

RIGHTS AND DEVELOPMENT

Bulletin



**Centre for Development
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INDEX

RIGHTS - ARTICLES	4
The Right to Development	4
The Children of Migrant Workers – Jayati Ghosh	8
Children under six – Out of the Spotlight – Jean Dreze.....	10
Suicides by Cotton Farmers in Andhra Pradesh – Reji.K.Joseph	12
RIGHTS – FEATURES.....	16
The Rights of the Displaced	16
Women’s Rights – Against Rape and its Torturous Legal System	19
The Right to Information	20
Ban on Child Labour	23
RIGHTS – COMMENTARIES	26
Law to Crack Down on Human Trade	26
Empowering the Girl Child and Tackling Female Foeticide	26
Make Development Basic Human Rights.....	27
Dalits being Denied Dignified Treatment.....	28
The India Social Forum 2006	29
First Human Development Report of Delhi	30
The Protection of Human Rights (Amendment) Act 2006.....	31
Scheduled Tribes (Recognition of Forest Rights) Bill 2005	32
RIGHTS - BOOK REVIEWS	34
The Future of Human Rights –By Upendra Baxi.....	34
Reflections on the Right to Development- By Centre for Development and Human Rights	36
The Right to Development: A Primer – By Centre for Development and Human Rights.....	37

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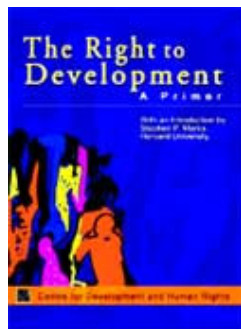
Centre for Development and Human Rights, New Delhi, is launching a bi-monthly Bulletin on Rights and Development, addressed to human rights activists in India and abroad, academics and scholars, public servants and political workers, NGOs and interested public. Its purpose will be to make the readers 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 would also focus on a few selected issues of major concern in other countries in the world. It will have a few short special articles, published and unpublished, in this area, and a section on brief analytical features on some of the major developments.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 will also be a section of commentaries on some important news in this area. Another brief section will provide 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 and Ms. Avani Kapur as joint editors. The work of the editors 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 will be available on the website of the Centre for Development and Human Rights, www.cdhr.org.in

RIGHTS - ARTICLES

The Right to Development



The Right to Development (RTD) is one of the most highly debated and contentious issues in international relations. Placed in the interface between human rights and development, the concept of RTD seeks to promote development as a human right. In recent years, work has been initiated at the international fora (more specifically, in the United Nations Commission on Human Rights) towards identifying more precisely the content of RTD. An Open-ended Working Group and the Commission on Human Rights itself, have deliberated on six reports by the United Nations Independent Expert (IE) Arjun Sengupta on the Right to Development since 1999. The ideas have also been discussed in many international conferences and academic seminars. It is now important that they are discussed and debated more widely in all branches of civil society so that the right can effectively be translated into implementation. To facilitate this process, the Centre for Development and Human Rights, New Delhi has brought out a primer on RTD.

Defining the Right to Development – Article 1, paragraph 1 of the RTD declaration states, ‘The right to development is an inalienable human right by virtue of which every human person and all persons are entitled to participate in, contribute to, and enjoy economic,

social, cultural and political development, in which all human rights and fundamental freedoms can be realised.’ This definition establishes RTD as a ‘human right’ that is inalienable, i.e., it cannot be bargained away. It also establishes the unity of rights by talking of development in which *all* human rights and fundamental freedoms can be realised. It further underscores the *entitlements* of all persons and peoples to participate in as well as to enjoy the *process* of development.

Although the word ‘process’ is not mentioned in Article 1, paragraph 1, the definition of *development as a process* is derivable from the preamble to the RTD Declaration, which defines ‘development’ as a ‘comprehensive economic, social, cultural and political *process*, which aims at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom’. As per this specification, a situation where there is sharp increase in GDP or rapid industrialisation or an impressive expansion of exports with a large increase in capital inflows does not in itself signify development. If these outcomes are not accompanied with an improvement in the well-being of all people, if people do not meaningfully participate in the process, or if the distribution of benefits is iniquitous and unfair, they will not be regarded as development. Among the different processes of development, the one in which all human rights and fundamental freedoms are capable of being realised can qualify as the object of claim as a human right.

What does the Right to Development Entail? - Focus on Process – The RTD approach focuses not only on the *ends* but also on the *means* of development. The goals and outcomes of development as the realisation of rights are the ends. The process by which such goals are actually achieved, in a progressive manner, consist also of the ‘means’ of programmes

and policies and instrumental changes needed for realising the rights.

The right to development is an inalienable human right by virtue of which every human person and all persons are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be realised.

According to the Independent Expert, RTD is the *right to a process of development* where all human rights – CPRs (Civil and Political Rights) and ESCRs (Economic, Social and Cultural Rights) are realised. The *outcome* of a process of development is in itself a human right, which entails obligations. The *process* is a programme or plan executed over time maintaining consistency and sustainability, with phased realization of the different human rights expected to lead to the realisation of the targeted outcome. The *right to the process* is different from the *right to the outcome*. In the RTD approach, the *process* is as important as the *outcome*.

Both the process and the outcome of the process are recognized as human rights. The principles of *equity, non-discrimination, transparency, accountability and participation* provide the defining parameters of a rights-based process of development. A rights-based approach to development aims at achieving the objectives of development in a manner consistent with these principles.

A process of development that does not follow these principles would be inconsistent with the RTD approach, even if it did attain the identified goals or outcomes of development. In addition, the RTD approach entails treating development objectives as *rights* – as entitlements giving rise to obligations on duty holders such as the state authorities and the international community. In other words, the objectives of human

development, when they are taken, as enhancements of freedoms must follow the ‘rights-based approach.’ Where the objectives are claimed by the people as rights backed by corresponding obligations, they become constituents of the right to development.

Step-by-step Approach and Poverty Eradication – The realisation of RTD has to proceed step by step, in tandem with the changing world economy and the strength of the human rights movement. Since all rights and corresponding freedoms cannot be realised immediately and simultaneously, it might be useful to concentrate initially on a few areas that may be regarded as basic to all other rights. These are the rights to food, health care and education. It is not that other rights are not important, but these rights cater to the most basic needs of the people and facilitate the realisation of the other rights. These may also be taken as the minimum indicators of RTD that have to be satisfied and that would claim priority in the use of the States’ financial and administrative resources.

Poverty is the most abject violation of human rights, denying as it does practically all the freedoms to the people affected. The eradication of poverty would, therefore, be a first step towards the ‘progressive realisation’ of the human right to development. Countries must adopt their own programmes for achieving rights-based economic growth and eradicating poverty in a sequential manner within a specific target period as a method of realising RTD.

Unlike the simple ‘trickle-down approach’ that views poverty reduction in terms of increased GDP, the RTD framework addresses poverty in the light of equity and justice. If the poor have to be empowered through development policy, the structure of production has to be adjusted. The development policy must focus on the poorest regions and the most vulnerable groups. A social protection system must guarantee a minimum level of income for all concerned.

Besides its *income* dimension, poverty also has a *capability* dimension, signifying an unacceptable level of deprivation of well-being, a level that a civilized society considers incompatible with human dignity. The *capability* dimension of poverty has a direct bearing on the *income* dimension since a lack of capability prevents people from having the capacity to earn more and rise above the poverty line. The provision of food, primary health care and primary education in a rights-based manner is the most effective method of alleviating *capability poverty* and of making any programme for the eradication of *income poverty* sustainable.

Lack of dignity, security, self-respect and justice are all expressions of violations of human rights. A poverty reduction strategy must, therefore, be based on the removal of those violations and improving people's real income and the other indices of the quality of life in a manner consistent with the human rights approach.

The Problem of Resource Constraints – Covering as it does the entire range of human activity, the implementation of RTD will inevitably be confronted with the question of the availability of resources – financial, physical or institutional – both at the national and international levels. Indeed this is often the most pressing argument used against the concept of economic rights in general and RTD in particular. However, the existence of a right should not depend on the method of realisation and all efforts must be made to realise a right, once recognized, depending on conditions in individual states, availability of resources and the international environment.

The Limburg Principles clearly state, in the context of economic, social and cultural rights, that state parties must move as expeditiously as possible towards realisation of rights and that resource constraints cannot be used as an excuse to defer the realisation of rights. *Progressive realisation* of ESCRs can come about not only by increasing

resources but also by developing the societal resources necessary for realising rights. The Limburg Principles define 'available resources' as 'both the resources within a State and those available from the international community through international cooperation and assistance'.

In many cases, resources may not be an insurmountable problem for realising individual ESCRs. Many of the activities needed to fulfill these rights do not require huge financial resources. Instead, they may merely involve administrative and organizational reorganization in order to use existing financial and other resources more effectively. All that may be needed for this could be political and administrative will.

Unlike the simple 'trickle-down approach' that views poverty reduction in terms of increased GDP, the RTD framework addresses poverty in the light of equity and justice

Achieving RTD, however, is dependent on increasing resources over time as well as making the most efficient use of the existing resources as it involves realising all the rights together in a sustainable manner. This can be done through proper fiscal, monetary, trade and competitive market policies and expanding the opportunities for trade. These changes have to be carried out in a phased manner with sequential consistency over time and cross-sectoral consistency at any one time. This is why economic growth has been made an essential component of the right to development.

Economic Growth – Economic growth is not merely the *ends* but also the means to the larger goal of overall well-being. It is an *objective* because it implies higher per capita consumption and, therefore, higher living standards. It is a *means* in that it allows for the fulfillment of

other objectives of human development and human rights.

The RTD framework proposes a qualitatively different approach, where considerations of equity, justice and respect for human rights standards determine the strategy for economic growth. In any case, sustainable GDP growth is possible only when there is all-round balanced development. A rights-based approach will, therefore, be conducive to increasing growth in the long term.

Conflict of Rights – The right to development, based on progressive realisation of all the rights and a process of rights-based economic growth, has greater flexibility in resolving such problems of trade-off, without violation of any human rights. Since this right builds on increments on the levels of different rights, when a technically-binding constraint presents the equal improvement in different rights, the corresponding programme to realising the right will have to include a mechanism to decide on the sequence and the rate of improvement of the different rights without allowing the current level of enjoyment of any single right to fall. The rights-based economic growth, by expanding the availability of resources, would also facilitate this process. There need be no violation of a right, only some rights would improve faster than others.

Justiciability of RTD – The right to development is often criticised on the basis of an alleged lack of justiciability. The positivist school of thought does not regard rights that are not legally enforceable as human rights; a right, to be taken seriously must be sanctioned by a legal authority and must be based upon appropriate legislation. For instance, the two 1966 covenants impart legal force to the obligation to respect CPRs as well as ESCRs. Additionally, mechanisms exist to review and monitor State compliance and an Optional Protocol to ICCPR allow individuals to bring complaints to enforce CPRs. However, while the ICCPR and the ICESCR are in the nature of treaties that codify certain human rights, the RTD

Declaration does not have the status of a treaty and so cannot be enforced legally. It has been argued that since RTD is not legally enforceable it is at best, a set of social aspirations or statement of objectives. In the absence of a measure of justiciability, the status of RTD as a 'human right' has often been questioned.

The right to development, based on progressive realisation of all the rights and a process of rights-based economic growth, has greater flexibility in resolving such problems of trade-off, without violations of any human rights.

But this view confuses human rights with legal rights. Human rights precede law and are derived not from law but from the concept of human dignity. There is nothing in principle to prevent a right from being internationally recognized as a human right even if it is not individually justiciable. It is inappropriate to assert that human rights cannot be invoked if they cannot be *legally* enforced. In fact, it is possible to fulfil human rights in many different ways (depending on the acceptability of the ethical basis of the claims) that go beyond justiciability in the sense of *legal* enforcement.

This is not to say that it would not be useful to seek to translate human rights into legislated rights. Formulating and adopting appropriate legislative instruments to ensure the realisation of human rights which are accepted through consensus is highly recommended as this would make these rights enforceable formally in courts *as well*. But this should not detract from employing an effort of equal magnitude towards finding alternative methods of enforcement of obligations through, for instance, peer pressure, democratic persuasion and an active and committed civil society. Indeed, according to some interpretation, if such enforcement is possible, a right can be a valid legal right. In other words, *justiciability* (i.e. judicial enforceability) must be seen as subset of *enforceability*. The focus in general should

remain on *enforceability* of human rights, though *justiciability* would certainly contribute to strengthening enforceability. An absence of justiciability, however, must in no way undermine the strength of the other means of enforceability.

In sum, the fact that the RTD Declaration is not a *legally* enforceable covenant does not detract from the responsibility of the States as well as of other individuals and agencies of the international community to realise the right as a human right. Some mechanism, however, may need to be devised for monitoring compliance with RTD commitments.

(Extracted from 'The Right to Development - A Primer' - Centre for Development and Human Rights and Sage Publications, 2004)

The Children of Migrant Workers

- Jayati Ghosh

While the National Rural Employment Guarantee Act - if it is effectively implemented - is likely to have many positive consequences, one of the potential benefits that has been inadequately recognised is how it may improve the welfare of around 60 million children. These are children of migrant workers, who are currently among those very adversely affected by the recent patterns of increased material pressure which has driven adult men and women to short term migration in search of work.

Consider the evidence that we have. Both aggregate official data and all the available micro studies suggest that there has been a very substantial increase in short-term economic migration in the recent past, driven by the reduced viability of cultivation, displacement, asset deprivation and collapse of employment generation in most parts of rural India. The more significant change recently has been the increased migration of women, with men or in groups or even on their own.

Of course, this puts huge pressures and creates new possibilities for oppression of women migrants, who are more vulnerable to all sorts of exploitation, both physical and material. While migration can be an important source of new economic opportunities, distress migration among the poor, and especially of poor women, tends to deepen existing inequalities, and make fragile and vulnerable situations even worse. But the worst consequences may well be on the children of such migrants, who are even less visible to policy makers.



Photo: Children of migrant workers remain neglected while their parents toil at exploitative wages. (Source: Mobile Crèches)

A recent study by Mobile Crèches "Labour Mobility and the Rights of Children", Mobile Crèches, New Delhi, March 2006) brings this out very clearly. Using official data from the Census and NSSO, the study estimates that there were about 30 million migrant women workers and 60 million children, of whom around half were children under 6 years of age, in 2000.

The dismal conditions of migrant workers in their places of work and temporary residence are well known. Such workers generally do not receive the minimum wages because of their inferior bargaining power, and late payment or non-payment of wages are constant threats or realities. Women usually receive significantly lower wages, between half to two-thirds of what the men workers receive. The works contracts are usually casual, insecure and highly exploitative. The residence is usually in shanty towns or in temporary roadside constructions,

with little or nothing in the way of basic sanitation, access to clean drinking water, and so on.

But, even apart from these features that make the quality of life very poor for the migrant family as a whole, there are other features that impact directly on children. Constant movement with no fixed abode, or residence in cramped, unhealthy and restricted quarters are obviously undesirable. But for migrant children, the problems may begin even before birth because of the pressures on the mother which operate to reduce birth weight, then reduce possibilities for breast-feeding, then prevent regular immunisation, and then expose the child to all sorts of infections because of poor sanitation and overcrowding.

There are also other concerns. Migrant families do not have access to all the normal rights of citizens because they are not seen as residents of the area where they work. Therefore, the children do not have access to immunisation and other health services, cannot attend anganwadis or local schools, and often simply have to accompany their mothers at their workplaces such as construction sites. These are unhealthy, often hazardous places for infant and young children who end up spending most of their waking hours there. And there is very poor nutrition available for growing children.

These conditions lead to constant prevalence among such migrant children of a range of illnesses including respiratory ailments and waterborne diseases. One 1998 study of children of migrant workers at worksites showed that 53 per cent of the children under five years were malnourished and 27 per cent were severely malnourished.

If migrants have been ignored by public policy, and thus face an insidious but extensive system of social and economic discrimination, this is even more true of the children of migrants, who are generally invisible to the public eye. Yet, beyond the clichés of how children are the

future of the country and so on, there are huge dangers in allowing this neglect to continue.

If migrants have been ignored by public policy, and thus face an insidious but extensive system of social and economic discrimination, this is even more true of the children of migrants, who are generally invisible to the public eye.

It is not just that early childhood is the period of life of maximum vulnerability, physical and mental development and dependence upon adults, such that events and processes in this period have long-term repercussions for future capabilities and life chances. It is also that the itinerant life with constant material struggle for survival and lack of basic facilities makes survival almost a miracle that is seen as the result of tough and often individualistic choices. The kernels of the future society that is thereby being created are surely full of dark possibilities.



Do the children of migrant workers have a secure future? (Photo Source: Mobile Creches)

So it is absolutely imperative for both society at large and government policy in particular to make the issue of basic protection for migrant families and the provision of public services and systems for migrants, including children, a basic priority.

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Children under six – Out of the Spotlight

- Jean Dreze

The Draft Approach Paper to the 11th Plan, prepared by the Planning Commission, has been discussed and criticised from various perspectives. However, little attention has been paid to its worst blind spot: the situation of children, particularly those below the age of six years.

The facts are well known. About half of all Indian children are undernourished, more than half suffer from anaemia, and a similar proportion escapes full immunisation. This humanitarian catastrophe is not just a loss for the children concerned and their families, and a violation of their fundamental rights, but also a tragedy for the nation as a whole. A decent society cannot be built on the ruins of hunger, malnutrition, and ill health.

Yet one is at a loss to find any serious discussion of these issues in the Approach Paper. Patient search uncovers a little "box," tucked away in the section on Sarva Shiksha Abhiyan, where children under six are finally mentioned. The box (two paragraphs) begins with the grand statement that "development of children is at the centre of the 11th Plan" but does not give any inkling of what this actually implies. Instead, it essentially confines itself to the startling suggestion that anganwadis (child care centres) should "concentrate on inculcating good health and hygienic practices among the children."

It would be natural to expect the universalisation of the ICDS to be one of the top priorities of the 11th Plan. None of this, however, finds mention in the Approach Paper

The anganwadi scheme, officially known as the Integrated Child Development Services (ICDS), is the only major national scheme that addresses the needs of children under six. As things stand, only half of these children are registered under the ICDS. The Common Minimum Programme (CMP) clearly states that the United Progressive Alliance Government will "universalise ICDS to provide a functional Anganwadi in every settlement and ensure full coverage for all children." This step is also required for compliance with recent Supreme Court orders (PUCL vs Union of India and Others, Civil Writ Petition 196 of 2001). It would be natural, therefore, to expect the universalisation of the ICDS to be one of the top priorities of the 11th Plan. None of this, however, finds mention in the Approach Paper.

The main argument for universalising the ICDS is that it is an essential means of safeguarding the rights of children under six — including their right to nutrition, health, and pre-school education. These rights are expressed in Article 39(f) of the Indian Constitution, which directs the state to ensure that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity." If we take children's rights seriously, an institutional medium is required to provide these "opportunities and facilities." That is the main role of the ICDS centre or anganwadi.

Apathy towards the ICDS in official circles appears to be linked to a perception that this programme is ineffective, if not useless. It is easy to provide superficial support for this claim by citing horror stories of idle anganwadis or food poisoning. These horror stories, however, are not a fair reflection of the general condition of the ICDS. Indeed, recent evidence suggests the ICDS is actually performing crucial functions in many States, and that there is much scope for consolidating these achievements.

A recent survey of the ICDS, initiated by the Centre for Equity Studies,

sheds some light on these issues. The survey was conducted in May-June 2004 in six States: Chhattisgarh, Himachal Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Uttar Pradesh. It involved unannounced visits in a random sample of about 200 anganwadis as well as detailed household interviews.

Among mothers with a child enrolled at the local anganwadi, more than 90 per cent said it opened "regularly." This is consistent with direct observation: nearly 80 per cent of the anganwadis were open at the time of the investigators' unannounced visit. Similarly, 94 per cent of the mothers interviewed stated supplementary nutrition was being provided at the anganwadi. Even pre-school education, the weakest component of the ICDS, was happening in about half of the anganwadis visited. More than 70 per cent of the mothers felt the ICDS was "important" for their child's welfare.

This is not to deny that the quality of the ICDS needs urgent improvement in many States. But recognising the need for quality improvements is not the same as dismissing the ICDS as a non-functional programme. The survey does not provide any justification for this defeatist outlook.

In fact, the survey findings highlight the enormous potential of the ICDS. This potential is well demonstrated in Tamil Nadu, where child nutrition has been a political priority for many years. Every sample anganwadi in Tamil Nadu had an effective feeding programme, and almost all the sample mothers were satisfied with the quality as well as the quantity of the food. Other basic services were also in good shape. For instance, 97 per cent of the mothers interviewed in Tamil Nadu reported that children were being "weighed regularly," and 86 per cent said useful educational activities were taking place at the anganwadi. Every single child in the Tamil Nadu sample had been immunised, fully so in a large majority of cases. Perhaps the best sign of real achievement in Tamil Nadu is the fact that 96 per cent of the mothers considered the ICDS to be "important" for their child's

well being, and half of them considered it to be "very important."

While Tamil Nadu is an exemplary case of effective action in this field, it is important to note that "success stories" are not confined to this particular state. Maharashtra, for instance, seems to be rapidly catching up with Tamil Nadu. To illustrate, the proportion of mothers who stated that the local anganwadi "opened regularly" or that their child was regularly weighed or that immunisation services were available at the anganwadi, was above 90 per cent in each case. Much as in Tamil Nadu, 93 per cent of the mothers interviewed in Maharashtra considered the ICDS to be important for their child's well being. A large majority (60 per cent) also viewed the anganwadi worker as "a person who can help them in the event of health or nutrition problems in the family." While there were also areas of concern, notably the pre-school education programme, Maharashtra's experience clearly shows that Tamil Nadu's achievements can be emulated elsewhere.

In the northern States, the condition of the ICDS varied a great deal, from relatively encouraging in Himachal Pradesh to very poor in Uttar Pradesh (the usual "basket case" as far as public services are concerned). Even in the lagging States, however, the strong potential of the ICDS clearly emerged in villages with an active anganwadi. It is also important to note that these States have largely reaped as they sowed. Consider for instance the "supplementary nutrition programme." There is much evidence that the best approach here is to combine nutritious, cooked food for children aged 3-6 years with well-designed "take-home rations" (together with nutrition counselling) for younger children. Yet many States are not even trying to take these simple steps to improve the nutrition component of the ICDS. For instance, in Rajasthan and Uttar Pradesh, children aged 3-6 years get the same bland "ready-to-eat" food (panjiri or murmura) day after day, and younger children get nothing at all. It is no wonder that mothers interviewed in these States

were often dissatisfied with the programme.

Similar remarks apply to other hurdles that have plagued the ICDS in the northern States — lack of funds, understaffing, poor infrastructure, erratic supervision, inadequate training, centralised management, among others. These shortcomings are curable, and their persistence essentially reflects a lack of political interest in the well being and rights of children. In sharp contrast to Tamil Nadu, where child health and nutrition are lively political issues, the ICDS is at the rock bottom of policy concerns in the northern States.

It is against this background of political indifference to children under six that the CMP commitment "to provide a functional Anganwadi in every settlement" was so important. In pursuance of this commitment, the National Advisory Council formulated detailed recommendations on the ICDS in November 2004, along with cost estimates and a proposed time frame for universalisation. These recommendations have been amplified and improved in a number of recent documents, such as the reports of the Commissioners of the Supreme Court and the concluding statement of a convention on "children's right to food" held in Hyderabad in April 2006. Unfortunately, this wave of creative advice appears to be falling on deaf ears. It is certainly not reflected in the draft Approach Paper to the 11th Plan. An opportunity is being missed to rectify the catastrophic neglect of children under six in public policy and economic planning.

*(The writer is Honorary Professor at the Delhi School of Economics.)
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**The shortcomings in the ICDS
are curable and their
persistence reflects a lack of
political interest in the well
being and rights of children.**

Suicides by Cotton Farmers in Andhra Pradesh

- Reji. K. Joseph



**Little hope for families of cotton farmers.
(Photo Source: Outlook May 2006)**

Andhra Pradesh (A.P) has been the focus of the media for the crisis in the agrarian sector and suicides of desperate farmers in India. The report of the Cabinet Sub-Committee on Farmers' Suicide (2004), Government of A.P finds that three out of four farmers' suicide in India take place in the state. There were farmers' suicides in the pre-liberalization as well as the post-liberalization phases. But what distinguish farmers' suicide in the post-liberalization phase are the large number suicides taking place every year. In the year 1997-98 alone, 307 such suicide deaths were reported (Venkateswarlu and Srinivas, 2000). Data compiled by Patnaik (2003) shows that there were 233, 58, 116, 202 and 2580 farmers' suicides in the years of 1998, 1999, 2000, 2001 and 2002 respectively. The magnitude of the distress is such that in a period of just one month (between 14th May and 14th June) in 2004 close to 300 farmers committed suicide in the state. Farmers' suicide is not confined to A.P, but is reported from all over the country. Recently the Vidarbha region was in the media spotlight for mass suicides of farmers, the visit of the Prime Minister to the region and the announcement of a relief package.

Majority of the farmers committing suicide in the state were the cultivators of cotton. Cotton cultivation has been facing problems of pest menace and spiraling

costs of cultivation. In 1985-86, some cotton farmers committed suicide on account of crop failure due to the white fly menace. Despite these problems, cotton has been the only crop showing steady growth in net area under cultivation. The area under cotton cultivation grew from 0.89 per cent per annum in the pre-Green Revolution period to 1.33 per cent in the first phase of the Green Revolution (1970s) to 4.58 per cent in its second phase (1980s) to 6.04 per cent in the liberalization phase (1990s). It is interesting to note that the area under cotton cultivation increased throughout the Green Revolution and the liberalization phase, despite the continuous decline in the growth in its yield. The yield of cotton declined from 10.57 per cent per annum in the first phase of Green Revolution to 3.43 per cent in its second phase, to 1.39 per cent in the liberalization phase (Subrahmaniam and Sekhar, 2002). Why do farmers increasingly cultivate cotton despite the problems facing the crop? What are the factors contributing to the suicide of farmers?

Certain inherent characteristics of cotton when combined with the socio-economic conditions prevailing in the state have made cotton the dearest crop especially for the economically backward. Cotton is a versatile crop that can be cultivated any time between June to September without any significant impact on yield, thus making it very suitable for upland rainfed conditions. Once the crop germinates, cotton can withstand a prolonged dry spell up to 45 days whereas other crops will dry up. Besides, post harvest expenditure is very low for cotton unlike chillies and tobacco. In other words, cotton is one of the most profitable crops. Even if the crop fails for one or two years, a single good harvest can yield sufficient income to make adequate profits in the current year as well as to compensate for past losses. Due to this fact, those at the bottom of the income distribution chain like tenants and small and marginal farmers look forward to cotton cultivation as a means to improve their income levels. The report of the Commission on Farmers Welfare (2004) points out that the

number of landless households in rural Andhra Pradesh has increased from 45.9 per cent in 1987-88 to 52.3 per cent in 1999-00. In this context, it is natural that the cultivation of cotton will increase, given the prospects of the crop.

The enquiries into reasons of farmers' suicides show that the problem of indebtedness is the immediate reason for distress. Reasons for indebtedness are multifarious.

Many studies have been undertaken and commissions set up to find the reasons for the distress of cotton farmers. The enquiries into reasons for farmers' suicide show that the problem of indebtedness is the immediate reason for the distress. Reasons for indebtedness are multifarious. Major factors causing indebtedness are high cost of cultivation, dependence on private agencies, problems in accessing reliable and reasonably priced inputs, volatility in prices, high rates of interest, inadequate irrigation facilities, inadequate marketing facilities, tenancy, previous debt, crop failure, etc.

The weakening of the extension system has taken place at a time when farmers have been encouraged to shift their cultivation from subsistence farming to cash crops such as cotton.

The report of the Cabinet Sub-Committee on Farmers Suicide (2004) points out that institutional credit was able to meet only 15-20 per cent of the credit requirements, leaving the remaining 80-85 per cent to the private lenders who charge exorbitant rates of interest. Institutional finance often goes for high tech agriculture, biotechnology, purchase of heavy machinery, including paddy harvest combines, agro-industries, agro business, etc. The institutional loans for the agriculture has gone to private companies

and rich farmers leaving the vast majority of small and marginal farmers and an increasing number of landless persons to private money lenders who charge exorbitant interest rates. Besides, tenants (the landless) do not get credit from financial institutions, as they are unable to provide collateral security. Lack of official recognition of tenants denies them not only institutional finance, but also access to any of the government schemes directed towards them and any assistance or compensation during a natural calamity. They also do not get any of the free or subsidized inputs, which are distributed, to the owner cultivators from the government.

The withdrawal of the state from agricultural development activities in the liberalization period has worsened the plight of the farmers. Withdrawal of the government from the agrarian sector is visible in the low priority it has been given in budget allocations. The revenue expenditure (plan and non-plan) on 'agricultural and allied activities, rural development and irrigation and flood control' formed only 29.58 per cent in 1990-91 which further declined to 24.70 per cent in 2002-03. Similarly, the capital expenditure on the same item declined from 68.96 per cent in 1990-91 to 50.04 percent in 2002-03 (Murti, 2005). The government has curtailed expenditure on extension services as part of structural adjustment policies. The report of the Cabinet Sub-Committee finds that 50 per cent of the extension posts are vacant at the ground level. Subrahmanyam and Sekhar (2003) find that the rate of growth of expenditure on extension service decelerated from 3.06 per cent in the 1980s to 0.01 per cent in the 1990s. The weakening of the extension service system has taken place at a time when farmers have been encouraged to shift their cultivation from subsistence farming to cash crops such as cotton. The report of the Commission of Farmers Welfare (2004) points out that the lack of extension services has resulted in the wrong selection of crops and is a major reason for the crisis. Transfer of modern agricultural production technology to the farmers through agricultural extension

services is the responsibility of the state government.

There was a decline in public investment in irrigation facilities. As a result, the share of area under irrigation from public sources declined from 76 per cent in 1989-90 to 45 percent in 2002-03. As the state withdrew from the expansion of irrigation facilities, farmers had to make investments in irrigation. Farmers have to borrow from private lenders to make investments in irrigation facilities and the purchase of inputs in the hope that they will be able to repay from the next harvest. In many cases, there are failed investments in irrigation. The crop failure due to drought and pest menace makes farmers defaulters. The private lenders, then, resort to ruthless measures like occupying land, taking away household equipments, engaging family members as bonded labourers, etc. to clear their dues. In the case of Banks, these farmers become defaulters and are rendered ineligible for fresh loans. These farmers do not have any other option but to borrow from private sources, for the next season. The current debt of a farmer need not be based on the previous year's loan alone, but can be an accumulation of dues from the past few years. The study by Venkateswarlu and Srinivasan (2000) finds that 60 percent of the outstanding loans are the accumulation of dues over a period of years. Of the total outstanding debt, 65 to 90 per cent was met by informal credit sources.

In this context, came the Bt cotton (in 2002) with the promise of higher profits to farmers. It was expected that the plant will resist bollworms, which is the major pest, and farmers will not have to spend much on pesticides. However studies show that it has not been successful as was anticipated. Sahai and Rahman (2003) find that the cost of Bt cotton seeds were approximately Rs.1200 higher per acre than non-Bt hybrid varieties, while the savings on pesticide was a meagre Rs. 217 per acre. Qayum and Sakkhari (2005) estimate that on an average, for the three years (2002-03 to 2004-05) farmers had spent Rs. 1090 more per acre for Bt cotton seeds whereas the savings in pest management was only Rs. 197 per

acre. It was also found that the company selling the Bt cotton seeds has supplied poor quality seeds resulting in poor germination. The MoU Committee of Warrangal district, which involves officials from both the government and seed companies found that Bt cotton varieties of Monsanto has led to income losses for farmers due to poor germination of seeds. The Committee has directed Monsanto to pay Rs 1,496.25 per acre compensation to farmers in January 2005. (letter from M Lakshman Rao, joint director of agriculture, Warrangal to Mahyco Monsanto India, document no Lr No: C5/Misccc/04, dated January 27, 2005).

What then is the alternative? Data from Modern Architects of Rural India (MARI), Warrangal which facilitates alternative methods of farming, non-pesticide management (NPM) and organic farming among farmers and data from the Department of Agriculture, A.P, on Integrated Pest Management (IPM) show that farmers are better off with these alternative methods. The profit for organic and NPM farmers were higher by more than Rs 5000 per acre as compared to cultivators of chemical intensive cotton. The net returns are highest among the IPM farmers – Rs. 10, 471 per acre. India needs to explore the prospects of expanding alternate farming methods to improve the welfare of people.

The agrarian crisis and farmers' suicide is a violation of human rights. The Constitution of India (Article 21) protects the right to life as a fundamental right and the Supreme Court has, in a number of decisions, held that the right to life includes the right to livelihood because no person can live without the means of subsistence. The Supreme Court has also reiterated that the greatest incentive for maximum production is the feeling of identity and security, which is possible only if the ownership of land is with the tiller (AIR 1987 SC 1518). The State has failed not only in undertaking land reforms but also in reforming the credit system and undertaking agricultural developmental policies to mitigate the evil effects of skewed distribution of natural resources. The state has pursued by its action and

omission, a set of policies, which have ruined the livelihood of farmers and left them vulnerable without any social protection. These policies and practices have deliberately contravened or ignored India's obligations under various international human rights instruments.

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The agrarian crisis and the farmers' suicide is a violation of human rights. The state has pursued by its action and omission, a set of policies, which have ruined the livelihoods of farmers.

RIGHTS – FEATURES

The Rights of the Displaced



Thousands of people rendered homeless by the Narmada Dam. (Photo Souce: Ian Berry/ Magnum)

“How much sacrifice of people’s rights may ever be justified at the altar of constitutionally unprincipled and insincere ‘developmental’ policy-making,” asked the former Vice-Chancellor of Delhi University, Upendra Baxi, at a colloquium: A Critical Examination of the Shunglu Committee Report – Politics of Displacement and Resettlement in the Narmada Valley. More than 50 million people have been displaced by the construction of over 3,300 big dams in India since its independence. Today, the struggle for the rights of those displaced, particularly the tribals, by the construction of dams on the Narmada River, especially the Sardar Sarovar Project (SSP) is one the most important rights issues in contemporary India.

Recently, the Supreme Court allowed the height of the Sardar Sarovar Dam to be further raised to 121 metres. As thousands of families were yet to be rehabilitated there was a renewed spurt of protests against the SSP. The Court, in its

earlier decisions of March 2005 and October 2000 had stated that further construction could not happen until rehabilitation of temporarily and permanently affected families is completed as per the Narmada Tribunal Award. The *Friends of the River Narmada*, an international coalition, state that “despite overwhelming evidence, the recent protests in Delhi and a 20 day hunger strike, the Supreme Court and Indian Government have turned a blind eye to this grave injustice”. The government formed a Group of Experts to oversee the matter. The Shunglu Committee’s Oversight Group (OSG) submitted its report to Prime Minister Manmohan Singh. But this report has been alleged of being a sham by those opposed to the Narmada dam. Critics say, it paints a picture of satisfactory rehabilitation work in the Narmada Valley while the real facts seem to be on the contrary.



The Narmada Bachao Andolan’s struggle to ensure proper rehabilitation of the displaced continues

However, the Prime Minister considering the OSG’s account to be a fair one, opined that work on the dam should not be stopped and that rehabilitation should be made up-to date, taking advantage of the stoppage of construction during the monsoons. But even though the OSG upholds the claims made by Madhya Pradesh (one of the states affected by the SSP) in its Action Taken Report (ATR) on the number of (18,000) affected families, it has found poor quality or dysfunctional facilities at the rehabilitation sites. Its report suggests that the rehabilitation sites

presented a mixed picture with some being good and others poor and average. At the same time the report says that at several sites there was no provision for water supply, electricity, education, health, schools etc, and wherever these amenities existed, they needed to be upgraded and serviced. But the report misses out that people did not move because there was no land and facilities at the rehabilitation sites as per the Narmada Tribunal Award, says Gargi Parsai (*The Hindu*, 06/07/06)

After going through 4,000 grievances pending with the Grievance Redressal Agency, the report has suggested that the State should complete rehabilitation within one year. This reality not only belies the M.P government's commitment to the Narmada Control Authority, of completing the rehabilitation of families displaced by the increase in the dam height to 121.92 metres before July 2006, but also goes against both the Narmada Award and the Supreme Court Order that had asked rehabilitation to be completed six months in advance of raising the height of the dam.

Significantly, as stated in *The Hindu* (04/07/06), the group is understood to have defended the Special Relief Package (SRP), which awards cash compensation to displaced families in place of land, even when the Supreme Court had held that it was a "disputed matter". Instead of advising the state to fulfil its "land-for-land" obligations the group has reportedly shown that eligible families were accepting cash compensation, as the government was unable to procure land for them or the process was besieged with corruption. Besides, as Baxi said the tyranny of statistics in the Shunglu Report suggests that out of the 40,441 displaced families, only 1393 accepted the SRP, simply because 17.9 per cent had no intimation concerning allotment of land, 94 per cent were not satisfied with the land bank offerings and 21 per cent opted for other reasons. "The report merely prefers to highlight those who accepted the SRP at a

clear and cruel cost to others who did not do so", he said.

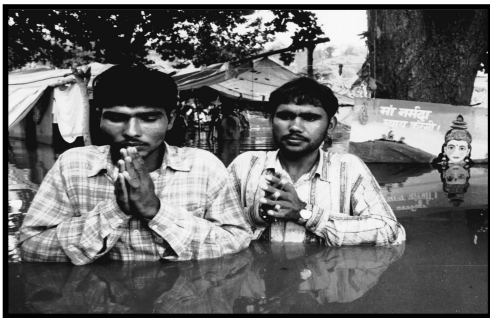
While the Shunglu report claims that many people have been provided land, the *Narmada Bachao Andolan* (NBA), fighting for the rights of the displaced, alleges that people have been made to sign on blank forms and that the reality is that 90 per cent of the mentioned number have not received any land. The report says that the reason why Project Affected Families (PAFs) "accepted" cash compensation was that the land allocations by the government did not match their requirement. But the NBA alleges that no land had been offered and that the displaced families were being forced to accept cash as, otherwise, they would get neither. Dr. G.K. Chadha, one of the OSG members, speaking to *The Hindu* after submitting the report claimed that the report included the findings of the National Sample Survey Organisation (NSSO) and the subsequent Random Survey.

But the NBA alleges that the NSSO, which carried out the survey, was not allowed any freedom and that while it surveyed some 25,000 families in 177 villages, it left out about 6,485 families, many of whom would be severely affected. "The teams did not use the new questionnaires but tick marked the already used ones, there were no new additions to the list", claims Medha Patkar, NBA leader. Though the group asked for a proper action plan, a mechanism for rehabilitation and the involvement of district authorities, the issue of validation by the gram sabhas does not seem to have been seriously addressed.

The OSG Report says that at several resettlement sites there was no provision for water supply, electricity, education, health, schools etc, and wherever these amenities existed they needed to be upgraded

In fact, Patkar, calling the Shunglu Report a “Bible in which the NBA makes new discoveries every time it goes through it”, alleges that the report gives incorrect numbers of those displaced and those whose claims were ignored. It also has flaws relating to the number of adult sons yet to be identified. It completely neglects the tribal families and those on hillocks, those whose livelihoods would be hurt and also has completely false demographic figures to buttress their findings. She said, “The Government should not go according to the Shunglu Committee Report that presents a lopsided account of the affected families and their requirements for resettlement” (*The Hindu*, 29/07/06)

But the dam has its supporters like Anil Patel, member of *ARCH-Vahini*, which works for resettlement and rehabilitation of tribals in Gujarat, Maharashtra and MP, who rubbish claims that raising the dam’s height will displace thousands and such figures are gross exaggerations. Patel agrees that about 33,000 families in 193 villages of MP will be affected when the dam is built but he asserts that the key word here is ‘affected’.



These Narmada villagers have vowed to drown rather than be resettled. (Photo Source: Harikrishna/Deepa Jani for International Rivers Network)

This does not mean that all the PAFs will be totally uprooted, only that a large majority of these PAFs would lose only their houses or houses, alongwith very little land. Their means of livelihood and socio-cultural environment would not be touched, as they may only have to shift their houses to a higher plane.

Unfortunately, mere counter-allegations will not dilute the enormity of the disaster looming large. On April 13, 2006, in a UN Press Release, the Special Representative of the Secretary –General on the situation of human rights defenders, Hina Jilani; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, and the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen expressed concern about the recent decision of the Narmada Control Authority (NCA) to further raise the height of the dam from the present 110.64 metres to 121.92 metres and on reports indicating that this will result in the submergence of villages and displacement of over 35,000 families.

They said, “We are concerned about information indicating that in Madhya Pradesh rehabilitation sites are still not ready and none of the sites have sufficient house plots for affected families and that this may leave people homeless when affected villages are submerged. Furthermore, alternative agricultural land is reportedly not being provided, and where land has been allotted as in Maharashtra and Gujarat, it is uncultivable and inadequate!”

Even as the swirling waters of the Sardar Sarovar project threaten the villages in the Narmada valley, over 3, 000 farmers and Adivasis led by the NBA and its leader Medha Patkar, braved the heavy rains, launched the Satyagraha against unjust submergence and displacement on August 5 2006 at Rajghat, near Badwani, Madhya Pradesh. Despite betrayal by the government and other institutions of democracy, they resolved to continue and strengthen their struggle for justice. Similarly, Satyagraha was launched at Bhitada (District Jhabua, Madhya Pradesh) on August 6th and at Chimalkhedi (Maharashtra) on August 7th. The struggle carries on.

- Priyanca M. Velath

Women's Rights – Against Rape and its Torturous Legal System

Women have been fighting for their rights for centuries and even today their struggle continues. As victims of crime, women need special laws and policies as with incidents of rape rising at an alarming rate, the failure to provide relief to the victims has become all the more conspicuous. The agony of a rape victim is augmented by the callous behaviour of the police, the social stigma and the mental trauma due to prolonged trials.

The Delhi Police claims to help rape victims in distress through "Rape Crisis Centres" in each district but the usefulness of these centres are highly doubtful. Women's organizations are demanding capital punishment for the rapists. However, what rape victims really require is stringent implementation of the law. The Hetal Parekh rape case dragged on for 14 long and arduous years. Though the rapist, Dhananjoy Chatterjee was sentenced to death, it was nothing but a derision of justice for her parents. Moreover, the conviction rate for rape cases is very low.

Thus for Rape Victims the legal system is nothing short of being torturous. As there are generally no eyewitnesses to a rape, the result of the case depends on the medical examination of the victim to a large extent. The examination has to be conducted within 22 hours of the incident, due to short sperm life and delays in many cases have confirmed rape but made it very difficult to ascertain the identity of the

The National Commission for Women (NCW) is envisaging a scheme which if cleared will make the state pay compensation for rape, a crime, which according to the National Crime Records Bureau, is registered once every half-hour

rapist. Besides, most victims felt that after the traumatizing incident lay the uphill task of getting an FIR registered for which the victim had to first shrug off doubts about

her integrity of character. On June 17, as reported in *Asian Age* (26/07/06), a woman was raped in Badarpur by two men unknown to her. The police went to her neighbourhood to enquire about her character leading her to shift her residence. "The absence of an eyewitness also calls the police to take a statement of the accused and victim before the magistrate under Section 164 Cr P.C so that they do not backtrack from their statements," said Asghar Khan, a criminal lawyer. "Generally, this is ignored and overlooked by the police and its advantage is taken by the accused", he further added.

Women become even more helpless when a heinous crime like rape is committed by the intended law-enforcers i.e. the policemen themselves. The rape of a woman by a Delhi Police sub-inspector in July 2006 has raised questions about providing fast track justice by prosecuting and punishing the rogues in uniform.

In an article in the *Times of India* (25/07/06), senior police officers said that fast track courts are the solution for all cases, irrespective of whether or not the accused is a cop. "The maximum police can do is dismiss and arrest the officer. We have the power under Article 311 of the Constitution to dismiss errant policemen without conducting any enquiry or seeking any explanation and this was done in the case of the crime branch sub-inspector. His dismissal ensures that he won't be able to exert any pressure on the victim or any of the witnesses in the case", said a senior police officer.

Lawyers like Ashok Arora feel that cases of rape by policemen should definitely be expedited. "The onus in such cases ought to be on the police to either punish the tainted within them or prove his innocence to refuse any claim of prejudice against him". He also spoke of a particular case where a sub-inspector was suspended earlier but reinstated. "His seniors should then be exposed as it is clear that he hadn't reformed himself before rejoining the force", he said. Others like criminal lawyer, Aman Sarin want

more radical changes and that cases involving a policeman should be investigated by an independent agency.

“A special court can be constituted for speeding up such cases. The fact is that in rape cases the more a trial gets delayed, higher the chance that evidence will be tampered with. Witnesses will be influenced and eventually justice will elude the victim. A swift trial, an independent probe by an agency like the CBI and you will notice how the errant cop will be nailed for sure. If an auto driver in Rajasthan can be convicted within seven days, why not a Delhi police SI?” demands Sarin. Former trial judge Prem Kumar agrees that heinous crimes like rape in which a policeman is involved ought to be transferred to existing fast track courts.

The Supreme Court in Delhi Domestic Working Women’s Forum Vs Union of India (1995 SCC (1)14) and others had directed the National Commission of Women (NCW) to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape”. The Supreme Court observed that having regard to the Directive Principles contained in Article 38(1) of the Constitution, it was necessary to set up a Criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment.

So, in a heartening development, the NCW is envisaging a scheme which if cleared will make the state pay compensation for rape, a crime, which according to the National Crime Records Bureau, is registered once every half-hour. Girija Vyas, NCW Chairperson admitted that, “There was dire need to provide rehabilitation and relief for such rape victims, especially minor girls”.

According to this proposal, if the victim is an earning member of the family, the family will get a compensation of Rs. 2 lakhs, and if she is not earning, then it will be Rs. 1 lakh. Compensation for minor victims will be given to their guardians and if the victim is killed, the compensation

could go upto Rs. 5 lakhs depending on her employment history and number of dependents. The first installment of Rs. 20,000 will be paid within three weeks of application, which must include a copy of the FIR and a medical examination report. The guidelines say that, “The balance of the compensation amount will be handed over the course of the year, subject to the victim’s cooperation with the police in the trial of the rape accused”. The decision will be taken by district-level relief & rehabilitation boards set up by state governments and headed by collectors. The boards will also have monitoring committees to provide victims with legal, medical and psychological aid. A NCW official said, states would be likely to get funds for compensation from the Planning Commission and were considering putting the scheme on the 11th Plan.

- CDHR Team

The Right to Information



The current debate on the extent to which the public can access information under the Right to Information (RTI) Act of 2005 has thrown up some interesting issues for an informed national debate. The focus of the current debate is the desirability of making notings on various files public. The Central Information Commission, the apex body under the

Right to Information Act (RTI), had interpreted the Act to include a citizen's right to get copies/inspection of file notings containing advice and opinions given by various civil servants. The government of India on the contrary, held that this right was never included in the Act and moved towards making an amendment to specify that the public cannot access notings on files of governance, except for social sector expenditure and projects. But the move has been temporarily withdrawn on account of resistance from political parties and civil society.

The RTI Act has been an empowering tool for the public. The article of Vidya Subrahmaniam (Secrecy is dead, long live secrecy' in *The Hindu*, (30/08/2006) reports two incidents of ordinary people benefitting from the Act. Mazloom Nadaf, a rickshaw puller in Bihar who had to run from pillar to post on his plea for a home under the Indira Avas Yojana in vain, finally succeeding by filing an application under the Act. The Block Development Officer treated him with dignity and gave him the cheque. In a similar case Nannu, a daily labourer from East Delhi who having done the rounds for a duplicate ration card filed a complaint under the RTI Act seeking the names of officers who drove him round the bend. He got a swift invitation from the Food and Civil Supplies office, where the officers gave him tea and the ration card along with a request to drop his complaint. At the ground level, the RTI story is a small success story.

The proposed amendment was based on the contention that the prospect of public gaze on the functioning of the civil service will hamper its objective functioning. The civil service is supposed to advise the political executive and the prospect of a public scrutiny on its advice would deter it from taking strong positions on various issues. If bureaucratic file notings are to be made public, the officials would tend to be non-committal. Mr. Arun Jaitley, Member of Rajyasabha and senior Supreme Court lawyer, in his article 'Right to information: first principles and sound practices' in *The Hindu* (24/08/2006) analyzes the source of RTI to judge

whether notings on files should be made public. According to him, this right emanates from the constitutional guarantees.

The Constitution of India guarantees, under Article 19(1)(a), to every citizen the freedom of speech and expression. In order to exercise this right effectively, one needs an informed public opinion. The right to knowledge includes the right to information. The right to information thus flows from freedom of speech and expression. The RTI Act 2005 is thus not the repository of the right to information, but merely an instrument that lays down the statutory procedure in the exercise of this right. The only reasonable restrictions on the fundamental right to free speech and expression are those under Article 19(2), which have a nexus to the interest of sovereignty and integrity of India, the security of the State, friendly relations with various States, public order, decency or morality, or relate to contempt of court, defamation or incitement to an offence. Any curtailment on the right to information cannot be on grounds of general public interest but only on grounds laid down by law with nexus to the specific circumstances mentioned in Article 19(2).

The Magsaysay award winner Arvind Kejriwal in an interview with *India Together* (posted in www.indiatogether.org on 7th August 2006) has gone into the problems with the proposed amendment. He says that the proposed amendment permits file notings to the public only in cases of 'substantial' social and development issues. The word 'substantial' has not been defined and it therefore has no meaning. What it would imply is that each time a citizen requests for file notings he or she will have to hire an advocate to argue his case of whether the particular social or development issue is 'substantial' enough to demand transparency. Further, for any information given, the name of the officer or reference to any individual will be obliterated, which means an end to transparency, as government officers and politicians, even if corrupt, will be shielded.

Vidya Subrahmaniam's article also reports that the Central Information

Commission first allowed access to file notings in January 2006 in the Satyapal case. The reasoning behind allowing file notings is: (1) file notings are essential to understand why the government came to a particular decision. Decisions are mostly based on recordings in the note-sheets and no file is complete without note-sheets having file notings. (2) a combined reading of sections 2(f), (i) and (j) of the RTI Act would indicate that a citizen has the right of access to a file of which the file notings are an integral part. But the Department of Personnel Training responded to the Satyapal ruling by putting up a website posting, unilaterally declaring file notings out of bounds of RTI applicants. The Ministries and Departments cited this posting when they refused to disclose file notings to RTI applicants.



Loads of Information but for whom? (Photo Source: indiadaily.org 2006)

The unwillingness of the authorities to share the information together with the prohibitive cost of obtaining information is undermining the very purpose of the Act. *India Together* (www.indiatogether.org 13/06/2006) reports a BBC news item showing the costs involved in getting information. A farmer in Chattisgarh was asked to pay Rs 1,82,000 when he had asked for information on paddy purchases in his area. This amount was incurred for photocopying the official documents relating to the purchases. Similarly, in another incident, a resident of Bilaspur district, Chattisgarh was told to pay Rs 75,000 for information he had requested

on the positions available for schoolteachers. The Village officials say that they do not have the money to provide information to people. They point

Village Officials point out that ever since the RTI Act came into being, the poor have risen to demand information from the government and the government does not have the money to supply it

out that ever since the Act came into being, the poor have risen to demand information from the government and the government does not have the money to supply it. The Chief Minister of Chattisgarh has stated that the poor people are being used by the well to do persons, to get information free of cost from the government (the fees are waived for the poor below the poverty line). He also has demanded that the RTI Act needs to be changed to allow the officials to examine whether the requested information is useful for the person asking for it.

A recent study conducted by Centre for Civil Society (Times of India, 19/10/2006) shows that most of the States in India lag behind in the implementation of the RTI. All states, except Jammu and Kashmir and the Union territories have been ranked on the basis of RTI compliance. It was found that only 8 out of them ranked above 50% in RTI compliance. The survey also found that literacy levels have not impacted awareness level in states. States that have high literacy levels including Kerala and Mizoram have lagged behind in the implementation of the RTI Act.

The idea that officials decide the utility of the information sought by an applicant under the RTI Act is preposterous and should not be allowed. There was a lengthy debate and discussion within civil society and with officials and government departments before the RTI Act was legislated upon. Moreover, the high cost of seeking

information seems to be a tactic of the officials to prevent more people from demanding information.

A recent study shows that most of the states in India lag behind in the implementation of RTI. In the RTI compliance ranking, only 8 states ranked above 50 per cent in RTI compliance.



Can child labour in India be truly wished away?
(Photo Source: un.org)

The Times of India (25/06/2006) also reports the irresponsibility of government officials in providing information. The Central Information Commission has found in a case related to BSNL that despite all information required by an appellant being available at one place, BSNL had asked for a deposit of Rs 9,810 for the man hours taken to compile information from different offices. The Commission has also received complaints about denial of information by public authorities. The Association of Indian Universities (AIU) had not only denied information to one Mr. Bal Krishan but did not even bother to respond to his reminders. It was only when the Commission demanded an explanation, that AIU clarified that it was not a public authority and therefore outside the purview of the RTI Act. The Commission has made it clear that any agency funded by the government and which has public functionaries on its board is considered to be a public authority. AIU receives public funds through aid from HRD ministry and its management board includes vice-chancellors of universities who are public functionaries and hence is a public authority. The Commission has asked AIU to provide information to the appellant or face penalties.

- CDHR Team

Ban on Child Labour

A new government notification has banned child labour in India. When it comes to exploiting children, India is one of the worst offenders. A UNICEF Report , World's Children 2006, states that in India 17 per cent are under the age of 15 and girls aged 12-15 are the preferred choice of 90 per cent households to work as domestic helps. Since its independence India has committed itself against child labour and Article 24 of the Indian Constitution states that, "No child below the age of 14 years shall be employed to work in any factory or mine or employed in any hazardous employment."

Through a notification dated May 26, 1993, the working conditions of children in India have been regulated in all employment, which are not prohibited under the Child Labour (Prohibition and Regulation) Act 1986. Then the government also prohibited employment of children in occupational processes like abattoirs/slaughter houses, printing, cashew nut descaling and processing, and soldering. The Labour Ministry has also prohibited government employees from engaging children as domestic help. Most recently, the Union Labour Ministry has issued a notification under the Child Labour (Prohibition and Regulation) Act, 1986. Under it, from 10 October 2006, children below 14 years of age, can neither be employed as domestic helps, nor in dhabas (roadside eateries) or eateries i.e. neither work in residences or in the hospitality sector and doing so will be an offence punishable with a fine of Rs.

20,000 and/or imprisonment between two months to three years.

The Labour Commission in Delhi claims to have chalked out a plan of action wherein Child Lines in all zones will be sensitized, an advertisement will be published informing the public about the contact numbers of the Deputy Labour Commissioners in each of the nine districts of the capital. The Commission asserted that once they receive information through any source, they would take care of the rescue and rehabilitation of the child in question. These rescued children would be temporarily accommodated in shelter homes and mid-way homes run by the Social Welfare Department while the Child Welfare Committee (CWC) would look into their cases. But in reality, limited manpower and a shortage of shelter homes is bound to hamper any zealous rescue efforts by the government. Meanwhile, awareness would also be created through consultations with Resident Welfare Associations (RWAs) and market associations. But the latter allege that there was no interaction or consultation with them. Thus, while on one hand, many shopkeepers are firing under age children with this ban in lieu, on the other, there are still many others who are not the least aware that such a notification is coming into force. The Delhi Police claims that all their police stations have been notified and that they would initiate action against complaints, but they are also quick to point out that it is primarily a labour department issue. The labour department has also prepared a complaint forum for citizens to report any instance of child labour to a court of law – be it at a neighbour's house or an eatery.

The actual effect and implementation of a rehabilitation plan is bound to be skeptical as India has actually over 1.2 crore child labourers. The Labour Ministry has asked state governments to initiate a coordinated effort to enforce the new notification. Research over the years has shown that while most of the 'dhabas' and shops employ boys from the states of Bihar and West Bengal: the domestic helps are usually girls from Jharkhand. A

study by the NGO Butterflies for UK's Save the Children Fund, has revealed that these children, especially girls, are frequently abused, made to work long hours at a stretch, beaten and even locked up, not given enough food, made to live in unhygienic conditions and are even at times, harassed and molested by their employers.

PLAN OF ACTION POST OCTOBER 10

For Delhi –

- Child Welfare Committee, before whom the rescued children will be produced, to work out rescue and rehabilitation in next 5 days
- NGOs to be intensively involved because of lack of staff, to arrange for transit accommodation after children are rescued and essentials like food, clothing, medicine, footwear.
- Programme also to include counseling for rescued children
- Creating awareness with help of RWAs and market associations, Bhagidari Cell also to help out.
- Helpline (in this case Childline) to be strengthened
- Advertisements, posters, banners highlighting punishment for child labour (Rs 20,000 as fine and imprisonment upto 2 years) For Bihar, Jharkhand and West Bengal –
- Nodal Officers to Coordinate with Delhi and provide escorts for children. They are also to provide transportation and security.
- For the first time, rehabilitation to focus on monitoring and tracking rehabilitated children. Each child to be monitored in home district and monthly reports to be sent to Delhi Government.
- Liason with District Magistrates of these states

- Indian Express, 3.10.06

According to Butterflies, in a city like New Delhi, 99 per cent of the child domestic workers are girls, 69 per cent of them have been abused and 32 per cent of them have been sexually abused. Though no exact figure for the total number of child workers in New Delhi exists, it is agreed that around 5 lakh children are employed in roadside dhabas and residences across the city and their dispersed condition actually makes their rescue a bigger challenge. Besides, as Joint Labour Commissioner Piyush Sharma pointed out, "Earlier, child labour meant children working in faraway factories. The focus is now on posh, middle class homes."

But NGOs are doubtful about how far the government would fulfill its commitment towards ensuring the children's rehabilitation and education plans. Bharti Ali of the NGO, HAQ Center for Child Rights has expressed her fear that in the absence of proper implementation of rehabilitation plans, the children may be left even more vulnerable without a shelter. She said, "The greater danger is that these children may be pushed into more dangerous circumstances by their employers making it more difficult for us to address the problem". But just the addition of these two more kinds of work to the list of hazardous work that already stands banned under the law will not ensure the complete banning of child labour. This is simply because the children employed in residences and the hospitality sector constitute only 5 per cent of the 70 million child workforce and the majority 85 per cent of children working are employed in agriculture which is not banned. Besides, critics have pointed out that the mere addition of domestic labour and hotel industry does not mean that the ban on them will work better than before. Enakshi Ganguly Thukral of HAQ has said that the basic flaw is with the law and in fact, HAQ has gone to the Supreme Court with the demand that the law be redrafted.

Other child rights activists echo this allegation that the whole Child Labour (Prohibition and Regulation) Act, 1986 is fallacious. Pradeep Narayanan of Child Relief and You (CRY) says that "The notification is as unenforceable as the law itself. Both suffer from ambiguity." Besides, the law fails to clearly define the term 'hazardous' and entails a long process to establish whether a hazardous work has been involved in an offence. The notification also leaves out household manufacturing industries. Plus, the notification does not guarantee alongside that the children will be rehabilitated. NGOs have worked out that on an average the cost of rehabilitating 100 children is Rs. 6.17 lakhs. Besides, the notification is no guarantee that the children rescued from residences and 'dhabas' will go back to schools. Banning child labour is also no guarantee that

school drop out rates will decline. What is truly needed is spreading more awareness so that people realise that they are committing a wrong act in employing children to meet their ends.

Interestingly, states like Karnataka had made efforts to ban child labour much earlier. In 2004, the Karnataka government had included a clause under the Minimum Wages Act prohibiting the employment of children under the ages of 14 in domestic work. This project, supported by UNICEF covering 16 wards in the city of Bangalore has successfully identified 1,000 children domestic helps and rehabilitated over 50 per cent of them. It has distributed Rs.13.6 lakhs as compensation to 200 children through schemes like NSS and linked adults in their families to income generation schemes. Thus, critics say that the Ministry, presenting its strategies through a new notification really had nothing new to offer.

- CDHR Team



Children continue to be employed in hazardous industries like firecrackers, tobacco etc

RIGHTS – COMMENTARIES

Law to Crack Down on Human Trade

Human trafficking and smuggling are not just signs of states plagued by poverty, corruption and absence of law-enforcement but also realities that add to the complexities of international immigration. Further, smuggling and trafficking can undermine security. By definition, trafficked persons are victims of serious human rights violations. The need to give special attention to trafficking of persons has been stressed both by the UN Special Rapporteur on Trafficking in Persons, especially women and children and by the Millennium Development Goals.

The Indian Government has decided to bring in a stringent law on human smuggling in an attempt to crack down on the increasing illegal export of manpower from India. The Ministry of Overseas Indian Affairs intends to amend the Emigration Act of 1983 to introduce a separate provision on human smuggling that will invite punishment of seven years and a fine of at least Rs. 25,000. The Ministry of Overseas Indian Affairs has discussed the issue with the Ministries of Law and Home Affairs since the new law will have to be implemented by the police along with the Protector of Emigrants, which is responsible for the welfare of Indians working abroad. Under this new law, the police can take action under the Emigration Act where the punishment will be very severe. The Home Ministry has also reportedly agreed to set up a cell to curb the illegal trafficking of women from within and outside India, with the help of the Ministry of Women and Child Development.

On 6 July, *The Hindustan Times*, reported that while the Ministry of Overseas Indian Affairs has issued licenses to 1,500 authorised recruitment agents who can send manpower abroad, officials claim the number of unauthorized agents involved in the trade are more than 10,000. The number, officials claimed, was growing rapidly as this was a low-cost- high return business. Sources said human smuggling has witnessed a sharp increase in the last two decades with a turnover of around Rs. 10,000 crores. An estimated 1,260 Indians are believed to have died in the process of being transported illegally to foreign countries.

The Protector of Emigrants has directed its eight zonal offices to launch a massive drive against the unauthorized agents, once the new law is executed as officials have claimed that Delhi, Mumbai, Jalandhar, Ludhiana, Chandigarh, Chennai and Kochi have emerged as major centres for this activity. The Home Ministry has reportedly agreed to set up a cell to curb the illegal trafficking of women from within and outside India, with the help of the Ministry of Women and Child Development. Interestingly, Pappu Yadav, an Indian gang leader, was arrested and charged with human trafficking in Nepal on 8 August 2006.

Empowering the Girl Child and Tackling Female Foeticide

The sex ratio of India had dropped from 976 women per 1000 males in 1961 to 927 women to 1000 men in 1991 and again to 933 females per 1000 males in the 2001 Census. The age-old socio-cultural preference for sons rather than daughters combined with modern technology has found an outlet in many clinics where illegal sex-determination tests are carried out for a price.



Endangered?? India's vanishing girl child
(Photo Source: hrln.org)

The recent recovery of at least 15 aborted fetuses from behind a well located private nursing home in Patiala have sent shock waves across the state of Punjab which is already fighting a losing battle with an adverse sex ratio. Recent events like these have prompted those in power like Delhi Chief Minister Sheila Dixit in expressing concern and announcing that the Government would tackle this problem by not only supporting and carrying out a comprehensive public awareness campaign against female foeticide, but also bringing about effective legislation that could help provide a foolproof system of auditing records of ultra sound diagnostic centres.

In an innovative attempt to change social attitude and educate people against female foeticide, the Ministry of Women and Child Development has asked spiritual leaders to speak against female foeticide while stressing on the positive attributes of women like 'Shakti' and 'Lakshmi' in their discourses (*Times of India*, 27/06/2006). It is expected that the positive portrayal of women would help prevent the barbaric practice of killing girl children in the womb.

In addition the Delhi government in a gesture towards economically empowering the girl child, also hopes to introduce a scheme under which Rs. 5,000 will be deposited in the name of every girl child born in a government

hospital or maternity home starting from September 2006. This scheme, prepared by the Social Welfare Department of the Delhi government, was highlighted in the budget of 2006-2007 by Finance Minister, A. K. Walia. The scheme was aimed at enhancing the enrollment rate of girls in schools and the money will be given to the girls along with the interest amount, when she attains 18 years of age. But the long term fixed deposit can be encashed only if she has attended Class X as a regular student.

Make Development Basic Human Rights

During his speech on 27th June 2006 at the first session of the United Nations Human Rights Council in Geneva Dr. Justice A.S. Anand, Ex-Chairperson, National Human Rights Commission, India has called for a paradigm shift from human development as seen in terms of economic development to human development as a basic human right. It would be interesting to note that the Indian National Human Rights Commission (NHRC) was the only Commission invited to make a statement at the Council. Dr. Justice Anand urged the Council to bring a rights perspective to the center stage in the debate over equality of opportunity. He said that the objective of human rights is the empowerment of people through human development.

Human rights are inter-dependent and inter-related and have a direct relationship with human development. According to him, the importance of the right to development needs to be emphasized, if the global inequalities are to be eradicated. The universality of human rights demands eradication of global inequalities. There exists wide disparities in different parts of the world and it must be minimized to ensure that minimum needs of everyone through out the world are met. He called for formulation of strategies to achieve this objective and said that the potential of all human beings should be fully realized in order to work for true human development.

He also referred to poverty and said it is the biggest violator of human rights. Poverty has to be eradicated through the process of human development. According to him, eradication of poverty should not be merely a development product but the agenda for such a development product should include provisions of all basic amenities for the people. In such a development process, the beneficiaries are empowered to participate in decision-making and the execution of schemes transparently and accountably and sharing of benefits equitably.

He also quoted figures from Human Development Reports and showed that there exists massive inequalities, particularly in the developing countries. The prevalence of inequalities in such magnitude makes the enjoyment of human rights rather illusory. He said that for the poverty-stricken people, the political freedoms would not have much meaning as they suffer from social evils emanating from poverty. They can enjoy the political freedoms only when their economic, social and cultural rights are protected.

He mentioned corruption as an important factor having a bearing on the development debate, as it is a violator of human rights. Good governance is not possible when there is corruption. He also mentioned the national conference organized by the NHRC on 'Impact of corruption on good governance and human rights'. He said the idea behind the conference was to highlight the importance of tackling the issue of corruption as it is seen to be one of the biggest drains of a country.

He also dealt with the issue of terrorism and said it is deeply hostile to human rights including the fundamental right to life itself. There can be no selective approach to deal with terrorism and there needs to be a united effort to fight the menace without compromising on the civil liberties of the citizens.

Dalits being Denied Dignified Treatment

The *Times of India*, on 23rd June 2006 reported that a Dalit woman sarpanch (village leader) had been paraded naked in Madhya Pradesh for not willing to pay the upper caste men from the village development fund. It was charged that she being a Dalit would not know how to spend the funds. She also had to face discrimination from the local police when she went to lodge an FIR against these men. After four days, she managed to register the complaint with the help of a MLA.

Though Articles 14 and 15 of the Indian Constitution guarantee equality before law, equal protection by the laws and non-discrimination on the basis of religion, race, caste, sex or place of origin, the Dalits have been denied equal treatment on the grounds of their so called 'low origin'. They face discrimination from many quarters – from members of upper caste communities as well as from the authorities. There have been a number of incidents of Dalit women being paraded naked and being raped by upper caste men; Dalits being socially excluded and prevented access to water and jobs and being subjected to primitive punishments. The incidents of violence against the Dalit communities bear witness to the practice of untouchability and discrimination perpetrated by our caste based social and economic system.

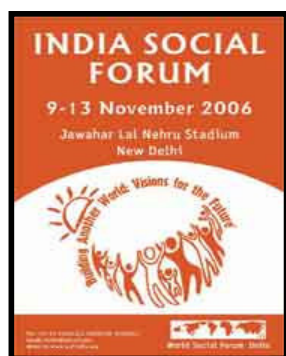
There was a public hearing on Dalit Human Rights Violations in Bangalore, India between 3-4 July 2006 organized by the National Campaign on Dalit Human Rights (NCDHR). The jury, consisting of Ms. Mary Ravindernath (Chairperson, State Women's Commission, AP); Mr. Bojja Tarakan (Senior Advocate, High Court, AP); Judge. Chandrashekaraiyah (Rd. District Sessions Judge); Ms. Prameela, Senior Advocate, HC, Cochin, Kerala); Mr. C. Chellappan (IAS Rtd, Former member of National SC/ST commission) and

Professor Samatha Desmane (Bangalore University) heard 52 cases of Dalit rights violations.

They came from 4 states – Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territory of Pondicherry. The offences that were heard can be broadly divided into six categories – offences relating to denial of human dignity, individual physical assault, imposition of social boycott, crimes against women, rape and murder and violence by police.

In the cases from all states, the particularly gruesome nature of the violence stands out. In all the complaints, in 14 cases, the FIR was not registered, in 35 cases there was no charge sheet, in 23 cases the accused were not arrested and were giving the victims/survivors, death threats. In 41 cases, the compensation had not been paid. Even in the cases that were registered, appropriate sections were cited. In most cases, rehabilitation under the Act of SC/ST Prevention of Atrocities Act (POA Act) is yet to be initiated. The only case where conviction could be obtained is under appeal.

The India Social Forum 2006



After the Asian Social Forum at Hyderabad in 2003 and the much talked about World Social Forum (WSF) at Mumbai in 2004, the India Social Forum (ISF) was held in New Delhi between 9-13 November 2006. The underlying theme of the ISF was “Building Another World:

Visions for the Future”. The ISF was organized to protest against the process of ‘neo liberal globalization, sectarian politics, patriarchy and militarization’ and its adverse effects.

Almost 50,000 participants across various states in India and from other countries in South Asia, Africa, Latin America and Europe are said to have come together in this socio-cultural extravaganza of sorts. The World Social Forum and its various events have often been criticized as being a ‘foreign funded talk shop’ or ‘nothing more than a carnival’.

An all women panel including women activists like Dr. Kamla Bhasin, Tulsi Munda and Ruth Manorama addressed the opening plenary session of the ISF. There were more than 500 meetings, seminars, panel discussions, workshops etc on various issues, including the implementation of the National Rural Employment Guarantee (NREG) Schemes, child rights, environment and development, displacement and urban evictions, food security and right to food, rights of marginalized communities like the Dalits and Adivasis, poverty, education, health, caste discrimination, right to livelihood etc.

The ISF accomplished the complex task of bringing together human rights and social activists, academics and students under one roof and creating an open space for them to interact and share their views and ideas on common issues of concern. Unfortunately, what the ISF failed to achieve is the way forward in this well-intentioned movement against the process of radical globalization. The ISF was an outlet for mutual exchange between the stakeholders in this struggle, but these exchanges become meaningless if the discussions and ideas floated at the forum do not translate into action at the policy and legislative levels.

Another aspect, worth appreciating at the ISF was the door it opened for cultural exchange. The ISF made arrangements for the presentation of

street plays, movie screenings and musical and dance performances at the venue at the end of each day. There were performances, not only from performers from various states in India but also from other countries in South Asia and Africa. The ISF also saw some interesting cross-cultural musical collaborations between Indian and non- Indian performers.

Most of the meetings and discussions were general in scope and content to ensure easy understanding and appreciation of the issues at hand. Several meetings were being conducted at the same time at different venues, which discouraged people from attending many of the meetings. The ISF had many powerful speakers and activists like Medha Patkar, Aruna Roy, Vandana Shiva, Sitaram Yechury, Jayati Ghosh, Praful Bidwai, Jean Dreze etc who put forth their points of view on several issues that affect us today. But none of these meetings or discussions fulfilled the task of paving the path for positive reforms in any of the concerned areas and remained merely rhetorical in many ways.

It is at times like these that one debates the effectiveness of public fora like the ISF that operates with such a broad social agenda in mind. While it is extremely important that social activists across India be given a platform like the ISF for engendering dialogue and communication amongst themselves, the importance of such a platform is greatly undermined if the concerns raised at the forum are not made known by way of suggestions or recommendations to the public or the government. Many of the proceedings at the ISF went unrecorded. The media failed to cover the event in its entirety; while the media covered meetings and workshops that had important persons as panelists or speakers, they ignored low profile meetings that discussed important issues.

However, civil society groups participating at the ISF agreed that there was a need for them to align and protest against anti-people policies of the government (The Hindu, 13 November

2006). It would be important to note that serious issues of social concern cannot be decided at a public forum like the ISF but it is on platforms like these, that effective dialogue is often initiated.

The popularity of meetings like these cannot be denied, as this is probably one of the few times that the so called 'traditional mass movement' in India found the occasion to converge under one roof. The convergence however, was more symbolic than actual, as the series of meetings, discussions and brainstorming sessions failed to give a definite direction to the fate of the anti-neo liberal globalization movement.

First Human Development Report of Delhi

The first Human Development Report of Delhi was released on 24 August 2006. In the report, the city of Delhi has emerged as quite an unsafe place. Only 19 per cent of the total 14,000 households considered the city as safe and half of the respondents felt that the city was not safe for women, says the Public Perception Survey 2005, included in the report to capture people's perception and their assessment of progress.

Only 6 per cent of the respondents felt that the work place was highly secure for women employees and nearly 90 per cent felt that public transport was not safe for women commuters. According to the Survey, only 24 per cent felt that the Delhi Police was performing its duties efficiently.

According to the Report, the capital city led the four metropolitan cities of India in crimes against women with 14 crimes against women for every 10,000 persons. In Mumbai and Kolkata, this count is just four, while in Chennai it is seven.

When it comes to basic public health facilities, the Report claimed that Delhi had one of the highest aggregate

per capita daily water supply of around 255 litres but the real problem was one of distributional equity as there was disregard for water as a precious resource. Incomplete coverage, short supply, unequal access, over-exploitation of ground water, deteriorating water quality and absence of adequate sewerage facilities are the many forms of water crises in Delhi, as identified by the Report.

Garbage disposal services have received the lowest rating across all localities with nearly 57 per cent of the respondents rating the services as “poor” or “very poor” and more than half the households (52 per cent) not observing any improvement in the situation.

Nonetheless, the city continues to be a favourite hub for its residents as an overwhelming majority of 82 per cent want to continue living in Delhi and nearly two – thirds (62 per cent) rate its quality of environment as acceptable. Also, around 55 per cent rate the government bus service as “good” or “very good” and almost 80 per cent of the respondents are satisfied with the conditions of the roads.

However, the Report concedes that progress has bypassed, to a large extent, for three categories of people living in Delhi: the aged, the working and street children and the disabled, who comprise around 5 per cent of the total population of Delhi.

The Protection of Human Rights (Amendment) Act 2006

The Protection of Human Rights Act 1993 (PHR Act) was enacted to establish the Indian National Human Rights Commission (NHRC) and provide for a comprehensive structure for the effective functioning of the NHRC by specifying procedures for membership, appointment, removal, term of office of members, powers and functions, investigation and inquiry of complaints etc. In 1998, the NHRC appointed a Committee, headed by Justice AM

Ahmadi to review the PHR Act, but the recommendations made by the Committee were not implemented. Human rights activists have been demanding the review of the PHR Act for a long time now.

The Protection of Human Rights (Amendment) Act 2006 (The Amendment) finally came into force in September 2006 but leaves much to be desired.

The achievements of the Amendment

Surprise jail visits - The NHRC has been empowered to perform jail visits independently without the prior permission of State Governments. This means that they will be able to perform surprise jail visits and make a better assessment of living conditions and treatment of prisoners in jails across India. However, these jail visits do not extend to detention and interrogation centres of the armed forces. (SAHRDC, 2006)

Transfer of complaints to State Human Rights Commissions (SHRCs)- The NHRC can now transfer a complaint to the SHRCs ‘from which the complaint arises’, so long as the said SHRC has jurisdiction to entertain such complaints. This will enable speedy disposal of complaints and better coordination and cooperation between the NHRC and its state counterparts. While multiplying the workload of the SHRCs, the amendment has also restricted the number of members of the Commissions from five to three.

Compensation to victims and prosecution of public servants - If a public servant is found guilty of commission or abetment to the commission of human rights violations or omission to prevent such human rights violation, during or on completion of inquiry, the NHRC may recommend payment of compensation to the victim or his family or initiation of proceedings against such public servant.

The failures of the Amendment

Compliance with international human rights standards - The definition of "International Covenants" under the PHR Act has been expanded to include those international instruments that have been adopted by the United Nations General Assembly, as notified by the Central Government. This definition leaves it to the complete discretion of the Central Government to include certain basic international instruments within the definition and exclude some others.

The appointment process - The appointment process of the NHRC has been under the scanner for sometime, especially after the appointment of Mr. P.C. Sharma, former Director, Central Bureau of Investigation (CBI) as a member in 2004. While the Supreme Court upheld Sharma's appointment as member of the NHRC, his appointment raises grave doubts about the eligibility criteria for membership to the NHRC. For example, should a police officer, with no human rights background or experience be a member of the NHRC?

It has also been argued that the appointment process is often politically motivated. The Chairperson of the NHRC is appointed by the President in consultation with the Prime Minister, Speaker of the Lok Sabha, Home Minister, and Leaders of Opposition in both Houses of Parliament and the Deputy Chair of the Rajya Sabha. In other words, members of the government of the day or related to the government have a greater say in the selection process and more often than not, such decisions are likely to be politically dependent.

The conferment of additional powers to the Secretary General of the NHRC, who is a direct Central government appointee, re-emphasizes the scope for greater government control over the functioning of the NHRC.

Others - The amendment does not address the lacunae in the PHR Act in relation to the limited scope of inquiry of

the NHRC, with regard to human rights violations by the armed forces, which is on a rise. The NHRC is barred from independently investigating into these matters and its role is merely recommendatory in this regard.

It remains silent with regard to the inability of the NHRC to investigate matters involving human rights violations that are more than a year old. Many genuine and serious complaints cannot be brought before the Commission due to this strict time limit.

On the whole, the Amendment Act pays lip service to basic international standards like the United Nations Principles Relating to the Status of National Institutions for the Protection and Promotion of Human Rights (Paris Principles) and has failed to effect a real change in the PHR Act. It has only brought about piecemeal changes, which are likely to have limited impact on the protection and promotion of human rights in India.

Scheduled Tribes (Recognition of Forest Rights) Bill 2005

Tribal communities in India continue to remain deprived of many rights. The Scheduled Tribes (Recognition of Forest Rights) Bill 2005 or Tribal Bill was drafted to fulfil their need for a comprehensive legislation, one that would bring recognition to those rights which were not recorded while consolidating state forests during the colonial period as well as in independent India. The Bill essentially seeks to recognise and vest forest rights in forest dwelling Scheduled Tribes (FDSTs) with respect to forestland and their habitat.

The Tribal Bill focuses on those FDSTs who have been occupying land before October 1980 (when the Forest Conservation Act, 1980 came into force). It delineates various rights for them like (a) living in the forest for habitation or for self cultivation for livelihood (b) community rights such as *nistar* (the right of a resident of a village in respect of cattle

grazing and collection of jungle produce) (c) right to own, use or dispose off minor forest produce (d) conversion of forest village to revenue village (e) conversion of pattas or leases issued by any local authority or any state government on forest land to titles, and (f) other traditional customary rights. Customary rights exclude hunting, trapping or extracting body parts of any wild animal.

Under this Bill, an FDST nuclear family would be entitled to the land currently occupied, subject to a maximum of 2.5 hectares and the land may be allocated in all forests including core areas of National Parks and Sanctuaries. In these core areas, an FDST would be given provisional land rights for five years, within which period he would be relocated and compensated. If the relocation does not take place within the next five years then he gets permanent rights over the land. The Gram Sabha is empowered to initiate the process of determining the extent of forest rights that may be given to each eligible individual or family.

Unfortunately, a lack of consensus within the government on some of its key issues is keeping the fate of the Tribal Bill 2005 hanging in uncertainty. Nonetheless, civil society activists have been campaigning aggressively with high expectations that the process will be expedited. The campaign to table the Bill in Parliament was led by a group of about 100 tribal rights organizations from 11 states under the banner of 'Campaign for Survival and Dignity'. They have also been trying to persuade the government to accept the recommendations made by the Joint Parliamentary Committee (JPC), which studied the Bill.

Problems arise with the absence of reliable estimates of the likely number of eligible families. No clear definitions of terms like 'livelihood needs' lead to litigation and implementation delays. The risk to existing forest cover too is doubtful because, if FDSTs in core areas are not

relocated within 5 years, it could lead to a loss of forests, which are crucial to the survival of certain species of wildlife. Besides, large-scale relocation could put the FDSTs in a position where they could be harassed. Also communities, who depend on the forest for survival and livelihood reasons, but are not forest dwellers or Scheduled Tribes, are excluded from the purview of the Bill. Finally, the Bill specifies October, 1980 as the cut-off period to determine eligibility but it does not clarify the kind of evidence that would be required by FDSTs to prove their occupancy. Thus the criticism of the Bill is, "The way the Tribal Bill is rolling out it will do away with forests, wildlife and tribals....using tribals as cover, the mighty of the city will pocket the forests using the provisions of the Tribal Bill" (*P. Devarajan, 'Leave the Tribals Alone', The Hindu, 11/08/06*)

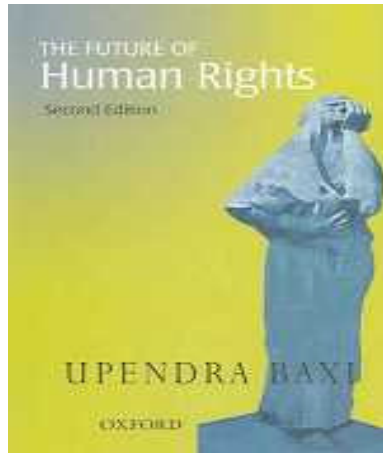
The JPC Report, submitted in May 2006, had recommended that the rights of all forest dwellers should be recognized and that the 1980 cut-off period for the recognition of forest rights be altered to 2005. While civil society activists have argued that corporates are putting pressure on the government not to 'recognise' large tracts of forestland under this Bill, conservationists have flayed the report and termed the JPC recommendations as the 'death of Indian forests and green cover'. However, tribal rights activists have hailed the report as positive for forest dwellers and urged the government to accept all the recommendations. Fearing changes in these recommendations, the activists have asserted that this Bill merely intends to recognise the land that is already being cultivated by the Scheduled Tribes. "We just want the government to recognise the land that the tribals are already using. That would ensure that they are not treated as encroachers", Shankar Gopalakrishnan, Secretary, Campaign for Survival and Dignity said. Thus, sadly, the fate of the tribals remains caught amidst this political crossfire.

RIGHTS – BOOK REVIEWS

The Future of Human Rights

By Upendra Baxi

Oxford University Press, New Delhi,
2006, pp. 339, Rs. 595.00



Reviewed by R. Venkataramani

With the publication of the book under review, Professor Baxi has joined the club of those class of thinkers and writers who generate a set of commentators.

A good deal of post-modernist writing is free from narrow doctrinaire or ideological impositions. The search for a global language towards articulating freedom struggles of a variety of rightless sections of the community is itself a product of impoverished democracies and disguised dictatorships. The struggle for the autonomy of the human person besides other requisitions to the community as also a demand for the creation of necessary conditions for the recognition, acknowledgment and promotion of that fundamental value. While this struggle seems to be eternal, the extent of community preoccupation with the contours of the struggle do vary and have always varied. Culture and

religion, economics and social adventures, have all played their apparently divided roles.

Professor Baxi has grappled with these in his book *Inhuman Wrongs and Human Rights* when he writes thus: – “The moral monotheism of rights - talk is clearly disconcerting to received habits of thought and traditions of social action. The essays in this, and the companion volume, suggest in diverse contexts that what is problematic is not so much the enunciative explosion of rights, but our reluctance to encounter it with means other than intellectual or moral fatigue, well-bred cynicism and alienating (and alienated) ethical critique.” This thought is captured differently when he writes now: – “To give language to pain, to experience the pain of the Other inside you, remains the task, always, of human rights narratology. If the varieties of postmodernisms help us to accomplish this, there is a better future for human rights; if not, they constitute a dance of death for all human rights.”

Any reflection on the contemporary forms of struggles for emancipation cannot afford to ignore the emergence of a wide range of positions well taken and whose relationship with the rights dialogues of the past itself are problematic. Several issues of human rights are apparently resolved. The enormous amount of literature, on these wide ranging positions and to a large extent propelled by the liberation issues of the female is reflective both of the strains on human reason and its great capacity. These aspects come under Professor Baxi’s scan in the following words: “An alternative reading of histories, towards which this work hopes to make modest contribution, insists that the ordinary authors of human rights are people in struggle and communities of resistance. The pluralization of claims to “authorship” contests all human rights patrimonies, and interrogates the distinction between the forms of “progressive” and “regressive”

Eurocentrism. We also, thus, discover the truth that to the tasks of realization of human rights all people, and all nations, arrive as equal strangers: and that from the standpoint of the rightless and suffering peoples everywhere all societies remain underdeveloped/developing.”

In the concluding part of the preface, two seminal warnings are narrated, one, the trade related, market friendly human rights paradigm subverting the paradigm of universal human rights of human beings, and two, techno-sciences, as codification of new material practices of power. In a significant echo of Marxist language, Professor Baxi holds, “the task now is not merely to understand these developments but to transform these in directions more compatible with competing notions of human rights future”.

The book however presents a valiant attempt to draw a bridge between the narratives in the preface and the discourses in the rest. It appears to me that while the book is like a ship with ever regenerating sails, it is informed by a constant struggle with the proposition in postmodernity, that, “the idea of history as a single unified process which moves towards the aim of human liberation is no longer credible (*see Gianni Battimo “The End of Modernity”*) and the desperations of the human rights shopkeepers and street makers.

Professor Baxi is equally alive to the truth that political philosophy has abandoned its classical vocation of exploring the theory and history of good society and has gradually deteriorated into behavioral political science and the doctrinaire of jurisprudence of rights. That is why like Costas Douzinas he is concerned, that “legal thinking has abandoned transcendence, has condemned natural law to the history of

ideas, has tamed justice and has become an accountancy of rules.”

The bewildering cacophony of human rights voices, sometimes through structured state institutions such as Courts presents another problem of adaptive repression and one begins to wonder, whether in the everyday struggles and debates, human rights are at all a mistake. Douzinas catches the point thus: “as human rights start veering away from their initial revolutionary and dissident purposes as their end becomes obscured in ever more declarations, treaties and diplomatic lunches, we may be entering the epoch of the end of human rights and of the triumph of a monolithic humanity”.

The legitimation, according to Baxi, of extraordinary imposition of human suffering in the cause and the course of the contemporary forms of imperialism, is seen as a paradigm shift seeking to cancel the historic gains of the universal human rights movements. It is an appeal to convert diffidence of outcomes to detoxification of power centres. I find it, however, difficult to proceed along with Professor Baxi when he suggests that the techno-scientific mode of production and the accompanying organic ideology threatens us all with the prospects of rendering contemporary human rights languages with obsolescence. If that is inevitably so, his endeavour to reflect on business ethics at the altar of human rights and to proclaim on the possibility of obligations, albeit by textual corrections of some of the contemporary United Nations norms, cannot be an enterprise in vain.

The book is otherwise packed in pages, abounding in paraphrases, rich in linguistic depth. They, however, will put off a first generation student of human rights or even a curious bystander. What he deals with under the sub title “The Dense Intertextuality of Norms” in Chapter 9 of the book is precisely the problem

encountered in his critical and sensitive endeavours to map a new point.

One school of thought proudly proclaimed dialectical materialism as the ultimate tool of all analysis. Its lofty claims are now part of the march of History. If human rights can claim to be a tribunal of history, what political and ethical utopias have to be ever present is a challenge posed by Professor Baxi. Will Human nature ever awaken to itself?

The formidable challenges could have been posed by him in language and thought accessible to the laity.

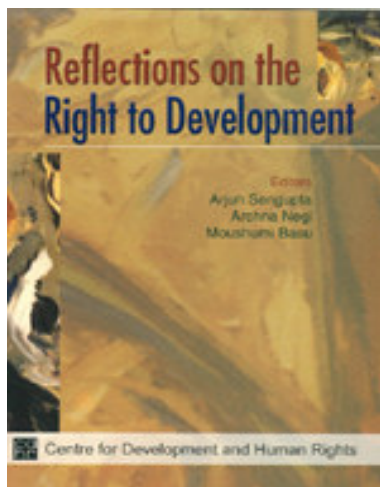
(R. Venkataramani is a Senior Advocate of the Supreme Court, with a long record of engagement in Human Rights activities at the National and International Level; is honorary Counsel of the National Human Rights Commission spends time for the equality rights of the unorganized sector; and writes on legal issues generally.)

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Reflections on the Right to Development

Edited by Arjun Sengupta, Archana Negi,
Moushumi Basu

Sage Publications, New Delhi, 2005, pp. 366,
Rs. 650.00



This book contains some of the papers presented at the third workshop on the Right to Development Project, which

was held at New Delhi in August 2003. Right to Development is one of the most discussed and contentious issues. After inadequate support in the 1970s, the concept of a New International Economic Order finally got recognition in 1993 as Right to Development as a human right. This come back of the issues significantly brought within its ambit, civil and political rights on the one hand, and, on the other, economic, social, and cultural rights, indicating a growing recognition of the linkage between rights and development. Sadly, there is no consensus over an exact definition of Right to Development as a concept.

The volume is divided into three sections; An Introduction to Right to Development; Studies in Right to Development; and Social Choice and Right to Development. Section I provides introduction to the concept of Right to Development in its theoretical and historical aspects. Section II contains empirical studies that throw light on various aspects of Right to Development concept. Section III is devoted to two studies in the linkages of rights with the social choice framework.

Professor Arjun Sengupta was Independent Expert on the Right to Development during 1999 and 2003, and his reports submitted to the UN Commission on Human Rights have given considerable support to issues under Right to Development. According to Sengupta, Right to Development is more than a sum of a set of rights. The value addition of the Right to Development framework includes viewing of development as a process facilitating the realisation of all human rights.

Among the more controversial aspects of Right to Development that Sengupta addresses are the basis for its claim as a human right, justiciability, monitoring, resource scarcity, etc. While examining the practical implementation of Right to Development, Sengupta points out that

the duty of the international community to cooperate in order to implement Right to Development is absolute. The overall responsibility of developing countries themselves to implement Right to Development is, however, not diminished even in the face of inadequate international cooperation. Sengupta makes an innovative suggestion towards building a cooperative relationship between the developed and developing countries in the form of a 'Development Contract' – an agreement based on mutual commitment and reciprocal obligations.

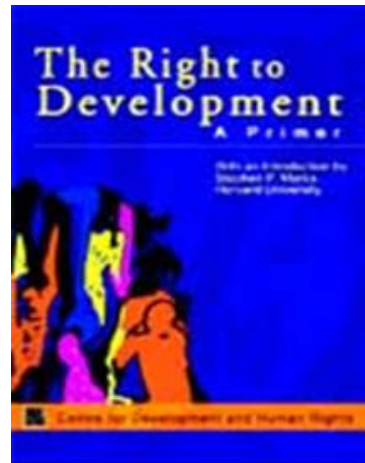
He identifies three basic rights, to food, health and education as a good starting point. Realising rights requires growth in resources, but growth must take place with equity and according to human rights standards. Further, the focus should be on protecting the worst-off, the poorest and the most vulnerable. Since poverty is the worst form of violation of human rights, poverty eradication is essential to realising Right to Development. But the concept of poverty is not restricted to income poverty, it extends to capabilities poverty.

Besides the paper by Arjun Sengupta, papers entitled, 'An Essay on Human Rights Approach to Development' by Siddiquir Rahman Osmani, 'Right to Development: Where are We Today?' by Rajeev Malhotra, 'Poverty and Inequality in India' by Angud Deaton and Jean Dreze, 'The Right to Development' and 'International Economic Regimes' by Jayati Ghosh. 'The Right to Development and Human Rights; A Social Choice Approach to Implementation and Measurement' by Manimay Sengupta are other notable contributions. This book is a distinctly important contribution to understanding of Right to Development

**Jayant Kher, 'Realizing Rights',
Business India, 22 October 2006**

Centre for Development and Human Rights 2004: The Right to Development: A Primer

Sage Publications, New Delhi, 2004, pp. 293, Rs. 720.00



Those who have followed Dr Arjun Sengupta's writings in recent years would agree that *The right to development: a primer* is a fitting culmination of his work as Independent Expert to the United Nations on the Right to Development (RTD). The 'rights' slant is not new to development studies; for over a decade, debates in reproductive health, indigenous people's rights and participatory development have staunchly drawn on the idea that human rights and development are inextricable. The primer, the initial offering of the Centre for Development and Human Rights, aims to set a conceptual foundation for these linkages at a level that will prove insightful for both the subject-expert and a lay audience. Focusing on the themes of food, education and health because 'they are complementary to the non-derogable right to life, which is the foundation of all rights' (p. 73), the book also examines the reality of the RTD within the legal and institutional structures in India. Sengupta's primer traces the concept of RTD over a long line of development approaches; from strategies that maximized GNP to the Human Development approach, which emphasized development of individual capabilities along with growth. The Human Rights approach sought to provide individuals with a claim to realize the fruits

of development and hold the State accountable to ensure its availability. The RTD has evolved from these earlier approaches; RTD brings together development as a human right (in that it is universal and indivisible), a rights approach to development (that is, development must be *inter alia* equitable, just, nondiscriminatory and participatory), individual and group claims over both the outcomes and processes of development while simultaneously emphasizing collective economic growth. This is a tall order. RTD clearly calls for an alignment of development policies and programmes with legal and human rights frameworks. RTD also links rights with duties; that states are endowed with the responsibility to ensure that conditions for development are made available. These are challenging, if not inherently conflicting, ideals. Nonetheless, it offers promising parameters for development in the twenty-first century. Without doubt, the book lives up to its intent to be a primer on the subject of RTD. It is a very useful guide in that it unravels with scholarly rigour what has thus far been a disconnected morass of vision, legal directives and scatterings of public policy. The complement of the conceptual overview with the programmatic application of RTD in a country context provides a recognizable translation of vision into action. The latter part on India, in particular, nicely brings together development trends in food shortage, health care and education and attempts to align the statistics with programme provision. The inset boxes with news reports and legal case summaries lend a dynamic dimension that augments the presentation of theory and fact. It is, however, the finesse of its 'primer' approach to writing on a topic such as RTD that precipitates its own shortcomings. The book follows a pattern of listing collated facts – be it of existing legal or programme provisions in a selected area. Admittedly, for the beginner in the field this can be a blessing. The book does present the terrain of development and human rights as a simple aggregation of legal guarantees plus government programmes. It is tempting to infer that where dysfunctions

of realizing the rights to education, health or food occur, these are an oversight or inefficiency on the part of the state or agency concerned. The urge to simplify, unfortunately, obscures the reality that it is the *complexities* that lead to failures in RTD. The right to development of one group, for instance, is likely to encroach upon the rights of another. Tradition and culture are often a formidable challenge in any interpretation of social change. In India, one must not forget that the imperatives of the state's development approaches themselves constitute a violation of RTD. A similar oversight is evident when listing international instruments such as the Development Compact or PRSPs. The 'how to' approach implies that these are benign instruments waiting to be activated for the benefit of the Third World; critics (see, for e.g., Craig and Porter, 2003) would argue that these very instruments infringe developing countries' right to self development. The book also progressively relies on a human rights institutional and juridical framework for the effectiveness of RTD – what are limits here? What role do the relationships between states, individuals, civil society, the market and other groups play in RTD?

A lens that provides this higher-level analysis would have augmented the substantive claims that RTD is realized in its ability to be a vector, an interlinked and interdependent unity. An in-depth case analysis of the Narmada Dam (briefly touched upon in the primer) or the inconsistent development of Reproductive Health Policy in India would highlight that RTD is not merely a matter of more programmes or Enquiry Commissions. Rather, the layers of conflicting social, policy and development expectations often stymie the goals of RTD. The concepts outlined in the initial chapters would have profited from a candid analysis of limits of the concept of RTD: what are the constraints when trying to meaningfully represent this idea for human development? Universality aside, is there one notion of RTD that fits all or are we to conceive of RTD as interpretations in localized spaces? And

with what consequences? The chapters on women's rights within the context of the larger purpose of the book appeared superficial and confounding. The book would have been an apposite opportunity to glean an understanding (or generate a debate) of a gender-based identity of the RTD. But, instead, the chapters on gender paid conventional homage to the various international and national human rights instruments governing 'women's issues' ranging from citizenship to *Sati*, the practice of widow-burning; the direct links to RTD were unclear. These comments could be misplaced for, as Dr Sengupta remarks in the Preface, there are 'challenging' domains within RTD that will be tackled in further volumes. I, for one, shall certainly await to see how the curly questions are addressed.

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- Craig, D. and Porter, D. 2003: Poverty reduction strategy papers: a new convergence. *World Development* 31, 53-70.

**Rachel Simon-Kumar (Te Puni Kokiri/Ministry of Maori Development, Wellington, New Zealand), Progress in Development Studies 5, 4 (2005) pp. 343-353*



The Centre for Development and Human Rights (CHDR) is, a research organization based at 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.
- Organizing seminars and workshops on aspects of development, public policy and human rights.

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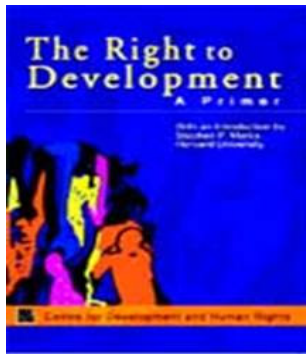
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Professor Stephen Marks

Harvard School of Public Health, Harvard University

Professor George Waardenburg

Emeritus Professor, Erasmus University, Rotterdam

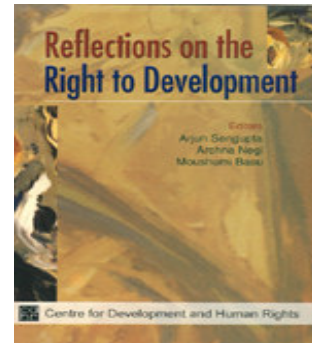


The Right to Development (RTD), a concept that emerged in the 1970s, is one of the most debated and contentious issues in international relations. RTD builds on the rights based approach to development, seeking to integrate the norms and principles of human rights with policies and plans to promote development. Despite its importance for the world's poor and dispossessed, a great deal of definitional confusion still surrounds the concept.

This primer introduces the concept of RTD as well as discusses its practical application in the Indian setting. It is divided accordingly into two sections, the first of which traces the origins and the evolution of the idea of RTD. This section identifies the defining parameters and content of RTD and focuses especially on the three rights – the rights to food, education and health – that have been identified as a 'good starting point' for the implementation of RTD. The last chapter in this section underscores the importance of women's rights in order to emphasize the need to focus on safeguarding and promoting the human rights of vulnerable groups.

Part II covers substantially the Indian situation relating to RTD. The first chapter in this section provides an overview of the legal and institutional mechanism in India for the protection of human rights in general and women's rights in particular. The next chapter examines the implementation of the rights to food, health and education. The last chapter in this section details the functioning of Public Interest Litigation (PIL) – which has emerged in recent years as an important mechanism for securing social justice – and the challenges and limitations of this mechanism.

Providing a comprehensive, lucid and innovative synthesis of current thinking on RTGD, this book will be of considerable interest to human rights activists, government departments and planning agencies, and non-governmental organizations working in the fields of development and/or human rights, while being of equal interest to researchers in the fields of development, human rights and law.



The Right to Development (RTD) is a new and highly contested right. Its emergence is linked to the demand for a 'new international economic order' by developing countries. Composite in nature and integrating civil and political rights with economic, social and cultural rights, the RTD approach underscores participation, a fair sharing of benefits, transparency and non-discrimination.

The present volume explores the theoretical and practical aspects of RTD as an alternative to existing approaches to development. It brings together the reflections and insights of some of the finest scholars on the specific aspects of RTD.

- Section I introduces the concept of RTD in its theoretical and historical aspects, and explores its implications for development.
- Section II contains empirical studies that throw light on various aspects of RTD/. These are an evaluation of Sri Lanka's development process from the RTD perspective; an enquiry into the trends and characteristics of poverty reduction in India; a case of public action and participation in Kerala; and the relationship between RTD and existing international economic regimes.
- Section III explores the theoretical underpinnings of social choice theory and its application to RTD. It draws attention to the problems involved in aggregating individual interests with social preferences.

An important contribution that enhances our understanding of RTD and provides the basis for further discussion and research on the subject, the volume will be of considerable interest to researchers in the fields of development studies, human rights, law and society policy.