

RIGHTS AND DEVELOPMENT

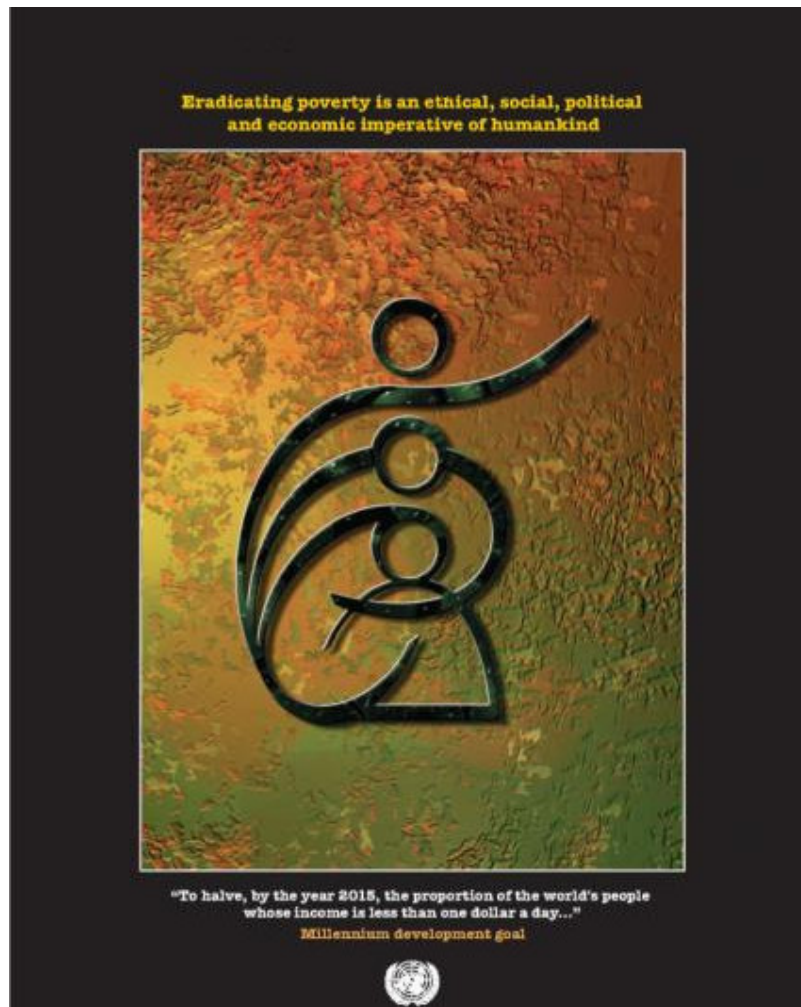
Bulletin



**Centre for Development
and
Human Rights**

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Centre for Development and Human Rights, New Delhi, has launched a bi-monthly Bulletin on Rights and Development, addressed to human rights activists in India and abroad, academics and scholars, public servants and political workers, NGOs and interested public. Its purpose is to make the readers aware of some of the developments in the area of human rights and economic, political and social concerns in India in the recent period. It focuses on a few selected issues of major concern in other countries in the world. It has a few short special articles, published and unpublished, in this area, and a section on brief analytical features on some of the major developments. There is also a section of commentaries on some important news in this area. Another brief section provides some reviews of recent books on these subjects.

This Bulletin has been prepared by a team of young researchers, Ms. Priyanca M. Velath, Mr. Reji K. Joseph, Ms. Ipshita Sengupta, Ms. Avani Kapur and Ms. Aparajita Mazumdar as joint editors. The work of the team has been supervised by a Board of Editors consisting of Dr. Pronab Sen (Chief Statistician of India), Prof. Pulin Nayak (Professor of Economics, Delhi School of Economics), Dr. Alakh Sharma (Director, Institute of Human Development), Dr. N.J. Kurian (Director, Council for Social Development) Ms. Jayshree Sengupta, (Senior Fellow, Observer Research Foundation), Mr. Ravi Nair (Executive Director, South Asia Human Rights Documentation Centre) and Dr. Arjun Sengupta, (Chairman - CDHR) as Editorial Advisor.

The Bulletin is available on the website of the Centre for Development and Human Rights, www.cdhr.org.in

RIGHTS – ARTICLES

Why are levels of child malnutrition high?

-A.K. Shiva Kumar

Levels of child malnutrition in India are exceptionally high. According to the recently released National Family Health Survey, NFHS-3, carried out in 2005-06, 46 per cent of India's children under the age of three are underweight. The corresponding levels of child malnutrition are much lower in most other countries — 28 per cent in Sub-Saharan Africa and eight per cent in China. Scientific evidence suggests that compared with the risks a well-nourished child faces, the risk of death from common childhood diseases is doubled for a mildly malnourished child, tripled for a moderately malnourished child, and may be even as high as eight times for a severely malnourished child.

Three commonly used measures — stunting (height-for-age), wasting (height-for-age), and the proportion of those underweight (weight-for-age) — provide somewhat different information about the nutritional status of children. Stunting captures chronic under-nutrition as it reflects a failure to receive adequate nutrition over a long period of time or chronic or recurrent diarrhoea. Wasting captures the thinness of children and indicates

the prevalence of acute malnutrition. The third indicator, weight-for-age (underweight), captures elements of both stunting and wasting. The proportion of underweight children is used most widely as a comprehensive measure of malnutrition as it captures elements of both stunting and wasting.

Why are levels of child malnutrition so high in India? Several misconceptions cloud public opinion. Many believe, for instance, that India's low per capita income is the major underlying cause. This is not entirely true. A majority of the countries in Sub-Saharan Africa report lower levels of per capita income than India — and most of them report lower rates of child malnutrition as well. Again, within India, we find that Gujarat and Uttar Pradesh report the same proportion — 47 per cent — of underweight children even though the per capita income in Gujarat is several times higher than in Uttar Pradesh.

Others argue that income poverty is a major underlying cause of child malnutrition. Here too, we find no obvious linkage between levels of child malnutrition and income poverty. For example, 26 per cent of India's population lives below the poverty line and yet 46 per cent of children under the age of three are malnourished. Again, it was believed that use of international growth standards to assess malnutrition is not right. However, extensive studies by the Nutrition Foundation of India have established that the growth patterns of Indian children who are well fed and well looked after are similar to those of adequately nourished children in other parts of the world, no matter where they are born — in New Delhi, New York or New Zealand. Yet others believe that Indian children are malnourished because families are too poor to feed their children. This again is not true as even the poorest of families can get the quantity of food needed to feed an infant — half a chapatti or

Many believe, for instance, that India's low per capita income is the major underlying cause. This is not entirely true. A majority of the countries in Sub-Saharan Africa report lower levels of per capita income than India — and most of them report lower rates of child malnutrition as well

half a banana or a boiled potato or a bowl of dal.



Nearly 46 per cent of Indian Children under the age of 3 suffer from malnutrition.
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What then explains the high levels of child malnutrition in India? Answers lie in looking beyond income levels, economic expansion, conventional poverty, and food availability. The first clue is found in the proportion of low birth weight babies. Estimates for India reveal that 20 to 30 per cent of babies weigh less than 2,500 grams at birth. This suggests the onset of malnutrition in the womb itself and reflects an inter-generational transfer of malnutrition from the mother to the child. Adversely affecting the birth of well-nourished babies is also the poor health and nutritional status of women. According to NFHS-3, close to one-third of Indian women suffer from Chronic Energy Deficiency and have a Body Mass Index (BMI) of less than 18.5 kg/m².

The second factor has to do with the limited reach of public health services and messages. In 2005-06, for instance, only 44 per cent of children aged 12 to 23 months were fully immunised. And only 26 per cent of children with diarrhoea were given oral rehydration salts. Barely two-thirds (64 per cent) of children suffering from acute respiratory infection or fever were taken to a health facility. Also affecting the health and nutritional well being of children is the limited reach of, and access to, maternal care services.

Here again, NFHS-3 reveals some glaring shortfalls. In 2005-06, barely half (51 per cent) of mothers across the country received at least three antenatal care visits during pregnancy; and less than half (48 per cent) of births are attended to by a trained birth attendant, which includes a doctor, nurse, woman health worker, auxiliary nurse midwife, and other health personnel.

The third clue lies in the care of the child. Breast milk provides vital nutrients throughout the first year of life; but it alone is not sufficient. Beyond four to six months, infants must be given solid foods to supplement breast milk. Despite the importance of breastfeeding and appropriate feeding for preventing malnutrition, only 23 per cent of children under the age of three were breastfed within one hour of birth and less than half the babies (46 per cent) up to five months old were exclusively breastfed. And only 56 per cent of children aged six to nine months received solid or semi-solid food and breast milk. It is, therefore, not surprising that a child typically becomes malnourished between six and 18 months of age, and remains so thereafter. In most cases, nutritional rehabilitation is difficult.

And the fourth clue is found in the limited opportunities available to women. Access to education, for instance, makes a big difference. According to NFHS-3, malnutrition among Indian children below the age of three born to illiterate mothers (55 per cent) is more than twice the levels (26 per cent) reported among mothers who have completed more than 10 years of schooling.

It is also well known that most infants get malnourished between six and 18 months of age. This raises three important issues relating to care of the child. First, six-month-old babies cannot eat by themselves; they need to be fed small amounts of food frequently. Feeding a six-month-old infant, however, is

time-consuming. Many rural women simply do not have the luxury of time to feed infants. The task is often entrusted to an older sibling who understandably may not have the required patience to feed an infant. Related to this is the need to care for pregnant women by ensuring proper nutritional diet and by reducing the burden of work on mothers. Child rearing in most families is made the primary responsibility of mothers. It is important for fathers too to recognise their role in childcare and share the burden with mothers. And third, it is important for state interventions to focus on care of newborns and those under the age of three.

States' records vary

Levels of undernourishment vary widely across Indian States. Punjab, Kerala, Jammu and Kashmir, and Tamil Nadu report the lowest proportions of underweight children (27 to 33 per cent); whereas Chhattisgarh, Bihar, Jharkhand, and Madhya Pradesh report the highest levels of underweight children (52 to 60 per cent). What explains the better nutritional levels among children in the first set of States? It is not surprising that, by and large, in the four States with the lowest proportion of underweight children, provisioning of health services, care of children especially of newborns, and the nutritional status of women are better than in the four high malnutrition States. For instance, 60 to 81 per cent of children aged six to 35 months were fully immunised in the low malnutrition States, whereas the proportion is much lower — 33 to 49 per cent — in the high malnutrition States. Reach of maternal care services is also poorer in the high malnutrition States. In the low malnutrition States, 63 to 97 per cent of mothers receive at least three antenatal care visits; this proportion varies between 17 and 55 per cent in the high malnutrition States. Again, 53 to 100 per cent of births were assisted by a trained birth attendant in the low malnutrition States

whereas in the high malnutrition States the proportion varied between 17 and 55 per cent. And finally, the nutritional status of women is better in States where children had lower levels of malnutrition. For instance, whereas 14 to 24 per cent of women in the low malnutrition States have a BMI below normal, the proportion varies from 40 to 43 per cent in the high malnutrition States.

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To conclude, the linkages of child malnutrition with women's health and well-being are strong. Reducing child malnutrition requires enhancing women's freedoms and promoting gender equality. At the same time, the focus has also to shift from enhancing incomes and food availability to understanding how members of a household establish command over food, health, and care. It is important to understand how family members acquire and apply knowledge on child caring and rearing practices, allocate time to look after children, and protect the cleanliness of the environment. But, above all, India's high levels of child malnutrition reflect the continuing neglect of health, the inadequate reach and efficacy of health and child care services, and the failure of strategies to reach newborn children and those under the age of three. These deficiencies need to be addressed immediately.

(The writer is a development economist who has focussed on poverty and human development, and social sector analysis.)

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Rights for Forgotten Tribes

-Nandini Sundar

Predictably, public discourse on the Gujjar-state-Mina (as the census spells them) standoff in Rajasthan has centred on two, or, at best, three issues: while large section of the media and some political commentators — fresh from the OBC bust up — have decried the irrationality of community-based reservations, another section has tried to frame the legitimate claims of the Gujjars against the lack of trickle-down. The brutality of the police firing merits passing mention, but will soon disappear, like all the other statistics of people killed by a trigger-happy police let loose by incompetent administrations. As if five lakh rupees here, and one lakh there were enough to deflect from the underlying issue of how governments in India treat demonstrating interest groups.



Gujjars demonstrating outside the Jantar Mantar in New Delhi ©www.hindu.com

It is easy to forget, in the midst of all this noise, that the Minas are not the only Scheduled Tribes (STs) in Rajasthan. But everyone, ranging from TV commentators to some Minas themselves, seem to think so: “Minas in Rajasthan are the only Scheduled Tribes and we would not tolerate any inclusion into our community,” Bhanwar Lal Mina,

president of the Rashtriya Mina Mahasabha, is reported to have said. Even the MP from Barmer, Manvendra Singh, in whose district Bhils constitute almost 6% of the population (and 99% of the district’s ST population), neglects to mention that they exist. No TV reporter, to my knowledge, has asked a Bhil leader what she or he feels about the stands taken by the Gujjars and the Minas, and no political commentator has yet asked why groups like the Bhils or Saharias are unable to take advantage of the reservations they are entitled to, and which they so desperately need.

At 12.6% of the state, Rajasthan’s tribal population is somewhat higher than the national average: the Minas constitute 53.5% of the total ST population, the Bhils 39.5%, smaller groups like the Garasia, Damor, Dhanka & Saharia are 6.6%, while the Bhil Mina, Naikda, Kathodi, Patelia, Kokna and Koli Dhor with populations ranging from below 100 to about 3000 make up the remaining 0.3%. The Minas almost exclusively dominate the eastern portion of the state’s Sawai Madhopur, Dholpur, Bharatpur, Karauli, Dausa, while the Bhils live in south-western Rajasthan. Banswara district is 72% adivasi, with Dungarpur and Udaipur following next in terms of adivasi populations, and it is not co-incidental that issues like the right to food, employment guarantee and common property resources have been so critical here.

The differences between the Bhils and Minas are pronounced. While the Minas have an overall literacy rate of 52.2%, which is higher than the national ST average of 47.1%, the Bhils and Saharias have an overall literacy rate of 35.2% and 34.2% respectively. 3.5% of Minas are graduates compared to 0.9% of Bhils, 0.6% of Garasias and 0.1% of Saharias. No wonder then that all the government posts reserved for STs are occupied by Minas,

making them not just the dominant tribe in Rajasthan, but one of the groups which has most benefited through reservations nationally, although their literacy rate is still lower than the state average of 61%. Even a cursory look at the civil services or even universities reveals a number of Minas, but scarcely any Bhils from Rajasthan or Madhya Pradesh, Gonds from Chhattisgarh, or Hos from Jharkhand, all numerically significant communities.

In the Time of Trees and Sorrows, the local politics was not about Gujjars vs Minas, both of whom were relatively privileged communities, although subservient to the court, but about access to the forests and the problems of agriculture. It is this lived relationship, the common frustration with government services and lack of employment, which needs to be restored to the forefront of political discourse.

Explaining why certain groups have been able to take advantage of reservations and others have been left out is a complex issue. It involves tracking histories of education, migration, and social networks. For instance, the Uraons in Jharkhand and Chhattisgarh, another group with access to government jobs, have had a long history of missionary education, though within Jharkhand, they are not as politically powerful as the Santhal and the Mundas. However, the Minas are better off not just in terms of education and employment but also land holdings, annual incomes and assets. A study by MK Bhasin and Shampa Nag found that among STs in Rajasthan, a greater percentage was engaged in agricultural or casual labour (50%) as against cultivation (40%). Among Minas, however, 85% were engaged in cultivation, and only 1.5% in agricultural labour.

Literacy figures for Gujjars are hard to come by since the census does not disaggregate for OBC groups. But even assuming that they are disadvantaged compared to the Jats, or even the Minas, and have suffered under the neglect of rural livelihoods, that by itself does not constitute a justification for giving them ST status. As Ann Gold and Bhoju Ram Gujar bring out in *In the Time of Trees and Sorrows*, the local politics was not about Gujjars vs Minas, both of whom were relatively privileged communities, although subservient to the court, but about access to the forests and the problems of agriculture. It is this lived relationship, the common frustration with government services and lack of employment, which needs to be restored to the forefront of political discourse. It is another question whether the current political parties and caste leaderships are capable of doing this.

While it is true that state categorisations placed one group in the ST category and flung another into the OBC list, the solution lies not in inflating the ST list or scrapping reservations, at least for scheduled tribes, but renewing the principles on which the Constitution envisaged special provisions for adivasis. The criteria used initially were vague, so deserving communities like the Kols of Sonbhadra got left out and many, who were scheduled, still need this protection. The kind of sheer discrimination STs face is not comparable to OBCs or even SCs, who perform better on education and employment criteria.

Apart from being the major victims of displacement, the absence of a significant middle-class and successful political formations like the BSP mean the adivasis are the most voiceless group in Indian society today. Without reservations, we would not even have the few adivasi MPs that we have now. If, with a quota of 7.5% there are only

2.2% ST teachers in Delhi University, without reservations, even they could get edged out. Few adivasi communities can aspire to the kind of front page coverage of their mobilisation in the way that both Gujjars and Minas have achieved with their narrow caste demands — even when they come out in lakhs to demand the forest rights bill or protest against atrocities.

Since the other tribes of Rajasthan do not exist for the government, the media or political commentators — neither in a political nor a metaphorical sense — this makes them the groups, which are most deserving of ST status. The objectives of the National Tribal Policy of 2006 include: “Arresting the increasing demand from new communities for inclusion in the list of STs by rationalising the process of scheduling; examine the need for de-scheduling of certain STs and sub-categorisation of existing STs to ensure that benefits are evenly spread across the tribes by 2020.” Will the UPA and the NDA have the courage to live up to this?

(The writer is Professor of Sociology at the Delhi School of Economics)

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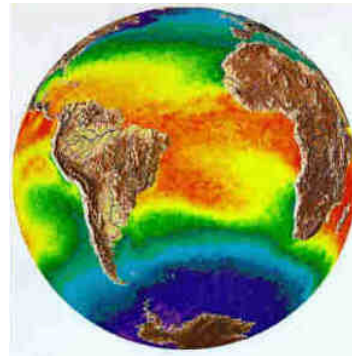
G8, India and Climate Change

-Jayshree Sengupta

The G8 has been regarded as the ‘rich man’s club’ and its annual meetings at exotic locales have been marked by violent protests from NGOs, environmentalists and trade unions. For 20 years (1974-1994), it has been an informal group of seven highly industrialised countries of the world (USA, West Germany, UK, Japan, Italy, France and Canada) that met every year to discuss global economic problems centering on exchange

rates and international debt. It also aimed at providing a supervisory and vigilant role to the world’s financial system.

While Russia was invited to join the group in 1997 after the collapse of the Soviet Union as it had very special problems, India and four other ‘Outreach countries’ (Mexico, Brazil, South Africa and China) were taken into the fold of the G8 in 2005 at the summit at Gleneagles, Scotland. The G8 was forced to take notice of these five fast growing countries because from the beginning of the New Millennium, climate change, problems of globalisation and world trade, had become a major concern for the rich countries. As the fast growing developing countries were increasingly taking a very different stance from the G8 on globalisation and trade issues, it was no longer possible to ignore them. In any case, China and India had to be taken into account because one third of humanity currently resided in these two countries.



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The G8 with its five Outreach members again met in Heiligendamm, Germany, recently in June 2007. This time climate change was on top of the agenda for discussion. While India is a signatory of the Kyoto protocol the U.S.A. is not. Even though this issue became serious with various reports coming out on the impact of climate change on the world, U.S.A. has maintained that there can be no talk of CO2 reduction unless China and India also commit themselves to it. India’s

viewpoint was that it was not right that the communiqué of the G8 was released before any consultations with the five Outreach countries. The G8 should have taken the viewpoint of the 5 Outreach members and that would have brought out the differences between them and G8 regarding many issues and specially climate change

The first time the rich countries thought of also including the developing countries in the dialogue on climate change was at the Gleneagles summit. A new outlook towards the developing countries had been adopted. The G8 pledged renewed commitment to sustainable development and harnessing the benefits of globalisation for all. A new focus on the problems of the South could thus be traced. The joint declaration pointed out, "Developing countries usually bear the brunt of crises and macroeconomic imbalances in the major economies and are not in a position to spur conditions for global economic growth and development."

At the Gleneagles summit, India pointed out that development of science and technology in the world and in India has not been able to eliminate chronic poverty, ignorance and disease. This is because the industrialised countries have a monopoly over technology through which they have achieved rapid productivity growth. Transfer of technology has remained important for India for sustainable development and energy efficiency. India already has a Ministry of Environment and is spending a large budgetary allocation on research on renewable energy. India urgently needs the transfer of technology for clean energy from G8.

But India has refused to accept any caps on CO2 emissions as proposed by the G8 at the German summit and has declared that it will not compromise on growth. China has

gone along India with its non-acceptance of similar caps.

G8 countries have however maintained that fast growing countries like China and India have to be involved not only because of their present CO2 and Green House Gas emissions, which are considerable, but because the pace of growth will rapidly increase such emissions in the future.

While it is true that the industrialised countries are the biggest polluters today and have been so in the past, India's CO2 emission is also considerable. Although it is one fourth of USA's emission level, the rate at which India is growing is making the world nervous.

While it is true that the industrialised countries are the biggest polluters today and have been so in the past, India's CO2 emission is also considerable. Though it is one fourth of USA's emission level, the rate at which India is growing is making the world nervous. Even now India is number fifth among the worst polluters regarding CO2 emissions. India has to react to climate change problems immediately and expeditiously. It cannot wait for other countries to make the first move because the effects of climate change are going to be most severe for India in the next few decades. It is not fair to hide behind the argument that the per capita energy consumption is one of the lowest in India today.

India's present trends in development are far from environmental friendly. The energy sector is dependent on coal for 50 per cent of power generation. Most of the coal is mined in the rural areas of Orissa, Jharkhand and Bihar with devastating consequences on the environment and the people living in those areas. The tribal population and small and marginal peasants that are resident in the

region, have been forced to resettle as the mining activity has expanded and the result has been that many of the landless population, unable to settle anywhere suitable are moving to urban slums. The waste product of these mines among which is fly ash, is laced with heavy metals and other toxic materials. Also, the power generated from coal fired thermal stations is going to energy intensive industries. In Orissa, the coal belt is dotted with foreign and Indian owned aluminum smelters, steel mills and sponge iron factories, which are exporting a big share of the final product to China, US or other foreign markets.

According to a leaked report of the Intergovernmental Panel on Climate Change (IPCC), it would be suicidal for India to pursue any strategy but the least carbon intensive path toward its own development. This is because the wealthy, less populous countries of the North are very likely and rather unfairly, going to suffer fewer of the devastating blows to their own economies and may actually benefit from extended growing seasons due to global warming, while India and other South Asian countries will have painful and dramatic consequences on its farming system unless action is taken now.



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According to the IPCC report, the Ganga, Brahmaputra and Indus will become seasonal rivers, dry between monsoons as the Himalayan glaciers will continue to retreat, vanishing by 2035, if not sooner. Water tables

will fall and the gross per capita water availability in India will decline by over one third by 2050 as rivers dry up. Water scarcity will in turn affect the health of a large section of the population with a rise in water borne diseases such as cholera. Other diseases like dengue and malaria will rise. Crop productivity will fall. This will mean an even lower caloric intake for India's vast rural population, and mortality due to heat and flood related deaths will climb.

The consequences of global warming is far from fair because they are going to exact the highest price from those countries which are least responsible for the problem. India can start by focusing entirely on clean energy like solar and wind and cannot afford to wait till its CO2 climbs further with accelerated growth.

The current energy mix in India is 65 percent fossil fuel, 32 per cent traditional biomass, 2 per cent renewable sources and 1 per cent nuclear. For reducing CO2 emission, the contribution of renewable energy has to rise from 4 per cent to 10 per cent by 2010, 20 per cent by 2020 and 65 per cent by 2050. At the same time, energy consumption has to be decreased by implementing energy efficient measures. These would require policy changes and reducing inefficient lighting (use of incandescent bulbs) and other means of wasteful electricity consumption.

Fuel efficiency in cars needs to be increased and more investment has to be made in railways and bus transportation routes rather than on highways that would promote gasoline guzzlers. India needs to seriously consider the problem of proliferation of cars per family in big metro cities. Big petrol guzzlers have to be banned. A mass transport system is bound to reduce the emission of CO2 and other Green House Gases as more people can use it to commute rather than use individual cars.

Minimising daily commuting can be achieved by building houses near the place of work.

At the same time Indian industry needs to implement its climate policy and has to significantly reduce CO2 emissions from their products and production processes. Another important point is that constant transportation of goods to retailers has to be reduced and more goods with long shelf life have to be produced so that they do not require frequent replacement.

It is in India's interest to take all preventive measures right away. It requires crop varieties that can withstand higher temperatures, salinated aquifers and increasing pest attacks. There has to be better water management, disease monitoring and control. India also has to prepare for mass exodus of people from Bangladesh where global warming threatens to inundate huge areas of Bangladesh. According to the IPCC report Bangladesh is slated to lose the largest amount of land due to the rise of sea level.

A fresh look can be taken of India's hydroelectric projects. These can be small and adjusted to the needs of the local community and in case of bigger projects, rehabilitation work has to be properly and sensitively organised.

In any case, while it is important to promote rapid growth for poverty reduction, it is also important to accept the fact that global warming is already taking place and India's non acceptance of any caps could give a new lease of life to the existing polluting industries which would worsen the impact of climate change rapidly. India has to take all the measures immediately even if it means a lower GDP growth.

(The writer is Visiting Fellow, Observer Research Foundation)

The Missing Girl Child

*-Ipshita Sengupta and
Priyanca Mathur Velath*

Female Foeticide in India: An Overview

Nearly 10 million girls have been eliminated in their mother's womb just because they are female in the last twenty years. The child sex ratio (CSR) has declined from 945 girls per 1000 boys in 1991 to 927 in 2001. A further disaggregation of these figures will reveal major disparities among states, with prosperous states like Punjab, Haryana and Maharashtra recording the lowest sex ratios. The discovery of forty female foetuses and skulls and bones of new born children tucked away in polythene bags in a well near a private clinic in Nayagarh in the state of Orissa sent shock waves through India, clearly demonstrating the failure of laws and policies to curb female foeticide.

Religious, cultural and economic factors play a significant role in defining the issue of female foeticide in India, wherein women are traditionally viewed as an economic burden within the patriarchy. Unlike popular belief, the practice of female foeticide figures more strongly among affluent, educated families based in urban India. The traditional son preference is highly prevalent among educated families and it is these rich, educated families that can also easily afford the medical technology for sex determination and sex selection.

Female foeticide is a serious human rights violation and an extreme manifestation of violence against women. The practice of sex selective abortion became popular in the late 1970s in India and it was in the northern Indian states of Punjab and Haryana that private foetal sex determination clinics were

first established. The resultant adverse sex ratio has created an unhealthy and undesirable shortage of women in India and states like Punjab and Haryana are already facing a serious shortage of brides for their men of marriageable age. Consequently, bride buying and abduction of women for marriage purposes from other regions and their subsequent exploitation is now common practice in many towns and villages in these states. The decline in sex ratio has also resulted in a sharp rise in sexual crimes, particularly in cities like New Delhi.

What the law says?

Abortion is legal in India since the enactment of The Medical Termination of Pregnancy Act 1971 (MTP Act). The Act allows abortion within twelve to twenty weeks of the pregnancy by a registered medical practitioner, if such practitioner believes in good faith that the continuance of the pregnancy endangers the pregnant woman's life or her physical or mental health or if there is a risk that on the child's birth, she would suffer from serious physical or mental handicaps. The Act also allows abortion when pregnancy is caused by rape or as a result of a failure of contraception measures used by any married woman or her husband.

Despite the legality of abortion, a large number of abortions are conducted in uncertified, unregistered medical facilities by unqualified medical providers and are more often than not, very unsafe causing maternal deaths in certain cases (Bracken and Nidadavalu: 2005). However, the use of medical technologies to identify foetal sex and sex selective abortion is illegal. The Pre Natal Diagnostic Techniques Act 1994 (PNDT Act) clearly prohibits foetal sex determination and the communication of the same to the parents.



Sex Determination and Sex Selective Abortion is illegal © CDHR

While the enactment of the Act was highly rejoiced in human rights circles, it remained ineffective in practice, with female to male sex ratios dipping further across India, confirming gross violation of the provisions of the PNDT Act. The Supreme Court, in the case of *CEHAT and others vs. Union of India and others* [(2003) 8 SCC 398] issued notices to all states seeking a reply as to why the PNDT Act was not being implemented and on the basis of the replies, passed specific orders to the Central and State governments and the Central Supervisory Board for effective implementation of the PNDT Act.

In 2003, pursuant to the Court's orders, the PNDT Act was amended and was titled as The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT Act). The amended Act prevents the use of diagnostic methods for the purposes of sex selection, before or after conception and also prohibits advertisements related to pre-conception and pre-natal sex determination. The Act further requires the mandatory registration of ultrasound machines and maintenance of records of all ultrasound tests conducted by clinics and state level supervisory bodies have been established for the purposes of monitoring of the implementation of the Act. What the amended Act fails to comprehend is that the practices that the Act prohibits makes great business sense for the doctors who thrive on the misuse

of ultrasound technologies for pre-natal sex determination. For example, the Act requires that pre-conception and pre-natal diagnostic tests be conducted only at government medical facilities but private medical practitioners and clinics provide these services surreptitiously, albeit illegally to their clients, at a much higher cost, thus, abusing this very restriction.

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 also considers the act of conducting sex determination test by a medical practitioner with the intention to end the life of a female foetus in the mother's womb as "professional misconduct" and the delinquent medical practitioner may be punished with deregistration from medical rolls. However, it is fairly easy for doctors to misuse ultrasound technology for sex determination on the pretext of detection of genetic disorders in the foetus and use code language to inform the parents as to the sex of the foetus.

The Ministry for Women and Child Development (WCD) plans to register all pregnancies to serve as a database for the actual number of pregnancies that result in childbirth and act as a check on the incidences of female foeticide and ensure safe motherhood. The WCD Minister, Ms. Renuka Chowdhury announced that abortions conducted without a "valid and acceptable" reason would be curbed.



Group Discussion with members of Chetana Samaj, Fatehabad. © CDHR

But women's rights activists have voiced their reservations on pregnancy monitoring as an invasion of a woman's privacy. The WCD Ministry has also proposed the 'Cradle Baby' scheme or 'Palna' scheme as a part of the Eleventh Five Year Plan. This scheme entails the establishment of crèches or palnas for abandoned girl children in every district and is aimed at encouraging those parents who are unwilling to bring up their daughters to leave them at the crèche, rather than resort to female foeticide. This scheme has been widely criticised by NGOs and activists as it will encourage and enable families to give away their daughters, even if they are in a position to take care of them. The poor track record of government orphanages and homes serves as a further deterrent to the effective implementation of such a scheme and such an approach towards the eradication of female foeticide does not pay much attention to women's rights or the importance of a girl child.

Findings in Sirsa district, Haryana

To understand the nature of the problem of female foeticide in one of India's most prosperous states, CDHR researchers undertook a field visit to Sirsa district, Haryana. Sirsa may be one of Haryana's richest districts but it also has one of the lowest rates of female literacy in that state (49.93 per cent). The female to male sex ratio in that district, as per the 2001 Census, is 882 but the child sex ratio (0-6 years) is 817. We visited many villages there like Fatehabad, Kalanwali, Hassu and Shamshabad and communicated with a cross section of people, including local communities, NGOs, doctors, government officials, school teachers, Anganwadi workers and political leaders.

A meeting with Mr. V. Umashankar, Deputy Commissioner, Sirsa district informed us of a wide campaign against female foeticide

initiated in 2006 by the district administration. Under this programme, local NGOs, community service organisations, charitable organisations, youth clubs, and public-spirited individuals across the district were first identified as the potential torchbearers of the campaign across villages, blocks and towns in Sirsa and entrusted with the responsibility of spreading awareness on female foeticide among their people. Additionally, a 24-hour phone hotline was installed so that any instance of female foeticide or potential case of sex determination or sex selective abortions could be reported directly to the Deputy Commissioner's office. The district administration has also initiated a process of rewarding and recognising those spirited and self-motivated local organisations and individuals working towards raising awareness on the issue of female foeticide in those areas where the sex ratio has shown improvement in real terms with a cash prize ranging from Rs 5,000 to Rs. 1 lakh. Notably, the district administration has also initiated the practice of recording the Sex Ratio at Birth (SRB) on a monthly basis so as to keep a check on the female foeticide figures in the district and also test the effectiveness of the district level campaign against female foeticide.

Mr. Umashankar, interestingly observed that while in rural areas, the demand side of the problem i.e son preference and the misplaced notion that a daughter is a liability dominates, in urban areas, it is the supply side of the problem i.e the easy availability of medical technology and the readiness of doctors to provide such technology to parents, that has to be effectively curbed. He regretfully admitted that the instances of female foeticide were much higher in the towns than the villages in Sirsa district.

Dr. Ved Beniwal, based in Sirsa city, Patron, Haryana branch of Indian Medical Association is one of the coordinators of the

anti-female foeticide campaign added that the programme aimed at those districts that had a sex ratio of less than 800-700. As a part of the programme, informal meetings were held with other doctors who were warned that if ever found guilty of female foeticide, their clinics



Government Primary School, Hassu © CDHR

would be raided by the police and they would face severe punishment under the law. To create and spread awareness, women and religious organisations like the Brahmakumaris were approached. Other strategies included holding blood donation camps and then discussing the issue of female foeticide with those in attendance at these camps. Alongside, the administration also intended to increase literacy among women and provide them with certain job skills so that their families and society at large sees them as assets and values their importance.

He pointed out that before the amended Act came into force in 2003, large advertisement boards and hoardings of clinics conducting sex determination tests were visible all over Sirsa town. However, now with stricter laws and better policing in bigger cities, it has become difficult to conduct these pre-natal diagnostic tests openly. But, he noted that with the mushrooming of private medical practice, ultrasound technology has reached the smallest towns in Punjab and Haryana and in case, families are unable to conduct sex determination tests or sex selective abortions in their hometowns, they have the option of

travelling to the neighbouring cities, towns or district headquarters to avail of the medical facilities, incurring minimal extra costs.



Lone woman working in a field in Haryana © CDHR

Interaction with some of the local NGOs working in this area, namely Chetana Samiti in Bhattu, Fatehabad and Sahara Welfare Club in Kalanwali brought out, some severe lacunae in the district level campaign against female foeticide. It was disheartening to note that these organisations or groups of individuals did not appreciate the seriousness of the issue at hand. Female foeticide was a mere *addition* to their agenda, at the request of the district administration. It was more of a compliance measure to the orders of the district authorities than a matter of genuine concern. An open meeting with members of Chetana Samiti provided anecdotal evidence that Fatehabad town is faced with an acute shortage of local brides, but also exposed the complete lack of comprehensive and effective campaign strategies to fight this social malaise both at the organisational and administrative levels. However, Janata Singh Patwari of Sahara Welfare Club, Kalanwali, accepted that in villages like his located near the Punjab border, it was easy for persons to cross over to that neighbouring state and conduct sex determination tests and sex selective abortions discreetly.

The casual approach and the typical response of 'it does not happen in our village' greeted us everywhere we went; from local

communities to village primary schools and Anganwadis to Panchayats. Even in Shamshabad, where the sex ratio is as low as 333, the Sarpanch (Head of Village Panchayat), Mrs. Paramjeet Kaur denied any instances of female foeticide in her village. She conceded that she had noticed a shortage in the number of females but this issue never came up for discussion and debate at the Panchayat meetings. Whether it is lack of awareness or a ploy to hide the unspeakable truth, we do not know. A lasting image that we carried back from our field visit was that women were very actively involved at all levels, whether it be sweating it out in the agricultural fields or managing their homes. It is ironic that a state like Haryana whose agricultural prosperity is largely dependent on the hard labour of its womenfolk has such adverse sex ratios.

A schoolteacher in the village primary school in Hassu village explained the scarcity of women in Haryana with utmost conviction and naive acceptance that most amongst the 140 families in their village had two boys and one girl. Thus, he expressed no surprise when informed that the sex ratio in his village was 593 girls to 1000 boys. He mentioned that the village primary school in Hassu had an enrollment rate of 82 boys and 53 girls. He also corroborated the fact of son preference and argued that in most families, when the first and second child is a daughter, parents will most definitely try for a third or fourth time for a son. However, in families where the first child is a son, then the parents are more willing to accept a daughter as a second child.

The school teacher's simplistic understanding of the shortage of girls in his village finds empirical support in studies conducted by the Christian Medical Association of India in Delhi in 2000-2001 which indicates that if the first child is male, the sex ratio of the second birth is 959 but if

The reversal of the trend of son preference in Indian society must begin by spreading education and awareness among families, both men and women equally, emphasising on the importance and economic value of daughters. NGO-Government partnerships, like in Sirsa, need to be replicated countrywide but implemented well.

the first child is female, the sex ratio of the second birth dropped to 542 and in cases where the first and second children are female, the sex ratio dropped to as low as 219. (L. Visaria: 2005) Even with the reduction of family sizes, the fact of son preference cannot be denied. According to the third National Family Health Survey (NFHS-3), in Haryana, only 25.8 per cent of mothers with two daughters did not want any more children as opposed to an overwhelming 97.4 per cent in case of mothers with two sons. These figures are also a stark contrast to the national figures, which show that 62.1 per cent mothers with two daughters do not want any more children.

What needs to be done

Despite the measures to criminalise the act of sex selection and sex determination and protect the lives of girl children, the adverse sex ratio has seen little change for the better. The PCPNDT Act targeted at the medical practitioners who facilitate female foeticide addresses only the “supply side” of the problem. It is anybody’s guess that there exists a high “demand” for sex determination and sex selective abortions resulting from the traditional son preference in many Indian families, especially in the northern Indian states and this demand cannot be met without the support of the doctors in the medical profession who aid the process with the “supply” of medical technology. While the supply side of the problem can arguably be

tackled (or attempted to be tackled) with more immediate, penal measures, it is the demand side of the problem that needs to be addressed with the help of social initiatives in terms of intensive awareness campaigns and gender sensitisation programmes launched on a sustained, long term basis. Most importantly, focused programmes to tackle female foeticide singularly need to be conceptualised and rigorously implemented.

It would also be important to distinguish between sex determination and sex selective abortion and a woman’s right to abortion in general (Malik: 2003). While the law permits a woman to decide on the number of children, it does not permit her to decide on that number on the basis of the sex of the child. Women should also be made aware of the health hazards that PNDT technology entails, like spontaneous abortion and infection. At the same time, doctors need to be educated about professional ethics and various laws that affect their profession and towards that end, an immediate revision of the medical curriculum is necessary.

Given the complexity of the situation, a multi pronged advocacy and law implementation strategy must be evolved. The reversal of the trend of son preference in Indian society must begin by spreading education and awareness among families, both men and women equally, emphasising on the importance and economic value of daughters. NGO-Government partnerships, like in Sirsa, need to be replicated countrywide but implemented well. In other words, an informed and sensitive environment must first be created and nurtured for the effective implementation of laws to arrest India’s slipping demographic profile.

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RIGHTS – FEATURES

Missing Children in India and the NHRC Report

In India, as high as 45,000 children go missing every year of which 11,000 are never found, according to the Institute of Social Sciences (ISS). These shocking statistics simply point out that the plight of missing children in India cannot be ignored. After the macabre incident of missing children being found murdered in Nithari, Noida, Uttar Pradesh. a Committee was constituted by the National Human Rights Commission (NHRC) to investigate into this matter on 12 February 2007 and it has submitted its report. Besides, a (mention the year of the study) study, compiled by Shankar Sen and P.M. Nair, titled, 'Trafficking of Women and Children in India' conducted by the ISS, along with the NHRC and UNIFEM, has revealed that the graph of missing children in India continues to rise.

According to the ISS report, the number of missing children in Maharashtra in 2001 was 13,881; in Madhya Pradesh 4,915; in Karnataka 3,600; in Andhra Pradesh 2,007; and in Gujarat 1,624. It also stated that within

a five-year period, the number of missing children in Andaman and Nicobar Islands had gone up by 1000 per cent; in Arunachal Pradesh by 883 per cent; in Tripura by 300 per cent; in Tamil Nadu by 194 per cent; in Haryana by 142 per cent; in Assam by 151 per cent; in Chattisgarh by 83 per cent; in Gujarat by 80 per cent; and in Andhra Pradesh by 78 per cent. In the capital city of Delhi too, according to police reports, the number of 6,227 children reported missing in 2004 had increased to 6,683 in 2006. These rising figures simply ascertain the fact that the malady of missing children in India is not one that can be ignored any more at all and remedial steps need to be taken urgently.

MISSING CHILDREN	1996	2001
Haryana	64	155
Rajasthan	154	278
Orissa	419	541

© Statistics provided by state police agencies www.infochangeindia.org

But these figures may provide a false picture sometimes "The number of missing children who were being reported on child help lines were much more than the figures in police records," said Kiran Bedi, Director General, Bureau of Police, Research and Development. In fact, civil society organisations working in the field estimate that only 10 per cent of all cases are registered with the police and that this is only the tip of the iceberg. Justice A.S. Anand, former Chairperson of the NHRC had rightly noted that, "Even when a report of a missing child is lodged with the police, it is treated as a minor issue. Everyone thinks that the child will show up and if that does not happen, the case is forgotten and closed." The website of the National Crime Records Bureau (NCRB), the nation's central crime research organisation, lists only 145 boys and 47 girls, below the age of 13, as missing from January 2004 to March

2007. The NHRC report very accurately points out that, “The Police Stations, too, generally do not give any feed back to the NCRB when the missing child is rescued, traced or returned. Hence the data lacks accuracy. Thus, despite being the national repository of ‘crime data’, the NCRB is unaware both of children who are traced or of those who remain untraced.” On the other hand, the ISS study calculated that the average number of children declared “missing” annually in the country was around 44,476 i.e. 122 each day. Of these an average of 11,008 children remained missing. It, however, noted that among the metropolitan cities, only Chennai had a good track record of tracing its missing children.

“In fact, missing children is the veritable black hole in law-enforcement...the typical police response is: the missing child is the parents’ problem, not our”, says Ritu Sarin in ‘Missing Children’ (www.indianexpress.com). This Indian Express investigation had revealed that just as Nithari showed that a missing child may end up buried in a neighbour’s courtyard, they could, as easily, end up in several places, like cheap labour in roadside shops, prostitutes in a brothel, exploited in a child porn industry, kidnapped by the beggar mafia or even trafficked abroad. The ISS study also acknowledges the linkage between missing children and trafficking and its co-author P.M. Nair said, “Many of these untraced children end up either being trafficked or used for prostitution which is a huge law enforcement and social problem. Unfortunately, there is no synergy between what the Government agencies and NGOs do to tackle the problem.”

The guidelines issued by the Supreme Court *Horilal Vs Commissioner of Police, Delhi & Ors* (W.P (C) 610/96) with regard to effective steps to be taken in case of tracing out the missing and kidnapped minor girls and

women include mandatory publishing of the picture of the missing child in newspapers, on television, in public places like railway



A Woman holding the picture of her missing child
©www.cctv.com

stations and inter-state bus stops, making inquiries from a long list of people and announcing rewards for tracing a child.

With regard to the role played by the governmental agencies, the NHRC report states that the overall status of governmental and non-governmental interventions concerning missing children across the country shows that except in a handful of states, most of them do not pay any heed to the problem of missing children. In Tamil Nadu, the Police Department has a Modus Operandi Bureau that maintains a list of missing persons and there is a Missing Children Bureau set up by the Government of Tamil Nadu under the Department of Social Defence; the Crime Branch of Orissa police, has from time to time, issued strict instructions for recording all missing reports and subsequent follow up action on them to trace missing children; and in Andhra Pradesh all cases of missing children are registered as FIRs and the state has a website of missing children too. The Delhi Police also reported to the Committee that in the year 2006, out of 4,118 male missing children, 3,446 had been traced back

as also out of 2,910 missing female children, 2,196 had been traced.

Releasing the report, the NHRC Chairperson, S. Rajendra Babu said that examining the issue of missing children should be considered a priority among law enforcement agencies and other stakeholders. It noted that the problem had not received the attention it deserved from the Government and society at large and urged that while the CBI needs to strengthen itself to investigate such cases, the State police forces need to make themselves more accountable.

NHRC Recommendations

- **Make the problem a Priority Issue**
- **Set up Missing Persons Squad/Desk in Police Stations**
- **Reiterate the Supreme Court Directives**
- **Enhance Role of District Administration**
- **Mandatory Reporting**
- **Involving Panchayati Raj Institutions (PRIs)**
- **Involving NGOs**
- **National Database and Monitoring**
- **Revive State/District Crime Records Bureau**
- **Establish Child Helpline**
- **Outsource Preliminary Enquiry to NGOs**
- **I-Card for Children**
- **Attention to Transit points of Trafficking**
- **Role of Media**
- **Role of State Organisations**

-CDHR Team

HIV/AIDS and Social Exclusion in India

As the Indian government celebrates the new estimates released by the Ministry of Health and Family Welfare on 6 July 2007, bringing the number of people affected by HIV/AIDS to nearly half of the previous

count, the fate of millions of people still living with HIV/AIDS hangs in balance.

According to previous UNAIDS estimates, based on data from surveillance centres, testing blood of pregnant women and high-risk groups such as drug users and sex workers over four months each year, the number of people infected with HIV/AIDS in India was estimated at 5.7 million. However, experts and national authorities claimed that these figures were upwardly skewed due to the higher presence of the poor and “high-risk” groups in those surveillance centres surveyed.

On 6 July 2007, the Government announced its revised estimates based on a new statistical methodology of using both surveillance data and a national population survey, covering 200,000 people (aged 15-54 years) across the country from December 2005 to August 2006. These new figures, now accepted by UNAIDS and the World Bank, brings the estimated HIV positive population in India down to between 2 million to 3.1 million infected people, with a prevalence level of about 0.36 percent, from the earlier estimate of 0.9 percent.

Whilst the government breathes a sigh of relief that India does not have the highest number of HIV positive cases in the world, the recent media reports of denial of basic rights such as the right to health and education, even in so-called progressive states like Kerala, bear testimony to the fact that the reduction in the number of HIV/AIDS cases brings little respite to the millions of people, continuing to face discrimination and social exclusion due to their HIV status.

On 3 December 2006, five children (three of them HIV positive and two born to HIV positive mothers), studying at Mar Dionysius Lower Primary School in Pampady, Kerala, were nearly expelled from school after

their HIV status became publicly known and objections were raised by parents of other students who refused to send their children to school, if those five children were allowed to



The five HIV positive children of Mar Dionysius Lower Primary School, Pampady, Kerala finally back in school. © www.ibnlive.com

continue in the same school. Even when these children were readmitted in June 2007, following State intervention, they were unable to study and subsequently removed from the school due to boycott of classes by other students and strong protests by the Parent Teacher Associations (PTA). Finally, on 1 August 2007, following a petition filed by an NGO before the Kerala High Court, these children have been readmitted into the school. However, it remains to be seen how they are going to be treated by their peers and teachers in the coming months. Similar incidents of exclusion from school due to other parents' objections have also occurred in Maharashtra, where 40 children at Bhagini Nivedita, a special hostel for HIV-affected children were denied schooling due to their HIV status. In another incident, a man was allegedly forced to deliver his own baby after doctors refused to attend to his HIV positive wife in Meerut Medical College in Uttar Pradesh. According to the couple, doctors and other staff refused to allow the pregnant woman to be taken into the labour room and shouted instructions from a distance without being directly involved in the process.

The element of stigma and social exclusion often associated with HIV/AIDS subjects those suffering from the infection, to extreme forms of discrimination. In India, as elsewhere, HIV/AIDS is perceived as a disease of "others" – those communities, which are already the most vulnerable and marginalised – the so-called "high risk" groups – sex workers, drug users, homosexuals, eunuchs etc. Persons already facing social exclusion, (a situation when people suffer from a combination of linked problems such as unemployment, poor skills, low incomes, poor housing etc) when suffering from HIV/AIDS often get trapped in a vicious cycle wherein HIV/AIDS is both the cause and outcome of their exclusion.

Most countries, including India, have accepted the right to non-discrimination of all persons, including those living with HIV / AIDS. In 2001, all UN Member States endorsed the Declaration of Commitment on HIV/AIDS. India's own AIDS Prevention and Control Policy clearly states that: "*The HIV positive persons should be granted equal rights in education and employment as other members of the society*" and that the "*Government will initiate advocacy and sensitisation of doctors so that the cases of HIV/AIDS are not discriminated and denied of services for medical treatment*".

Despite this, many studies, such as the 2003 study conducted by the International Labour Organisation (ILO) in four Indian states, indicate that HIV positive people continue to face discrimination and stigma from all sections of society, including the family, community and health institutions. The method and range of discrimination includes physical isolation and neglect by the family and community, denial of share of assets, denial of access to treatment in hospitals, blackmailing in the workplaces, physical and verbal abuse, denial of death rites

etc and thus leads to the denial of basic human rights and exclusion from being active participants in society.

A study carried out in 2006 by the Centre for Operations Research and Training (CORT), Vadodara, shows that inherent discrimination exists even amongst the medical fraternity. According to Hemlata

India's own AIDS Prevention and Control Policy clearly states that: "The HIV positive persons should be granted equal rights in education and employment as other members of the society" and that the "Government will initiate advocacy and sensitisation of doctors so that the cases of HIV/AIDS are not discriminated and denied of services for medical treatment".

Sadhvani, Manager, CORT, "Many doctors shy away from treating HIV/AIDS patients because they believe that they would lose their clientele or goodwill and are afraid that other patients might object to the presence of HIV patients in the hospital". (*Times of India*, 3 July 2007). Even when patients were admitted, "conditions" are placed upon them such as, refusal to touch or physically examine the patients, higher charges to HIV/AIDS patients etc. This denial of access to treatment is exacerbated by conditions of extreme poverty and the fact that life insurance is denied to HIV positive people in India. The plight of sexual minorities like homosexuals and eunuchs, on one hand and sex workers, on the other is even worse, as they are faced with double discrimination and further marginalisation, if infected with HIV/AIDS. The existence of laws like Section 377, Indian Penal Code that criminalises same sex relations, irrespective of consent of the adults in question, is a significant barrier towards effective HIV/AIDS interventions among

sexual minorities as they remain isolated and are scared of accessing medical assistance.

These sort of negative responses and attitudes are strongly linked to lack of awareness, in particular, to the causes of HIV/AIDS and routes of HIV transmission. Studies have demonstrated that people wrongly perceive transmission routes to include sharing utensils, sitting in close proximity, physical touch etc. Governmental attempts to introduce sex and HIV/AIDS education in schools, is also being blocked by many states on grounds of morality and lack of consensus regarding course content. According to Dr Balaji, advisor to the National Council of Education Research and Training (NCERT), "Too many people think that neither is compatible with their notion of Indian culture." (*www.indiatogether.org*, 10 December, 2005).

Even as the government's HIV prevention programme, known as the National AIDS Control Programme (NACP) enters its third phase, the concentration and focus continues to be on prevention rather than care. While the government, companies, aid agencies and charities, are spending billions of rupees (115.9 billion rupees in a five year program), to initiate programmes to combat the disease, with the overall goal being on halting and reversing the epidemic in India over the next five years, most of the funds are used for prevention and treatment with a much smaller share going to care. As Anjali Gopalan, Director, NAZ Foundation noted, "The weak link of the program is the inability to look at prevention with care. Just to look at care in a medical framework is no good."

This is not to say that inspiring stories do not exist. Bagalkot district in Karnataka is emerging as a model of how prevention can be accomplished by creating an atmosphere, where HIV positive people can live with

freedom, dignity and hope. Similarly, NAZ foundation in Delhi and the Positive Women's Network of South India (PWN +) has been providing support and care to children, counselling parents, and assisting people with skill training for income generation etc.

A significant legislative step has been taken with the preparation of the Draft Law on HIV, covering provisions such as discrimination, disclosure, safe working environment, social security, access to treatment etc, which is to be tabled in the Monsoon Session of the Parliament. However, with the number of HIV/AIDS cases decreasing in the Government's eyes, it remains to be seen if the commitment towards prevention of HIV/AIDS continues and if the rights and dignity of the invisible majority of people suffering with HIV/AIDS are finally restored.

-CDHR Team

Confined to Death: Prison conditions in India

Tihar prison, Asia's largest correctional facility was in the eye of a storm recently, when six inmates died inside its premises in as many days followed by the death of a jail warden soon after in June 2007. A magisterial probe was ordered into the incident by the Delhi government; the National Human Rights Commission (NHRC) also initiated an independent inquiry into the matter. While the Tihar prison administration prides itself on its outstanding achievements with regard to rehabilitation, reformation, education and recreation of its inmates, such reports raise serious concerns about the deteriorating state of our prisons and the urgent need for prison reforms. The prison authorities attributed all the deaths to natural causes (excessive dehydration and stomach

ache) but the magisterial probe revealed that one of the deaths was not natural and caused by injuries.



Tihar, the largest prison complex in South Asia
 ©www.tiharprisons.nic.in Tihar, the largest prison complex in South Asia ©www.tiharprisons.nic.in

The Delhi High Court took cognisance of the series of deaths and asked Tihar authorities and the Delhi government to respond to notices as to why such deaths had occurred. The Court also set up a Committee to look into the matter. On perusal of the Committee's report, the Court observed that if overcrowding in prisons were tackled with a reduction in the number of under trials, the problem would be solved to a large extent (*In Re: Various Irregularities at Tihar, Crl. Ref. No. 1/2007*). To that effect, the Court ordered that approximately 600 inmates who were detained because of their inability to furnish surety be released on furnishing personal bonds of Rs. 2000 each. They should also report to their local police station twice daily upon release. Subsequently, 517 inmates were released as per the Court's orders. The Court Committee also found during their investigation that Tihar faces a serious shortage of water supply. Out of the six water connections, only two are functional for a few

hours during the day. The Court also noted the lack of medical staff and emergency medical facilities in the prison and directed

Overcrowding also results in the creation of unsanitary and unhygienic living conditions. Basic conveniences like water, latrine and bathrooms are not made available to inmates. The space problem arising from overcrowding leads to many people being lodged in a tiny cell, without proper light, air circulation or privacy.

that all vacancies in the prison hospital be filled immediately. To ensure better air circulation within the prison cells, the Court also asked for an increase in the number of exhaust fans.

Overcrowding in Prisons and Related Problems

The problem of overcrowding in Indian prisons is not a recent phenomenon and Tihar Prison, by its own admission, houses 13, 249 inmates, when its sanctioned capacity is only 6250 out of which 10, 845 or nearly 82 per cent are undertrials. According to 2003-2004 figures of the Ministry of Home Affairs, there are 1, 147 prisons in India with an official capacity of 2,35, 012 but housing as many as 3, 31, 391 inmates, more than 65 per cent of whom are undertrials. Delhi prisons recorded the highest overcrowding rate (249.7 per cent) after Jharkhand (300.9 per cent). Overcrowding also results in the creation of unsanitary and unhygienic living conditions. Basic conveniences like water, latrine and bathrooms are not made available to inmates. The space problem arising from overcrowding leads to many people being lodged in a tiny cell, without proper light, air circulation or privacy. Added to this, is the fact of general ill treatment of prisoners, often sanctioned by

law. For example, the outdated Prisons Act 1894, still in operation provides the Jail Superintendent with the discretion of whipping inmates as punishment for a prison offence, as minor as “feigning illness (SAHRDC, HRF/142/06). Medical facilities are inadequate in most prisons and inmates often suffer due to understaffing, lack of basic infrastructures like ambulances, stretchers, hospital beds, dispensaries etc.

Although, the concept of appointing non-official visitors (NOVs) to visit prisons to ensure better prison administration is reflected in The Prisons Act 1894, very few states in India have effectively institutionalised the prison visiting system and some of the restrictions placed on NOVs by the prison rules of various states are outdated and irrelevant, e.g. the restriction on NOVs from visiting inmates on hunger strike, the restriction of lady NOVs visiting the men’s section of the prison or the restriction on NOVs visiting inmates held under preventive detention or NOVs being precluded from sharing with the media matters related to prison administration. The rejection of NOVs by the prison administration as intrusive and ineffective and the lack of accountability among NOVs themselves, have greatly undermined the significance of the prison visiting system (CHRI: 2005).

Studies have, however, shown that the number of prisoners per thousand persons in India is 28, one of the lowest in the world, yet it faces an acute problem of overcrowding in its prisons, the reason being the very high number of undertrial prisoners who languish in custody due to an inordinate delay in trial. In order to remedy this situation, an increase in prison capacity and speedy trial mechanisms through the establishment and effective functioning of fast track courts must be ensured. The Code of Criminal Procedure (Amendment) Act 2005 has introduced a new

Section 436A to The Code of Criminal Procedure 1973 which provides that undertrials, other than those accused of an offence attracting the death penalty, who have been in detention for half the period of their maximum sentence shall be released. The Probation of Offenders Act 1958 can also be used as an alternative to imprisonment in cases of offenders having committed offences not punishable with death or life imprisonment, keeping in mind the nature of the offence and character of the offender.

The State of Prison Reforms in India

Prison reforms in India are long overdue. Prison administration in India is governed by archaic laws like The Prisons Act 1894, The Prisoners Act 1900 and respective state jail manuals. The All India Committee on Jail Reforms (1980-1983) headed by Mr. Justice A.N. Mulla has recommended a host of legal and administrative measures to address the problems facing prison administration in India. The Indian judiciary has played a key role in shaping prison rights jurisprudence in India by ensuring that fundamental rights of undertrials or prisoners are not curtailed upon detention or imprisonment. In *Charles Sobhraj vs. The Superintendent, Central Jail, Tihar* (AIR 1978 SC 1514), the Supreme Court held, "Imprisonment does not spell farewell to fundamental rights...Whenever fundamental rights are flouted or legislative protection ignored to any prisoner's prejudice, this Court's writ will run breaking through stone walls and iron bars, to right the wrong and restore the rule of law".

The Mulla Committee also recommended that senior police officers who have expertise and experience in correctional administration should be posted in Prisons. The Mulla Committee had further suggested the need for a common jail manual for the whole of India. The Supreme Court in *Rama*

Murthy vs. State of Karnataka (1997) 2 SCC 642 also emphasised on the need for an "All India Jail Manual to serve as a model for the country, which Manual would take note of what has been said about various punishments by this Court in its aforesaid decisions. Not only this, the century old Indian Prison Act, 1894, needs a through look and is required to be replaced by a new enactment which would take care of the thinking of the Independent India and of our constitutional mandate". None of the Committee recommendations or Supreme Court directives on improvement of prison conditions has been implemented till date. The Model Prison Manual drafted by the BPRD aimed at establishing a uniform prison administration system in India has been circulated to all States but is yet to be officially adopted.

The Bureau of Police Research and Development (BPRD), Government of India has estimated that there is a need for 256 additional prisons with an additional capacity of 1,08,900 in India. The projected cost estimates for the overall modernization of prisons in India, including construction of new prisons, repair and renovation of existing prisons, prison staff quarters and sanitation and water supply is Rs. 18136.6 millions (BPRD: August, 2001). The Central Government has initiated a scheme of prison modernisation since 2002-2003 with a budget allocation of Rs. 17965.5 millions on a cost-sharing basis with the States i.e Central Government contributes 75 per cent and States the remaining 25 per cent.

Conclusion

The deteriorating prison conditions and their impact on the health and well being of inmates cannot be denied. The death of seven persons in Tihar prison reveals complete disregard for prisoner's rights and a complete break down of prison administration. The law

governing the lives of more than 3,00,000 prisoners in India is more than a century old, paying scanty regard to international human rights standards on treatment of prisoners. While discussions on the reformative nature of our criminal justice system reigns supreme in administrative circles, a law, which dehumanises prisoners, is still on the books. An immediate review of the outdated prison laws along with ensuring transparency and accountability within the prison administration will be the first step towards securing better prison conditions and prisoner's rights in India.

-CDHR Team

Starvation Deaths in Tea Plantations of North Bengal

The thriving tea industry in India suffered a serious financial setback in the late 1990s and early 2000s as international tea prices collapsed from Rs. 78 in 1998 to Rs. 55 in 2004. With shrinking exports and rising labour costs, 25 loss making tea plantations in North Bengal in 2002 were closed down, leaving thousands of plantation workers and their families in a state of utmost penury and deprivation. It has been estimated that more than 3,000 workers of these abandoned tea gardens have succumbed to starvation deaths since 2002. The 61st Round NSSO Survey (2004-2005) reveals that West Bengal has the highest percentage of rural households 'not having enough food everyday in some months' (10.6 per cent). In the case of *PUCL vs. Union of India* (Writ Petition (Civil) No. 196 of 2001), a series of orders and directives have been passed for the Central Government and State Governments to act upon, in order to prevent starvation or hunger deaths but unfortunately, these orders have mostly been observed in their breach.



A worker in a tea plantation in India
©www.actionaid.org.uk

A study conducted by the Paschim Banga Khet Majoor Samity and International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco, Plantation and Allied Workers' Associations (IUF) in September 2005 in 22 tea gardens in the Dooars in North Bengal that had been closed down found that 21,000 permanent workers and 95,000 people on the whole were affected by the closure. 68 per cent of the tea gardens in the area had re opened. However, the plantation workers were afraid that they would close down again at the end of the plucking season and that the employers had not undertaken any planning strategies to ensure long-term viability and sustainability of the re-opened tea gardens.

The rights of plantation workers guaranteed by The Plantation Labour Act 1951 (PLA) and The Minimum Wages Act 1948 were being violated. The workers were not receiving the industry-wise negotiated minimum wages in many of the re-opened tea gardens. Subsidised foodgrains or rations which form a core component of the wages of tea plantation workers were being provided irregularly in some of the tea gardens and complaints were also received as to the poor quality of the rations. The PLA requires every plantation to provide a regular supply of clean and safe drinking water, free electricity, toilets, housing, medical and educational facilities, crèches, maternity benefits,

recreation to all workers and their families, but in many plantations these basic facilities are not provided and they are forced to live in poor conditions.

According to The Tea Act 1953, the Central Government has been vested with special powers of investigation when the tea plantation is 'being managed in a manner highly detrimental to the tea industry or to public interest' and it can even take over the management of a tea plantation if the owner of such plantation has 'habitually made default in the payment of wages, or provident funds dues, of workers and other employees, or rent of the land, or duties of excise, or in the payment of such other dues as are obligatory under any law for the time being in force'. The workers did not receive their dues from their employers by way of salary/wages, provident fund and gratuity but no action was initiated against the defaulters for the recovery of dues by the Tea Board or the Central Government as required by the law.

In some of the re-opened tea plantations run by worker's unions, the conditions were slightly better because of the management's proximity with the State Government. With respect to the closed tea gardens, the State Government had pledged before the Supreme Court in January 2004 to provide benefits like Below Poverty Line (BPL) cards, subsidized food rations, work for minimum 15 days under the Sampoorna Gramin Rozgar Yojana (SGRY), mid day meals at all primary schools in plantation areas, drinking water and medical facilities and Rs. 500 to all workers as per a government scheme providing assistance to workers of locked out industries to workers and their families but monitoring reports showed that the government was not providing all these benefits. However, after the intervention of the Supreme Court Commissioners on the Right to Food, weekly or fortnightly Action Taken

Reports were being sent by the district to the state administration.

The right to adequate food and nutrition is a basic human right, both under international and domestic law and it is the duty of the state to protect its citizens from hunger, malnutrition and starvation. The fact of starvation deaths is an affront to human life and dignity.

Another study by the Mumbai-based Indian People's Tribunal on Environment and Human Rights (IPT) in these tea gardens in 2004 reported more than 800 deaths caused by starvation, extreme malnutrition and disease at the six closed tea gardens it surveyed. A large section of women had been forced into prostitution in some of these plantations. The IPT noted severe violations of the plantation worker's right to 'food, work, healthcare and sanitation, education and decent living conditions'. (*The Hindu, 13 June 2004*)

Despite the fact of large-scale violation of the rights of plantation workers, public outcry and adequate media attention, the so-called pro-poor Left government in West Bengal showed complete apathy and neglect towards the poor. Not only did the government openly evade its responsibility, it also disputed the fact of starvation deaths in the closed and abandoned tea gardens of North Bengal, even while thousands of workers survived on rats, wild plants and flowers for food with no alternative sources of income and livelihood in sight.

It was not until June 2007 that the West Bengal government acknowledged the fact of 571 deaths for a fifteen-month period upto March 2007 in the 14 closed tea gardens of Jalpaiguri district but it was quick to deny that such deaths were caused due to starvation. The health department cited various reasons

for these deaths, namely heart disease, cirrhosis of liver, hepatitis, TB, meningitis, high fever, malaria etc but carefully chose not to use words like 'malnutrition' or 'starvation' (*The Telegraph*, 6 June 2007) Needless to say, all of the above-mentioned ailments can be directly caused by lack of nutrition or starvation as the body's immunity to fight diseases is weakened. A further disaggregation of these figures also show that of those dead, 406 were below the age of 60 years and 46 below the age of 10 years and 80 per cent of them died at home as they could not be taken to a medical facility for treatment and the remaining 20 per cent at health care centres or hospitals or on their way to hospitals, thereby showing that most of the workers and their families had little or no access to medical services and facilities.

In June 2007, nearly five years after reports of starvation deaths first started pouring in, the State government finally convened a meeting with the Indian Tea Board officials and various other government departments like Health and Family Welfare, Commerce and Industry, Labour, Women and Child Development and Social Welfare to discuss remedial measures to help plantation workers suffering from this crisis. The Tea Board decided to initiate action against errant tea plantation owners under the 1953 Act who have not re-opened their tea gardens. (*The Statesman*, 15 June 2007) Certain other social support and credit schemes were also announced for the plantation workers. It was further decided at a high level meeting attended by Mr. Jairam Ramesh, Union Minister of State for Commerce along with other Ministers of the West Bengal government that the closed tea gardens at Jalpaiguri would be re-opened. (*The Statesman*, 28 July 2007) Mr. Ramesh, however, pointed out that the Central Government is in no position to acquire and manage these tea gardens and that the tea

gardens would be handed over to new buyers who would then initiate the process of reviving them.

The right to adequate food and nutrition is a basic human right, both under international and domestic law and it is the duty of the state to protect its citizens from hunger, malnutrition and starvation. The occurrence of starvation deaths is an affront to human life and dignity. The re-opening and revival of the tea gardens is the only hope left for the thousands of plantation workers who have been left to starve until death and all measures to restore their basic rights must be urgently and effectively implemented.

-CDHR Team

RIGHTS – COMMENTARIES

Birth Certificates for Street Children of Kolkata

The Kolkata Municipal Corporation (KMC) has decided to issue birth certificates to street children. The City Level Programme of Action, an organisation that represents 74 NGOs that are part of this project, essentially initiated this programme in 2005 and since then for the past 15 months it has been undertaking groundwork that has covered the entire city. This project was titled, 'Registering Births of Urban Deprived Children in Kolkata: A Pilot Project jointly undertaken by Kolkata Municipal Corporation (KMC), City Level Programme of Action (CLPOA) and UNICEF.'

Issuing birth certificates is a very important step towards empowering homeless street children with basic rights, specially voting rights when they turn 18 as this

provides them with an identity document. Birth registration is also an attempt to protect these children from abuses like early marriage, trafficking, labour and harassment by law enforcing agencies. Besides, around 97 per cent of the state of West Bengal's population is registered and this is a serious effort to focus on the remaining 3 per cent that are 'hard to reach'.



Street children of Kolkata have a reason to smile now ©www.theage.com

During the groundwork of this project, at first, 75,000 children were identified who did not have birth certificates. Then, from among them, over 50,000 were found as those eligible for registration. Individual NGOs have filed group affidavits on behalf of these eligible children. This project was facilitated by the relaxation of certain guidelines meant for registration of births. "The state health department reduced the late fee for registration for these children from Rs. 100 to 50 paise. Further, the Registrar General of India (Union Ministry of Home Affairs) allowed group affidavits in place of individual affidavits," said a UNICEF spokesperson. (*The Indian Express*, 20.06.07)

This project has also been ensured that those children who are living in West Bengal but were born in either Bihar, Orissa or any other state in India were not issued birth certificates by KMC. It has been claimed that efforts would be made to negotiate with the

respective states so that those children are given their rights.

Weak Implementation of Ban Against Child Labour

As the world observed International Anti-Child Labour Day on 12 June 2007, more than a hundred thousand children in the national capital of Delhi alone, continued to work as child labour. This is the sad reality eight months after the Central Government notified a ban on employment of children below 14 years of age in residences and the hospitality sector. According to Child Rights and You (CRY), the city of Delhi alone has around 41,899 child labourers working in various places like brick kilns, the weaving industry, scissor factories, cremation grounds, agricultural fields and in homes and hotels.

Critics allege that the government has neither taken adequate measures to ensure proper implementation of the amended law nor devised any comprehensive rehabilitation scheme for the rescued children. The main reason behind the violation of the law is the lack of punitive action. The Labour Department should, at least, fine the guilty parties, as in the absence of such checks or punishments, the ban becomes toothless. There is also a lack of inter-ministerial discussions from which concrete strategies could emerge on how to rehabilitate the rescued child workers. As Harsh Mandar, child rights activist and convenor of Aman Biradiri, rightly points out, "After rescue raids, some children are repatriated but we need to ensure that they do not go back to the same conditions." Rakesh Senger, national secretary of the Bachpan Bachao Andolan cites an example of how 450 children who were rescued in a raid in Seelampur in 2004 were all back to work despite being handed over to the respective

state governments. (*The Hindustan Times*, 12.06.07)

Vikram Srivastava, Manager (Development Support), CRY, says that, "It is important to understand why children are forced to work. If there is no education and health care and no means of earning a livelihood for the parents, children are forced to work. To make the ban work, the Government has to first address these concerns. ...It has to ensure means of livelihood, proper implementation of minimum wage laws for adults and equitable educational opportunities to all. CRY believes that in India child labour is largely the outcome of social inequality." (*The Hindu*, 13.06.07). More than often it is sheer poverty and unemployment that forces children to work than go to school but activists feel that if awareness is provided and right incentives are given like free and compulsory education and health care, all children will opt to go to school. The government meanwhile insists that the rescued children are sent back to their homes, that they are supporting NGOs to counsel the children and provide them shelter. "It is a complex problem but things are moving....the government is working for the cause", says ML Dhar, Director, Media and Communications, Ministry of Labour, Government of India.

Asian Sub-regional Workshop on "Using Indicators to Promote and Monitor the Implementation of Human Rights"

The National Human Rights Commission, in collaboration with the Office of United Nations High Commissioner for Human Rights (OHCHR) and Institute for Human Development (IHD), had organised an "Asian Sub-regional Workshop on Using Indicators to Promote and Monitor the

Implementation of Human Rights" from July 26 to 28, 2007 in New Delhi.

In the inaugural address of the workshop, Justice Balakrishnan, Chief Justice of India, expressed concern at the gap between rhetoric and reality in the implementation of human rights standards and suggested that this gap can be filled by bringing together the strengths of the legislature, executive and the judiciary. Referring to the use of statistics and quantitative indicators for implementing human rights standards, the Chief Justice suggested that, if identified appropriately, the indicators could help in concretising the normative content of human rights and facilitate enforcement. While pointing out that each country or region may have its own recognised notions of what rights and freedoms are essential, Justice Balakrishnan added that human rights standards not only provide the foundations of a humane, just and progressive society but also a normative framework for the formulation of national and international policies and strategies for human development.

Also addressing this workshop, the NHRC Chairperson, Justice Rajendra Babu noted that along with the need to develop indicators was the need to understand them in the rights perspective and interpret them taking into account the economic and political context. However, he cautioned that no single set of indicators would be able to provide universally applicable information, as the indicators were essentially a tool to help policy makers to plan and evaluate their work and not an end in themselves. Referring to the recent resolution adopted by UN Council for Human Rights (UNCHR) which endorsed inviting National Human Rights Institutions (NHRI) to participate in all agenda items besides becoming a first recourse for complaint remedy, he said that with this, the importance and responsibility of NHRIs in protecting and

promoting human rights has increased. Further, the NHRC Secretary General, R.K. Bhargava said that the primary objective of the workshop was to show the relevance and raise awareness about using commonly available statistical information and appropriate indicators in promoting and monitoring implementation of human rights. He added that the human rights community has always struggled in engaging the policy makers and the statisticians to raise their sensitivity about human rights commitments of the State but had always been short of credible tools that could effectively translate the narratives on human rights standards into concrete quantitative indicators for use in policy formulation and implementation. Dr. Arjun Sengupta, Chairman, National Commission for Enterprises in the Unorganised Sector in his keynote address stressed that the indicators should reflect both the outcome and how it is to be achieved. He said that both the duties and the duty holders are to be identified.

All the participants of the workshop shared their country experience in the design, implementation and monitoring of policy framework and strategies to address three different issues. The issues included Right to Health - in terms of accessibility, availability and affordability- illustrating economic, social and cultural rights; analysis of criminal justice system - deaths in custody, encounter deaths, custodial violence, duration of undertrials in jails - illustrating civil and political rights; and poverty which prevents choice for livelihood, education, food security and access to health - as developmental issue.

Unorganised Sector Workers Social Security Bill to be introduced

The Unorganised Sector Workers Social Security Bill finally received Cabinet

approval on 24 June 2007 and is likely to be introduced in the forthcoming session of the Parliament, according to Mr. Oscar Fernandes, the Minister of State (Independent Charge), Labour and Employment. This Bill intends to cast a social security net to protect the unorganised sector and to prevent nearly 93 per cent of India's workforce from falling into destitution.

Under this Bill, the government will issue identity cards or 'smart cards' to 36.9 crore workers in the unorganised sector to help them avail social security benefits and which can be used anywhere in the country. A labour ministry official said that these cards were made keeping in mind the migratory nature of the workers in the unorganised sector. (*The Hindustan Times*, 25.05.07) However, to get the cards, the workers have to prove that they are above 18 years of age and also declare that they are employed in the unorganised sector. States and Panchayats intend to be involved in preparing and issuing these cards. The Centre intends to bear the larger part of the financial burden that the scheme would entail.

The Labour Minister, while addressing the Parliamentary Consultative Committee attached to his Ministry, said that the proposed legislation entailed the constitution of tripartite Social Security Advisory Boards at the national and state levels and the formulation and notification of suitable welfare schemes for different sections of unorganised sector workers both by the Central and State Governments that would pertain to life and disability cover, health insurance, maternity benefits and old age insurance. This legislation had been drafted by the Ministry of Labour and Employment after deliberations at various levels.

Other members of the Parliamentary Consultative Meeting wanted the Bill to be

more comprehensive and its funding and benefits to be clearly defined. On the other hand, central trade unions have called this Bill an 'eye wash' and alleged that it is simply an effort to deceive workers. They also claim that the Centre has neglected workers in the agriculture sector. Nonetheless, prominent citizens and activists have urged the Prime Minister to introduce the Social Security Bill. Ela. R. Bhatt of SEWA said in a statement that, "there were over 370 million unorganised workers in the informal economy, of which 65 per cent are engaged in agricultural work and rest in non-agricultural work. Their vulnerability is revealed by the fact that 59 per cent of men workers and 89 per cent of women workers in rural India earn less than Rs. 44 and that 50 per cent of men workers and 83 per cent of women workers in urban areas earn less than Rs. 55. Though their contribution to the Gross Domestic Product (GDP) is over 60 per cent, they do not have access to any form of social security, in the time of needs driving them into debt, reducing their productivity and leading to vulnerability in old age."

'School Choice' – Voucher power to Poor Students to choose their own schools

A new concept of 'School Choice' is giving children the right to choose their school by giving them adequate financial freedom in India. This comes in the form of education vouchers that are issued to students who are from economically weaker sections of the society. These vouchers enable these students to choose the school they wish to study in and thus prevent them from being compelled to study only in government schools.

This school voucher is a coupon of a specific amount that can be used to fund a child's education at any school chosen by the parents. Thus, money follows the student and to get the voucher schools, government or

private, have to compete and satisfy the parents. If the parents do not like the school, they can take their child (and the voucher) to another school. Thus, parents decide and choose the school that their child will attend, not the government. As parents are empowered with the right to choose, a voucher system instils a sense of competition among schools and improves the quality of service. Also, unlike the present system where schools are accountable to the government bureaucracy, the voucher system makes schools accountable directly to the parents. (www.schoolchoice.in)

The Centre for Civil Society (CCS) in New Delhi has initiated a pilot project, under which 400 vouchers worth Rs. 300 each were distributed in a public function in the capital presided over by the Delhi Chief Minister, Sheila Dixit on 26 July 2007. First an intensive field campaign reached out to more than 1.2



Parents and children sign a petition for school vouchers @www.schoolchoice.in

million people in 68 of the poorest wards of Delhi like Narela, Welcome Colony, Jahangir Puri etc spreading awareness about this

scheme. From the one hundred and fifty thousand persons who filled the voucher forms, 408 were selected, six from each ward, through a public lottery drawn by the Ward Councillor of the area. (*The Indian Express*, 14.06.07)

The voucher system already exists in countries like Sweden, Chile, Columbia, Bangladesh, New Zealand, the U.S.A and the U.K. In India, it is also gaining ground in other states like Andhra Pradesh, Bihar, Jharkhand, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal. As Dr. Parth J Shah, President, Centre for Civil Society says, 'If we have to make the Right to education meaningful, we have to give the poor the Right to Education of *their* choice. School vouchers will give the poor the choice that the rich enjoy today.'

Broadcasting Bill to be tabled after further 'consultations'

The Ministry of Information and Broadcasting (I&B) has said that the Broadcasting Services and Regulation Bill 2007 would be tabled only after further consultations with broadcasters. Despite several pronouncements of determination, this Bill does not figure in the list of new legislations to be introduced in the Parliament in the monsoon session commencing on 10 August 2007.

At the last round of deliberations held with broadcasters, the latter had clearly spelt out their opposition to cross-media restrictions provided for in the proposed legislation, stating that these would stunt the growth of the sector. The broadcasters as well as civil society organisations and the public were given time till August 5 2007 to send their views but many of the stakeholders have not submitted their comments. (*The Hindu*, 08.08.07)

Most news channels and nearly all organisations of broadcasters are understood to have urged the government to hold the Bill in abeyance for one year. This Bill has been hanging on an uncertain thread for nearly a decade now. The present I&B Secretary has been working for a long time on putting together the document and help had also been sought from several other quarters while drafting the Bill like the US FCC (full form), Casbaa in Hong Kong, other consultants, consumer groups and interested parties. Although the Information and Broadcasting Minister, Priya Ranjan Dasmunsi has continuously assured that this Bill 'will not gag the media', there has been much opposition to this proposed and allegedly 'draconian' piece of legislation from all quarters of the Indian media.

This Bill while proposing to regulate private broadcasting also provides for punishment like revocation of licence and fines on those who violate the proposed broadcast guidelines. It provides that the government may, at any time, direct the licensing authority, the Broadcasting Regulatory Authority of India (BRAI), to suspend or revoke a broadcaster's licence if the service is 'considered prejudicial to friendly relations with a foreign country, public order, communal harmony or security of the state.' Thus, it has generated intense debate with some contending that it is an insidious route for controlling the media while others have come out in its support, albeit on the ground that any content regulation should be self-regulatory and not left to the whims of the bureaucrats.

Speedy Disposal for Child Rape Cases – NHRC Guidelines

In July 2007, the National Human Rights Commission (NHRC) issued guidelines for the speedy disposal of child rape cases.

This issue had emerged from three incidents of sexual assault and rape of minor girls in Kerala that had been brought to the notice of the Commission by the President of the All-India Democratic Women's Association of Thiruvananthapuram. The draft guidelines were placed before the NHRC last year and forwarded to Home Secretaries and DGPs of all State and Union Territories for their suggestions and comments.

These guidelines provide that the complaint relating to child rape cases shall be recorded promptly as well as accurately and that the complaint can be filed by the victim or an eyewitness or anyone, including a representative of non-governmental organisation, who has received information about the offence. It should be recorded verbatim; the recording can be done at the residence of the victim and the police should not insist that it be done only at the police station; the officer recording it should be not below the rank of Sub-Inspector (SI), preferably a woman and should be in civilian dress. The officer must ensure that the complainant, especially if it is the child victim, is made comfortable before recording the statement and if feasible, assistance of a psychiatrist should be sought.

The Investigating Officer should also ensure that the medical examination of the victim of sexual assault and the victim is done preferably within 24 hours and that the Chief Medical Officers should ensure that the tests are conducted immediately after receiving the request. The guidelines also stated that the gynaecologist, while examining the victim should ensure recording the history of the incident and that the investigation should be completed within 90 days of the registration of the case.

The NHRC noted that the trial should be conducted in a 'child-friendly atmosphere'

and if possible, the trial proceedings should be done via video conferencing in a conducive manner so that the victim is not subjected to close proximity of the accused. The new guidelines have recommended fast track courts to deal with child rape cases that are preferably presided over by a woman judge, that the trial be held in camera and that the magistrate should hear within 15 days of filing the charge sheet.

Pregnancy Registration in India

Rights of women and girl children in India witnessed an interesting development with the Government announcing its plan for mandatory registration of pregnancies. This is directed towards addressing India's dismal levels of female foeticide, high female infant mortality and maternal mortality rates. Recording pregnancy would help in creating a database on the number of pregnancies that lead to actual births and tracking abortions, aimed at saving thousands of unborn and newborn girls and reducing maternal mortality rates.

The Union Women and Child Development Ministry and the Union Health Ministry will jointly undertake this project. Anbhumani Ramadoss, the Union Health Minister, announced that a related bill would be proposed in Parliament that would register and standardise the procedures and operations of public and private health centres under a centralised process. The state-funded Accredited Social Health Activists (ASHAs), rural health clinics, hospitals and maternity homes would be entrusted with the task of registering pregnancies.

Over the past 20 years, nearly 10 million girls have been killed in India, either before birth or immediately after. Driven by their preference for a boy child for economic, social, cultural and customary reasons, many

parents take advantage of ultrasound scanning and willingness of some medical practitioners to undertake illegal abortions for money, to get the girl foetus aborted. According to the United Nations Children's Fund (UNICEF) figures, the present infant mortality rate of India is 57 per 1,000 live births, higher than impoverished countries like Bangladesh and Namibia and double that of Egypt (www.newstrackindia.com). The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT Act), and a subsequent amendment to the PNDT Act in 2003, banning pre conception and pre natal sex-determination, clearly failed to lower gender-biased abortions and infanticide of girls.

Describing the female foeticide problem as a 'national crisis', Renuka Chowdhary, Minister for Women and Child Development, contends that tabulating pregnancies will not only make mysterious abortions difficult but will give women a good and healthy life. The registration process holds the potential to disrupt the nexus between pre-natal sex-determination and illegal abortions that result in destroying female embryos and to help in the promotion of safe maternity and healthcare for prospective mothers. She also asserted that abortions without a strong valid and acceptable reason would not be allowed.

Geeta Malhotra (Programme Manager-Grassroots Communication, OneWorld South Asia) asserts that pregnancy registration would generate data on the age of the first time pregnancy of women, act as a check on the age at which they are married off and automatically lead to birth registrations. UNICEF has welcomed this plan but has also stressed on supplementing the move with increased institutional facilities in rural villages, where most of the Indian population

is concentrated and where proper medical facilities still remain inadequate.

A section of scholars and activists are doubtful about the execution and success of the project. It is branded as idealistic in a country with 1.4 billion population, with a substantial percentage of women living in poor, rustic conditions and delivering babies at home, without any proper medical assistance. The measure is attacked as being impractical and unfeasible. Alok Mukhopadhyay, Voluntary Health Association of India, remarks that, "We cannot give elementary health services in a satisfactory way to most of our citizens, and to talk about registering pregnancies is ridiculous" (www.newstrackindia.com). Another section of the critics consider the move as being coercive, intrusive, infringing upon a women's privacy and constituting an additional burden on them, who are already subjected to control by their husbands and in-laws.

Arguments in favour of addressing the root causes that perpetuate sex-based discrimination and atrocities against girl child – patriarchy, poverty, illiteracy, social customs such as dowry, unethical practices by doctors and distorted use of medical technologies – are cogent. But a government policy on pregnancy registration may serve well to arouse general awareness and rejuvenate discussions on rights of women and girl children.

RIGHTS – BOOK REVIEWS

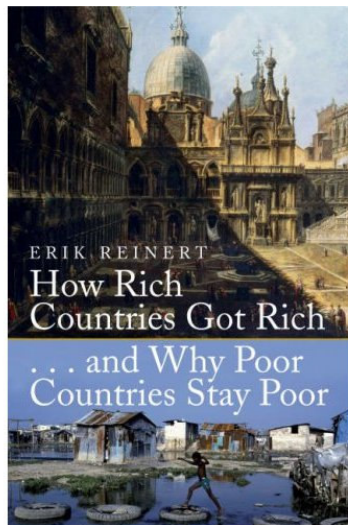
How Rich Countries Got Rich and Why Poor Countries Stay Poor?

By Erik S. Reinart

**Constable and Robinson, 2007, pp. 320,
£30.79**

Erik Reinert's new book asks the crucial development questions and lucidly provides a vast historical sweep that critiques mainstream wisdom and posits plausible alternative explanations. The virtues of realism have always been underplayed by most of the economics profession. This is a greater issue of concern than it would be for most professions, simply because economists – indeed, often the most unrealistic of them – tend to exercise a disproportionate influence upon policies that affect the lives of many millions of people.

Reinert begins with an acute assessment of what is wrong, methodologically and axiomatically, with the long stream of economic thinking that traces its origins in David Ricardo's work. He argues that Ricardo's theory of comparative advantage, which is the lynchpin of so much economic thinking, was deeply unreal in its assumptions. It even provided a foundation for colonialism, by making it morally defensible to keep some countries as producers of raw materials only.



The large number of simplifying assumptions that make standard theories less relevant to the actual world are probably well known. But Reinert hones in on some of the most crucial, such as "the equality assumption", which effectively assumes

away all differences between human beings, between economic activities and between nations. One classic example of this is the concept of the "representative firm", which equates the giant firm Microsoft with a twelve-year-old self-employed shoeshine boy in a Lima slums.

Other assumptions, such as that of "perfect information" are equally suspect, while the totality of assumptions leads to the theoretical loss of both time (history) and space (geography). This in turn means that, despite some recent attempts to partially incorporate these elements, there is a tendency to downplay the importance of increasing returns, technological change and synergies.

In consequence, four important economic concepts for understanding the process of economic development were lost to economics, despite the fact that early thinkers emphasised all of these. The first is the concept of innovation (which, it is worth noting, is the key focus of policy makers in China today). The second is the insight that economic development results from synergistic effects, and that people sharing a job market with innovative industries will have higher wages than others. The third is that different economic activities can be qualitatively different carriers of economic development, so that it matters which specialisation is chosen. Reinert's final concern is that the labour theory of value posits a system of exchange whereby labour hours are void of any other qualities, which according to him disregards the important connections between mode of production, technology and institutions that underlie the labour embodied in commodities.

The main problem is that the ahistorical theorising generated by all this has replaced and therefore lost a far richer tradition of social and economic thought, which Reinert characterises as "The Other

Canon". As he puts it, "before Adam Smith it was often understood that economic development was based on collective rent-seeking, originating in synergies of increasing returns, innovations and division of labour that were found clustered only in the cities." (page 79)

Thus, the origins of the concept of increasing returns are not to be found in Adam Smith's all-too-famous example of the division of labour in a pin factory, but in the writings of Xenophon, whose book *Oeconomicus* in the 4th century B.C. Greece gave economics its name. In 1613 the Italian Antonio Serra described the positive effects of increasing returns with greater clarity than Smith, while the early 18th century German economist Ernst Ludwig Carl used the same pin factory example first. In the same vein, Reinert shows that many of the so-called novelties of modern economic modelling are more than the partial resurrection of earlier insights of the Other Canon, dusted off to be displayed in spangling new colours to a profession that has lost its own history.

So how does the Other Canon provide an answer to the basic question posed in this book? Reinert argues that the key concept is not comparative advantage or free trade, but rather what Enlightenment economists called emulation. The toolbox of emulation contains a number of instruments, and there is a useful listing of the main ones. (pages 82-83) They include:

- recognition of wealth synergies around increasing returns activities and conscious targeting, support and protection to these activities, including temporary monopolies and patenting, tax breaks, export bounties and cheap credit.
- maximising the division of labour through a diversified manufacturing sector.
- relative suppression of landed nobility and other groups with vested interests based in

the production of raw materials.

- strong support for the agricultural sector, combined with restraints on export of raw materials.
- emphasis on learning and education.
- attracting foreigners to work in targeted activities.

All this was understood by more than the thinkers of the Other Canon. Indeed, according to Reinert, history's first deliberate large-scale industrial policy - the promotion of wool production in 15th century England - was based on an observation of what made the richer areas of Europe rich: that technological development in one field in one geographic area could extend wealth to an entire nation. Subsequently, there have been systematic attempts to suppress this basic insight: "wealthy nations keep poor countries poor based on theories postulating the non-existence of the very factors that created their own wealth." (page 79)

The book provides numerous examples of how success was achieved, along with more depressing examples of how the opposite has been foisted on too many countries that remain poor. In fact, the process is not simple marginalisation or exclusion from benefits of development. Rather, in many countries there has been the opposite of progress, that is retrogression and primitivisation, because of policies that have not only prevented the virtuous cycle resulting from emulation but actually destroyed existing production economic activities. The chilling examples of diminishing returns at work, created by exposure to external economic forces that destroyed the capacity for diversification, innovation and technical change within these societies.

This in turn leads to a comprehensive critique of the "Washington Consensus" policies and their slightly modified descendants. Reinert demolishes each of the maxims that are now so routinely recited to developing country policy makers, such as getting prices right, getting property rights right, getting institutions right, getting governance right, getting competitiveness right, and so on.

In another powerful chapter, he shows how the arguments in favour of globalisation – especially those of economies of scale, technical change and synergies – are also the arguments against globalisation when the process prevents some economies from achieving these. This leads to a critique of what Reinert calls "palliative economics" as exemplified in the Millennium Development Goals, which are aimed at easing the pains of poverty rather than making the fundamental structural changes that result in true economic development.

The real aim, according to Reinert, should be to focus on the lost art of creating middle-income countries, where all inhabitants have a purpose and claim on the necessities of life and at least some of its pleasures. This requires "getting the economic activities right", since the only way that vicious circles of low development can be broken is by first changing the productive structure itself.

Reviving these old but crucial insights in a contemporary context and in an effective and stimulating way is no mean task. Erik Reinert's intellectual lineage has been described as "neo-Schumpeterian". But in this book he shows that his work extends beyond such simplifying categories to be in the best tradition of heterodox economics: historically informed, conceptually powerful and compelling on policy matters.

Reviewed by Jayati Ghosh, June 14, 2007

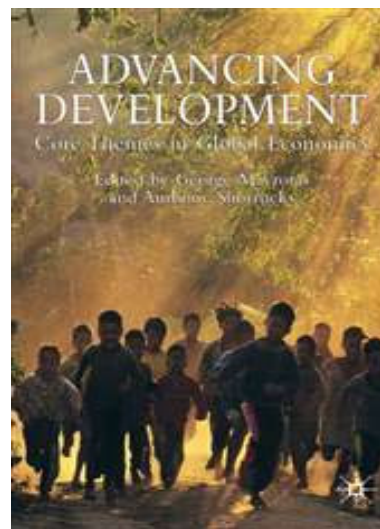
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Advancing Development – Core Themes in Global Economics

Edited by George Mavrotas and Anthony Shorrocks

Palgrave Macmillan, 2007, pp. 848, £29.99

This book opens with a perfunctory foreword by Amartya Sen, who as one of the founders of the World Institute for Development Economics Research (WIDER) in Finland 20 years ago, claims part responsibility for the name of the institute. It was intended to have a broad area of research in development economics. It demonstrates



that WIDER has achieved this objective in the first 20 years of its existence. The flavour of this broad approach is given in this review.

It is difficult to understand who the book is meant for. It has 36 essays that range from country experiences to conceptual themes, many of which are not easy reading. It is a book that will certainly grace library shelves and be occasionally referred to for one or the

other of its essays. That is a pity since it contains excellent essays on the dynamics of economic development.

The essays are categorised under seven parts: four essays each on development economics in retrospect; inequality and conflict; human development and well-being; globalisation; three on development finance; five on growth and poverty; seven on development strategies, and six on development economics in prospect.

Development paradigm

It traces the broadening of the definition of development that moved from GNP growth as objective, to growth and employment, satisfaction of basic needs, and now to enhancement of human welfare and the reduction of multidimensional poverty to be achieved through a pattern of pro-poor growth. At the same time development theory moved from one-sector models to dualistic ones, distinguishing between urban and rural sectors; to distributional issues and measurement of poverty; structural issues giving way to the role of institutions and markets in the development process; and planning being replaced by markets as the engines of development with a minimisation of the role of governments.

It argues for heading off disasters before they happen, through enlightened and visionary leadership. However, it accepts the role of chance and participatory decision-making as well as the availability of funds. India has travelled this route. Markets, globalisation, incentives, and private sector, are common parameters for measuring and stimulating development today. We now add social indicators as part of development strategies. India's experience shows that human development will not naturally accompany economic development without special measures by government.

Need for integration

In this context the meaning of economic development as the reduction of deprivation, discrimination and conflict leads to the need for policies that integrate economic development with human rights and conflict reduction.

One essay perceptively argues that some inequalities are maintained by laws of property and economic relationships; land ownership deriving from colonial times; operation of legal systems and international law. It resurrects Thomas Paine's innovative proposal on equality by giving each young person a capital sum to make a start in the world and an annual pension beyond age 50.

Another essay points to botched liberalisation and regressive tax reforms in some developing and transition economies that have affected health and health inequality. A causal spiral is traced from inequality to corruption (and back again) and from both inequality and corruption to lower levels of trust.

Human security in the form of freedom from want and fear are interrelated. Interdependence of political, security, economic and social aid activities needs to be better acknowledged and international donors should support a more integrated and unified framework for planning political, security, humanitarian, economic and development activities at a country level.

The book should have acknowledged the critical role played by Mahbub-ul-Haq who initiated the annual Human Development Report of the UNDP. The Human Development Index that this Report created is a benchmark for countries for their development. It has since been used to measure human development at local levels (in India, states, districts, even villages).

The Sachar Report on the human development indicators of Muslims is a child of these measurements. The NCAER conducted large-scale surveys to measure human development by states and for Scheduled Castes, Scheduled Tribes and the majority-minority in each state (for example, Muslims in Uttar Pradesh).

These disaggregated measures are useful for evolving policies that aim at including all social classes in the gains from development.

Social capital

The essays argue for investing in health for economic development: an analysis of health expenditures in different countries shows that there is much room for improvement both in efficiency and equity. There is found to be a straightforward positive effect of aid on development outcomes, contrasting with existing literature showing mixed results about impact of aid on per capita GDP. This is perhaps because the authors of this essay look at the effects of aid on human development, unlike others who do so only at labour productivity.

Social capital is defined as informal institutions that are codes of conduct and conventions of behaviour. An interesting distinction is made between “deep” and proximate determinants of development affecting factor accumulation or total factor productivity affecting incomes. “Deep” in this context refers to underlying norms, as against the easily visible ones like institutions and procedures. The better demographic indicators for Muslims in India despite low economic status and literacy may be due to such a “deep” determinant.

The vastness of this book’s coverage makes it impossible to do justice to its contents. Despite its length, the book is an

excellent survey of the thinking on development.

Reviewed by S.L.Rao © The Hindu, 26 June 2007



The Centre for Development and Human Rights (CDHR) is, a research organisation based in New Delhi and is dedicated to bringing theoretical clarity to the concept of Right to Development by integrating the academic disciplines of law, economics, international co-operation and philosophy.

The Centre is involved in:

- Raising national and international awareness that the Right to Development is a human right.
- Networking with NGOs working on various aspects of development and human rights.
- Examining implications of integrating a human rights perspective into existing development programmes.
- Undertaking research both independently and in collaboration with other institutions.
- Publishing monographs, reports and papers on development, public policy and human rights.
- Organising seminars and workshops on aspects of development, public policy and human rights.

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