer to this right.) In this context, it is necessary to review the criteria for judging the participation of people. For example, in India there is generally a high participation of the poor in voting, or in staging some protests - but these are wrong indices in the sense that the poor are drawn into the process through the political manipulators who "buy" their participation; the participation of the poor does not reflect their freedom of choice.
 12. The right to participate in social and cultural life. (Refer to Article 22 of the Universal Declaration and Article 15 of the International Covenant on Economic, Social and Cultural Rights.)

The listing of the rights that are violated in the context of the poor suggests that poverty is a denial of not this or that right but of human rights as a whole. It is not only the economic rights of the poor that are violated when he suffers from absolute poverty, but the entire gamut of his civil, political and cultural rights is violated. Absolute poverty, as is said in a UN document, is "an accumulation of mutually reinforcing misfortunes:

poor living conditions, insalubrious housing, unemployment, ill health, lack of education, marginalization, etc." There is a veritable 'horizontal vicious circle of povert'.

The human rights perspective regards poverty as denial of justice. Advocates of this approach hope that the poor, "once recognized as the injured party, would acquire a right to reparation for which governments, the international community and, ultimately, each citizen would be jointly liable. A strong interest would thus be established in eliminating poverty, as a matter of urgency..."

Approaching poverty as a human rights issue makes it more than a social problem and gets it linked to the question of basic social and economic rights as also civil and political rights. Such an approach would require new instrumentalities to ensure elimination of poverty. It would necessitate not only vigorous efforts on the part of the States but also involvement of the civil society, non-state actors, and multinational corporations.

It is now recognised that mere passage of legislation, and government expenditure on the social sector, is not enough to mitigate this scourge. The World Summit for Social Development did discuss several measures such as Tobin Tax³ on international financial transactions and the concept of 20:20⁴. A proposal made by Thomas Pogge⁵ for Global Resources Dividend is also doing rounds. A careful review of all these proposals would suggest that all the suggested measures are primarily meant for the removal of poverty of given regions or communities; they do not address the problem of the individual poor.

Viewing poverty as a "violation of Human Rights" brings into the picture the non-poor sections of the society. To the extent the non-poor are held responsible for causing poverty, or aggravating it, one may talk of violation of human rights by the non-poor. In this perspective, the poor may appear as victims. The social responsibility of the State is also invoked in this framework. State Plans and programmes addressing to the needs of

3 James Tobin, 'A Proposal for International Monetary Reform', *Eastern Economic Journal* 1978, pp.153-59.

4 The proposal suggested that 20% of all ODA - Overseas Development Assistance - would be used for the social sector provided the recipient government agrees to spend 20% of its GDP on this sector.

5 See Thomas Pogge, "Eradicating Systemic Poverty: Brief for a Global Resource Dividend" in *Journal of Human Development*, 2001, pp.59-77.

the poor are part of this framework. The poor can rightfully demand from the State all the support to emerge out of the condition of poverty.

Are Human Rights a Panacea for Poverty?

One must, however, ask the pertinent question: Can we resolve the problem of poverty through the instruments of Human Rights alone? The answer, I am afraid, will be negative.

Conceptually, it is important to distinguish between various types of poverty. If poverty were caused by denial of Human Rights its remedy would certainly lie in the restoration of such rights. But if poverty prevents one from the exercise of certain human rights then efforts would be needed to obliterate those factors that create obstacles. In that case, even a poor will be able to exercise his human rights, but this may not affect his poverty. Mere exercise of human rights does not guarantee abolition of poverty. Seen this way, providing education to the poor should be differentiated from the fight against poverty. Education is a fundamental right, and the poor children should not be denied access to education, but provision of education may not always lead to elimination of poverty. There is ample statistics to indicate poverty among the educated - the former communist block countries offer countless examples of this; similarly, the poor could be found among those who are in jobs or who are normally healthy. A devastating earthquake, or any other natural calamity, can render many homeless and jobless, and even penniless. For such kind of poor one cannot offer the usual recipes of education or employment. The educated may be aware of their human rights, and yet may suffer from poverty that is caused not by the denial of human rights but by other factors.

The human rights approach has the advantage of creating among the poor awareness of their rights, and also of hinting at the non-poor about the implicit discrimination in their behaviour towards the non-rich. But at the same time, it continues to support a philanthropic attitude of charity and of moral responsibility towards the less fortunate compatriots. Even international cooperation hinges on the premise of charity. It remains to be seen how the poor can assert their human rights and seek repairs to the social damage to their lives. The attitude of charity among the non-poor cannot help build self-confidence among the poor. They will continue to be parasites and may even see advantage in appearing to be poor and

downtrodden. This would go against the philosophy of empowerment. This is what is happening to India's policy of positive discrimination. A vested interest has developed among the recipients of government subsidies to remain backward; a "creamy layer" has developed in these groups, but it refuses to opt out of the privileges to make more facilities available to their poor brethren.

Need for an Integrated Approach to Poverty Eradication

It must be admitted that discussions of poverty are full of rhetoric. Those who speak for the poor have not personally experienced poverty, and most of them do not know what poverty entails for those who live it. There is merit in the allegation that while the non-poor speak the socially right language, decrying poverty and sympathising with the poor, they need the poor to maintain their non-poor status. The manifest aims, in such cases, differ from their latent intentions.

These days, empowerment has become a key word and is employed freely with total endorsement from every one. Any one contradicting it faces the prospect of being dubbed as reactionary, anti-secular, and anti-poor. But despite its overuse the concept remains vaguely defined and the word is used more as a synonym for many things - providing education, participation in voting and in protests and demonstrations, entering the job market, good health, human rights, and so on. It is in such a milieu that the role of the civil society has also been highlighted.

Treating poverty as a human rights issue can add a moral dimension to the poverty debate, but cannot solve the problems of the poor, or eradicate the phenomenon of poverty. This may make States and the non-poor sectors of the society sensitive to the issues and may even help empower the poor in certain ways, but human rights alone are not enough to combat poverty.

Concluding Remarks: Human Rights and Social Sciences

From the above the reader must have gathered the impression that the words "Civil Society" and "NGOs" are used as synonyms. In international conferences, it is the NGOs that are regarded as the representative of the Civil Society. The latter word came in currency rather late, and has been monopolised by the NGOs. I think that there is a need to make the distinction.

This issue was raised in the UNESCO Round Table organised at the World Summit for Social Development in Copenhagen in March 1995⁶. A question was raised: Is Civil Society an opposite of the Government? Does the word NGO include also the so-called "Private Sector"? Are the NGOs not the part of the environment of the non-poor? It is well known that many organisations work "on behalf" of the poor, but they are not run by the poor. The spokespersons for the poor are not always the poor; what they represent are their own perceptions of the poor, or of poverty, and their own prescriptions for the elimination of poverty. Such NGOs only "co-opt" and "incorporate" the poor, as the poor neither have the luxury of time or of resources to invest in the activities that do not directly and immediately benefit from in material terms. Questions were also raised about the effectiveness of participation in public life by the poor. Past experience suggests that participation of the poor means addition to the crowd assembled by the agitators - they are used as tools in the name of participation, and their participation is assured through payment of a modicum of fee for adding to the number of the crowd. In any case, participation does not eliminate poverty.

Let me end this essay with a personal note. As UNESCO's Regional Adviser for Social and Human Sciences for Asia and the Pacific for nearly two decades, it was my responsibility to promote teaching and research in human rights, particularly in the social sciences, in higher education. This promotional work, however, remained confined mainly to university departments of Law - particularly International Law - and of Political Science. In the region of Asia and the Pacific⁷, such teaching was mainly normative, and very little by way of research was done in these departments. The celebration of the Human Rights Day on 10th December⁸ was the most important activity in many countries. The celebration took the form of a seminar or a guest lecture on the importance of Human Rights. The funding support sought by the university departments related to the translation of various documents - Universal Declaration, conventions, and

6 As UNESCO's coordinator for work related to the World Summit, I had organized this Round Table in collaboration with CROP - Committee for Research on Poverty. See the Proceedings of this Round Table: Poverty and Participation in Civil Society (edited by Yogesh Atal and Else? yen), New Delhi, Abhinav Publications, 1997.

7 As was the case in other parts of the world as well.

8 The General Conference of the United Nations adopted the Universal Declaration of Human Rights on 10 December 1948. Every year this day is celebrated as the Human Rights Day.

covenants, organization of special lectures for the general public, and arranging competitions - essay writing, poetry, or cartoons and paintings relative to Human Rights. My office did all this, besides bringing out a Newsletter on International Law⁹.

The Reports produced by organizations such as Amnesty International, or by the United States Government, related to the compilation of cases of Human Rights violations in various countries. No doubt, these reports attracted media attention, but they also generated political debates. It is interesting to note that while no government explicitly opposed Human Rights, several did not encourage any work on them. However, UNESCO did support some researches on "awareness" regarding Human Rights amongst special groups. But that was all.

I always had a feeling of discomfort while treating Human Rights as a social science specialty. The question was of orientation -- how to approach the subject? What questions to ask? Whom to ask? How to go beyond macro statistics to empirical research? No departments other than those of Political Science and Law ever showed any interest in Human Rights. Some universities did consider the prospects of introducing an orientation course in Human Rights for all the students, but nothing came to fruition.

I must confess that much of what I read as research material was more in the nature of commentaries and explications. Under the UNESCO auspices, I did organize an international seminar in Bangkok to discuss the place of human rights in various religious traditions. That was an exercise, I realized while conducting the seminar, to provide a counter argument to the general criticism of Human Rights as Western conceptualization; the papers on various religions presented at the seminar tried to show that the idea of Human Rights is universal and is commonly shared by all religions. Again, this exercise was based on the analysis of religious scriptures and did not provide any explanation for the violation of Human Rights by the religious fanatics and fundamentalists who were promoting Jihad and indulging in bloody communal violence.

Social sciences would have to develop a paradigm to handle the issue of Human Rights if they really wished to go beyond "journalistic" reportage

9 Edited by me in collaboration with Professor Vitit Munrarabhorn of Chulalongorn University, Bangkok. Professor Vitit also developed a children's game on Human Rights with UNESCO's help.

or "political" commentaries. If social scientists as social scientists dealt with Human Rights in the same manner as NGO leaders, or politicians, or social activists, they might promote the cause of human rights but would not strengthen the cause of social sciences.

To conclude, let me quote the Secretary-General of the United Nations, who said this on the occasion of the 60th anniversary of the Declaration of Human Rights:

"It is our duty to ensure that these rights are a living reality - that they are known, understood and enjoyed by everyone, everywhere. It is often those who most need their human rights protected, who also need to be informed that the Declaration exists - and that it exists for them."

Appendix 1

List of Major Conventions and Declarations passed by UNESCO General Congress relative to Human Rights

(A) Conventions

- Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character, (the "Beirut Agreement"), 1948
- Universal Copyright Convention, 1952
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the "Rome Convention"), 1961
- Convention against Discrimination in Education, 14 December 1960
- Protocol Instituting a Conciliation and Good Offices Commission to be Responsible for Seeking the Settlement of Any Disputes which may Arise between States Parties to the Convention against Discrimination in Education, 1962
- Universal Copyright Convention as revised at Paris on 24 July 1971
- Convention on Technical and Vocational Education, 1989

(B) Declarations

- Declaration on the Principles of International Cultural Co-operation, 1966
- International Charter of Physical Education and Sport, 1978
- Declaration on Race and Racial Prejudice, 1978
- Declaration on Fundamental Principles concerning the Contribution of Mass Media to Strengthening Peace and Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, 1978

Role of Civil Society and Human Rights in the Present Situation

*Prof. Ranbir Singh**

Introduction

The protection of basic human rights is one of the most pressing and yet most elusive goals of the international community¹. Since the adoption of the Universal Declaration of Human Rights in 1948, there has been a rapid growth in international law mechanisms for the protection of human rights. There are nearly 100 universal and regional agreements regarding the protection of human rights to which a vast majority of nation States bind themselves today². Yet, the lingering effects of violence, disease, famine,

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- 1 Emilie M. Hafner-Burton & Kiyoteru Tsutsui, Human Rights in a Globalizing World: The Paradox of Empty Promises, 110 *A.J.S* 1373(2005).
- 2 The UN Human Rights Treaty mechanism is grounded in the seven core human rights treaties (International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Discrimination; Convention on the Elimination of All Forms of Discrimination Against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment; Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of Migrant Workers and Members of their Families), which set legal standards for the promotion and protection of human rights. Compliance is monitored by treaty bodies through several procedures, including reporting, consideration of individual complaints, and, for two treaties, inquiries into systematic violations. See Karin Lucke, Remarks at the American Society of International Law Proceedings of the 98th Annual Meeting (Mar. 31-Apr. 3, 2004).

and the destruction of economic and social infrastructure continue to violate human rights and increase the world's death toll³.

Together these formal mechanisms⁴, with the informal mechanisms in terms of civil society, transnational advocacy networks, social movements, and non-governmental organizations have created new standards of international human rights norms⁵. These combined efforts at both the formal and informal level have reduced, to a certain extent, the democratic deficit in international law making by giving increased opportunity to non-governmental actors to participate in formation of global human rights standards.

The real question is what good are these international human rights norms if they are not enforced at all? Even though there are international institutional mechanisms for enforcement of human rights treaties, to monitor and enforce treaty obligations, they prove to be weak in enforcing international human rights norms. So what should be done when international mechanisms are not enough for enforcement of international human rights norms? As Hathaway and Burton suggest, global civil society and domestic enforcement mechanisms could play an important role in the effective enforcement of international human rights norms. Where international bodies are less active in the enforcement of treaty commitments

3 One conservative estimate of the direct death toll from civil wars since 1945 exceeds 16 million, more than five times as many people as have died in interstate wars. In the 1990s, over 90 percent of deaths caused by war occurred in internal conflicts. See Jeremy M. Weinstein, *Inside Rebellion* 4-5 (New York: Cambridge University Press, 2007)

4 Lucke, *supra* note 2.

5 Further as per Chinkin and Boyle, the range and diversity of non-state actors make it impossible to do more than generalize about their law-making activities. Nevertheless there is little doubt that various non-state actors contribute in different ways to the emergence of international norms. Alan Boyle & Christine Chinkin, *The Making of International Law* 44, (New York: Oxford University Press, 2007). The role of non-state actors in making of international norms has been recognized by scholars such as Bruno Simma, Andreas Paulus, Michael Reisman, and Harold Koh. See B. Simma & A. Paulus, "The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View", 93 *Am. J. Int'l L.* 302, 306(1999); M. Reisman, *The View from the New Haven School of International Law*, 86 *Am. Soc'y Int'l L. PROC.* 118, 122(1992); H. Koh, *Why Do Nations Obey International Law?* 106 *YALE L.J.* 2599, 2626(1996-7); Justice Rajsoomer Lallah, *International Human Rights Norms, in Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms 1* (Human Rights Unit, Commonwealth Secretariat, London, 1988). See generally Kenneth Roth "Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organizations" 26 *Hum. Rts. Q.* 63(2004).

(as in the area of human rights) it falls upon domestic institutions to fill the gap. Many scholars argue that domestic enforcement mechanisms such as domestic courts could play an important role in enforcing international human rights norms.⁶

But are domestic courts obliged to enforce international human rights norms? Under most of the international human rights instruments, a State party is required to take appropriate measures to implement its international human rights promises, which include adoption of legislative measures.

It has been argued specifically in the context of the economic, social and cultural rights that legislation is indispensable in order to apply international human rights norms to relations between private individuals, to override inconsistent legislation, or to remedy situations where non-legislative measures have been proven ineffective⁷. In this scenario when a State fails to fulfil its international obligations, domestic courts, are in a position to implement the responsibility of the State party. The Constitution provides for the domestic courts to serve as a mediator between the international human rights norms and national society. There is no single variable that conclusively explains the enforcement of international human rights norms by domestic courts in general; as a result, it is difficult to generalize from experiences of domestic courts in different jurisdictions. There are many variables such as domestic political pressures, particular constitutional structures and histories, legal culture and the relative independence of courts which determine how effectively domestic courts could enforce international human rights norms.

6 See generally Andre Nollkaemper, *Internationally Wrongful Acts in Domestic Courts*, 101 *Am. J. Int'l L.* 760 (2007); Eyal Benevenisti, "Judicial Misgivings Regarding the Application of International Law: An Analysis of Attitudes of National Courts" 4 *Eur. J. Int'l L.* 542 (1993); Yuval Shany, *How Supreme is the Supreme Law of the Land? Comparative Analysis of the Influence of International Human Rights Treaties Upon The Interpretation Of Constitutional Texts By Domestic Courts*, 31 *Brook. J. Int'l L.* 341 (2006); Joanna Harrington, *The Democratic Challenge of Incorporation: International Human Rights Treaties and National Constitution*, 38 *Vict. U. Wellington. L. Rev.* 217(2007). See also *Enforcing International Human Rights in Domestic Courts* (Benedetto Conforti & Francesco Francioni ed., The Hague: Martinus Nijhoff Publishers, 1997); Karen Knop, *Here and There: International Law in Domestic Courts*, 32 *N.Y.U. J. Int'l. & Pol.* 501 (2000).

7 Mathew C.R. Craven, *The International on Economic, Social, and Cultural Rights* 125(1995); cf. Yuval Shany, *How Supreme is the Supreme Law of the Land? Comparative Analysis of the Influence of International Human Rights Treaties Upon the Interpretation of Constitutional Texts by Domestic Courts*, 31 *Brook. J. Int'l L.* 341 (2006).

Role of Human Rights in India

All modern societies tend to organize and regulate their affairs in such a manner as to ensure that they work for common welfare on one hand and dignity of each individual on the other. The growth and development of humanity comprised in the society depends on the sincerity and commitment to this approach. Human rights are generally rooted in the cultural and political ethos of each free modern State in the present times. The prime reason is that the theory of natural law of existence mandates provision of, and access to these inalienable and innate rights for optimum growth of the individual as a human to be useful to self and to the society and environment of which he is a part.

During the struggle for independence, our freedom fighters raised their voices against human rights violations and deprivation of basic civil, political and economic rights at the hands of the foreign rulers. When free India set about the task of preparing a Constitution for self-governance, one area on which there was complete unanimity was the subject of fundamental rights. With history of strife emanating from social evils of casteism and communalism, and a large chunk of population engaged in struggle for existence amidst extreme poverty, deprivation, hunger, illiteracy, unemployment and all consequent miseries, it was clear that respect for human rights, not merely in theory, but in practice from the standpoint of good governance could be the only lasting solution for guaranteeing peace, tranquillity and equitable development.

Taking cue from the Universal Declaration of Human Rights that became part of the firmament of international law in 1948, as indeed from Constitutions of other great democracies of the world, India adopted her Constitution that assured one and all that it would be a Democratic Republic aiming to secure to all its citizens Justice, Liberty and Equality while promoting dignity of the individual. The Constitution assured Justice not merely in abstract but Justice of broad spectrum covering social, economic and political rights. The Liberty guaranteed to the citizens of India was promised to be inclusive of liberty in the matter of thought, expression, belief, faith and worship. Similarly, if not more importantly, the right to Equality, grafted as a basic precept of the State policy, was intended to be not merely of status but of opportunity.

To facilitate attainment of these Constitutional goals, enjoyment of basic civil and political rights under the taxonomy of Fundamental Rights was guaranteed as part of its basic structure. This was done by not mere ornamental platitudinous declaration but by making these rights justiciable and enforceable. These rights are complemented and supplemented by certain universally recognized economic, social and cultural rights known in our polity as the Directive Principles of State Policy, treated as "fundamental in the governance" of the country and, therefore, subject matter of the "duty" of the State to apply. The regime of these human rights, recognized by our Constitution, is founded on common objective, namely the welfare of the individual on one hand and of the society on the other. In this sense, they are interdependent for facilitating attainment of democratic aspirations of "We, the people of India" as a whole.

Principles - Moving towards Domestic Implementation of International Human Rights

Human rights movement in the free world reached a landmark when UN General Assembly adopted a resolution, in December 1993 to endorse the "Paris Principles" of 1991 that mooted the idea of establishing Institutions designed to provide "guidance and directions" for affording "better protection of human rights". In the wake of these developments India, committed to "respect for international law and treaty obligations in the dealings of organized people with one another", enacted the Protection of Human Rights Act, 1993, with a view to bring about greater accountability and strengthen the dominion of human rights in the country. This enactment widened the field of human rights regime in our country by including within its compass, not only fundamental rights but also the rights embodied in two major international covenants, namely the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both adopted by the UNO in 1966.

The International Human Rights regime has made tremendous progress in the last four decades after the adoption of two international covenants mentioned in our Statute. The basic right to life stands enlarged, courtesy pro-active approach of judicial organ, so as to include within its sweep the right to live with dignity, right of health, right to clean

environment, right of equitable access to opportunities for optimum growth & development of self, economically, culturally and socially.

Concerns for the protection of ecology and pollution free environment have brought under sharp focus the goal of "sustainable development" rendering it a subject matter of basic human rights. Over the years, the international community has become increasingly aware about the relationship between environment degradation and human rights abuses. It is now universally accepted that environmental and human rights are inextricably linked. Poverty situations and human rights abuses are worsened by environmental degradation. This phenomena occurs for several reasons including the facts that the exhaustion of natural resources leads to unemployment, emigration to cities, leading to adverse impact on public health and negative economic, socio-cultural, and political consequences. The situation brought out by environmental degradation transcends political boundaries and is of critical importance to the preservation of world peace and security. The protection of the environment being at the core of existence of humanity, it has assumed the status of most crucial human rights, the protection of which is a matter of universal responsibility. These concerns, in fact, led to inclusion of a duty to protect and improve the environment as part of our State policy under Article 48-A.

As participative democracies have increasingly recognised, the awareness of serious impact of a degraded environment on human health and well being. This helps in adjustment of State policies and cultural practices leading to better protection of human rights and human dignity and articulation of a more integrated approach to dealing with socio-economic and environmental problems, encouraging the development of a sustainable model, for the use and enjoyment of both present and future generations. As part of the movement to trigger action on the front of human rights, the United Nations Millennium Summit, held on 8 September 2000, adopted a Declaration to set out the Millennium Development Goals for all peace loving peoples of the free world.

This declaration was a solemn resolve by the member States to end human poverty, promote dignity and equality and to take steps in furtherance of the attack on widespread hunger, gender inequality, environmental deterioration, lack of education and health care etc. Hon'ble Dr. Justice A.S. Anand, Chairperson of National Human Rights

Commission, in his Address in June 2006 at the inaugural session of United Nations Human Rights Council in Geneva, said that "universality of human rights demand eradication of global inequalities" since "human rights are interdependent and interrelated and have a direct relationship with human development" and because massive inequalities and social evils flowing from poverty render "the enjoyment of human rights rather illusory". The world is veering round to this view that holds the concept of human rights underpinning holistic human development.

India, thus, has been at the forefront of the growth of human rights jurisprudence. We are the largest democracy of the present day world. We see for ourselves a greater role in near future for maintenance of global peace, tranquillity and security with the objective of promoting harmony and the spirit of universal brotherhood amongst the entire humanity. We are committed to work for a world order transcending religious, linguistic and regional or sectional diversities so that each individual has access to opportunities and resources to aspire and strive for excellence and collective enrichment leading to common welfare. These are the very ideals on which our democratic welfare State is founded.

In view of the fact that guarantee of basic human rights lies at the core of true democracy, it is imperative that India leads by example in the enforcement of human rights. It being part of the constitutional obligation of our democracy, the objective of ushering in good governance that cherished and zealously guarded human rights is sought to be achieved by establishment of Human Rights apparatus under the Protection of Human Rights Act.

The National Human Rights Commission has been entrusted with an all-India role and responsibility of protecting and promoting human rights of the citizens. At the cutting edge level, however, the law envisaged creation of Human Rights Commissions for each State. The role assigned to National and State Human Rights Commissions is participative, supplementary and collaborative, the only difference being in the area of jurisdiction, since their respective functions overlap.

In the fast-growing expectations of law-abiding citizenry, it has become imperative for all concerned to fully grasp and appreciate the significance of the law governing the object of protection of human rights, in our

country. Especially, as the progress of setting up of Commissions in certain States has been tardy, with appreciation of the importance and supportive role of such machinery in matters of effective and good governance being rather slow.

The task of the State in the matter of protection of human rights does not end merely with the establishment of the Commission. Such machinery is expected to deliver on the promises the law envisages as part of its duties. It would not be out of place to mention about the activities of the Madhya Pradesh State Human Rights Commission over the last about fourteen years. This Commission can claim the proud distinction of being the pioneer in the field, in that it was set up even before the enactment of law by the Union Legislature. Undoubtedly, this Commission has made great contribution to the sustenance of rule of law by steadfastly pursuing issues of human rights coming up before it in various forms.

The Commission has received, by and large, positive response and cooperation from the State executive. But bodies like this cannot afford to sit on their laurels. As it appears to be a considered policy adopted by NHRC, the entire burden of complaints of alleged human rights violations would slowly and gradually shift on to the shoulders of the State Commission so as to allow the National Commission to take on the larger and more challenging role of providing "guidance and directions" to the human rights movement in the country as a whole. This finds reflection in Chapter 14 of the Annual Report for 2003-04 of NHRC. What I am pointing out is the fact that with increased awareness of rights, shifting of focus from "welfare" to "rights" of persons with disability, added emphasis on the worth of human dignity, acute abhorrence of discrimination of any kind, in a system of "inclusive democracy" that we have adopted, wherein, all sections of the society demand justice & equality in status, opportunity and distribution of resources, the consequent conflicts of interests would generate more complaints of human rights violations in future. In the result they may face a deluge in very near future.

The areas of interest and focus will undoubtedly continue to include the traditional subjects of custodial deaths; custodial rapes; encounter deaths; rights of arrestees; human rights and prisons; rights of women, children or other such vulnerable sections of society, subjects in which you have had reasons for dissatisfaction, given the confrontationalist or obstructionist

attitude in quarters having vested interests. But then, these are the fire-tests for which statutory authorities of this stature must always be geared up. Possibility of recourse to "Reference" procedure is a matter of debate and policy on which one shall have to await views of the legislature.

Given the direction in which human rights laws is heading, the State Commission would be expected to also shoulder the responsibility in the areas as varied as right to health care, right to gainful employment, right to corruption-free governance, right to relief in times of man-made or natural disasters, right to food and potable water, right against trafficking in human beings, right against sexual harassment or abuse, rights against child labour and child marriage etc.

No purpose is served by the Commission engaging the other agencies of the State in adversarial litigation to secure enforcement of its recommendations. In this context, I would like to impress upon the State executive that by augmenting the human rights protection machinery in the State, the Government is, in fact, acquiring a partner in good-governance. The law casts an obligation on each State Government to sustain the Human Rights apparatus by acting in its aid rather than at cross-purposes. It is hoped and trusted that the State Government would do all it can to reinforce this partnership for the common good of the people of the State and would abide by the provisions of protection of Human Rights Act in letter and spirit.

Functionaries of Human Rights throughout India must bear in their hearts and minds, the proactive approach adopted by the judiciary to religiously guard the rights fundamental for human existence. The direction of Human Right Commissions must encompass right to life so as to include within it the right to live with dignity, healthy environment, humane conditions of work, right to education, shelter and social security, right to know, adequate nutrition & clothing, pollution-free water and air and many other such rights.

Role of Non-State Actors in Human Rights

Human rights law, obscured by the fallacies of realism, has traditionally concentrated on action by States. It has been assumed that it is the government which has the primary responsibility both for protecting

human rights and for ensuring that human rights are not infringed, either by state agents or by third parties. However the credibility of this vertical imposition of responsibility is losing ground with a plethora of non-state bodies now acting on the international stage.

When we talk about non-State actors, we tend to focus primarily on NGOs. Non-State actors, however, are not homogenous, nor do they form a monolithic whole. They have various and often conflicting interests, different values, there are good and bad non-state actors and not necessarily any agreement about which fall into which category⁸. The polarity emerges when the distinction between two categories of non-State actors is made. There are those who are self-interested, the financial actors, the transnational corporations, even terrorist groups, for instance, and those who have the common interest at the center of their project, for instance the non-governmental organizations (NGOs), particularly human rights NGOs⁹. This classification however makes it difficult to categorize an international organization as a non-state actor for it does not fall under one specific category. An international organization is an institution that is composed of states, but, nevertheless, it has an independent existence-it has limited international personality-hence; perhaps it could be considered a non-state actor¹⁰. Nevertheless, we generally do not think in those terms about international organizations, for the simple reason that in terms of ultimate decision-making and implementation, these international organizations are in turn dependent on the will of the States comprising them.

The role of non-State actors in human rights can be that of defenders or violators. As stated above, this role is to be identified and prioritized by the category under which they fall. The pro-bono activist role, in other words the role of defenders of human rights, is played by the NGOs, the international media (to a certain extent) and in the rarest of rare cases, individuals. Transnational corporations, terrorist/armed groups are more often violators of human rights.

8 Christine Chinkin, Non-State Actors and their influence in International Law, 92 *Am. Soc'y Int'l L. Proc.* 380.

9 Aryeh Neir, Non-State Actors and their influence in International Law, 92 *Am. Soc'y Int'l L. Proc.* 380

10 Virginia Leary, Non-State Actors and their influence in International Law, 92 *Am. Soc'y Int'l L. Proc.* 380

Role of Non-State Actors as Defenders of Human Rights

Non-state actors (hereinafter referred to as NSAs), mostly comprising NGOs have been playing a considerable role as champions of human rights. This role can be categorized under two heads, *de jure* and *de facto*. The *de facto* rôle of non-state actors in this category can be further classified under three heads, viz., initiation, formulation and enforcement of human rights laws.¹¹

The first *de facto* role of NSAs is the initiation of discussion on human rights issues. These NSAs draw the world's attention to various human rights issues and thus facilitate international organizations (and even governments) such as the UN, in identifying and bringing before the fora, the key human rights issues. Specific mention is to be made of the role played by the international media. The media highlights the human rights violations across the globe, thereby enabling the prioritisation of human rights issues in the agenda of governments and international organizations. This ignites the formulation of human rights laws at the national and international level.

The second *de facto* role relates to the formulation of human rights laws. Non-State Actors, with particular reference to NGOs are actively involved in the drafting of human rights treaties and charters¹². The recent Rome Statute of the International Criminal Court is the finest example of the role played by NGOs in drafting human rights conventions. In July of 2002 in Rome, the ICC came about, but not simply because states were interested in it. Over 200 NGOs participated in the drafting and ultimate approval of that statute. The ICRC has been a pioneer in drafting the Geneva Conventions on Humanitarian Law relating to treatment of civilians during times of war, prisoners of war and the treatment of the sick and wounded belonging to armed and naval forces. The NGOs submit legal studies drafted by experts, which contain their own interpretation of the applicable international rules of law and suggestions for improvements. This, they

11 For further background on the role of human rights NGOs, see e.g., David Weissbrodt, *The Contribution of International Nongovernmental Organizations to the Protection of Human Rights*, in 2 *Human Rights International Law: Legal Policies and Issues* (Theodor Meron ed., 1984)

12 Prof. Dr. Jan Wouters & Ingrid Rossi, *Human rights NGOs: Role, Structure and Legal Status*, Working Paper No 14 - November 2001 <<http://www.law.kuleuven.ac.be/iir/eng/wp/WP14e.pdf>> (Last visited on 28.10.2009)

employ as a part of their lobbying strategy and thereby set standards (e.g., 1993 World Conference on Human Rights in Vienna, 1995 Fourth World Conference on Women in Beijing, 2001 World Conference on Racism).

The third and the most important *de facto* role relates to the enforcement of human rights. NSAs, though not having any affiliation with the State machinery, do play a pivotal role in the implementation of human rights standards at the national and international level. Human rights NGOs, being more independent from political forces than States or international organizations, are able to recognise and censure human rights violations.¹³ The reports submitted by these NGOs on human rights violations (which is often made available to the public through the international media) make it difficult for the States to ignore these violations. Further, the UN human rights bodies and other inter-governmental human rights bodies such as the Inter-American Court on Human Rights, European Court of Human Rights require information on human rights standards and violations which is provided by these NGOs through their research.

The *de jure* role of non-state actors in human rights is quite substantial indeed, considering the fact that very few international NSAs (particularly NGOs) are exclusively international in their approach (e.g., Amnesty International). Nevertheless, international law has provided these non-state actors a role to play through the UN Charter and various other human rights treaties¹⁴. Article 71 of the UN Charter provides that the Economic and Social Council (ECOSOC) may make consultative arrangements with NGOs. In 1948, when only forty-eight non-governmental organizations had received consultative status with the U.N. Economic and Social Council, today 1,350 NGOs have such status. In addition, 1,550 NGOs have consultative status with the U.N.'s Department of Labor, up from 200 in 1968¹⁵. Many special organs of the UN maintain similar consultative arrangements with NGOs, which are regulated in resolutions of the General Assembly, ECOSOC, or in rules of procedure of the special organs themselves.

13 "...Because many national delegations lack the resources to do thorough human rights research, NGOs often provide delegates with information and even draft documentation for use in U.N. bodies". (Weissbrodt, *op. cit.*, p. 419).

14 See Nigel S. Rodley, Human Rights NGOs: Rights and Obligations, Present Status and Perspectives, in *The Legitimacy of the United Nations: Towards an Enhanced Legal Status of Non-State Actors*, Sim Special No. 19, (1997), p. 44.

15 Thomas M. McDonnell, Human Rights and Non-State Actors, 11 *Pace Int'l L. Rev.* 205

With respect to human rights treaties, there is always a reporting procedure by the State Parties before the treaty bodies (Economic and Social Council under the International Covenant on Educational, Social and Cultural Rights, for instance). As regards this reporting procedure, the ECOSOC is open to NGO participation. It has been said that the most developed system of NGO input is the NGO group on the Committee on the Rights of the Child, which has issued a guide for NGOs preparing complementary information and which invites NGOs to present oral information to a pre-sessional working group of the Committee¹⁶.

In other treaties, however, the *de jure* role of NSAs, though informal, is nonetheless influential, the earlier Human Rights Committee (HRC) and current Human Rights Council under the International Covenant on Civil and Political Rights and Council of Europe's European Social Charter for instance. The HRC enlists the help of NGOs to scrutinize the reports submitted by the States and to reveal those vital matters that have been concealed in such reports.

However, the cornerstone of enforcement, viz, the ability of NSAs such as NGOs to initiate an international case or intervene as party is limited because in the international courts only States may be parties to proceedings. However, NGOs have participated as *amicus curiae* in international judicial bodies and are active as *amicus curiae* in the regional human rights systems of Europe and America, i.e. the European Court of Human Rights and the Inter-American Court of Human Rights¹⁷.

Role as Violators of Human Rights

While the general rule is that non-state actors cannot commit human rights violations, human rights law does oblige states to regulate the conduct of non-governmental actors, including corporations, to ensure they do not commit human rights abuses. Non-state actors such as corporations, fundamentalist groups and armed opposition groups are having an increasing impact on the enjoyment of economic, social and cultural rights in particular.

16 Martin Scheinin, *International Mechanisms and Procedures for Implementation*, in *An Introduction to the International Protection of Human Rights* (Raija Hanski and Markku Suksi, eds., 1999, 2nd ed.), 429, at p. 435.

17 For more information on this topic, see Dinah Shelton, *The Participation of Nongovernmental Organizations in International Judicial Proceedings*, 88 *Am. J. Int'l Law* 611-642 (1994).

Human rights law confers certain duties on non-state actors as well. Article 10 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms provides that no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedom. Thus it becomes clear that by the disregard of such duties non-state actors play a direct and indirect role in a wide range of human rights violations.

In Canada, a major cause of homelessness, particularly among poor families with children, is landlords using "minimum income requirements" to disqualify low-income households from housing. The Centre for Equality Rights in Accommodation (CERA), along with other groups and organizations, challenged these policies as a form of discrimination under domestic human rights legislation. Landlords and banks poured almost a million dollars into defending their "corporate right" to disqualify poor people as "bad credit risks." The tribunal ruled in favor of the claimants. The decision, which received widespread media attention across Canada, found that landlords violate domestic human rights legislation when they discriminate against the poor.¹⁸

In 1997 a coalition of human rights lawyers established the right under US law to sue multinational corporations for their participation in certain types of human rights violations in foreign countries. A US District Court Judge ruled that victims of forced labour and other gross human rights violations in Burma could bring suit against Unocal Corp. for its joint participation with the Burmese military government in a petroleum pipeline project where Burmese citizens were forced to work on the project and atrocities were committed against them.¹⁹

In December 1984, a cloud of toxic chemicals escaped from the US-owned Union Carbide pesticide factory in Bhopal, India. Three thousand people died in a space of a few hours. After a criminal investigation, the Indian Government charged Union Carbide, its US chairman and a number of other company officials with homicide.²⁰

18 See <http://www1.umn.edu/humanrts/edumat/1HRIP/circle/part2/MODULE9.HTM/> (last visited on 28.10.2009)

19 John Doe I et al. v. Unocal Corporation, Myanmar Oil and Gas Enterprise et al. United States District Court, General Dist. of California, Case No. Cv 96-6959-RAP.

20 See Charanlal Sahu v. Union of India AIR 1990 SC 1480.

The most dangerous among the non-state actors who violate human rights standards are, however, terrorists and armed groups. Currently, one of the most dramatic threats to human security is internal armed conflict.²¹ In 1998 alone, violent conflicts took place in at least 25 countries. Out of these armed conflicts, 23 were internal, engaging one or more non-state armed groups.²² A key feature of internal conflicts is the widespread violation of humanitarian and human rights by armed groups, from rebel movements to private militias.

Background: Constitution of India and Supreme Court

The Constitution

The Constitution of India is the world's lengthiest constitution with more than 370 articles, replete with multiple schedules and more than ninety amendments²³. It recognizes fundamental rights that are largely similar to the individual rights enumerated in the International Covenant on Civil and Political Rights in Part III²⁴. They were originally divided into seven parts consisting of the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, the rights of the minorities, the right to property and the right to enforce the fundamental rights²⁵. The fundamental right to property was deleted in 1979 and placed in a new Article 300A and is now a legal right. The Constitution of India also contains rights corresponding to the International Covenant for

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- 21 Claude Bruderlein, *The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars*, <<http://www.humansecuritynetwork.org/network-e.php/>> (last visited on 28.10.2005).
- 22 See the SIPRI Yearbook 1999, *Armaments, Disarmament and International Security*, Oxford University Press, 1999.
- 23 The classic study of the Indian Constitution is Granville Austin, *The Indian Constitution: Cornerstone of A Nation* (New Delhi: Oxford University Press, 1966). The length and complexity of the document is somewhat mitigated by the fact that approximately two-thirds of its provisions are technical, functioning more like organic statutes than constitutional provisions; cf. Burt Neuborne, *The Supreme Court of India*, 1 *INT'L J. CONST. L.* 476(2003).
- 24 These fundamental rights substantially cover all the traditional civil and political rights enumerated in Articles 2 to 21 of the Universal Declaration of Human Rights. See Subhas C. Kashyap, *The Constitution of India and International Law*, in *India and International Law* 13 (Bimal Jalan ed., Martinus Nijhoff Publishers, Boston, 2005).
- 25 Mahendra P. Singh, *Constitutionalization and Realization of Human Rights in India*, in *Human Rights, Justice and Constitutional Empowerment* 30 (C. Raj Kumar & K. Chockalingam ed., New Delhi: Oxford University Press, 2007).

Economic Social and Cultural Rights (ICESCR) under Part-IV referred to as Directive Principles of State Policy and constitutes non-enforceable set of rights (see Appendix II). For instance, minimum living wages²⁶, free and compulsory education for all children up to age fourteen²⁷, minimum standards of living, nutrition and public health, protection and improvement of environment, forests and wild life and the right to free legal aid²⁸. The spirit of Directive Principle of State Policies is expressed in Article 38 which establishes the aspirational goals of economic justice and social transformation.

Further, the Constitution under Article 51 in Part-IV also lays down the bases on which India's foreign policy should be constructed and its international obligations respected²⁹. Article 51(c) obligates the State to foster respect for - international law and treaty obligations in inter-state relations. For a domestic lawyer, Article 51(c) raises issues concerning the subjects, the functions, the nature and sources of international law as well as the relationship between the domestic law and international law³⁰.

The Supreme Court of India

The Constitution of India provisioned for a Supreme Court with a Chief Justice and seven lower-ranking judges, leaving it to Parliament to

26 Art. 43: Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

27 Art. 45: Provision for free and compulsory education for children.-The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

28 Article 39A: Equal justice and free legal aid. The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

29 Article 51: Promotion of international peace and security-The State shall endeavour to-

- (a) promote international peace and security;
- (b) maintain just and honorable relations between nations;
- (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) encourage settlement of international disputes by arbitration.

30 P. Chandrasekhara Rao, *The Indian Constitutional and International Law* 7 (Delhi: Taxmann, 1995).

increase this number. The Supreme Court of India comprises the Chief Justice of India and not more than 25 other judges appointed by the President of India. However, the President must appoint judges in consultation with the Supreme Court and appointments are generally made on the basis of seniority. The Cabinet has recently increased the number of Supreme Court judges from 25 to 30 taking into consideration the increasing work load and enormity of long pending cases. Supreme Court judges retire upon attaining the age of 65 years.

As regards the functioning of the Supreme Court, the period from 1950 to 1975 constituted one of the formative years of the Indian Supreme Court which ended with a doctrine of 'basic structure', in particular, as a reaction to the executive's attempt to dilute the power of judicial review through statutes or constitutional amendments³¹. According to this doctrine, the executive power of amending the Constitution could not be equal to the power of making a constitution. In other words, the power of constitutional amendment could not be used for repealing the entire Constitution. The identity of the original constitution must remain intact. From 1977 onwards, the Court's jurisprudence blossomed with doctrinal creativity and procedural innovations, starting an era of judicial populism³². It was partly an attempt to refurbish the image of the court and also an

31 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225. See also Raju Ramachandran, "The Supreme Court and the Basic Structure Doctrine" in *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* 107 (B.N. Kirpal et al. ed., New Delhi: Oxford University Press, 2000). Gobind Das provides an overview of the distinct phases of the Supreme Court of India based on the judgments delivered since 1950 until 1998: the first period, 1950-60: where the court gradually and cautiously expanded its own authority; the second period: 1960-70: where the court decided to take corrective measures to establish a just economic, political and moral order in the interest of the country; the third period, 1971-6: where the edifice that the court had built over the last two decades was dismantled through Constitutional amendments; the fourth period, 1977-80: the new government that came to power dismantled the constitutional amendments brought into law by the previous government and the Court sought a revival of the pre-eminent position it had lost during the Emergency; the fifth period, 1980-84: where the Court decided not to have major confrontation with the government and did not interfere with major political and economic decisions of the government; the sixth period 1985-87: where the court proposed a holistic approach to participatory management with the executive; the last decade, 1987-98: where there was much instability in the country and there was no direction in the jurisprudence of the Supreme Court: See Gobind Das, "The Supreme Court: An Overview" in *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* 16 (B.N. Kirpal et al. ed., New Delhi: Oxford University Press, 2000).

32 S.P.Sathe, Judicial Activism: The Indian Experience, 6 *Journal of Law and Policy* 29 (2001).

attempt to seek new, historical-bases of legitimizing of judicial power. During the 1980s, the Supreme Court relaxed its rule of standing and simplified procedure under Public Interest Litigation' (PIL) or Social Action Litigation (SAL)³³ where even a post-card (even newspaper clippings) sent to the court highlighting human rights violations could be converted into a petition as a means of asserting the Court's relevance in the human rights arena³⁴. As Prof. Upendra Baxi puts it, there was a transition from a traditional captive agency with a low social visibility into a liberated agency with a high socio-political visibility³⁵. Thus, the Court assumed a proactive role in protecting the rights and interests of the citizens of India.

Unlike the division of human rights into ICCPR and ICESCR, in 1976, the Supreme Court of India held that the Fundamental Rights and Directive Principles of State Policies in the Constitution's Part-III and Part-IV were indivisible- neither part being superior to the other³⁶. The court held that in building up a just social order it is sometimes imperative that the Fundamental Rights should be subordinated to the Directive Principles.

33 Prof. Upendra Baxi use the term social action litigation in preference to the more vogueish term public interest litigation which slipped into Indian juridical diction as effortlessly as all Anglo-American conceptual borrowings readily do. See *infra* note 52 at p. 290.

34 Dr. Usha Ramanathan, Human Rights in India: A Mapping, *IELRC Working Paper* 2001-03, available at <http://www.ielrc.org/content/w0103.pdf> (last visited Feb, 18 2008). See Burt Neuborne, The Supreme Court of India, 1 *INT'L J. CONST. L.* 476(2003) (What made the PIL cases so extraordinary was the Indian Supreme Court's radical departure from the usual rules of adversary judicial procedure and separation of powers), Ashok H. Desai & S. Muralidhar, Public Interest Litigation: Potential and Problems, in *Supreme but not Infallible: Essays in Honour of the Supreme Court of India* 159 (B.N. Kirpal et al. ed., New Delhi: Oxford University Press, 2000).

35 Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India, in Judges and the Judicial Power* 289 (Rajeev Dhavan et al., London: Sweet and Maxwell, 1985).

36 *State of Kerala v. N.V. Thomas*, (1976) 2 SCC 310 at 367. As per Justice Bhagwati in *Francis Coralie Mullin v. Administrator Union Territory of Delhi*, 1981 AIR(SC) 746: This principle of interpretation which means that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution.

International Human Rights, Supreme Court and the Indian Constitution

Over the last few years, many scholars have argued for the enforcement of international human rights norms by domestic courts. These are, however, largely normative claims, and only a few scholars have supported their arguments with empirical claims³⁷. Scholars across Africa, Latin America, Europe, Australia, Canada and the United States have argued for enforcement of international human rights norms by the domestic courts, yet there is no such argument advanced by scholars within India. On the basis of the content analysis of the judicial decisions of the Supreme Court of India, the following conclusions may be made:

When the Supreme Court mentions international human rights norms (in 34% of cases), although it doesn't use them in reaching its decision, the Court incorporates them into its domestic human rights jurisprudence. When the Court follows international human rights norms or uses them as a support in reaching its decision, it both incorporates and enforces them into domestic human rights jurisprudence. Of course, there is a slight difference in terms of emphasis on international human rights norms when Court uses them as a support or follows them. There is a stronger reliance on international human rights norms when they are followed as compared to instances where they are used as support.

There is no difficulty upholding the applicant's request when the domestic legislation is subsequently enacted giving effect to the international treaty or covenant such as enactment of Juvenile Justice (Care and Protection of Children) Act, 2000 in pursuance of obligations under the Convention on Rights of Child, 1989. But when there is no subsequent domestic legislation, should the Supreme Court of India still enforce those obligations under the relevant international covenant or treaties? There are generally two scenarios before the Court. In the first scenario, the international treaty or covenant relied upon by the one of the parties to the case is signed or ratified by the executive. In the second scenario, a relevant international treaty or covenant has not been signed or ratified by the executive.

37 See, e.g., Thomas Trier Hansen, Implementation of International Human Rights Standards Through the National Courts in Malawi, 46 *Journal of African Law*, 32(2002); Richard Frimpong Oppong, Re-Imagining International Law: An Examination of Recent Trends in The Reception of International Law into National Legal Systems in Africa, 30 *Fordham Int'l L.J.* 296 (2007).

In resolving the questions posed by the first scenario, the Supreme Court has recognized the obligation of the State once it ratifies the international treaty to take all necessary measures such as enacting legislation at the domestic level in consonance with treaty obligations. When there is no domestic law giving effect to the provisions of the international treaty or a covenant, the Supreme Court has indirectly enforced them into the domestic law. This is in consonance with the obligations of the judiciary in engaging the responsibility of the State party to an international human rights instrument³⁸.

In the second scenario where the executive has not ratified a relevant international human rights instrument, the Supreme Court has relied on the customary international principles in enforcing the international human rights norms. Thus, two situations could arise before a domestic court in terms of question of enforcement of international human rights norms:

- a. Where the executive has signed and ratified an international human rights instrument but not enacted a domestic legislation enforcing its obligations under the relevant treaty; or
- b. Where the executive has not signed or ratified an international human rights instrument.

In the first situation, the task before the Court is relatively easy as the Court is simply fulfilling its obligations in enforcing international human rights norms, which is done either by mentioning, following or supporting international human rights norms. Mostly, the Court has used international human rights norms as a support of its decision (in 43% of cases). Whether it is a question of interpretation of pre-constitutional legislation or the fundamental rights in the Constitution of India, the Court has referred to international human rights norms for the purpose of clarifying the ambiguities in the legislation. The objective of the Court in interpreting domestic law in consonance with international human rights norms is to uncover the values inherent within the domestic law and to promote universal values. In this way, the Supreme Court plays an important role in 'legal internalization' or 'norms convergence' of international human rights norms as they are incorporated through the judicial interpretation into domestic law³⁹.

38 General Comment No.31[80] Nature of General Obligations Imposed on State Parties to the Covenant, May 26, 2004.

39 Harold Hongju Koh, The 1998 Frankel Lecture: Bringing International Law Home, 35 *Hous. L. Rev.* 642 (1998); See also Harold Hongju Koh, How is International Human Rights Law Enforced?, 4 *IND. L. J.* 1413 (1999).

However, judges must be cautious in referring to international human rights norms while using them for statutory interpretation. It should not be seen as a crowded cocktail party- avoiding all unknown people, people you dislike, annoying people or boring people, and scoping the scene to manoeuvre towards your friends. Judges have a large crowd to pick from and a large pool to ignore or reject⁴⁰.

With regards to the second situation, it is argued that the real challenge before the Court is to enforce obligations under certain international human rights' instruments which have not been ratified by the Executive. The Court is called upon to decide whether a particular human right in dispute has become part of the customary international law or not. So, the challenge before the Court is to define the customary international law in this situation. If the Court comes to a finding that a particular human right forms part of the customary international law, and there is no conflicting domestic law, the Court should enforce those international human rights norms. In this situation, the Court follows the international human rights norms.

It is argued that when the Supreme Court of India defines customary international law, it plays an important role in norm creation as a source of international law. Article 38 of the Statute of the International Court of Justice refers to judicial decisions as a source of international law. As per Rosalyn Higgins, it is natural in a decentralized, horizontal legal order that the courts of nation states should also have a role to play in contribution to the norms of international law⁴¹. Moreover, there is a transition in the case law of the International Court of Justice jurisprudence from treating decisions of domestic courts as just facts, to evidence of a more complementary relationship as an interaction between domestic and international law⁴².

40 Melissa A. Waters, *Mediating Norms and Identity: The Role of Transnational Judicial Dialogue In Creating and Enforcing International Law*, 93 *Geo. L. J.* 487(2005); Karen Knop, *Here and There: International Law in Domestic Courts*, 32 *N.Y.U. J. Int'l L. & Pol.* 501(2000)

41 Rosalyn Higgins, *Problems and Process: International Law and How We Use It* 208 (Oxford, Clarendon Press, 1994).

42 Andre Nollkaemper, *The Role of Domestic Courts in the Case Law of the International Court of Justice*, 5 *Chinese J. Int'l L.* 301(2006)(discusses two ways in which decisions of domestic courts can be relevant for the ICJ: their relevance for the development of international law and for the settlement of particular disputes. It also cites *Occidental EPC v. Ecuador* in which the London Court of Arbitration noted that the domestic and international procedures? may interact reciprocally). On the interactionist theory of international law, See generally J. Brunnee & S.J. Toope, *International Law and Constructivism: Elements of an International Theory of International Law*, 39 *Col. J. Transn'l L.* 19(2000); E. Hey, *Sustainable Development, Normative Development and the Legitimacy of Decision-making*, 34 *Netherlands Stet* (2004).

In enforcement of international human rights norms by the Supreme Court of India, lawyers and judges have to play a vital role in the promotion of these rights by forging new methods, fashioning new tools, and creating innovative new strategies for securing the promotion and enforcement of human rights norms in domestic jurisdictions. Ultimately it depends upon the legal culture of each jurisdiction- in some jurisdictions international law will be treated as a familiar topic, one that both the judge and the counsel before him will expect to deal with on a routine basis, and in others, where a practicing lawyer who has not studied international law, becomes a judge, and will be confronted with the unfamiliar territory of assessing international law⁴³. According to Rosalyn Higgins, international law thus becomes an exotic branch of the law, to be avoided if at all possible, and to be looked upon as if it is unreal, of no practical application in the real world⁴⁴.

The critics may argue that the Supreme Court of India has a limited role, even if it enforces international human rights norms. It could enforce, but not ensure compliance with international human rights norms. However, one must note the different nature of the orders passed by the Supreme Court of India. The Supreme Court of India has passed both declaratory and mandatory orders depending upon the issue at hand.

Further, even if the Court only issues a directory order, I would argue that it will lead to compliance. The point here is to show that the judiciary could trigger a process of desirable changes in the law. This process of compliance by the government seems to be similar to what Goodman and Jinks define as acculturation. Judicial decisions result in community expectations building a socio-cognitive pressure on the government such as the imposition of social-psychological costs through the shaming or shunning (which generally is done by non-governmental organizations) of the government. On other hand, it could also result in conferral of the social-psychological benefits on the government

43 Ibid. at p. 206.

44 Supra note 43.

through 'back-patting' and other displays of public approval (which perhaps could be an increase in vote bank for the government)⁴⁵.

The Supreme Court's jurisprudence during the years 1997-2009 shows that the Court is going through a transitional period, at least when it comes to the enforcement of international human rights norms. The Court has largely used international human rights norms as an interpretative tool, where international human rights norms were taken as a given under the international human rights instruments. There are only a few instances where the Court has defined what constitute international human rights norms by reading them into customary international law. The question is not whether the Supreme Court of India should refer to international human rights norms, as the court has been referring to international human rights norms over decades.

Conclusion

What is missing now is, of course, an answer to the question about the role non-state actors ought to play in international affairs. It is not surprising that we do not have the answer because we really do not have one international law. At least we do not have a unified system of international law. On the brighter side, the space opened by globalisation does foster the role of non-state actors in law-making, law-interpreting, and law-implementing. It is true that many challenges remain, but the door of citizen participation in the international law-making process has now been open, and perhaps will never be closed again due to the efforts of the human rights movement in the last fifty years.

Non-governmental organizations or voluntary organizations play a vital role in the shaping and implementation of nation building. They have been contributing immensely towards various development programmes. NGOs/VOs provide innovative and alternative cost effective

45 See generally *The Power of Human Rights: International Norms and Domestic Change* (Thomas Risse et.al. ed., New York: Cambridge University Press, 1999) (Have the principles articulated in the Declaration had any effect at all on the actual behavior of states towards their citizens? What are the conditions under which international human rights norms are internalized in domestic practices? In other words, what accounts for the variation in the degree to which human rights norms are implemented? And what can we learn from this case about why, how, and under what conditions international norms in general influence the actions of states).

models for development. They mobilize people for constructive community work and often reach the most marginalized and vulnerable sections of society and contribute to the socio-economic development of the country, with a much wider outreach. The voluntary sector has a significant presence in almost all regions of the country and its role as an important partner of the Government in development is being increasingly recognised .

In the international crusade against human rights violations, the role of NGOs can hardly be over-emphasized. As a matter of fact, the development of international norms, institutions and procedures for the promotion and protection of human rights has gone hand in hand with working in the field of human rights. NGOs played an important role during the drafting of the United Nations Charter as they lobbied for the inclusion of human rights provisions in the Charter and for a system that would give NGOs a formal institutional affiliation with and standing before the UN organs. Article 71 of the UN Charter was implemented in due course by the Economic and Social Council and it established a formal system that enables qualified NGOs to obtain consultative status with the ECOSOC. Since then the human rights NGOs have played a very important role in the evolution of international system for the promotion and protection of human rights and in trying to make it work . It is the non-governmental organizations' (NGOs) role to help states to protect and respect human rights. The existence and presence of NGOs in states all over the globe have formed a presence on the international stage and have helped to draw attention to the excess human rights violations that are taking place. An example of an NGO forming a presence on the international state and making a stand can be seen in the establishment of the International Criminal Court (ICC) at the Rome Conference in 1998 where Amnesty International (AI) was one of the main NGOs that supported ICC's creation. NGOs have been viewed as the driving force behind human rights violation prevention and have played a large role in ensuring the human rights violations in countries world-wide remains an important political issue. NGOs have influenced and created further opposition to human rights violation through campaigns. NGOs through their work have lead to "the promotion and 'universalization' of human rights norms."

Corporate Social Responsibility and Human Rights

*Justice G.P. Mathur**

1. Transnational corporations and business entities are powerful forces not only in their own countries but all over the world. The three hundred largest corporations account for more than one-quarter of the world's productive assets. They hold 90% of technology and product patents world wide and are involved in 70% of the world trade. They create employment, bring capital and technology which generates wealth thereby improving the working conditions and living standards of the people and thus have capacity in fostering development and achieving prosperity. But at the same time, they often indulge in egregious human rights violations like use of forced and child labour, highly detrimental working conditions for the employees, suppression of right of freedom of association and collective bargaining, human trafficking and also cause degradation of environment by releasing toxic material and other forms of pollutants which are health hazard.
2. Corporate Social Responsibility (CSR) is a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. CSR has evolved in a time of increased economic and social globalisation.
3. Business or corporate social responsibility is neither corporate philanthropy nor simple compliance with law. Corporate philanthropy

* Member, NHRC

involves an activity extraneous to a firm's actual operations: while generally appreciated by social recipients, it does not represent an essential or even necessarily expected business function. The philanthropic tradition is rooted in the personal or family origins of business enterprises, which in many countries has led to both personal and corporate gift-giving for worthy causes, as well as to the direct involvement of firms in the provision of housing, schools, hospitals, social facilities and other amenities for employees and local communities.

4. Corporate compliance with law is no more than the mandated minimum necessary to permit the continued existence of any legally-chartered corporate entity. Corporate entities are legal persons granted the right to exist and operate within a society, subject to the laws of that society. Violations of law subject firms to civil or criminal penalties and can result in revocation of the corporation's license to operate. Some international instruments include references to a general duty of Trans National Corporations (TNCs) to observe the laws of the host country (UNCTAD, 1996). However, these provisions simply recognize the essential role of national law in setting a mandatory minimum floor for corporate conduct.
5. The social responsibility concept rests centrally on a firm's operational behaviour and its impact on the surrounding society. They have come to be associated with standards of performance that are applied to both internal and external corporate activities, addressing societal norms and thus operate on a plane higher than mere compliance with law or corporate philanthropy.
6. Human rights standards have been established by international agreement. A number of these human rights standards can be applied in varying degrees to the private sector. They can be categorized as follows
 - (i) principles that directly affect a business' employees;
 - (ii) principles that involve a company's business partners, and their employees, both in the public and private sector;
 - (iii) principles that affect the community and general human rights environment in which a company operates;
 - (iv) hybrid issues that may implicate a company and public institutions to various degrees, or may involve concern for

individual human rights, the environment, and community concerns.

This suggests that a company may be expected to address a broad range of human rights issues. Some may be straightforward and direct, such as the protection of human and labor rights of workers employed by a company or its supply chain partners. Other issues may relate only in part to a business but are still relevant to the environment in which they operate, such as calls on business to seek to influence governments to improve the general human rights climate in places where they operate.

7. The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provide indirect human rights responsibilities of businesses. The Organisation for Economic Cooperation and Development (OECD) established its guidelines in the year 1976 which were updated in the year 2000 for multinational enterprises to promote responsible business conduct consistent with applicable laws. The International Labour Organisation (ILO) in the year 1977 developed its Tripartite Declaration of Principles which was updated in the year 2000 concerning Multinational Enterprises which calls for businesses to follow the relevant labour conventions and recommendations.
8. National laws are the most important instruments in protecting human rights, as they are legally-binding, and apply to all actors in a given country, including all business regardless of size or home country. Therefore, government's performance in promoting and protecting human rights should be assessed not only on the basis of what laws they have enacted but more importantly on the basis of how effectively these laws are enforced. This gap between legal standards and their implementation in practice is the most pressing human rights issue today. Priority should therefore be given to improving the capacity of national governments to effectively protect and promote human rights in national law and by respecting their international obligations¹.

1 Manoj Kumar Sinha : *Corporate Social Responsibility and Human Rights*

17. Both concepts are useful in protecting human rights. The former provides an opportunity to impose broader societal expectations on the operations of a corporation that go beyond that which a government may impose. The latter provides an avenue for civil or criminal liability for conduct that in some way contributes to the commission of an offence.
18. Indeed the concept is fundamental to the accountability of TNCs since most allegations of human rights violations against companies predominantly focus on complicit conduct rather direct participation. In addition, liability for complicit conduct may also encompass offences that a company (or legal person) is incapable of committing in its own right, for example, a corporation cannot generally commit a sexual offence, but may be complicit in such an offence.
19. More recently the International Commission of Jurists has released a report on Corporate Complicity and Legal Accountability, in which it proposes an approach to determining corporate complicity based on three key elements:
 - *Causation*: That the conduct either enables, exacerbated or facilitated the commission of violations.
 - *Knowledge*: That the company actually intended for the violations to occur, knew or should have known that the violations would occur, or were willfully blind to the likelihood that violations would occur; and
 - *Proximity*: Proximity assists in determining causation and knowledge refers particulars to the situation where a close relationship, established as a result of geographic location, or through the duration, frequency, intensity or the nature of that relationship, exists between the perpetrator and the company.
20. A variety of barriers limit the capacity of victims to obtain effective redress for violations of human rights committed by TNCs. Amongst other things, such barriers may relate to the TNC itself (for example, its corporate structure), the limitations imposed by domestic laws relating to the incorporation of business enterprises, (for example, separate legal personality and limited liability), and the failure of the legal jurisdiction in the home or host State to provide a means for seeking redress for certain violations.

21. With the increased international attention on corporate human rights abuses in 1990s, the international community, headed by United Nations addressed the issue again in the form of Global Compact. Outlined by UN Secretary General Kofi Annan at the World Economic Forum on 31st January 1999, the Compact "provides a basis for structured dialogue between the UN, business, labour and civil society on improving corporate practices in the social arena." With roots in Universal Declaration of Human Rights (1948) the fundamental principles and rights of the International Labour Organisation and the environmental backing of the Earths Summits Agenda, the Global Compact has a prestigious basis of literature supporting it.
22. The Global Compact is a network. At its core are the Global Compact Office and six UN agencies: Office of the High Commissioner for Human Rights(OHCHR); United Nations Environment Programme(UNEP); International Labour Organisation(ILO); United Nations Development Programme(UNDP); United Nations Industrial Development Organisation(UNIDO); and United Nations Office on Drugs and Crime (UNODC). The Global Compact involves all the relevant social actors: governments, who defined the principles on which the initiative is based; companies, whose actions it seeks to influence; labour, in whose hands the concrete process of global production takes place; civil society organizations, representing the wider community of stakeholders; and the United Nations, as an authoritative convener and facilitator.
23. The UN Global Compact, provides in its 10 principles a reference framework. Ten Principles are broadly a set of core values in the areas of human rights, labour standards, the environment, and anti-corruption².

Human Rights

- Principle 1 : Business should support and respect the protection of internationally proclaimed human rights; and
- Principle 2 : Make sure that they are not complicit in human rights abuses.

Labour

- Principle 3 : Business should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4 : The elimination of all forms of forced and compulsory labour;
- Principle 5 : The effective abolition of child labour; and
- Principle 6 : The elimination of discrimination in respect of employment and occupation.

Environment

- Principle 7 : Business should support a precautionary approach to environmental challenges;
- Principle 8 : Undertake initiatives to promote greater environmental responsibility; and
- Principle 9 : Encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

- Principle 10: Business should work against corruption in all its forms, including extortion and bribery.
24. The Compact sets out its guidelines for corporate practices in its ten principles. The first two principles deal with human rights in a general sense, asking corporations to support the protection of universal human rights and ensure that they are not complicit in human rights abuses. Corporations that commit themselves to the human rights cause would ensure and adhere to human rights practices not only in the workplace, but would also condemn human rights violations in the wider community. The Compact advocates workplaces that have safe and healthy working conditions, rights to basic health, education and housing and an end to forced and child labour. The Compact asserts that in the wider community corporations should prevent forced migration, protect the local economy and most importantly, contribute to the public debate - MNCs have both the right and the responsibility

to express their view on matters that effect their operations in the country.

25. Principles three to six deal exclusively with labour issues which seek to support workers' freedom of association and right to unionize, to eliminate forced labour (such as mandatory overtime), to abolish child labour, and to eliminate discrimination in the workplace.
26. Principles seven to nine of the Compact address environmental issues which emphasize that MNCs should promote environmental responsibility, encourage the development of environmentally friendly technologies, and support a 'precautionary approach' to environmental challenges. A precautionary approach to environmental protection suggests that companies take early actions to ensure that irreparable environmental damage does not occur because of their practices. Principle ten completely prohibits corporations to indulge in bribery or corruption in their business dealings.
27. The Global Compact relies on public accountability, transparency, and the enlightened self interest of companies, labour, and civil society to initiate and share substantive action in pursuing its principles. The idea was and still is that international companies in particular should commit themselves not only to observe terms of employment conditions, environmental protection, and the fight against corruption, but also to comply in their sphere of influence with two important principles, namely,
 - (1) To support and respect the protection of international human rights and
 - (2) To ensure that they do not become complicit in the human rights abuses of others.
28. Three obstacles stand in the way of the Compact's effectiveness: "the lack of legally enforceable standards, the lack of a monitoring and enforcement mechanism, and a lack of clarity about the meaning of the standards themselves."
29. The United Nations Human Rights Sub-Commission, in August 2003, approved 'Norms on the Responsibilities of Trans-national Corporations and other business enterprises with Regard to Human Rights' prepared by the Working Group. These Norms integrate

existing standards concerning labour rights, human rights, consumer protection and environmental protection in the same document. The UN Commission adopted a resolution in 2005 and called for appointment of a Special Representative by the Secretary General on the issue of human rights and transnational corporation and other business enterprises. Professor John Ruggie, who was appointed as Special Representative has identified, clarified and elaborated standards for the responsibility and accountability of transnational corporations and other business enterprises with regard to human rights. At its June 2008 session, the Human Rights Council was unanimous in welcoming the "protect, respect and remedy" policy framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. This marked the first time the Council or its predecessor had taken a substantive policy position on business and human rights. By its resolution 8/7, the Council also extended the Special Representative's mandate for another three years, tasking him with "operationalizing" the framework- providing "practical recommendations" and "concrete guidance" to States, businesses and other social actors on its implementation. The framework rests on three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater access by victims to effective remedy, judicial and non-judicial. The three pillars are complementary in that each supports the others.

30. The UN is the logical place to house an international unbiased corporate monitoring system for human rights abuses and it is the appropriate arena for the analysis of TNC issues in the context of global economic relations.

Corporate Sector and Human Rights

*Anu Aga**

Even as India registers impressive growth figures of over 9% GDP and the world takes note of the strides we have made in the new technology areas, it is now fairly clear that there are disturbing facets of our life that sometimes many of us pretend not to see. The large scale displacement of people in the name of urban beautifications and development projects, the suicide deaths of farmers, increasing homelessness of thousands - these are some aspects of this suppressed reality. While globalization led by corporations has unleashed tremendous energy, creating wealth, it is also creating a situation where the basic rights of millions are being ignored or neglected. We need to pause and reflect why this prosperity in a booming India is bypassing the life of an average Indian, and more fundamentally whether the development process itself is violating the rights of the vulnerable for the benefit of some sections of the society.

We have witnessed that in a schizophrenic development situation where India is shining and Bharat is lagging behind, there are daily media reports of social unrest and violent movements like that of the Naxalites and those seeking justice outside the law. We can no longer afford to neglect large numbers of people who have nothing to look forward to but to stare at a blank wall. How long will people live in poverty? And how long can our own citizens be deprived of their human rights? It is time the corporate sector acted decisively and with a sense of urgency, for the betterment of our backyard communities. We need to realise that in the long run, business cannot succeed in a society that fails. It is unfortunate that most countries still measure their progress only on the basis of GDP growth. Bhutan may be a possible exception where they have introduced a unique Gross National Happiness (GNH) has been developed to measure the quality of life or

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social progress in a more wholesome manner. Isn't it time we added factors such as protection of human rights when we evaluate a country's growth?

The impact of corporate activity on human rights has always been recognized at a basic level. For example, when companies are required to pay fair wages to labour, it is the economic rights of citizens that are being underlined. Similarly, the right to non discrimination while being recruited for jobs or while in service brings to focus the social aspects of human rights. The right of communities to clear air and drinking water and the inherent responsibility of corporates not to pollute the environment are directly linked to the right to life. Corporate activity, depending on the levels of sensitivity and practices can either promote or violate any or all of these rights.

As the economic might, reach and political influence of corporations have grown, especially in a globalised world, their impact on people's human rights becomes even more significant. Today, many corporations are also delivering services that earlier used to be provided by governments - be it utilities, communications or healthcare.

Many corporations realize that good citizenship involves respecting the human rights of those who come in contact with the corporation. Consumers and investors expect companies to behave in socially responsible ways. Corporates are increasingly called upon to play an important role in maintaining, protecting and enhancing human rights, even though the enforcement of human rights is seen as governments' responsibility.

Since corporates have to draw on the community in which they operate for all resources, they also have obligations to their multiple stakeholders. Very often, corporate leaders have argued that since they create job opportunities and pay their taxes, they have done their bit and that "the business of business is business". This approach is no longer enough and we need to move to the realization that the "business of business is human well being". There is a striking paragraph I read somewhere stating that the business of business is to generate growth and profits or else it will die; however, if that is the sole purpose of a business, then also it should die, for it no longer has a reason for its existence. This is even more applicable to a country like India where we are surrounded by poverty and the gap between the rich and the poor is widening. It is imperative that the corporate sector with its managerial resources and financial muscle reaches out to the needy.

This sense of a wider social responsibility is today popularly expressed as the triple bottom line principle which takes into consideration the economic, social and environmental aspects of corporate activity.

Though companies may not speak the language of human rights, corporate social responsibility (CSR) programmes acknowledge that companies are accountable not just to their shareholders, but also to a wider universe of stake holders that include employees, customers, suppliers, environment, and the community. In some of the committed CSR initiatives of some companies, one can see the concern for a wider universe, an essential condition for the nurturing of a human rights consciousness. For several enlightened companies CSR could be the framework and the instrument for future engagements with issues related to human rights.

The wider ramifications of stakeholder responsibility have become clearer over a period of time. Traditionally companies did not take the responsibility to ensure at least minimum and humane standards that a supplier would offer to its work force. They argued that they did not own their suppliers and hence had no right or responsibility to interfere in their workspace. But the infamous Nike case has changed that attitude to a large extent.

Nike shoes and clothing is manufactured in more than 700 factories in 50 countries. Some years ago, Nike was accused of allowing child labour to be used in its vendors' factories in developing countries, under sub-standard conditions. When news of 'sweat shops' was all over the US, a graduate student from MIT responded to Nike's offer to personalise customer's trainers by asking for the word 'sweat shop' to be printed on the side of his shoes. When Nike refused, the student emailed the company saying 'thank you for the time and energy you have spent on my request. I have decided to order the shoes with a different ID, but I would like to make one small request. Could you please send me a colour snapshot of the ten year old Vietnamese girl who makes my shoes?' His email exchange with Nike was flashed around the world, which created a very negative public image for the company.

Monitoring what takes place in each of your outsourced factories may not be an easy task. But such attention to details is necessary, as Nike learnt from this incident. It was a wake up call for Nike which subsequently introduced proactive steps and has taken responsibility for its supply chain.

Today it has over 90 people employed in CSR positions and it invests heavily in independent third-party audits of its suppliers

Recent years have seen the links between corporate activity and its impact on people being examined and clarified. Companies, industry bodies and NGOs, inter governmental bodies and multi-stakeholder groups have taken several initiatives. Such efforts have resulted in the formulation of international standards and initiative -the ILO Tripartite Declaration on Fundamental Principles and Rights at Work; UN Norms on the Responsibilities of Transnational Corporations; The United Nations Global Compact; and The Business Leaders Initiative on Human Rights are some of these.

As a result, world over many companies have publicly committed to uphold specific human rights standards - protect the interests of shareholders, employees, customers and the communities in which they operate. Enlightened companies are purposefully using CSR to build bridges of understanding with local communities. In many societies they are also forming partnerships with governments and civil society to address the many challenges that communities face. In the process, companies are going beyond conventional notions of charity and philanthropy to consider CSR an essential plank of their commercial activity. They are factoring in the impact of their business operations on the lives of communities in which they are situated. Business for Social Responsibility, a global organisation that helps member companies to make CSR an integral part of their business operations, defines it as 'achieving commercial success in ways that honour ethical values and respect people, communities and the natural environment.' Such a definition brings companies closer to the domain of human rights, as the element of respect is the bedrock on which the edifice of human rights is built.

However, there is a gap between professed intentions and ground reality. As globalization gathers momentum and the development process leaves millions by the wayside, human rights often receive lip service and platitudes rather than concrete support. Instead of promoting and nurturing rights, the agencies responsible for development, including companies often disregard the rights of communities and sometimes even flagrantly violate them. Though several companies have drafted policies regarding safety, codes of conduct and corporate governance practices -necessary prerequisites

for a humane eco-system of rights - practices often run against such finely formulated guidelines. Thus, we have industrial accidents of the magnitude of a Union Carbide, or corporate frauds of the Enron kind. Such tragic and avoidable instances happen because the concerned companies have failed to internalise values essential for upholding the rights of the stakeholders.

Today, in the name of development, in our own country, there are companies aiming to expand their operations at the cost of human rights of groups of people, who often are the vulnerable sections of our public. We have laws to protect the tribals. The law clearly states that no forest land can be acquired for any development activity without the consent of the tribals. But greed sets aside all other considerations and we see the rights of forest dwellers ignored and the law of the land violated. This cannot continue and it is mandatory for every corporate to respect laws. Government regulation should be tough and timely to pull up and punish companies that violate the rights of communities and individuals.

What can be done to make sure that corporate activity and human rights go together? Regulatory frameworks and governmental vigil certainly help to rein in errant companies. Tough laws and impartial enforcement backed by punitive measures, to an extent, can avoid such breakdowns of systems and processes. However, legal enforcement can only single out and maybe avoid serious acts of commission, where wrong doing and illegal acts are discouraged and punished. That still would not take care of the myriad acts of proactive measures that companies can initiate to make the lives of communities better and to protect the interests of their multiple stakeholders. There is ample scope for doing things that the law might not ask you to do -like going beyond pollution abatement and installing clean technologies that eliminates waste at the source, inviting community partnership through skill developments, investing in sustainable practices of agriculture, water management, energy efficiency. There are many more such desirable but often neglected areas that can be added to the list.

Progressive companies have been expanding the frontiers of their corporate governance practices and reporting patterns. While government regulations, as it happened in UK, have certainly triggered the process, voluntary reporting on newer areas have brought new facets of information sharing that had not been in the public domain. Think of CSR and sustainability reports that have become routine matters of reporting today,

and we can be hopeful that companies venture into the fairly new territory of human rights in the near future.

Company cultures hold the key to human rights getting integrated to the CSR practices. An awareness of the responsibilities towards multiple stakeholders has to percolate to every level within the organisation. Employees and suppliers should be made to understand their considerable enlarged area of responsibilities in a global economy. It is desirable to convey within a company basic information about what human rights are - the rights arising from merely being human. These rights are recognized in the Universal Declaration of Human Rights and the leading international instruments. In today's context it is extremely important for everyone inside the company to realize why they are relevant for the organisation and its business.

Democratic cultures within organisations encourage employees and managers to discuss and ask questions. Questions that can help to reveal the hidden ethical issues in a business decision can provide clarity to employees why it is important to follow certain progressive ways of behaviour. It would help them to understand how the company's can affect various stakeholders and why such actions need to be consistent with relevant laws and ethical principles. An environment of openness and trust will also encourage employees to report bad news. Internal transparency and systemic study of failures can go a long way in integrating a respect for human rights to the tomorrow-bound and progressive agenda of an organisation.

Let me end with a quote from the American African writer James Baldwin, "Words like freedom, justice, democracy are not common concepts; on the contrary, they are rare. People are not born knowing what these are. It takes enormous and, above all, individual effort to arrive at the respect for other people that these words imply." Corporate sector, in view of the power it wields, the resources it commands, and because of the far reaching consequences of its actions, has a special responsibility to respect the others, which means respect the rights of communities and individuals.

Corporate Social Responsibility and Human Rights

*Prof. S. Parasuraman**

Approaches to Corporate Social Responsibility

It is the dominant view that the main concern of the corporate sector is wealth creation. This concern is rooted in certain cultural values regarding free market, private property and the fact that wealth creation is good for society (Friedman, 1970; Friedman and Friedman, 1962). It is held that a business operating in a free market is the best way to allocate scarce resources because through such a process society can achieve an optimum benefit. This means that the satisfaction of all people involved in the situation is the greatest possible or, at least, the situation satisfies most of them without being detrimental for others (Garriga and Melé, 2004). Here share holder value maximization is the supreme reference for corporate decision-making. Along the way companies engage in philanthropic activities that enhance their value. Most often, corporate social responsibility (CSR) means providing some basic services to communities located closer to production sites. Mines, Power, Steel and other manufacturing industries focus on communities located around them by investing some human and/or financial resources.

CSR is a set of ad-hoc policies designed to address particular issues or enhance the reputation of the firm. This form of CSR is perpetuated by the position that demands companies to prioritise the interests of the shareholders above all others. Corporates use CSR as one means of pursuing profit maximisation or, considering the pressure from secondary stakeholders, deterring the loss of profits. The Indian Government has stipulated that all public sector companies invest upto 2% of their net profit on CSR activities.

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The Guidelines on Corporate Social Responsibility for Central Public Sector Enterprises says that

Corporate Social Responsibility is a Company's commitment to operate in an economically, socially and environmentally sustainable manner, while recognizing the interests of its stakeholders. This commitment is beyond statutory requirements. Corporate Social Responsibility is, therefore, closely linked with the practice of Sustainable Development. Corporate Social Responsibility extends beyond philanthropic activities and reaches out to the integration of social and business goals. These activities need to be seen as those which would, in the long term, help secure a sustainable competitive advantage. (Department of Public Enterprises, 2010).

This broader definition provides opportunity for the individual entities develop activities better suited to their context. It would seem, therefore, that while industries cannot afford to ignore CSR, they can continue to define it in whatever manner best suits their interests. In the case of private sector industries, this directive is voluntary.

One of the recent innovations in CSR is working with 'bottom of the economic pyramid' strategy. Traditionally, most business strategies are focused on targeting products at upper and middle-class people, but most of the world's population is poor or lower middle class. India's poor and vulnerable alone accounted to over 800 million (Sengupta, 2008). Prahalad and Hammond (2002), while analyzing the India experience, have suggested some mind-set changes for converting the poor into active consumers. The idea is to see the poor as an opportunity to innovate rather than as a problem and certain strategies can serve the poor and simultaneously make profits. Disruptive innovations (Christensen and Overdorf, 2000; Christensen et al., 2001) are products or services that do not have the same capabilities and conditions as those being used by customers in the mainstream markets. As a result they can only be introduced for new or less demanding applications among non-traditional customers, with a low-cost production and adapted to the necessities of the population. For example, a telecommunications company invents a cellular telephone system with lower costs, but also with less service adapted to the base of the economic pyramid. Disruptive innovations can improve the social and economic conditions at

the "base of the pyramid" and at the same time create a competitive advantage for the firms in telecommunications, consumer electronics and energy production and many other industries, especially in developing countries (Hart and Christensen, 2002; Prahalad and Hammond, 2002).

Another view of the CSR is to look at the business and industry in terms of their obligation to the society. Business is very closely linked to the society, with the business wielding enormous power over society and the state. How the business uses such power is a critical question. The locus of this power is unstable and constantly shifts from the economic to the social forum and from there to the political forum and vice versa. One of the major changes in the recent decades has been the increasing externalisation of social and environmental costs. Externalities are the social and environmental effects of business actions that burden or benefit others. In case of externalities, another system of society, the political system, should act (Davis, 1973). The political system must have the capacity to make the business confront these externalities through taxes, regulation and adherence to minimum package of rights. So, business is assumed to contribute to the welfare of society through the market mechanism and in compliance with the law. The social objectives and demands come under business consideration through the law applied by the political system.

An appropriate guideline for legitimate corporate sector behaviour is found within the framework of relevant public policy. Public policy includes not only the literal text of law and regulation, but also the broad pattern of social direction reflected in public opinion, emerging issues, formal legal requirements, and enforcement or implementation practices (Preston and Post, 1981, p. 57). This is the essence of the principle of public responsibility. In this view, if business adhered to the standards of performance in law and the existing public policy process, then it would be judged acceptably responsive in terms of social expectations. The corporate sector works to influence regulations that enhances their ability to make profit through political contributions, lobbying, coalition building, and other means. Global and national processes have created policy and legal frameworks to make doing business in any part of the world predictable. Legal frameworks created by the World Trade Organisation (WTO) and its adherence at the national level have had implications for the people and their environments.

Global and National Laws and Regulations that Externalise Social and Environmental Costs

The rules and regulations of the WTO to facilitate global trade often compromises the social and environmental rights of the people (Oxfam 2002). The WTO is rapidly assuming the role of a global government representing the rules-based regime of the policy of economic globalisation. It seeks to remove any obstacles in the path of operations and expansion of global business interests. In practice, these 'obstacles' are usually policies or democratic processes that act on behalf of working people, labour rights, environmental protection, human rights, consumer rights, social justice, local culture and national sovereignty. The legitimacy of the WTO has been questioned by several states, especially from the developing region and by people's organisations (Koshy, 2001).

The instruments of economic policy have often had elements that undermined the State's ability to protect specific aspects of human rights. For instance, the Government has devised several forms of economic activities to facilitate growth. One of them is the special economic zone (SEZ), which refers to a totally commercial area, especially established for the promotion of foreign trade. An SEZ is a geographical region that has economic laws more liberal than a country's typical economic laws with the goal of expansion in foreign investment. The SEZs are specifically delineated enclaves, treated as foreign territory, for the purpose of industrial, service and trade operations, with relaxation in customs duties and a more liberal regime in respect of other levies; foreign investments and other transactions. These SEZs have their own adjudicating, enforcing and administering agencies. Therefore, it implies absolute non-interference by the State. The SEZs are entitled to 100% tax exemption and relaxation from following strict labour laws. The State and Central Governments have put in place mechanisms and processes to facilitate land acquisition, tax exemption and relaxation with regard to environmental, social and labour laws. A review of SEZs by civil society organisations concluded that SEZs across the country have entailed serious violations of the Constitution, laws, and procedures laid down by the government itself, and of peoples' rights. These include the following:

- Several SEZs have taken over irrigated lands, despite a policy statement not allowing this.

- Most have entailed forcible acquisition of land, using the Land Acquisition Act where the State has intervened on behalf of the developer, or used force where the developer has carried out acquisition directly.
- Many have violated environmental laws, such as the Forest Conservation Act, the Forest Rights Act, and the Coastal Regulation Zone and Environmental Impact Assessment notification of the Environment Protection Act.
- Many have obtained approval by providing false or misleading information, for e.g. misrepresentation of the purpose for which the SEZ is proposed, the legal status of lands involved, the extent of local community rights and their dependence on the area.
- Most have involved violations, in letter and/or spirit, of constitutional guarantees for tribal people or other disadvantaged sections. This includes alienation of supposedly non-alienable lands, taking back of lands given to landless, and many others.
- The affected and displaced people had no role in decision making, even in areas under Fifth and Sixth Schedule of the Constitution (Public Hearing on SEZ, 2010).

Non-Observance of Environmental and Social Rights of the People

One of the major problems involving projects that require lands, forests and other natural resources is the livelihoods and culture of the people. Often, projects are cleared without addressing social, economic and environmental concerns of the people. For instance, the Niyamgiri bauxite mining project of Vedanta was given initial environmental clearance even while it was clear that the project had violated the Environmental Protection Act, forests rights of the people, and did not follow democratic decision making processes as mandated by the 73rd Amendment to the Constitution (Report of the Four Member Committee, 2010). Even though these facts were known in 2008, the Supreme Court of India, in its August 2008 order (Equivalent Citation: (2008) 9SCC711) mandated the formation of Special Purpose Vehicle for Scheduled Area Development of Lanjigarh Project in order to ensure implementation of proper schemes for the

development of the tribal area. In the Order the Supreme Court suggested a Rehabilitation Package under which apart from Vedanta is also required to deposit 5% of annual profits before tax and interest from Lanjigarh Project or Rs. 10 crore per annum, whichever was higher to provide benefit to the displaced people and the project affected area. The notion that basic rights of the people to habitat and livelihood and adherence to laws of the land can be compromised to facilitate economic growth by promising welfare programs for the people and the region through contribution from the company is acceptable has a fundamental problem. The industry and business must adhere to social and environmental laws of the nation, and CSR cannot compensate for the irreparable losses that people and the environment suffer.

Framework for Corporate Accountability to Human Rights

The latest report from the UN Special Representative of the Secretary General on Business and Human Rights demonstrates a practical and balanced approach (United Nations, 2010). The Special Representative has identified five priority areas where States should strive to achieve greater policy coherence and effectiveness.

1. States must safeguard their ability to promote and protect human rights. In this respect, the Special Representative has been particularly critical of bilateral investment treaties (BITs) and host government agreements (HGAs) which, he suggests, may constrain States' ability to pursue legitimate policy reforms.
2. States must ensure that when conducting business they also promote respect for human rights. In particular, State-owned enterprises should respect human rights.
3. States should take steps to promote corporate cultures and business practices, which respect human rights. The Special Representative also highlighted CSR policies, reporting requirements, director's duties and criminal law.
4. The Special Representative noted that the worst business-related human rights abuses occurred in conflict affected areas. The Special

Representative has convened a special working group to discuss approaches for preventing and mitigating business-related human rights abuses in conflict zones.

5. Noting that States have typically been reluctant to exercise extraterritorial jurisdiction in this area, the Special Representative has indicated that he would continue consultations towards identifying options for tighter 'home' State regulation of business with respect to human rights.

The Special Representative defined corporate responsibility as respect human rights. Its foundations are described in his recent report as follows:

- the responsibility to respect means avoiding the infringement of the rights of others and addressing adverse impacts when they occur;
- the scope of the responsibility depends on the actual and potential impacts generated by a company's business activities;
- the responsibility applies in relation to all internationally recognised human rights in some industries and contexts; certain rights will be more relevant than others, such as in conflict zones or where business activity may affect vulnerable groups (such as indigenous peoples, women or children);
- the corporate 'responsibility to respect' exists independently of the duties or capacities of States in relation to human rights; 'it applies to all companies in all situations',

Discharging the 'responsibility to respect' requires due diligence. Adopting a legal compliance approach may assist companies to design reliable systems for assessing and addressing human rights risk. Company level grievance mechanisms are said to be an important complement to State-based mechanisms.

The Special Representative also endorsed State-sponsored non-judicial grievance mechanisms. In particular, he notes that National Human Rights Institutions are a promising vehicle. The national contact points (NCPs), which hears complaints under the OECD Guidelines for Multinational Enterprises are also mentioned as having potential.

Economic Growth and Widening Disparities

The role of the industry and business in the Indian context is very different from other parts of the world. In a social, political and economic context that provides highly inequitable access to basic needs of the people, business and industry processes should not further accentuate the inequities. The post economic liberalisation context points to entrenchment of deprivation for a significant proportion of India's population. The Indian economy is now the 12th largest in the world by market exchange rates and the fourth largest on the basis of purchasing power parity (PPP). India achieved 9.6% real GDP growth in 2006, 9.0% in 2007, and despite financial crisis, an impressive 6.7% growth rate in 2008-2009. India ranks second worldwide in farm output. Though the agriculture and allied sectors employed 52 % of the total workforce, it accounted for only 16.6% of the GDP in 2007. In spite of this, the sector will continue to play a major role in the overall socioeconomic development of India.

The Government of India has established the National Commission for Enterprises in the Unorganised Sector after examining the nature and extent of poverty. In its final report to the Prime Minister, the Commission concluded:

An overwhelming majority of the Indian population, around three quarters, is poor and vulnerable and accounted for 836 million people in 2004-05. This includes 70 million or 6.4 per cent of the population who may be characterised as extremely poor with a per capita consumption of less than or three-quarters of the official poverty line. Another 167 million are poor with consumption less than the official poverty line. If we include those with a per capita consumption of up to 25 per cent above the poverty line, called marginally poor, adding to another 207 million. These three groups account for 444 million or 40.8 per cent of the population. If those with a per capita consumption between 1.25 and two times the poverty line are added, the number of poor and vulnerable in the country comes to 836 million or well over 75 per cent of the population. Social identity of individuals is very closely associated with poverty and vulnerability. The two social groups that are most vulnerable are the SCs and STs, and the Muslims. This does not mean that the other groups are far better off. The next group is the OBCs but better than the two bottom layers.

Across the country about 130 million women and men, boys and girls, sleep hungry (Mehta and Shepherd 2006). The experience of chronic hunger in distant villages, as much as on city streets, is one of intense avoidable suffering; of self-denial; of learning to live with far less than the body needs. About one third of the world's malnourished children live in India and this child malnutrition rate is higher than that for any country in Sub-Saharan Africa. And it is not only children, but also adults (around one-third of all Indian men and women have body mass index below 18.5), and especially adolescent girls. These figures have remained through the last two decades of India's impressive economic growth.

Such high levels of hunger and malnutrition are a paradox, because they stubbornly survive surging economic growth and agricultural production, which outpaces the growth of population (although it has worryingly stagnated in recent years). The persistence of widespread hunger is the cumulative outcome of public policies that produce and reproduce impoverishment; of failures to invest in agriculture; of unacknowledged and unaddressed destitution; of embedded gender, caste, tribe, disability and stigma which construct tall social barriers to accessing food; but in the last analysis it is the result of a profound governance failure.

Conclusion

CSR is an instrument used by the business and industry to share part of its wealth generated with the people. Though the economic and political power of the members of the corporate sector is enormous, sharing such power with the people is limited. Most often, the motive for sharing is to maximise the profit and sustainability of the business in the short and long run. Business with bottom of the pyramid is also located in this framework. In order to secure favourable environment that maximised opportunity to make profit, business and industry were able to secure policies legal instruments at the national and international level that externalised social and environmental costs to the people. The national policy and legal frameworks are being tailored to be in tune with WTO rules and regulations. These norms often over-rule international and national norms to secure social and environmental rights. Policies and laws to secure environmental and social rights-Environmental Protection Act, Forest Rights Act, Panchayat Extension to Scheduled Areas, Labour Laws-are being violated

in order to enhance ability of the industry and business to operate. The State must retain its ability to secure and protect rights of the people through implementation of its oversight authority, and the business and industry must follow laws of the land. That would be the best CSR model for the corporate sector.

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Corporate Sector and Human Rights

*Tarun Das**

The evolution of the Indian Corporate Sector has been a story going back to the 19th century with the role model and standard setter being the House of Tatas with the Steel plant in Jamshedpur. Tatas have continued to be the benchmark for taking care of employees and their families in an enlightened manner and this example is now followed by thousands of companies across the country. At the same time it needs to be acknowledged that the implementation of proper rights for the human workforce has yet to reach the level where it should be, especially in the micro, small and midsize units which are resource-scarce.

History shows that the first issue which needed to be addressed was the question of Minimum Wages. Eventually, legislation had to be adopted to ensure a fair minimum wage but, in reality, the large companies and many midsize corporates pay their workers and employees far in excess of the minimum wage. There was a time, both in the developed economies, and in India, when this was not so. The employer focused on paying the lowest possible wage, in fact, far below what was reasonable and fair. Fortunately, this issue has been resolved but concern remains about the very small firms since their capacity to pay is constrained. The issue goes beyond the wage level. Other statutory dues are also essential such as PF, Gratuity, Pension, Superannuation etc. The corporate sector is adhering to these requirements.

In this day and age, the corporate sector cannot only follow the law which sets minimum standards. It has to go beyond, recognizing the aspirations of the employees to have a reasonable standard of living for themselves and, especially, good quality education for the children.

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The exciting development is that many companies are now running schools for the children of employees and, also, for the community nearby. This is a growing practice and, even more than this, major companies have set up Foundations specifically designed to spread quality primary education. The Azim Premji Foundation is one example.

The other critical issue relates to provision of healthcare for the employees and their families. And, in today's world of new viruses and pandemics, this is a very important responsibility for corporates to fulfill.

The Government's Primary Health centres are, by and large, very inadequate in terms of infrastructure, medical professionals and drugs. Hence, reliance on these is not advised.

Fortunately, once again, corporates have set up hospitals, employed doctors, nurses, paramedics and broken new ground in providing quality healthcare not only to employees and their families but also to neighbouring communities. The Tata Main Hospital in Jamshedpur is a pioneering example of quality healthcare but the Bajaj Auto facility in Pune, the Godrej & Boyce Hospital in Vikhroli are a couple of other excellent models.

In fact, corporates in India have done something unprecedented in the world. As HIV/AIDS impact was spreading, select Indian corporates such as the Avantha Group, Bajaj, Godrej, ACC, Reliance Industries, etc. set up ART Centres which are for Care and Treatment in partnership with the Ministry of Health and Family Welfare, Government of India and the Global Fund for TB, Malaria and HIV/AIDS. This is a pioneering activity organized by the Confederation of Indian Industry (CII) which undertook this responsibility a few years ago.

Issues of Education and Health may not be seen as traditional "Human Rights" matters but, in India, with hundreds of millions of people living in deep poverty, the corporate sector needs to step forward and supplement the Government's programmes. Happily, it is doing so and HIV/AIDS Clinics and Corporate Hospitals are two such examples.

Health connects directly with the Environment. Air, water and noise pollution which, all, impact on health if proper standards are not maintained in offices and factories.

It was a sad tradition in the old mines, metals, textiles and other factories in the developed countries in the 19th and 20th centuries that all kinds of pollution and poor environment standards impacted seriously and adversely on the health of workers, leading especially to Tuberculosis as well as other diseases. This, too, prevailed in India and, perhaps, still does in some places.

But, by and large, there is corporate consciousness about the environment and "Sustainable Development" is a new Mission in the corporate sector in India. No organization is doing as much in this area as the CII-ITC Centre for Sustainable Development, New Delhi, working with the CII-Godrej Green Business Centre, Hyderabad for cleaner, greener environment for workers.

In the Human Rights area there is one important issue and this concerns children. Child labour is as old as the world itself, often a family tradition of early training or an essential need of the poor. This is especially so where the work is done out of the home.

Gradually, almost invisibly, a process has been on for the last few decades to do away with child labour and to ensure that children got to school and get basic education. The Right to Education Act is a major step in this direction. However, corporates need to see this issue, also, as an extended responsibility even though child labour is not prevalent in corporations. Just as corporates have taken leadership in the field of Education, they are placed well to support the movement to do away with child labour.

There are some new issues which have emerged in recent times, requiring corporate attention and action on a scale hitherto unknown and unforeseen.

First, is the issue of equal opportunity for women. Not too long ago there were major Indian companies unwilling to employ women. Today, such companies are fewer but it is an issue whether women have equal opportunity to employment, promotion or leadership or, whether, it is still very much a "man's world".

Women in India normally have to undergo strict discipline at home, including helping the mother with work. The sons are generally freed of

responsibility. The woman normally has an arranged marriage and takes on considerable responsibility. In this process, the evolution of Indian woman is quite unique both in terms of values as well as application and commitment.

Many organisations have therefore, found that women are excellent workers, managers, leaders. But, the ratios are still skewed. And, it is therefore, important to focus on the need for women to be given equal opportunity for jobs and growth. This just cannot be assumed to be happening. It needs constant pushing, for example, the Reservation for Women issue in Parliament or, the strong symbolic value of the President of India and The Speaker of the Lok Sabha being women.

A corollary to this is the issue of sexual harassment at the workplace or anywhere (e.g., buses, trains, planes, streets, etc). This is a growing phenomenon as the number of women in corporate and public life is on the rise.

It is not enough for corporates to deny that this problem exists. Denial is wrong. It is also essential for each corporate to have a policy framework relating to sexual harassment and a laid down process to deal with it. At this point of time, few companies are fully organized to deal with this sensitive issue.

It is extremely important to deal with this challenge transparently, efficiently and effectively so that its importance is diminished and the matter does not grow beyond all proportions. Women must be safe, and must feel safe, in any environment. Corporates must ensure this.

Just as the women's issue needs constant attention, so also the issue of minorities.

India is, and will always be, a strongly secular country. At the same time there are minority communities in varying numbers- large to small- who need attention, care and support. They must have a "place in the sun". India has set up structures, policies and systems to ensure this. For example, the Minorities Commission. But, much of the focus has been on the public Sector and government service. Probably, the corporate sector has not been deeply involved in this issue which it needs to be. Only then can India have a truly secular society. Corporate involvement is essential.

What applies to women and minorities, also, equally applies to the SC/ST population who have had disadvantaged positions in society. The Affirmative Action programme of the Confederation of Indian Industry (CII) is framed to address this issue on a voluntary basis. But, much more needs to be done across industry so that this section of the people of India feel enabled, empowered and engaged. Because of the large numbers, this is not the case at present and, therefore, represents a major challenge for the corporate sector in India.

One aspect of this process is Skills Development so that, over the next ten to twelve years, 500 million young people can be trained in different skills for suitable employment or self-employment. Many of these millions are from sections of society which have been disadvantaged through lack of proper opportunity for education and training. A highly successful Indian corporate sector can do much to address this challenge of the country. It is doing so but much more is needed.

While individual corporates and group companies are the "doers" and "players" the institutions of the corporate sector have a major role to play. First, to create awareness of human rights issues; second, to take on demonstration programmes and, third, to "persuade" corporates to do more in this whole challenging area.

Industry institutions have traditionally been "lobbies" for business to get concessions, incentives and policies which foster industry and entrepreneurship. Gradually, their role has changed and evolved into developmental institutions connected to, and concerned with, the real issues of the day concerning human development and rights. A classic example is the Confederation of Indian Industry (CII) which has taken multiple initiatives and has sustained their efforts.

The need is more institutions to do likewise. To bring different aspects of Human Rights to the conference table so that, across the country, thousands and thousands of companies emulate and adopt best practices. In the words of C K Prahalad "next practices". In fact, Prof. Prahalad is the person- the thought leader- who has influenced generations of corporate leaders to think and focus on society's "Bottom of the Pyramid". To consider their position, to understand their needs and resources, to develop products and services for them, to see them as an asset and a resource (not a liability). In this way, he connected corporates to another world- the

world of the poor and disadvantaged, the world of the people with very limited resources and opportunities and to see them in a completely different light.

The C K Prahalad philosophy, which is the philosophy of this article, is that the people at the bottom of the pyramid must be treated with respect. They have dignity. They have capability. They have potential. So, it goes beyond Human Rights in the traditional sense. It is Human Dignity and Respect. It goes beyond laws and rules. It concerns behavior and conduct, not based on codes - though these are useful references and checking points.

The India of tomorrow has to be an India of equality of opportunity, of minimum inequality, prejudice and bias. A truly secular society filled with harmony and peace.

In all of this, the Indian corporate sector has a huge role to play.

This sector is led by educated, enlightened people. And, whilst profit is an important self- sustaining driver, it cannot, must not, be the only motivation. Corporates are creating wealth for all. The need is for improved distribution and sharing, not through government laws and rules, but, through enlightened practices of corporate leadership.

In a country of 600 million plus people living in poverty, corporates can set examples in terms of their own emoluments, their lifestyles, their policies and practices relating to equality and their leadership vis-a-vis women, minorities, disadvantaged communities, affirmative action and many other issues.

Corporates have transformed the economy of India to face globalization challenges with competitiveness and confidence. The same corporate can help transform the Indian society.

Mobilizing for Human Rights: International Law in Domestic Politics

By Beth A. Simmons

*Review by Professor B.B. Pande**

Depending upon the developmental and cultural context, the Human Rights discourse the world over has been carried out at three distinct levels, namely, the conceptual, the normative and the implementation. Though in most of the countries the human rights thinking and writing is still stuck-up at the conceptual and normative levels, but there do exist countries where, either due to a better record of social and political acceptance of human rights ideology or the sheer intellectual initiative of the scholars, there has been positive movement in pushing to the fore the human rights implementation level activities. The book under review by Beth A. Simmons is one such venture that has distinctly attempted to assess the impact of the International Human Rights Law on 'Domestic Politics', across the world. It is paradoxical that mobilizing, which has been conceived by an American scholar and published in New York in 2009, a distinctly post 9/11 period, should have devoted one full chapter (Ch. 7) to the theme "Humane Treatment: The Prevalence and Prevention of Torture".

Mobilizing is authored by a seasoned political scientist currently working as a Professor of International Affairs at the Harvard University, whose research and writings on International Law and State behavior are already well known and rewarded. True to her academic and hard research-orientation. Mobilizing has attempted to give a through academic treatment to the subject on hand. The book is divided into two distinct parts, the first, devoted to the four theoretical inquiries and second, devoted to four impact areas of current interest. Chapter 1 and 2 incorporate discussion

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relating to role and significance of International Law, which appears to be superfluity in a book on implementation of human rights. But chapters 3 and 4 that centre round theories of ratification and theories of compliance have culled-out some very useful material of great interest to non-political science human rights academics. The value of the book is further enhanced by the authors attempt to assess the performance of diverse nation states on the basis of ratification and compliance with select human rights treaties. We shall advert to chapter 3 and 4 in the later part of our discussion. The second part of the book comprises of five chapters. The main focus is on chapters 5, 6, 7 and 8 that are devoted to some most vital human right. themes such as "Civil Rights" (Ch. 5), including 'religious freedoms', 'Fair Trials', 'Cruel and Inhuman Treatment-Death Penalty', "Equality for Women: Education, Work and Reproductive Rights" (Ch. 6), "Humane Treatment : The Prevalence and Prevention of Torture" (Ch. 7) and "The Protection of Innocents: The Rights of the Child" (Ch. 8). Though one can hardly find any fault in the authors' choice of the above four impact areas. But at times, one feels like disagreeing with the author for having shown undue interest in civil and political aspects of human rights over the economic, social and cultural aspects of human rights. The value of the book for the reader lies not only in the aforesaid six chapters, but also the two appendices and a long list of seven hundred and fifty references about which some comments would be made later.

Analysing the Implication of Ratification of Human Rights Covenants by the States

Chapter 3 titled as "Theories of commitment" provides an elaborate of discussion on motivations and the processes in the ratification of the six leading human rights covenants, namely, the international covenant on. Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Elimination of Racial Discrimination (CERD), Convention on, the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), convention Against Fortune and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The author has made some interesting cross country/regional/continental comparisons in the patterns and preferences in the ratification of the covenants by the governments through illustrative tables, charts and graphs. At the end of the

'commitment' chapter the book presents as a few interesting conclusions such as: "That governments ratify because they intend to comply"² or "Nondemocratic governments-polities, that never experienced much democratic participation or accountability at any point in their histories-have been systematically reluctant to commit themselves to the contents of legal arrangements that declare the importance of civil and political rights for the individual. Similarly, governments-polities that hold social values that fit quite uneasily with the values reflected in these treaties are also systematically unlikely to commit, as is especially clear in the case of predominantly Muslim societies' reluctance fully to embrace CEDAW."³ "What is clear, however, is that the nature of legal system has a significant and highly consistent effect on governments' commitment patterns. Governments in common law settings are systematically more reluctant to ratify most of these treaties. The nature of legal system itself can create resistance against the ready acceptance of the international human rights regime."⁴ Yet another very interesting conclusion of this chapter is the influence of regional ratification patterns, in the words of the author: "Governments appear to time their ratification-even coordinate their reservations-largely to keep in step with regional peers ... Rights-oriented countries pull their less enamored neighbors along in their wake"⁵. However, the otherwise excellently conceived and articulated chapter does not shed much light on why certain human rights conventions are more ratified and others less ratified? Similarly, the positive and negative role played by the Human Rights institution in the ratifications has also remained unexplored.

Analysing the Implications of Compliance with the Ratified Conventions

Chapter 4 is an excellent follows up of the previous chapter that deals with multiple issues involved in post ratification treaty compliance. Beginning with a lucid discussion of diverse theories of treaty obligations under the international law, the chapter discusses the mechanisms by which the human rights treaties influence the rights outcome as a tool to support

2 Mobilizing at p. 108.

3 Mobilizing at p. 109.

4 Ibid.

5 Mobilizing at p. 110-111.

political mobilization. Particularly relevant for rule of law societies is the role of judiciary in relying upon ratified treaties in creating international legal obligation for the nation states. The author considers that "Litigation in national courts is one of the best strategies available for creating homegrown pro-rights jurisprudence."⁶ The author also underscores the vital role played by activist lawyers in the creation of such pro-right jurisprudence in these words: "Litigation has grown in importance in many countries because of a growing network of "cause lawyers" with the interest and expertise to push human rights cases through the courts. Cause lawyering- or legal work that is "directed at altering some aspects of the social, economic, and political status-quo" - is traditionally associated with the litigation campaigns of the NAACP in the case of civil rights movements of the United States"⁷.

Furthermore, the author opines that ratification of human rights treaties can also serve as a tool of political mobilization. They can impact the individuals' value preference for the concerned human rights and also go a long way towards their implementation at the ground level. To support his point the author has provided a discussion concerning the theories of social mobilization at pp. 136 to 149. Advocating strongly his viewpoint that treaties can empower political mobilization, the author observes: "Treaties can change values and beliefs and can change the probability of successful political action to achieve the rights they promulgate"⁸. The ability of treaties to generate mobilization for human rights in stable autocracies, stable democracies, and partial democratic or transitional regimes is displayed in a comparative frame chart in Figure 4.1 (at p. 151). According to the author: "The value of securing treaty compliance is much higher in a repressive or discriminatory setting than in a liberal democracy, which has a wide variety of domestic guarantees already in place, At the same time, the probability of successfully demanding a civil or political right is likely to be low in a highly repressive environment. Such demands are likely to be met with repression in stable autocracies or regimes rooted in discrimination. Democracies tend to be highly responsive to citizens' demands."⁹ Similarly, in figure 4.2 (p.153) the author tries to project through a graph the values of human rights mobilization in autocracies,

6 Mobilizing, at p. 131.

7 Ibid.

8 Mobilizing at p. 150.

9 Mobilizing at p. 151.

democracies and partially democratic/transitional regimes, and arrives at a conclusion that compared to both stable autocracies and stable democracies, the treaty effect is much more in partially democratic or transitional regimes. Trying to find an answer to the question: under what conditions do government comply with their international human rights treaty commitment? the authors' advocacy of citizens' for securing better state compliance is over simplifying the realities, apart from reversing the clock of strengthening the international human rights order, particularly after the United Nations institutions assuming a key role in building a international legal order.

Relating ICCPR Ratification to Improvements in the Civil Rights Record

Chapter 5 has followed a very vital line of enquiry pertaining to the impact of ICCPR ratifications on the civil rights realities in different societies. Civil rights here have been understood in terms of its three aspects, namely, 'Fair Trial', 'Religions Freedom', 'Death Penalty- Abolition and Retention'. The chapter presents the data and findings in respect of all the three civil rights separately, through charts and tables. Table 5.2 (pp. 175-176) presents the research findings in a tabular form in which 'religious freedom' is taken as a dependent variable and the statistical realities pertaining to it are collected in respect to the five state models. However, such an elaborate research has only led to a more or less, routine finding: "The major result is the weak but noticeable influence of the ICCPR within five years of ratification for all regime types, with a clear/concentration of the treaty's liberalizing effects within countries that have had of democratic governance"¹⁰ Similarly, the effect of ICCPR ratification on 'Fair Trial' has been analysed in pp. 178 to 187. Here as well the author after a graph of ICCPR obligation and fair trial practices and a statistical table, arrives at a finding, that: "the influence of ICCPR ratification on fair trials is highly conditioned by the nature of the regime. There is a mild positive but statistically insignificant association across all countries, but the analysis of subgroups indicates that the positive effects are concentrated largely in neither the stable democracies nor the stable autocracies, but rather in those polities that have had some experience with democratic government, however fleeting".¹¹

10 Mobilizing at p. 177.

11 Mobilizing at p. 187.

Justice for the Poor

Perspectives on Accelerating Access

*Edited by: Ayesha Kadwani Dias and
Gita Honwana Welch*

*Review by Prof. (Dr.) Ranbir Singh**

Amartya Sen in his recent book 'An Idea of Justice' commends the comparative method of discoursing on key questions of social justice. Even as one finds Sen's suggestion unexceptionable, its practical application is difficult because of the paucity of comparative material. To be precise, the Anglo-American outlook on key social questions occupies so much of the knowledge space that it virtually blocks every other perspective. This book breaks this embargo as it deliberates on the accessibility of justice to the poor through essays which specially dwell on the UNDP-supported experiments.

In theory, a sound legal system is essential for the maintenance of a civilised society. However, in practice does the legal system really promote or perpetuate justice? Is justice for all? In what ways does social class influence criminal case outcomes? Justice for the poor attempts to answer these vexing questions and raises the issues of obtaining fairness for the poor and less well educated defendants in the criminal court process. The prime aims of the books are to examine 'both the place of law and place of social class in the lawyers' everybody negotiation of criminal cases', and to assess 'whether social class undermines justice ideals' and 'whether the socio legal environment itself somehow obfuscates and reinforces class oppression'. Study of justice for the poor is timely and thought provoking in examining law from a socio legal perspective that emphasizes the importance of studying 'law in action'.

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The distinguished contributors contend that the formulation of legal strategies is indispensable for protecting people, including the poorest of the poor, from human rights violation, and for securing rights- civil, political, socio-economic, and cultural. They clarify conceptual issues and address crucial questions. What are the most appropriate, practical, effective strategies for securing access to justice for the poor? What are the means of evaluating justice programming from a results based perspective what level of interplay exists between poverty, good governance, and accountability in the realisation of the millennium development goals and in ensuring participation and non-discrimination?

The 18 essays in this collection have been organised around five themes: access to justice, first, in the international context and then in plural legal systems; the link between public interest litigation and access to justice; the relationship between democracy, governance and justice programming; and the developments and obstacles encountered in the implementation of various regional initiatives. And the editors have provided an introduction to each of these segments, apart from the one for the entire group. This methodology has, apart from ensuring that no contribution suffered editorial neglect (because a succinct summary of each essay is given by the editors), rendered the work reader-friendly in the sense that one can easily zero in on the theme of one's interest. However, in opting for the descriptive, the editors have lost an opportunity to interlink the various contributions and meld them into a composite entity. As a consequence, the book remains just a collection of discrete essays.

The book is truly a mine of information on the state of justice in various countries in Africa, Asia, Latin America, the Middle East, and the Central and Eastern Europe. In some cases, these rich descriptions are accompanied by a deep analysis. For example, the piece by Geof Budlender is a fascinating analysis of how, in South Africa, public interest lawyering combined with work at the level of the public interest movement and subverted an unjust system. Jill Cotterell and Yash Ghai point to the difficulties of using the Constitution as an instrument of empowerment in Kenya, where large sections of the people are poor and marginalised. And Upendra Baxi provides the overarching conceptual framework to these country-wise descriptions by bringing out the multiple connotations of globalisation and the resultant interplay between neo-liberalism and access to justice.

Since authentic information must come ahead of analysis, the material provided in the book can form the basis for a comparative study and assessment of developments vis-à-vis access to justice in India. Thus, for example, the liberalisation of locus standi, a precursor to the concept of 'public interest litigation' (PIL), has come to be regarded as 'routine.' Both the legal profession and the lay people have ceased to appreciate the radical import of this development. In order to continue reflecting on legitimate liberalisation, it may be appropriate to keep examining the purpose of the standing rule and to study case law where the refusal to liberalise is manifestly unjust. The essay on 'PIL in Nigeria' provides umpteen such examples.

Relevance

Equality before the law in a democracy is a matter of right. It is not a subject of charity or magnanimity, but an entitlement strictly afforded to one and all. Proper access to justice is only possible with the attainment of the endeavors like engaging the poor in a dialogue for empowerment; coordinating the participation of all role players in the law reform process; fostering linkages to regional and international networks for the purposes of advocacy, training and capacity-building within existing institutions and, where necessary, the creation of new ones; advocating for lay participation in the justice system so that the Courts are better informed; advocating for the establishment of such offices as that of the Ombudsperson in order to promote an accountable and transparent legal and judicial environment; encouraging lawmakers and the legal profession to use local language and simplify language in the justice system and inform poor communities how the formal system works; and initiating pilot studies tracking cases in the civil, criminal and administrative Courts thereby also monitoring and assessing the quality of judgments and the delays in their execution.

"Only thus, we can make this world a better and more peaceful place to reside in."

The book examines the self-validating tendencies of best practices that leave little scope for a cumulative and incremental approach to reforms. Administrative innovations and initiatives even if unsuccessful, leave behind a repository of information, which if relegated to the cage of best practices may be lost forever. The book brings forth this concern and lays accent on the research that must move beyond 'best practices'. Transcending best

practices viewpoint advocates that there is a scope for increased policy activism in a practice which is striving to find solutions to the problem.

In India, the colonial lineage of the legal system provokes questions about its relevance to the poor and the dispossessed who neither understand the language nor the practice of the courts. This situation often causes people to hark back to institutions of community justice. Such nostalgia is far from uniform on account of the sexist and casteist decisions that are pronounced by many an institution of the non-state legal system. The need to adopt a nuanced approach is ably brought home by Julio Faundez, who in his analysis of the community justice institutions in rural Peru exposes the limitations of that system and also explains how it often helps in restoring people's faith in a political system. That there is no right without a remedy is a clichéd proposition of rights jurisprudence. The 13th Finance Commission has earmarked Rs.5,000 crore during the five-year period, 2010-15, for improving the justice delivery system. If this allocation is to yield the intended result, it is imperative that those involved in drawing up action plans stop recycling worn-out ideas and come up with something fresh and innovative. This book could be of great assistance in such a reform process.

This book is of immense value and a commendable effort of Ayesha Kadwani Dias and Gita Honwana Welch scholars which has laid at rest the State centric understanding of efficiency, capacity building and implementation. Thus the book provides a lease of refreshing relevance to judicial administration research efforts for the well being of poor. It is a must read for all policy makers and researchers of governance.

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