

# ***RIGHTS AND DEVELOPMENT***

## ***Bulletin***



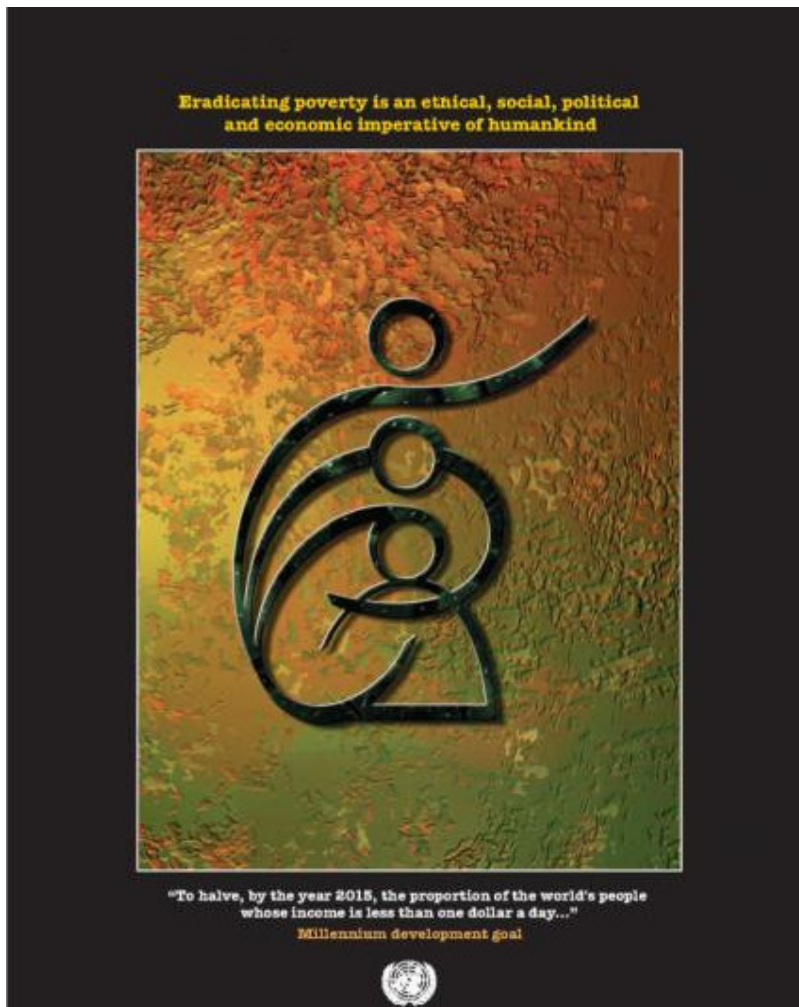
**Centre for Development  
and  
Human Rights**

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VOLUME 1, ISSUE 8

MARCH 2008-MAY 2008

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Human Rights**

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 It has a few short special articles, published and unpublished, in this area, and a section on brief analytical features on some of the major developments.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

This Bulletin is prepared by a team of young researchers, Ms. Priyanca M. Velath, Ms. Ipshita Sengupta, Ms. Avani Kapur and Ms. Pragya Singh as joint editors. The work of the team has been supervised by Ms. Jayshree Sengupta, (Editor-in-Chief) and a Board of Editorial Advisors 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), Mr. Ravi Nair (Executive Director, South Asia Human Rights Documentation Centre) and Dr. Arjun Sengupta, (Chairman - CDHR).

The Bulletin is available on the website of the Centre for Development and Human Rights, [www.cdhr.org.in](http://www.cdhr.org.in)

### *From the Editor-in-Chief's Desk*

In the last two months, international oil and food prices have shot up in an unprecedented manner. During this period India's human rights record was also put to test by the international human rights community. The March- May 2008 issue of the 'Rights and Development' Bulletin begins with a focus on these issues. The global food crisis and India's own inadequate food supply and distribution mechanism have badly hit India's food security situation. Despite an overall increase in domestic food production, India still faces an acute food shortage and people continue to suffer from malnutrition and die of starvation. The Bulletin tries to analyse this area of concern and offers some possible solutions in this regard.

India's human rights record came up for review before the Human Rights Council in April 2008 and this issue of the Bulletin looks into the process of Universal Periodic Review (UPR) and how effective it has been in ensuring accountability of the State parties on the human rights front. The question of inclusive growth has been addressed in the form of a critique of the Report of a Panel appointed by the Planning Commission on financial sector reforms. Whether the existing rural credit mechanisms should be replaced by a new system of private credit for the purpose of inclusive growth has been examined.

The recent elections in Nepal and the ushering in of a democratic regime have thrown up several challenges for the new government, particularly in relation to Nepal's economic growth and development and human rights. We have attempted to look into some of these questions and recommended certain positive measures that the democratic government could undertake to ensure Nepal's overall progress. Outgoing migrant workers from the South Asian region face severe violation of their human rights in the form of low wages, ill-treatment, poor living conditions and denial of the right to voluntary return etc. A proposed Model SAARC Declaration on Labour Standards for Outgoing Migrants from the SAARC countries has been discussed in this issue.

In our commentaries section, we have covered a wide variety of topical subjects, including the impact of the inflationary spiral on the poor in India and the human rights implications of the anti-conversion law that was recently enacted by the state of Gujarat. Questions of judicial accountability under the Right to Information (RTI) Act and the judiciary's constant endeavour to stay out of the scope of the RTI Act have also been assessed. A little known amendment to the Karnataka State RTI Act attempted at limiting the scope of information sought has also been brought to the attention of our readers.

Positive developments such as the introduction of a health insurance scheme for persons with disabilities and the Supreme Court's order of a fresh inquiry into the Godhra riots have been highlighted. The actual impact of the Sixth Pay Commission's recommendations on government salaries and work culture and the corruption in the implementation of the mid-day meal schemes in India have also been studied. We have also examined the feasibility and effectiveness of the recently announced Loan Waiver scheme for small farmers. Lastly, among significant international developments, India's dismal record in the implementation of economic, social and cultural rights, as per the review of the UN Committee on Economic, Social and Cultural Rights has been discussed in detail.

We look forward to your comments and feedback as it would help us improve the Bulletin further.

*- Jayshree Sengupta*

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## RIGHTS – FEATURES

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### India's Universal Periodic Review

India became one of the first countries to be reviewed under the Universal Periodic Review (UPR) mechanism of the Human Rights Council (HRC) on 10 April 2008. The UPR process introduced by the HRC aims to review the human rights records of all member-states of the United Nations once every four years.

The process involves a thorough review by the UPR Working Group (WG) comprising of all UN member-states and assisted by a *troika* that conducts the review and prepares the final report which is adopted by the WG and the HRC. India is currently a member of the HRC (2007-2010) and thus, it is even more important that she is able to establish her human rights credentials before the international community.

The members of the *troika* who were responsible for conducting India's UPR review were Indonesia, the Netherlands and Ghana. The UPR WG based its findings on India's human rights record based on the State Report submitted by the Indian government ahead of the review (A/HRC/WG.6/1/IND/1), compilation of official UN documents (A/HRC/WG.6/1/IND/2) and information provided by other stakeholders (A/HRC/WG.6/1/IND/3).

The compilation of information by the UN and other stakeholders pointed towards several human rights violations in India, especially with regard to special security and counter-terror legislation, custodial torture, caste-based discrimination, violence and discrimination against women and sexual

minorities, communal violence, violence against human rights defenders and independence of the National Human Rights Commission (NHRC).

In its State Report, the Indian government emphasised that a tradition of human rights is entrenched in Indian culture. The report claimed that a broad and inclusive national-level consultation was undertaken involving the various stakeholders for the preparation of the report. With regard to India's compliance with international human rights standards, the report merely listed all the international human rights conventions that were ratified by India. However, no mention was made as to how these international human rights standards were being implemented at the domestic level.



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The government of India also referred to its commitment towards upholding the obligations under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT) by signing the same. India is yet to ratify the CAT but has not provided any reason as to why she has not ratified it so far.

The report also refers to the voluntary pledge and commitment made by India in support of her candidature for re-election as a HRC member. The report claims that the Indian government has fulfilled most of the pledges and the "rest are being carried out in

earnest” but makes no attempt to elaborate on actions taken to further or implement the pledges made as a member of the HRC.

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A strong emphasis is placed on the importance of the Right to Development (RTD) in the report. While the high figures of India’s GDP growth are on proud display, no mention is made of measures taken to address poverty and unemployment. The reasons for the failure in the implementation and corruption in the National Rural Employment Guarantee (NREG) Programme and the adverse effects of the Special Economic Zones (SEZ) on poor, small land holders have not been addressed.

With regard to civil and political rights, the national report expresses a tough stance on terrorism and describes terrorists as ‘the biggest violators of the most basic of human rights, the Right to Life’. While terrorism cannot be justified, the Indian government makes no attempt to justify its own retrograde anti-terror legislation like the Unlawful Activities (Prevention) Amendment Act 2004 (UAPA) which contains similar provisions as the now repealed Prevention of Terrorism Act 2002 (POTA).

Like POTA, the UAPA contains a broad, arbitrary definition of what constitutes a ‘terrorist act’ and the listing of terrorist

organisations as those that may be ‘involved in terrorism’ is in complete violation of due process of law (SAHRDC/HRF/106/04).

A similar rhetoric was adopted in the State Report with regard to the implementation of economic, social and cultural rights. A cursory reference was made to ‘inclusive growth’ and empowerment of the disadvantaged like women, tribals, scheduled castes, minorities and other backward classes. The focus of the government on rural development through programmes like Bharat Nirman and NREG were mentioned.

Yet again, the report did not capture the failure of these programmes to achieve their objectives. Merely referring to the NREG programme as a ‘path-breaking initiative’ without taking stock of its inherent shortcomings clearly points towards the lack of political will to ensure effective implementation of poverty alleviation programmes.

With regard to women’s rights, a number of legislative and policy measures are listed in the report that are addressed towards improving the plight of women in India. India’s position with respect to protecting and promoting women’s rights was summarised by the CEDAW Committee in its concluding observations on India’s second and third periodic reports in early 2007.

The CEDAW Committee concluded that the information provided by India was inadequate and sought additional information on the plight of women after the Gujarat riots, existing and proposed legislative measures for empowerment of women, gender-based violence, discrimination against women, women’s participation in public life, education, health, employment, condition of rural women and efforts at ratification of the Optional Protocol to the CEDAW.



With regard to child rights, India referred to her efforts at abolishing child labour by banning employment of children as domestic servants or labourers at roadside eateries, teashops, restaurants, hotels and other recreational centres. Needless to say, these efforts have been far from successful as children continue to be employed and exploited, especially in the unorganised sector.

On the whole, India's State Report is not truly reflective of the reality of the human rights situation. India's presentation of facts is inadequate and does not provide a complete picture of the issues being addressed. They merely list certain measures taken by the Indian government without analysing more important questions as to their actual efficacy on the ground. The lack of political will to address human rights concerns runs as a thread through India's national report and despite the government's tall claims of achieving several legislative and policy milestones on human rights, a lot remains unknown and yet to be done.

The Indian delegation at the UPR was led by H.E Ambassador Swashpawan Singh, Permanent Representative of India to the United Nations along with 13 other members. Interestingly the initial drafts of India's national report were prepared by the NHRC, which gives rise to serious questions about the credibility of NHRC as an independent human rights monitor (*ISHR, Human Rights Monitor, India Report*).

The interactive dialogue comprised of questions and recommendations from HRC member states relating to a range of issues including child labour, ratification of CAT, the Armed Forces Special Powers Act, 1956 (AFSPA), caste-based discrimination, communal violence, violence against women etc.

On the question of ratification of CAT, the delegation said that 'ratification was in progress'. The delegation dealt with attacks on the AFSPA by emphasising that the Act was subject to administrative and judicial review. The delegation justified the continued operation of the AFSPA on the ground that a constitutional bench of the Supreme Court of India had upheld the constitutionality of the Act.

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It must be mentioned here that the report of the Justice B.P. Jeevan Reddy Committee to review the AFSPA submitted in June 2005 recommended that the AFSPA be repealed on the ground that it "is too sketchy, too bald and quite inadequate in several particulars". Unfortunately, the Indian government has shown no signs of adopting the findings of the Committee.

Yet again, India consistently denied the existence of racial discrimination in India despite the CERD Committee's sharp rebuke of their stance. Mr. Goolam E. Vahanvati, India's Solicitor General, echoed the Indian government's claim that caste is not 'racial' in origin. With regard to communal violence, the Indian delegation stated that measures were taken to tackle communal violence at the local level by setting up local committees to promote better understanding between communities. Mr. Vahanvati also justified anti-conversion laws enacted in some states on

the ground that they would regulate ‘forced conversions’.

With regard to the Foreign Contribution Regulation (FCR) Bill, the delegation said that it was intended to limit the acceptance of foreign funding for bonafide purposes only, so that they are not misused for activities detrimental to national interest and that the Bill is still under review. However, a close reading of the provisions of the FCR Bill will reveal that in the absence of a definition of the term ‘national interest’ in the Bill, any individual or organisation could be arbitrarily deprived of funding.

***While the UPR has provided a platform for the first time in the history of the United Nations for a country’s human rights record to be put through the scanner, its worth as a successful review mechanism is yet to be established***

The Bill prohibits foreign funding for “organisations of a political nature, not being a political party” and the power to determine what is an “organisation of a political nature” lies at the discretion of the Central government indicating that any NGO or individual working on issues with political overtones could be targeted by the provisions of the Bill, thus, adversely affecting freedom of the civil society and human rights defenders in India. (SAHRDC/HRF/156/06).

On the question of rights of sexual minorities, Mr. Vahanvati referred to the view of the Law Commission of India that “Indian society does not currently accept homosexuality as an acceptable form of behaviour” and said that the issue is under judicial review. He also stated that India could not extend standing invitations to United Nations special procedures but would extend

all cooperation when they do visit with ‘proper notice’. He also made a brief reference to the growing divide between the rich and poor despite India's high rate of economic growth and that the government was waiving farmers’ loans etc to bring some respite.

In his concluding statement, Mr. Swashpawan Singh stated that the delegation had tried to address all queries in a transparent manner and that many of India’s human rights initiatives were seen as “best practices” across the world. He also expressed India’s support to the UPR mechanism. Some of the conclusions and recommendations that emerged from the UPR were immediate ratification of the CAT, involve civil society in the follow-up to the UPR, signature and ratification of the Optional Protocol to the CEDAW, ILO Conventions, share best practices in the promotion and protection of human rights, devise new mechanisms to address socio-economic inequities, and take into account recommendations of treaty bodies and special procedures etc.

While the UPR has provided a platform for the first time in the history of the United Nations for a country’s human rights record to be put through the scanner, its worth as a successful review mechanism is yet to be established. For instance, in India’s review, member states raised a few pertinent questions exposing the loopholes in India’s claims about their strong human rights commitment. Despite highly inadequate responses from the Indian delegation, the reviewing countries seemed content with whatever responses they received and most of India’s unsubstantiated claims went unchallenged.

The *troika* responsible for preparing India’s UPR report, instead of questioning some of India’s human rights practices showered praise on the delegation for an “excellent presentation” and a “high quality”



national report. The ‘universality’ of the review process remains suspect as countries carefully measured their words while evaluating the human rights records of their peers. Human Rights Watch summed up the first session of the UPR as being “undermined by inconsistencies and the timidity of some governments in reviewing others” and that the “review can only help to end abuses if states take their responsibilities seriously instead of hiding behind pleasantries” (*Human Rights Watch, April 18, 2008*).

**-CDHR Team**

### **The Global Food Crisis and its Impact on Food Security in India**

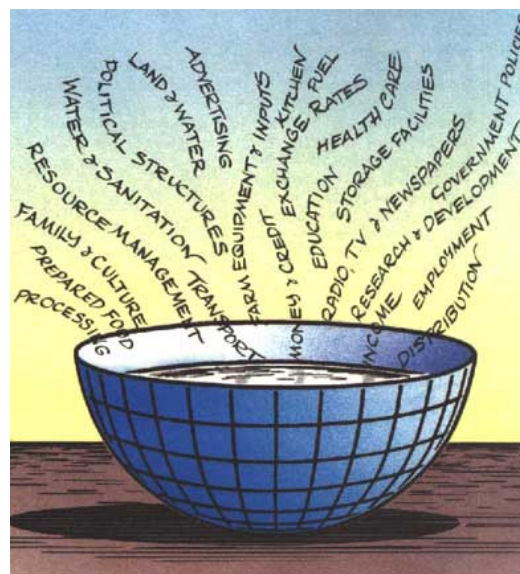
The startling revelation by the Director-General of the United Nations Food and Agricultural Organisation (FAO) that there are 4-5 million tonnes (MT) of cereal stocks to feed the world population for only 8-12 weeks, accompanied by news of food riots across the world, in Argentina, Zimbabwe, Bangladesh, Egypt, Indonesia, and Cameroon have opened the eyes of the world to the global food crisis at hand. (*The Times of India, 09/04/2008*).

Political unrest over the food crisis has resulted in the resignation of the Haitian Prime Minister; hoarding rice has been made punishable with life imprisonment in the Philippines and army troops have been deployed to prevent seizure of foodgrains in Pakistan and Thailand. (*The Economist, 17/04/08*). Unlike past localised and food crises due to war, strife or climatic disasters – the recent crisis is different – occurring in many countries simultaneously.

The global food situation is alarming. There has been a sharp rise in food prices in the past year, with wheat and rice prices rising

77 per cent and 16 per cent respectively, which have further accelerated this year. Since January 2008, rice prices have soared by 141 per cent, while the price of wheat has risen by 300 per cent in some places. (*The Economist, 17/04/08*). Domestic economies have typically limited exports of food grains resulting in a shortage of food supply in the international market and further rising prices.

While the Indian government assures that the food crisis situation is under control with a bumper crop of 227.32 MT in 2007-2008 and the “highest wheat procurement since independence” at 21 MT for the Targeted Public Distribution System [TPDS] (*The Hindu, 24/05/2008*), India as the world’s second most populous country and second and third largest producer of rice and wheat respectively, still faces an acute problem of food security.



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The right to food was established in international law under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises the “right of everyone to an adequate standard of living” and “the

fundamental right of everyone to be free from hunger”. The corresponding obligations of providing equal access and availability of food was further elaborated in General Comment No. 12 (GC12) on the right to adequate food in 1999.

Having signed and ratified the ICESCR, India has accepted her responsibility to take steps to guarantee the right to food and ensure food security defined at the World Food Summit (1996) as, “*when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.*”

India’s food security policy has been to attain food self-sufficiency by procuring food grains from farmers at the centrally-declared Minimum Support Price (MSP), stocking them in warehouses, and then making them available to all its citizens at affordable prices through numerous schemes such as the targeted Public Distribution System (PDS), Antyodaya Anna Yojana, Food for Work Programme etc.

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Besides, the interim orders of the Supreme Court of India in *People’s Union for Civil Liberties (PUCL) vs. Union of India* (Civil Writ Petition No. 196 of 2001) or the *Right to Food* case are milestones in the

fulfilment of the right to food and food security in India. The petitioners in this case argued that the right to food is a fundamental right under Article 21 (right to life) of the Indian Constitution and that India’s large food stocks be used to fight hunger and starvation.

The apex court has, from time to time, passed several orders to implement various aspects of the right to food in India, including the implementation of government schemes on poverty alleviation, employment generation and universalisation of access to food for children like the mid-day meal schemes, monitoring of the PDS, and government accountability in starvation death cases. Although the apex court has not expressly pronounced the right to food as a fundamental right under the Indian Constitution or a legally enforceable right, the progressive orders and directions passed by the court recognises that such a right exists.

Although India is not listed as one of the 37 countries facing a food crisis by the FAO, thousands of Indians die every year due to hunger and starvation. The existence of rampant corruption, inadequate implementation of government schemes on the ground and lack of government accountability has led to household food insecurity of the worst kind.

Worse still, the government has failed to account for these starvation and hunger-related deaths and government statistics attribute such deaths to illness, epidemic and other natural causes of death. In fact, Prof. Jean Ziegler, the former United Nations Special Rapporteur on the Right to Food on his mission visit to India in 2005, expressed concern about the government’s inability to translate increased food production and availability to household food security.

The situation is further aggravated by inflation driven by high food prices and stagnation in domestic agricultural production growing at barely 2.5 percent over the last five years. Consequently, current per capita output of wheat and rice is at its 1970s level. (*BBC News, 07/04/08*). The greater dependence on international markets, low minimum support prices for farmers and, declining investment in agriculture has worsened the situation of farmers and resulted in at least 17,060 farmer suicides in 2006. (*National Crime Records Bureau, 2006*)



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The government has taken short-term preventive steps to avoid a food crisis and increase agricultural production including; fiscal measures like eliminating tariffs on rice, wheat, pulses, edible oils and maize; administrative measures like banning exports of non-basmati rice, wheat, major edible oils and major pulses and imposition of stock limits on other products; periodic enhancements in MSPs for rice and wheat etc. (*The Hindu Business Line, 13/5/08*).

In addition, the government has also initiated medium-term strategies to increase agricultural production through investment of Rs. 30,000 crores and launched the National Food Security Mission aimed at ensuring food security for all by 2012 through increase in production of rice, wheat and pulses and the Rashtriya Krishi Vikas Yojana to encourage

public investment in agriculture and related sectors.

According to Dr. M.S. Swaminathan, renowned scientist and the father of India's Green Revolution, the right to food has to be recognised and enforced as a fundamental human right, both legally and socially, without which 'the hungry will have to eat only promises and platitudes'. In order to ensure future food security and contain prices in the long run, focused policies at both the production and distribution level are needed. Dr Swaminathan recommends a five point programme including water harvesting, soil healthcare and conserving untapped yield reservoir in rain-fed areas. He also emphasised on the need for the central and state governments to exercise control on the implementation and delivery of the PDS and other food-related poverty alleviation and employment guarantee programmes (*The Hindu, 15/04/2008, 02/06/2008*).

The statement of the Managing Director of the Asian Development Bank that "the era of cheap food is over" ([www.adb.org](http://www.adb.org)) clearly points towards the alarming nature of the recent global food crisis. At the High-Level Conference on World Food Security held in Rome from 3rd to 5th June 2008 organised by the FAO, Mr Ban Ki-moon, Secretary-General of the United Nation, stressed the need to raise food production by 50 per cent by 2030 to help check the rising prices that threaten to plunge millions more into poverty.

India has more reason to worry as it also has one of the highest child malnutrition rates comprising one-third of the world's malnourished children and another 1.5-1.8 million children are at risk of being malnourished due to rising food prices, according to latest UNICEF reports. Today, India has to accept that if the agricultural stagnation, corruption at the level of

implementation of schemes like National Rural Employment Guarantee Programme (NREGP) and food security schemes, ineffective targeting of foodgrains to people below the poverty line, and rising prices continue, it may disprove Sen's thesis that famines don't occur in democracies.

**-CDHR Team**

### **Model SAARC Declaration on Labour Standards for Out-going Migrants**

"International migration has become an intrinsic feature of globalisation (and) today, one human being out of every 35 is an international migrant." ([www.unesco.org](http://www.unesco.org)) According to the 2005 estimates of the International Organisation for Migration (IOM), there are 191 million migrants, comprising 3 per cent of the global population ([www.iom.int](http://www.iom.int)). Migrant workers emigrate for various reasons, ranging from poverty, better employment opportunities, war, civil strife, persecution and natural calamities.

However, they become vulnerable and suffer a loss of rights in their destination countries in the form of discriminatory policies of receiving states, arbitrariness of the employers, unscrupulous recruitment practices, low and irregular wages, poor working and living conditions, fear of arbitrary detention and lack of legal support and services. Besides, on return they also face difficulties in re-integrating in their home countries.

With the aim of ensuring basic labour standards and securing better rights protection to all out-going migrants from SAARC countries, the Second Residential Training Workshop on Migration, Globalisation, Security and Development, deliberated and

produced a '*Model SAARC Declaration on Labour Standards for Out-going Migrants*'. This workshop was held in Nepal in March 2008 and conducted by the South Asia Migratory Resource Network (SAMReN) of Bangladesh in collaboration with the Nepal Institute of Development Studies (NIDS) and the Institute of Development Studies (IDS) at Sussex, U.K.



**The logo for the Declaration as designed by participants of the SAMReN workshop © SAMReN**

This Model Declaration serves as a crucial beginning to a process of legitimising the rights of migrant workers within a regional framework in South Asia. Academics, lawyers, policy makers, practitioners and a host of other experts from the field of migration studies deliberated and produced this document.

Around three decades ago, the International Labour Organisation (ILO) adopted two instruments aimed at protecting migrant workers viz., the ILO Migration for Employment Convention No. 97 of 1949<sup>i</sup> and the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975<sup>ii</sup>. At that time, these Conventions were crucial in recognising that migrants constitute a vulnerable group and that an international UN Convention was needed for the promotion of their rights.



The 1990 UN International Convention on the Rights of All Migrant Workers and Members of their Families is the most comprehensive document that, not only, establishes the rights of migrant workers but also sets standards to ensure that they are protected and respected. It came into force in 2003 with the minimum required ratifications from 20 countries<sup>iii</sup>.

A migrant worker is defined in that Convention as, "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national" (Art.2). This Convention recognises the need to provide protection not only to migrant workers but also to their families, without discrimination (Art. 4, 7). It guarantees a host of basic rights to migrants and insists that while legal migrants can claim more rights than undocumented migrants, the latter are also entitled to their basic human rights.

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Unfortunately, the impact of that Convention has been limited as major migrant receiving countries in North America and Europe and elsewhere like Kuwait, Jordan, Israel, Japan and Australia have not signed it. In fact, Sri Lanka is the only country in South Asia to have ratified the Convention. Bangladesh has signed but not ratified the Convention as ratification would involve an obligation to put into place the provisions of pre-departure information campaigns and training sessions; monitoring and imposition

of sanctions on brokers and recruiters operating illegally; the provisions of extending improved consular services to citizens working abroad.

Besides, most sending countries fear that their ratification of the Convention, without the ratification of receiving countries, may make it difficult for them to send their workers abroad and thus, adversely affect their overseas labour market and foreign exchange earnings from this sector.

Thus, a regional framework that particularly addresses migrants' rights within South Asia, amongst the major sending countries themselves, is critically needed. The Model Declaration was drafted for that very purpose. The underlying premise of the Model SAARC Declaration on Labour Standards for Out-Going Migrants, as laid down in its Preamble, is that all the members nations of SAARC, who are parties to major international human rights instruments, affirm to recognise and ensure that all out-going migrant workers from within the boundaries of all SAARC countries must be entitled to basic human rights implying access to a minimum level of protection, such as equality of treatment and working conditions.

This Declaration seeks to ensure that all out-going SAARC migrants shall be provided with a standard minimum wage, working hours and remuneration, without delay and not less than, in accordance with a 'Model' contract, pre-approved and shared with destination countries. More importantly, as has been laid down, there should be a guarantee that all out-going SAARC migrants will be provided with labour standards without any social and cultural discrimination.

All migrants need social benefits and so the Model Declaration specifically enlists that all out-going SAARC migrants,

documented/undocumented, and their families have the right to adequate housing, essential health services and basic education for children. They must also have the basic human rights to security and to liberty of persons against arbitrary arrest, detention, collective expulsion and the right to voluntary return.

To involve them in a participatory process, the Declaration also lays down that all out-going SAARC migrants shall be provided relevant information including pre-departure information, awareness regarding their remuneration and rights awarded to them under their work contracts, and within the legislative system of their respective countries of destination, through a SAARC Information Centre with regional cells in all respective SAARC countries. This SAARC Information Centre will also maintain a comprehensive database on migrants to facilitate future problem analysis and policy making.

It is mostly seen that migrants become vulnerable as they lack access to legal services. Thus, this Model Declaration particularly states that in case of legal complications within destination countries, such as a deportation or an expulsion order, all out-going SAARC migrants should have adequate access to relevant legal services including liaison with competent authorities, to ensure that the accused migrants have the right to adequate defence. Legal support should also include ensuring protection against exploitation, either sexual or economic; guaranteeing the right not to be held in slavery or servitude; ensuring the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

The activation of such legal support services should be undertaken by the foreign embassy of SAARC countries within the concerned country of destination, via a SAARC Legal Grievance Cell (situated within

the SAARC Secretariat) and SAARC must also lobby with the destination countries to ensure that their embassies are informed in case any of their migrants are accused of an illegal activity.



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Migrants need rights redressal mechanisms even on their return to their home countries. All out-going SAARC migrants should be ensured the right to voluntary return. They should be provided adequate and cost effective means and guidance concerning repatriations, have better saving and investment options, more choices to utilise skills acquired during migration, and adequate options concerning pensions upon return.

The Model Declaration has already been sent to the Foreign Secretaries of the SAARC Countries, to the SAARC Secretariat and is also out in the public domain for debate, discussion and deliberation. More importantly, this is the first attempt at codifying the rights of migrant workers from SAARC countries and endowing the responsibility on SAARC member-states. While continuing advocacy efforts with the Model Declaration, one must not forget that more countries need to ratify the 1990 UN Convention.

Remittances received from migrant workers working abroad has been rising steadily. Countries like India and Bangladesh



earn huge remittances from their migrant labour force abroad (Bangladesh – 6 billion U.S. dollars net in 2007; India 24,102 million U.S. dollars in 2005-06) and so financial commitment to this sector as a result of ratification of the Convention to protect the migrant workers from vulnerability and improve their welfare services is bound to further increase remittance flows. More than anything, all countries should recognise and fulfil their international obligations with regard to migrant workers and the SAARC Model Declaration is a positive step in that very direction.

#### Endnotes –

<sup>i</sup> Status as of 4 June 2008 – 46 Ratifications

<sup>ii</sup> Status as of 4 June 2008 – 22 Ratifications

<sup>iii</sup> Status as of 4 June 2008 – 37 Ratifications of State Parties, 14 Non-ratified signatories. – 54 States have ratified one or both of the ILO Conventions, 78 States have ratified one or more of these three instruments.

*-CDHR Team*

### **At the Crossroads: Democracy, Human Rights and Development in Nepal**

The ushering of democracy in Nepal comes with its own share of serious concerns, particularly with regard to her development and human rights. The Communist Party of Nepal (Maoists) captured 220 seats in the 601-seat Nepal assembly. King Gyanendra and members of the royal family have been declared as commoners and can no longer reside in the royal Narayanhity palace. Monarchy stands abolished in Nepal with the newly elected Constituent Assembly declaring it as a Federal Republic.



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However, things are already in disarray as the Maoists under the leadership of Prachanda and the Nepali Congress along with the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) bicker over power-sharing. Since it has been decided that the post of the President would not be an executive position and will go to a “non-partisan person from civil society”, the Maoists have decided to forego Presidency but the clash over central leadership continues. Mounting pressure from the Maoists has led to an announcement from the Interim Prime Minister of Nepal, Mr. Girija Prasad Koirala that he would step down as soon as the new Constitution is in place.

While promises of a new democratic Nepal are being made by the Maoists who are cheering the end of an era of monarchy and feudalism, it would be interesting to take note of their rather patchy record. The ten year Maoist insurgency in Nepal has claimed more than 13,000 lives. As so-called champions of social justice, the Maoists launched an armed revolution that abducted, tortured and killed with impunity.

In fact, a Nepalese businessman and longtime Maoist supporter, Ram Hari Shrestha, was kidnapped, tortured and killed by the People’s Liberation Army (PLA), the military outfit of the Maoists over a petty

money-related dispute in May 2008 revealing the extent of lawlessness in Nepal.

Despite a 2006 peace accord confining PLA members within military cantonments and barracks, the brutal killing of Shrestha proves that such assurances are only being observed in their breach. Human Rights Watch (HRW) reported that the Maoists and their sister organisations like the Young Communist League (YCL) have continued their engagement with violence and intimidation even after the elections (*Human Rights Watch, 23 May 2008*). The Maoist leadership has indicated that they will not renounce armed struggle but assured that future violence by their guerillas is unlikely.

***While promises of a new democratic Nepal are being made by the Maoists who are cheering the end of an era of monarchy and feudalism, it would be interesting to take note of their rather patchy record. The ten year Maoist insurgency in Nepal has claimed more than 13,000 lives. As so-called champions of social justice, the Maoists launched an armed revolution that abducted, tortured and killed with impunity.***

Given the ongoing political crisis further aggravated by Maoist extremism, the dispute over power-sharing is unlikely to end in a hurry. As Nepal struggles to build a politically stable leadership, poverty and underdevelopment thriving in a culture of violence and impunity is the key challenge that the new government will have to grapple with.

Nepal is one of the poorest countries of the world with per capita income of \$388 per annum and GDP growth rate of 2.3 per cent. Nepal's development has been limited by poor infrastructure, limited resources, high investment and transport costs, political

instability and insurgency, fragile governance and high population growth (*Nepal MDG Progress Report, 2005*).

The Poverty Reduction Strategy Papers (PRSP) of the World Bank is being implemented in Nepal since 2003. The 2007 Progress Report of the Nepal PRSP observed that the poverty incidence had declined from 42 per cent in 1995-96 to 31 per cent in 2003-04. However, the overall reduction in poverty incidence has not reached the poorest of the poor living in the rural areas and the eastern hills.

Marked improvements have been registered in the percentage of households with less than adequate food consumption, clothing, health care, schooling and total household income. Human development indicators like health, education and access to electricity, piped water, toilets, roads and other basic services have all shown considerable progress.

Yet, Nepal is ranked 142<sup>nd</sup> among 177 countries on the United Nations Human Development Index (HDI) with a HDI value of 0.534. The Human Poverty Index (HPI-1) which indicates the proportion of people living below a threshold income in terms of human development rates Nepal 84<sup>th</sup> among 108 developing countries.

Despite an improvement in all human development indicators such as life expectancy at birth, literacy, gross enrolment ratio and per capita GDP, the Gender-related Development Index (GDI) captures the glaring gender disparities in these figures. Nepal is ranked an appalling 134<sup>th</sup> among countries with both HDI and GDI values with a GDI value of 0.520 (94 per cent of its HDI value). Nepal is ranked the lowest among her South Asian counterparts while Sri Lanka ranked 99<sup>th</sup>, Maldives 100<sup>th</sup>, India 128<sup>th</sup>, Bhutan 133<sup>rd</sup>,

Pakistan 136<sup>th</sup>, and Bangladesh 140<sup>th</sup>. In other words, Nepal has a long way to go before she can achieve her human development goals.

Nepal is committed towards achieving the United Nations Millennium Development Goals (MDGs) by 2015. The Tenth Plan/PRSP (2002-2007) was aimed at achieving its goals through a multi-pronged strategy-‘high, sustainable and broad-based growth, social and infrastructure development, social inclusion and targeted programmes and good governance’.

The MDGs were incorporated within the Tenth Plan and significant progress has been made so far with regard to poverty reduction, gender equality, child mortality, maternal health and environmental sustainability. It was noted that Nepal might not be able to achieve her MDG targets of universal primary education and fighting HIV/AIDS. The effective realisation of MDG targets by 2015 depends largely on greater participation by women and marginalised communities like Dalits and janjatis (tribals).

However, political instability, Maoist insurgency and poor security serve as major hurdles in the achievement of Nepal’s MDG targets within the said period. Besides, Prachanda’s announcement that the Maoists will bring about an “economic revolution” through the promotion of “capitalism” is particularly worrying in context of Nepal’s gloomy development and economic indicators.

Nepal’s patchy human rights record is another key area of concern for the newly elected democratic government. Protection and promotion of human rights is the cornerstone of a democracy. The government should take immediate measures to end the climate of impunity and violence that has afflicted the lives of the Nepali people for more than two decades.

The Maoists and state security forces have killed, tortured and illegally detained several innocent persons during the insurgency but no serious investigation has been made into such gruesome crimes and the perpetrators of such egregious human rights violations have not been prosecuted.

A large number of persons disappeared during the insurgency period and despite, a three member commission being set up to investigate into these disappearances in June 2007; it has not yet begun its work. Signifying yet another threat to press freedom in democratic Nepal, Prachanda has issued an ultimatum to journalists, threatening them with serious consequences if they continue criticising the Maoists.



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Amnesty International reported that the Maoists continue to operate their parallel judicial systems (people’s courts) in certain areas, even after they had been officially disbanded. The Maoists continued to recruit child soldiers within the PLA in complete violation of the 2006 peace agreement.

The interim Nepal government under the leadership of Mr. G.P. Koirala allowed the use of excessive force to crack down on Olympic torch protestors. The Office of the High Commissioner for Human Rights (OHCHR) has observed that the Nepal Police, the Armed Police Force and the Royal Nepal Army used excessive force, sometimes

resulting in death, during the political uprising of 2006 (UNCHR, 2006).

The insurgency caused several people to lose their homes and livelihoods. Although the government and Maoists agreed to allow the Internally Displaced Persons (IDPs) to return to their homes, it was not followed in practice. Nepal's ill-treatment of Bhutanese and Tibetan refugees has drawn criticism from all quarters.

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Refugees face severe harassment at the hands of the government, security forces and Maoists on a regular basis. Nepal is not party to the 1951 UN Refugee Convention and its 1967 Protocol and does not have a national legislation on refugee protection, thus, deciding the fate of thousands of asylum seekers who seek refugee within Nepal through ad-hoc, administrative procedures.

On the whole, Nepal has failed to comply with international human rights standards. As a party to almost all core international human rights treaties, Nepal has been unable to implement its core human rights obligations, either by incorporation into domestic law or through consistent state practice. Further, Nepal has neither signed nor ratified the Optional Protocol to the Convention Against Torture (OP-CAT) and the UN Migrant Workers Convention 1990.

The 'Secular Federal Democratic Republic' of Nepal and the Constituent Assembly has a challenging task ahead, that of transforming the erstwhile monarchy and fledgling democracy of Nepal into a strong and stable nation with a focus on inclusive growth, human development and the highest respect for human rights.

*-CDHR Team*

### **The Case for Financial Sector Reforms and Inclusive Growth in India**

Financial sector reforms in India are necessary in order to address questions of access to capital and finance by the poor and their excessive dependence on exploitative moneylenders for loans. Recently, the Planning Commission appointed a committee headed by the former Chief economist of the World Bank, Raghuram Rajan. The Committee, in its draft report has recommended certain measures to achieve 'inclusive growth' of the Indian economy. The Raghuram Rajan Committee is critical of the existing financial system of India because it has been unable to provide adequate services to the majority of Indian retail customers, small and medium enterprises and large corporations.

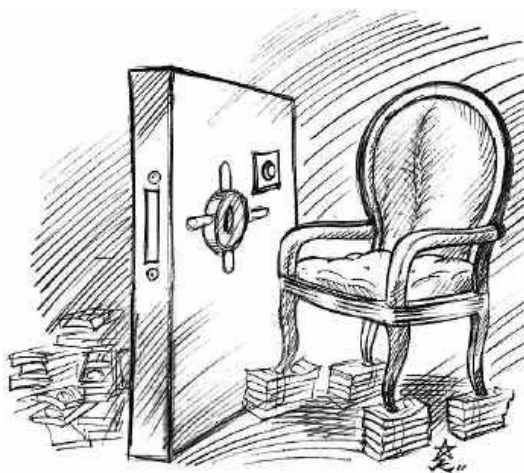
The chapter in the report on financial inclusion is most critical of the present system of rural branch banking. It observes that nearly three-quarters of rural households have no access to formal sources of credit, leaving the rural poor in the clutches of moneylenders. The bottom-quarter of the income distribution ladder borrows from informal lenders at interest rates above 36 per cent per annum, well above the mandated lending rates of formal banking institutions. The report asserts



that financial inclusion is not only about credit but involves providing a wide range of financial services, including savings accounts, insurance and remittance products.

A major source of vulnerability of the poor would be reduced if there is crop insurance for farmers and health insurance for the poor in general. Past efforts at financial inclusion were mainly through rural branch banking of public sector banks. But, according to the Committee, rural branches are seen as a burden by the profit-oriented public sector banks. Increasing the number of branches of banks cannot be the way to reach the poor since the poor in richly-branched urban areas have no more access than the poor in rural areas. Branch banking in rural areas is, thus, set with diminishing returns.

The Committee is critical of the most important credit policy component of the government-priority sector lending. It believes that banks migrate towards the bankable within the priority sector rather than the excluded due to broad coverage. Secondly, the interest rate ceiling on small loans further reduces commercial banks' desire to service the truly excluded.



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Also, when low rates are mandated in the face of unfulfilled demand for credit, bribes often have to be paid to offset the difference between the ceiling and the market rate. This adversely affects the poorest who do not have the ability to pay those additional charges and are further excluded in the process. Secondly, unnecessary paper work is imposed on loan officers, to counter the possibility of corruption, which further reduces accessibility to loans by the poor.

The Committee, therefore, believes that interest rate ceilings have to be removed and that these should be replaced with transparent market based pricing. According to the Committee, lack of political will has hindered better access to loans from the formal sector by the poor.

The report further notes that technology, competition, as well as, low cost local outreach organisations will have to play a much greater role in any strategy. The role of the government should be to attempt to increase the returns and reduce the costs of providing better services to the financially excluded.

The cooperative system could have been an alternative source but it has not been a success in India and priority sector norms can often force banks to lend at the cost of denting their profitability. As the financial sector becomes more competitive and as a bank's privileges gradually erode, it will become more difficult and unwise to compromise banks' profitability by mandating that they take on the burden of financial inclusion.

The Committee's approach is that 'inclusion' has to be made profitable by creating small, local, private or voluntary institutions which have a low cost structure and low staffing costs. Local hires should be paid local wages rather than city rates. This

will allow small loans to be profitable. In fact, successful micro lenders, and moneylenders have precisely these characteristics. Thus, in order to ensure financial inclusion, small, financial banks and small local entities should be created to facilitate the retailing of large banks' financial products to small clients.

The small private banks should be allowed to have minimum capital and lower capital requirements and exemptions from various taxes. Incentives will enable banks to give higher interest rates on deposits and lower rates on loans and also build up their capital. Although this has worked in a country like Indonesia with a more homogenous and compliant population, there is no reason to believe that, if replicated in India, it will reap similar benefits. While the idea of small banks in rural areas providing regular credit access to small farmers is worth appreciating, the ground reality is that the rural poor are still heavily dependent on moneylenders.

A wider development strategy of cluster development is needed for more inclusive growth where small farmers and enterprises have facilities like training, marketing, technological upgradation and knowledge dissemination. It would be unwise to dismantle the wide network of Regional Rural Banks (RRBs) or branches of public sector banks that have actually increased their banking network in remote rural areas in recent years. The existing network should, however, be strengthened to reach out to the poor. Very often, rural branches have managed to serve the community well under priority sector lending with the help of a dedicated team of staff members who need to be encouraged with incentives.

The report also espouses the cause of foreign banks and wants to make their entry into the Indian market easier as a result of which domestic public sector banks have to

shape up. According to the report, the government's ownership of 70 per cent of the banking sector and the obstacles to the development of the corporate debt and derivatives markets in India created by the government, has stunted financial development. Thus, it recommends that special advantages of public sector banks should be removed and under-performing banks should be sold (or closed). Further, it is also recommended that foreign banks have greater participation in the bond market and insurance companies and provident funds are allowed to invest overseas.

***On the whole, the Raghuram Rajan Committee has little to add to the debate on financial sector reforms and remains limited to repeating a set formula. Even their advice to put a heavier emphasis on private banking as an alternative to public sector bank branches in villages is impractical if we consider the huge sums of money that have already been spent in expanding rural credit through such banks.***

The report follows the International Monetary Fund (IMF) line as it argues in favour of minimum government control on capital flows. The Reserve Bank of India (RBI) should not interfere with the foreign exchange markets by purchasing dollars in order to keep the rupee-dollar parity because this adds to the fiscal deficit and stokes inflation.

The Committee recommends that the RBI should confine itself to inflation targeting and maintaining a floating exchange rate. In case of excess capital inflow, the rupee should be allowed to appreciate. Also, there should be a clear and streamlined procedure for default and bankruptcy in the banking sector. In India, the rupee's appreciation has hurt exports and created unemployment.



On the whole, the Raghuram Rajan Committee has little to add to the debate on financial sector reforms and remains limited to repeating a set formula. Even their advice to put a heavier emphasis on private banking as an alternative to public sector bank branches in villages is impractical if we consider the huge sums of money that have already been spent in expanding rural credit through such banks. A parallel approach is to undertake reforms to remove constraints on the public sector banks but at the same time, retain government ownership. Reducing the government's ownership gradually is also possible and perhaps, more politically palatable. Alongside, a detailed study on rural banking problems would highlight the need for reform more accurately.

*-CDHR Team*

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## **RIGHTS – COMMENTARIES**

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### **India's scorecard on Implementation of ESCRs**

The Committee on Economic, Social and Cultural Rights (CESCR) considered the joint second to fifth periodic report on India's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 7-8 May 2008. India submitted her periodic report before the Committee, fifteen years behind schedule.

In India's joint second to fifth periodic report submitted in March 2007, no information was provided on Articles 1-5 of the ICESCR. It enlisted the legislative and policy measures undertaken for better

implementation of economic, social and cultural rights (ESCRs) including the 73<sup>rd</sup> and 74<sup>th</sup> Amendment to the Indian Constitution enabling increased women's participation in Panchayati Raj Institutions (PRIs) and other municipal bodies and the recognition of right to education as a fundamental right under the Indian Constitution.

Despite the enactment of several laws in India with regard to ESCRs, their ineffective implementation remains the key problem for the realisation of these rights.

India was represented at the CESCR by a government delegation headed by Swashpawan Singh, India's Permanent Ambassador to the United Nations and Pronab Sen, Chief Statistician and Secretary of the Ministry of Statistics and Programme Implementation of India among others.

Dr. Sen emphasised on the high rate of economic growth that India had achieved in the post-economic liberalisation era and an overall improvement in employment rates. He also pointed out that 93 per cent of India's workforce comprises of unorganised workers whose plight is being addressed through skill development, regular monitoring and a proposed legislation on the rights of unorganised workers.

Dr. Sen also mentioned that although India had recorded significant improvements in food production and food security through the implementation of schemes like Integrated Child Development Scheme (ICDS) and Mid Day Meal scheme, malnutrition rates are on the increase.

The delegation highlighted improvements in the health sector but also pointed out that the rural areas are untouched by advancements in medical technology and health services. Despite the launch of the

National Rural Health Mission, the lack of doctors and para medical staff in rural areas affects service delivery in the health sector. It also admitted that school drop out rates remains high despite the right to education being made a fundamental right under the Indian Constitution.

A list of questions with regard to India's progress in the implementation of ESCRs were posed by the committee members on a range of subjects including rights of Scheduled Castes and Scheduled Tribes, gender discrimination at the workplace, bonded labour, domestic violence, incidence of HIV/AIDS, poverty, maternal health, access to safe drinking water, vocational training for marginalised communities like Dalits and tribals etc.

Virginia Bonoan-Dandan, Committee Expert and Rapporteur for India's report complained that India had failed to satisfactorily respond to the list of issues/question posed by the Committee which could serve as an obstacle towards a constructive dialogue between the Committee and the government (*United Nations Press Release, 8 May 2008*).

The Committee, after studying India's report and interacting with the Indian delegation, welcomed the efforts made by the Indian government at ensuring implementation of ESCRs through the ratification of international instruments like the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict and the ILO Convention No. 105 on Abolition of Forced Labour.

India's efforts at enacting domestic laws and other measures like the National

Rural Employment Guarantee Act, Protection of Women from Domestic Violence Act, Sarva Shiksha Abhiyan (Education for All) Programme, National Rural Health Mission, the Right to Information Act, Juvenile Justice (Care and Protection of Children) Act etc were also applauded by the Committee.

But, it expressed serious concern on India's stand that the realisation of ESCRs is 'entirely progressive in nature' (E/C.12/IND/CO/5). The absence of domestic legislation to implement India's obligations under ICESCR prevents the Covenant from being 'given its full effect'. The lack of effective mechanisms at the central and state levels to ensure the implementation of ICESCR obligations serve as a further deterrent.

The widespread prevalence of caste-based discrimination, gender inequalities, bonded labour and child labour has led to the further marginalisation of vulnerable groups like women, children, Dalits and tribals. The Committee also noted that rapid economic growth has not given rise to greater employment, especially in rural areas. The inequality in wage rates, restrictions on trade unions and the lack of protection for the unorganised sector have all emerged as problem areas.

The Committee pointed towards rising reports of forced displacement, evictions and the absence of a national housing policy in India. Low government spending on health care and lack of basic health services, particularly in rural areas and rising maternal and infant mortality rates also show a clear violation of international human rights standards.

The Committee regretfully noted that India has failed to achieve universal primary education targets, registering high drop out

rates despite high enrolment. The quality of education provided in government schools was also discredited.

The Committee, in its concluding observations on India's joint second-to fifth periodic report, stated that India should immediately implement the rights in Part II of the ICESCR (Arts. 2-5) and aim for the progressive realisation of rights under Part III (Arts. 6-15). It notes that India should take steps to the "maximum of its available resources" to implement her core obligations under the ICESCR. India should also take all possible measures to incorporate the obligations of the ICESCR into domestic law and ensure that all court decisions on the subject are fully implemented without any further delay.

The Committee requested the Indian government to look into all the areas of concern as highlighted by the Committee and take adequate redressal measures with immediate effect. From the CESCR's review of India's progress on the implementation of ESCRs, it became clear that India did not make a sincere effort to report on her obligations under the ICESCR or reply to the issues and questions raised by the Committee and still remains far behind in fulfilling her core obligations under the ICESCR

### **Gujarat Implements Anti-Conversion Law**

The Gujarat anti-conversion law passed in 2003 came into force in April 2008. The law, ironically titled the 'Gujarat Freedom of Religion Act' prohibits forced religious conversion and is in complete violation of the fundamental right to freedom of conscience and religion under Article 25 of the Indian Constitution. Gujarat became the fifth state to implement an anti-conversion law after Madhya Pradesh, Orissa, Chhattisgarh and

Himachal Pradesh. Arunachal Pradesh and Rajasthan have also passed similar laws but they are yet to be enforced.



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The Gujarat anti-conversion law defines 'convert' as making 'one person to renounce one religion and adopt another religion'. A proposed amendment to the 2003 Act was aimed at including Jains and Buddhists as part of the Hindu religion, Shias and Sunnis as part of the Islamic faith and Catholics and Protestants as part of Christianity and allowing conversions within denominations of the same religion. Jain groups had particularly expressed their reservations as being considered part of the Hindu faith. The amendment bill was eventually revoked by the Gujarat government in March 2008 after Naval Kishore Sharma, the Gujarat governor did not provide his assent to the same on the ground that it was unconstitutional.

The Act prohibits 'forcible conversions' which is defined as 'No person shall convert or attempt to convert, either directly or indirectly or otherwise, any person from one religion to another by use of force or by allurement or by any fraudulent means, nor

shall any person abet such conversion' (Section 3). Both supporters and critics of anti-conversion laws have extended the 'protection of religious freedom' argument to substantiate their respective positions. While supporters of such laws contend that forced conversions should be restricted, critics point out that such laws are meant to harass and target religious minorities (SAHRDC, 'Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights', EPW, 12 January 2008).

In this regard, it must also be noted that 'force' has been defined in very broad terms in the Act to mean 'a show of force or a threat of injury of any kind including a threat of divine displeasure or social excommunication'. Forcible conversions are punishable with imprisonment up to three years and fine up to Rs. 50,000 (Section 4).

The Act requires all persons willing to convert and the priest performing the conversion ceremony to get 'prior permission' from the District Magistrate before such conversion. Such permission will have to be sought in a separate application form which will contain details like name, address, age, SC/ST status (if applicable), marital status, occupation, monthly income, reasons for conversion, place where conversion ceremony shall take place, date and time of conversion, name and address of religious priest performing the ceremony etc.

The details in the application form shall be inquired into by the District Magistrate who will then decide whether the said conversion can be carried out or not. If he refuses to give permission, he must provide reasons for the same which shall be communicated to the applicant within one month from the date of receipt of the application.

Similarly, a person who is converted or the guardian of such converted person is also required by the law to send an intimation of their conversion to the District Magistrate within ten days of such conversion ceremony. The failure to acquire such permission for conversion or send such intimation upon conversion is an offence punishable with imprisonment up to one year or fine up to Rs. 1,000.

In the opinion of Dr. Tridip Suhrud, renowned social scientist, the Gujarat anti-conversion law is a communal legislation because 'it does not understand the true nature of faith, belief and a deep religious quest. It is suspicious of faith itself' (*The Indian Express*, 19/03/08).

The intent behind enacting an anti-conversion law is particularly suspect in a state like Gujarat where, in the aftermath of the 2002 communal riots, the vulnerability of religious minorities like Muslims and Christians stands exposed. Given the vague nature of some of the critical aspects of the anti-conversion law like definition of 'force' and what constitutes a 'forcible conversion' and the arbitrary discretion placed in the hands of authorities like the District Magistrate to determine whether a religious conversion should be permitted or not; the Act stands in contravention of the right to freedom of conscience and freedom of religion guaranteed under the Indian Constitution.

### **India's Inflation Rates Spiral out of Control**

The poor, the extreme poor, and people with fixed incomes like pensioners have to suffer many hardships and India is currently experiencing a rather high rate of inflation. With the recent 10 per cent hike in fuel prices imposed by the government, inflation has touched double digit levels at

11.63 per cent for the week ended 21/06/2008. India has experienced similar high rates of inflation in the past and the main causes have been poor harvest or oil price hike. Today, once again, oil prices are shooting up in an unprecedented manner and have even crossed \$140 a barrel. Many of the emerging economies are also suffering from the same malady of a high rate of inflation. In the case of India, retail prices of essential goods have been rising rapidly and there is no respite in view in the short term.

The world food crisis which has led to a rapid rise in the price of food grains across the globe, has also affected India's ability to import food fast. On earlier occasions, timely imports were undertaken to relieve any shortfall in domestic production. Duty cuts on many essential commodities like pulses and edible oils, however, have been allowed and the supply situation has improved to some extent.

But other components of the Wholesale Price Index (WPI) have also registered a price rise. For eg., metal prices (these have a heavy weight in the composition of WPI) rose sharply in the last few months and caused the WPI to shoot up. Metal prices have been rising world wide due to the strong demand from China to feed its construction boom.

The WPI, computed from the wholesale prices of a basket of commodities, probably does not reflect the rate of inflation as it actually impacts the common person's budget. Many regard the consumer price index (CPI) to be the appropriate index because it takes into account the retail prices of commodities commonly consumed by industrial and farm workers. In India, the CPI has always been higher. A new WPI is being constructed that will take care of the various gaps and also include services.

The main reason for the rise in the price of foodgrains in the past few months has been the government's inability to procure enough foodgrains from the farmers and this caused a supply-demand mismatch. In addition, private players who were allowed to buy directly from farmers, may have been cornering big amounts (at higher prices than the government's minimum support price-MSP) and may have been hoarding and stock piling for speculative purposes. For this reason, the government banned futures trading in essential commodities to curb inflation.

In the past two years, the government imported foodgrains at much higher prices than prevailing in domestic markets in order to build stocks. But since the international prices have gone up further, the government has not entered the market in a big way. Accused of paying more to foreign farmers rather than to Indian farmers, the government decided to raise the procurement prices of both wheat and rice from Rs 745 per quintal for paddy and Rs 850 for wheat to Rs 1000 a quintal for both rice and wheat.

But the MSP for rice has not been raised to Rs 1000 and is at Rs 850. By raising the procurement price, the government has given a signal to farmers to produce more. In the case of edible oils, the government's import policy has led to price stabilisation to some extent but over the years, cheap imports led farmers to switch to other crops and as a result the import dependence has increased. Dependence on imports will always make India more vulnerable to imported inflation.

On the whole, the government has procured less foodgrains domestically in 2006-07 although the production was close to 75 million tons. The Food Corporation of India (FCI) however has procured 219 lakh tons of wheat in the current season and has cornered 91 percent of the market arrivals due to more



attractive MSPs. In the past one year, not only were the stocks low but the ‘leakages’ from the Public Distribution System were high which means that there was less per capita availability of food grains for the poor. With a better supply situation, the government hopes that the food inflation will come down within a few months.

But many think that unless the long term neglect of agriculture is reversed and productivity growth of agriculture rises significantly, food prices are not likely to come down soon. Higher support prices will also lead to higher retail prices of wheat and rice in the coming months.

The oil prices hike is also going to stoke up inflation and since India is heavily dependent on imported fuel (78 percent), unless global prices come down, there is hardly any likelihood of reduced pressure on inflation. Meanwhile the government has taken several steps to tighten liquidity and the Reserve Bank of India has raised the short term lending rate to 8 percent. Sucking out liquidity through credit tightening can bring down inflation.

Even if food prices ease with more foodgrains in the market, soaring oil prices will still remain an inflationary factor. It would be the government’s task to cut down its own wasteful expenditure to cushion the burden of higher fuel and food prices on the

poor, may be by targeting them more accurately for accessing their supplies.

### **Judicial Accountability: Are Judges under the RTI Act?**

The Chief Justice of India, Justice K.G. Balakrishnan recently claimed that the office of the Chief Justice of India (CJI) is outside the purview of the Right to Information (RTI) Act 2005. He stated that the CJI is a constitutional functionary, not a public servant and is therefore, not covered by the RTI Act.

A RTI application to learn whether judges were filing their annual assets before the CJI as required by a 1997 resolution was rejected by the Supreme Court registry on the ground that “matters covered under resolutions like ‘in-house procedure to probe against judges’, ‘declaration of assets by judges, restatement of values of judicial life’ etc are not handled by the registry and the information relating thereto is not under the control of CPIO”.

The CJI, however, claimed that all judges declared their assets to him in a ‘sealed envelope’ and keep him updated on any increase in their assets. The Supreme Court also subsequently dismissed a PIL seeking to include the judiciary within the scope of the RTI Act.

The legislature-judiciary conflict was further aggravated when the Parliamentary Committee on Personnel, Public Grievances, Law and Justice clearly indicated in its report that the judiciary comes under the purview of the RTI Act. Mr. EM Sudarsana Natchiappan, head of the Committee said that when constitutional functionaries like the Prime Minister and Lok Sabha Speaker are covered by the RTI Act, there is no reason why judges





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should be left out. The report stated that except judicial decision-making functions, all administrative functions of the judiciary are subject to RTI scrutiny. The Committee also criticised the current system of appointment of judges involving a collegium as it is “against democratic principles” and recommended that the executive should also be involved in the process.

The judiciary’s refusal to disclose any information on judicial conduct or judges’ assets raises grave concerns about the state of judicial accountability in India. The CJI’s comments and the Supreme Court registry’s refusal to provide information on judges under RTI have been faced with opposition from all quarters.

The Lok Sabha Speaker, Mr. Somnath Chatterjee and Law Minister, Mr. H.R. Bharadwaj are in disagreement with the CJI’s ‘unreasonable’ views. However, with regard to the inclusion of the judiciary within the RTI framework, Bharadwaj said that “judiciary is not an extension of the government, therefore

no directions can be issued to it for the implementation of the RTI Act”.

The Bar Association of India is also of the view that judges should declare their assets annually and that the public should have access to this information. The association said that the judiciary must be accountable to the public just like the other constitutional offices. The Indian Prime Minister had also pointed towards the need to fight corruption in government and judiciary at a meeting, thus, re-affirming the need for judicial accountability.

Justice J.S. Verma, former CJI who was responsible for passing the 1997 resolutions on judicial accountability has said that all information on judges’ assets are available with the CJI’s office and could have been easily made available by the Supreme Court registry which is a part of the CJI’s office. Justice Verma also stated that the CJI is not outside the scope of the RTI.

The Constitution provides for the CJI’s removal, his judicial decisions are delivered in open court in front of the public and therefore, there is no question of him being rendered unaccountable for his administrative functions. He further expressed his disappointment at the fact that the judiciary ruled in favour of disclosure of assets by election candidates without applying similar standards of transparency and accountability to itself.

### **How Effective is the Farm Loan Waiver Scheme?**

Ever since the announcement on farmers’ loan waivers by Union Finance Minister P. Chidambaram was made in the Union Budget 2008-09, the actual benefit of such a scheme to the farmers is being debated.

The announcement of the farm loan waiver package was a big and bold move because the cost to the exchequer would be enormous at Rs. 60,000 crores.

The original proposal was for the small and marginal farmers constituting 70- 94 per cent of the farming population and cultivating between 1-2 hectares of land who would get complete debt relief through the scheme. 'Other farmers' were defined as those cultivating over 2 hectares of land, and would get One Time Settlement (OTS) relief of 25 per cent.



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After questions were raised regarding the efficacy of the scheme because the definition of a small farmer was too narrow and the cut-off point at two hectares of land was unrealistic, it was announced in May 2008 that farmers cultivating two hectares of land would also be included within the package. Previously, the bigger farmers with more than two hectares were eligible only to 25% debt relief but since most farmers who are cultivating two hectares of land in dry and non-irrigated areas are also poor, they have been included as beneficiaries under the scheme. The average loan size in such cases is Rs 19,908 and the average size of the investment loan is Rs 13,224.

By extending the scheme to more farmers—including tenant farmers and sharecroppers, the government hopes that it will become more relevant to a wider circle of indebted farmers, but the burden to the exchequer will now be more at Rs 71,680 crore. How the government is going to finance this along with the Sixth Pay Commission's revised outgo, is yet to be seen.

The government claims that by extending the scheme to cultivators of two hectares of land, roughly 60 to 75 per cent of 'large' farmers in 237 dry districts will get not just 25 per cent debt relief but full debt waiver. The debt waiver is now a minimum of Rs 20,000. Each bank branch will have to prepare a list of borrowers who are entitled for either a debt waiver or a debt relief. The name of the farmer, the amount of loan outstanding against him and the full debt waiver will be put up in that list. The second list will consist of other farmers with "One time Settlement" relief of 25 per cent or Rs 20,000 whichever is higher.

These two lists would be put up on the notice board of the branch of the lending institution. The bank will immediately issue a certificate of debt waiver to the small and marginal farmer mentioning the amount of debt that has been waived and receive an acknowledgement for the same. A high level committee comprising of senior government and bank officials will oversee the implementation of the scheme which shall cover 69 crore small and medium farmers and nearly 60 lakh 'other farmers'.

The main problem is that only 35.6 per cent of farmers are covered by institutional credit and the rest borrow from moneylenders, co-operatives and relatives. Money lenders dispense 25.7 per cent of the credit to farmers, cooperatives give 19.6 per cent and relatives another 16.5 percent. Farmers also obtain 2.5

per cent of their credit requirements from the government.

The moneylenders form an integral part of the farmers' life cycle and provide them with consumption as well as production loans. Institutional credit is restricted only for production inputs, investment purposes like digging of wells, installation of pump sets, purchase of tractors, bullocks or land development. Banks also give working capital loans and sometimes loans can also be obtained for allied activities like dairy, poultry farming, goat and sheep rearing, fisheries, green house and bio gas.

Some experts point out that even the two hectare limit is narrow because in some distressed areas like Vidharbha, though the farmers hold around four to five hectares, their income is uncertain and their fate is totally bound with the monsoons. Undoubtedly, in order to make farming viable, farmers have to improve the quality of inputs and more farmers have to be brought under the ambit of institutional credit otherwise loan waivers may not bring actual relief to farmers and could only add to the financial burden of the government.

### **Supreme Court orders Fresh Enquiry into Gujarat Riots**

In an order dated 25 March 2008, the Supreme Court of India, accepting the plea of the National Human Rights Commission (NHRC) ordered a fresh probe into the Gujarat communal riots of 2002. The apex court directed the Gujarat government to constitute a Special Investigation Team (SIT) within ten days from the date of the order to be headed by Mr. R.K. Raghavan, former chief of the Central Bureau of Investigation (CBI).

The five member SIT comprises of Raghavan, three senior police officers from Gujarat, Ms. Geeta Johri, Mr. Shivanand Jha, Mr. Ashish Bhatia and Mr. C.D. Satpathy, former Director General of Police (DGP), Uttar Pradesh. Ms. Geeta Johri was named convenor of the team.

The SIT was directed to submit its findings within a period of three months before the Magistrate trying the cases. It will investigate the Sabarmati train burning incident and fourteen riot cases in Godhra, Gulbarga Society, Naroda Patiya, Odh, Sardarpura and Dipla Darwaza.



**Ahmedabad riot victims demonstrating against the Modi government and demanding implementation of the recommendations of the National Human Rights Commission for the riot victims of Gujarat.©PTI**

The SIT was empowered to develop its own modalities to investigate into the cases identified by the petitioners in the matter. All those victims and witnesses whose statements were not recorded by the Gujarat police after the riots shall be given an opportunity to present their testimonials in writing.

The members of the SIT visited the riot affected areas and have already arrested one Parbatsingh Thakore who was allegedly actively involved in the Gulbarga Society carnage. The team also visited the Godhra train station and inspected the train coach to

investigate the incidents leading to the burning down of S-6 coach of the Sabarmati Express on 28 February 2002.

In a bold move, the SIT sacked Deputy Superintendent of Police, Noel Parmar from the investigation team who was faced with accusations of carrying out defective investigations of several riot cases and making false arrests. Jayesh Muliya, an assistant commissioner of police was also replaced by the SIT. Geeta Johri, SIT member said that fresh officials would be appointed as these two officers were not in service and were serving in extension. Dr. Mukul Sinha of Jansangharsh Manch stated that the Supreme Court had also acknowledged the flaws in Parmar's investigation and that the SIT had established its credibility by dropping him from the team.

The SIT also summoned witnesses to appear before them at their office in Gandhinagar. Members of the SIT personally served summons to witnesses residing in the Satnagar refugee camp. One of the SIT members, Ms. Geeta Johri also asked the police to provide protection to the witnesses residing in the camp.

The fight for justice of the riot victims in Gujarat received a boost after a fresh inquiry into the riot cases was announced by the Supreme Court but activists like Mukul Sinha remain sceptical. He has expressed concerns over the inclusion of police officers in the SIT, especially those from the Gujarat cadre who may not be able to function freely without bowing down to pressure from the Gujarat government.

Supreme Court lawyer, Prashant Bhushan has also sought a clarification from the SIT as to the scope of their investigation and whether it is a complete re-investigation or an extension of the previous probe.

### **Sixth Pay Commission – No Real 'Bonanza' for Government Employees**

The Sixth Central Pay Commission headed by Justice B.R. Srikrishna was constituted in July 2006 to examine the principles that 'govern the structure of pay, allowances and other facilities/benefits of Central government employees, All India Services and Armed Forces personnel, personnel to the Union Territories, employees of the Indian Audit and Accounts Department and Supreme Court of India and members of statutory regulatory bodies.

It was also mandated to recommend measures to transform, modernise and professionalise central government organisations. The Commission submitted its report on 24 March 2008.

The Commission recommended that the total number of standard pay scales be reduced to 20 from 35. The minimum salary at the entry level was estimated at Rs. 6,600 and maximum salary was fixed at the Secretary level at Rs. 80,000; the minimum: maximum ratio being 1: 12.

The Commission also introduces a new grade pay system (a fixed amount attached to each post) which shall determine the status of a post. Around 8,000 civil servants in the highest pay grade with salaries above Rs. 52,000 per month shall benefit from this grade pay system. These revised pay scales will be implemented retrospectively from 1 January 2006 and the recommended allowances shall be made available prospectively.

The Armed Forces and Indian Police Service (IPS) have strongly objected to the pay structures and pay grades introduced by the Sixth Pay Commission which are clearly in



favour of the civil servants. Since members of the armed forces retire early and career progression is relatively slower, an average member of the armed forces shall not be able to avail of the recommended benefits. The IPS is worried that the position of a senior IPS officer (State Director-General of Police) shall be devalued in comparison to that a senior civil servant (State Chief Secretary) if the grade pay system is implemented.



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A Performance Related Incentive Scheme (PRIS) was introduced according to which employees will receive 'pecuniary remuneration over and above their pay' replacing the existing ad-hoc annual bonus and overtime system. Although, the Commission has suggested the use of SMART goals, objective scorecards based performance management system, process improvement through internal savings etc to monitor the performance of employees, the implementation of the PRIS is largely dependent on the change in the mindset of employees and their work practices.

The Commission has suggested a 40 per cent increase in pension and family pension and a market-driven compensation package for professionals with special skills like scientists, along with an increased pay scale for nurses, teachers, constabulary and postmen.

Special benefits for women employees like flexible work hours, special leave for child care, maternity leave up to 180 days, better accommodation facilities like working women's hostels have also been considered. Similar benefits for government employees with disabilities like increased number of casual leaves, aids for facilitating office work, vehicle loan subsidies, flexible work hours etc were also announced by the Commission.

The gross expenditure of implementing the recommendations of the Sixth Pay Commission is estimated at Rs. 12,561 crores for 2008-09 but savings of Rs. 4, 586 crores is also likely to accrue during the said period as a result of some of the positive recommendations. Therefore, the net expenditure of the Central government in implementing the revised pay scales and other allowances and emoluments is Rs. 7,975 crores which is 0.4 per cent of the GDP.

An additional one-time expenditure of Rs. 18, 060 crores is estimated for the payment of arrears. Although the Commission has made tall claims of massive pay increase for government employees, the salary increase is 30-40 per cent at the highest level but the increase in compensation is only 10-13 per cent for an average government employee.

### **'Nirmaya' – A Health Insurance Scheme for Persons with Disabilities Launched**

The Ministry of Social Justice and Empowerment has introduced 'Nirmaya', a health insurance scheme for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities. The scheme is aimed at providing affordable health insurance, encourage 'health services seeking behaviour' among persons with disabilities

(PWDs) and improve the health and quality of life of PWDs.



**The Union Minister for Social Justice and Empowerment, Smt. Meera Kumar launching “Nirmaya” a Health Insurance Scheme for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, in New Delhi on March 26, 2008. © www.photodivision.gov.in**

Nirmaya aims to provide ‘community based’ coverage with a common insurance premium across all age groups and insurance cover up to Rs. 1, 00,000 for all types of disabilities and ‘all’ PWDs. Unlike other health insurance schemes, Nirmaya shall not exclude pre-existing conditions from coverage and shall include all kinds of medical services like medical checkups, hospitalisation, therapy, surgery and transportation and those cases where continuous medical intervention is necessary, shall also be covered under the scheme.

Further, the scheme shall cover pre and post-hospitalisation costs without any requirement of pre-insurance medical tests. Smart cards with health and related financial information shall also be issued to the beneficiaries of the scheme.

The services envisaged under the scheme will be provided by empanelled hospitals and nursing homes. The criteria to be fulfilled by the health service providers are - there should be at least 20 medical beds in urban centres and 5 in rural centres; provision for medical, surgical and diagnostic facilities

along with an in-house operation theatre; fully qualified and experienced nurses and doctors working full-time at these centres; maintenance of complete records on a daily basis of the patients; and provisions for insurance and health related information to the insurer whenever needed.

The beneficiaries of this scheme shall be enlisted by the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities, who shall maintain all records of their identity etc. The implementation and monitoring of the scheme also lies in the hands of the National Trust operating through a State-level Nodal Agency and Local Level Committees (LLCs). The nodal agency shall coordinate with insurance companies, health service providers, local committees, National Trust, state governments and other stakeholders in the insurance claim and settlement process.

In the first phase, the scheme is slated to be implemented in ten districts on a pilot basis and is expected to cover one lakh beneficiaries below the poverty line (BPL) for health insurance up to Rs. 1, 00, 000 at an annual premium of Rs. 99 per insured person (to be fully funded by the National Trust). The estimated expenditure of implementing this scheme is Rs. 125,00,000. PWDs living above the poverty line may also avail of the scheme by paying a nominal annual premium of Rs. 250.

The Nirmaya health insurance scheme for PWDs is a positive step in the direction of protecting and promoting the rights of PWDs. India is party to the UN Convention on the Rights of Persons with Disabilities 2007 and is bound by the obligations under the Convention, including the health-related provisions in Article 25 which prohibits discrimination in the provision of health



insurance to PWDs and that the same should be provided in a 'fair and reasonable manner' in accordance with domestic laws.

The *Nirmaya* scheme will go a long way in achieving the health-related objectives of the Convention. The social security provisions of India's Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (PWD Act) does not provide for health insurance for PWDs but disability rights activists are actively lobbying for the inclusion of a health insurance component within the social security measures envisaged under the PWD Act.

### Mid-Day Meal Scam

Mid-Day Meal (MDM) Scheme is the popular name for the school meal programme in India in which lunch is provided free of cost to school children on all working days in government and government-aided primary schools. This scheme was first launched in Tamil Nadu and was duplicated all over India to eliminate the growing school dropout rate. According to government figures, the number of school dropouts have reduced from 320,00,000 in 2001-02 to 75,97,000 in 2007-08 as a result of effective implementation of the mid day meal scheme.

The MDM scheme is a central government sponsored scheme whose implementation lies with the respective state governments. It was introduced in 1995 to achieve the twin objectives of lowering high rates of malnutrition especially among children from poor families and to increase school attendance. Mid-day meals contribute to social equity and undermines caste prejudice, by teaching children to sit together and share a common meal. These cooked mid-day meals also restore the gender gap in school attendance, attracting more girl children

to enrol in schools. It also fosters female employment and reduces the burden of working mothers to cook and feed their young children during the day.



**Mahtab S. Bamji, former Director, National Institute of Nutrition, at a mid-day meal centre at Mantur village in Medak district, Andhra Pradesh.© [www.thehindu.com](http://www.thehindu.com)**

The Government initiated the MDM scheme with noble objectives but corruption in the implementation of the scheme has significantly marred its prospects. A recent study by the Ministry of Human Resource Development has described the *Sarva Shiksha Abhiyan* (SSA-Education for All) and MDM schemes as "fraudulent" and plagued with "malpractice and corruption".

An expert panel formed by the Ministry visited several states across India to assess the success of these schemes and found several loopholes in the implementation of these schemes in states and the figures on high enrolment rates and low school dropout rates issued by states were also declared faulty. The panel rated Maharashtra and Karnataka as the best implementing states of the said schemes while Bihar and Uttar Pradesh were rated as the worst.

The study found that officials misdirected funds meant for the scheme to buy expensive cars, air conditioners etc while children were not served mid-day meals at

school. It was also noted that states like Bihar projected incorrect school dropout rates at the primary and middle school level to collect more funds.



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In certain schools in Madhya Pradesh, the MDM scheme has either been totally or partially discontinued because of 'corruption, absence of teachers, non-availability of food in required amounts and no water'. In rural areas, the lack of school infrastructure has forced school teachers to cook mid-day meals rather than teach and they are also faced with corruption as officials demand commissions to release funds. In other places, teachers themselves allegedly sell mid-day meal supplies to earn money.

Recently, a few Parliamentarians had proposed that hot cooked mid-day meals be substituted with '100 gram biscuit packs' for school children. This proposal was opposed by the Supreme Court appointed commissioners overseeing the implementation of the right to food who clearly stated that biscuits constitute 'snacks' and cannot replace cooked mid day meals as they do not fulfill the nutrition requirements under the scheme.

The scheme has also been faced with limited supply and quality of food grains, non-availability of drinking water and non-timely release of funds. Mid day meals are often not prepared in hygienic conditions and the poor

quality of these cooked meals have resulted in children falling ill frequently.

The MDM scheme is a important tool in the government's hands to universalise primary education. It is a very important means of providing nutrition to the children. The prevalent corruption and malpractices need to be eliminated urgently to restore the scheme and realise its cherished goals.

To ensure better implementation of the MDM schemes and eliminate corruption foodgrains should be purchased from local farmers rather than the Food Corporation of India (FCI), extra land in school spaces should be utilised for growing vegetables and fruits as raw materials for the meals and better inspection and monitoring of the scheme should be encouraged.

### **Karnataka RTI Amendment limits the scope of information sought**

The Karnataka government passed an amendment to the Right to Information (RTI) Rules 2005 in March 2008, introducing new Rule 14 restricting the scope of information sought under Section 6 of the RTI Act on one subject only and that such application requesting information shall not exceed one hundred and fifty words. If a RTI request seeks information on more than one subject, the concerned Public Information Officer (PIO) shall provide information only on the first subject.

Consumer rights NGO, CREAT found that the Karnataka Information Commission (KIC) had advised these amendments to the Karnataka government. According to CREAT, "Rule 14 not only goes against the spirit of the Act but also places restrictions on the citizens." Commonwealth Human Rights Initiative (CHRI) has observed that the right to

information guaranteed by a statute cannot be curtailed by its rules as they constitute subordinate legislation.



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The amended rule gives the PIO the power to determine what constitutes “subject matter” under the Act. Further, by restricting the information request to one hundred and fifty words only, the amendment violates the right to freedom of speech and expression guaranteed under Article 19(1) of the Indian Constitution. If the applicant is unable to explain the nature and scope of information sought in his request, he may not be able to get the kind of information that he is seeking which defeats the very purpose of the RTI Act.

Besides, the rules amending the RTI Act goes beyond the limitations already placed on information sought under Sections 8 and 9 of the Act. CHRI has also criticised the lack of public consultation in the issue of the new Rule. Despite apprehensions that the amended rules restrict the right to information in illegal ways, the Bangalore Development Authority (BDA) has already begun implementation of the amendment.



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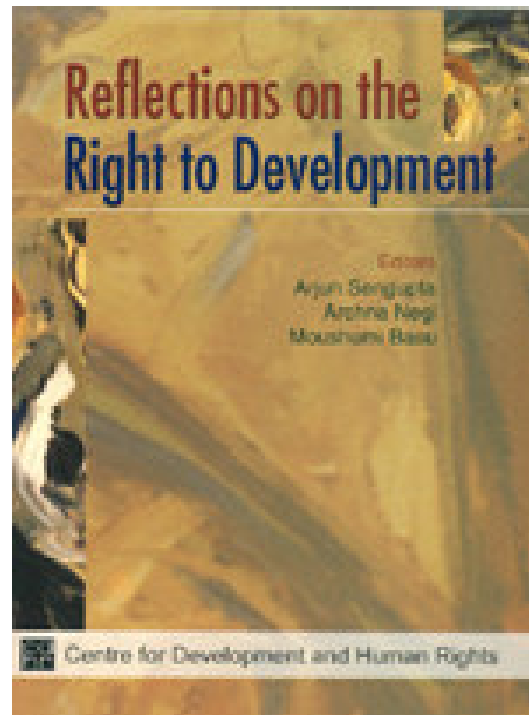
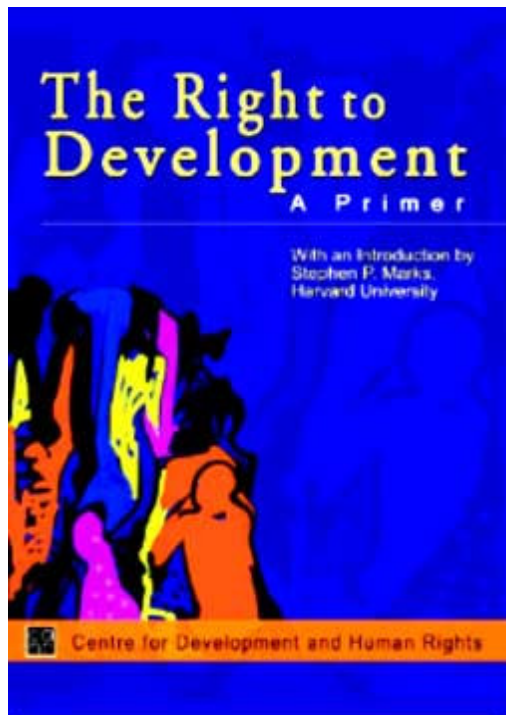
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