

RIGHTS AND DEVELOPMENT

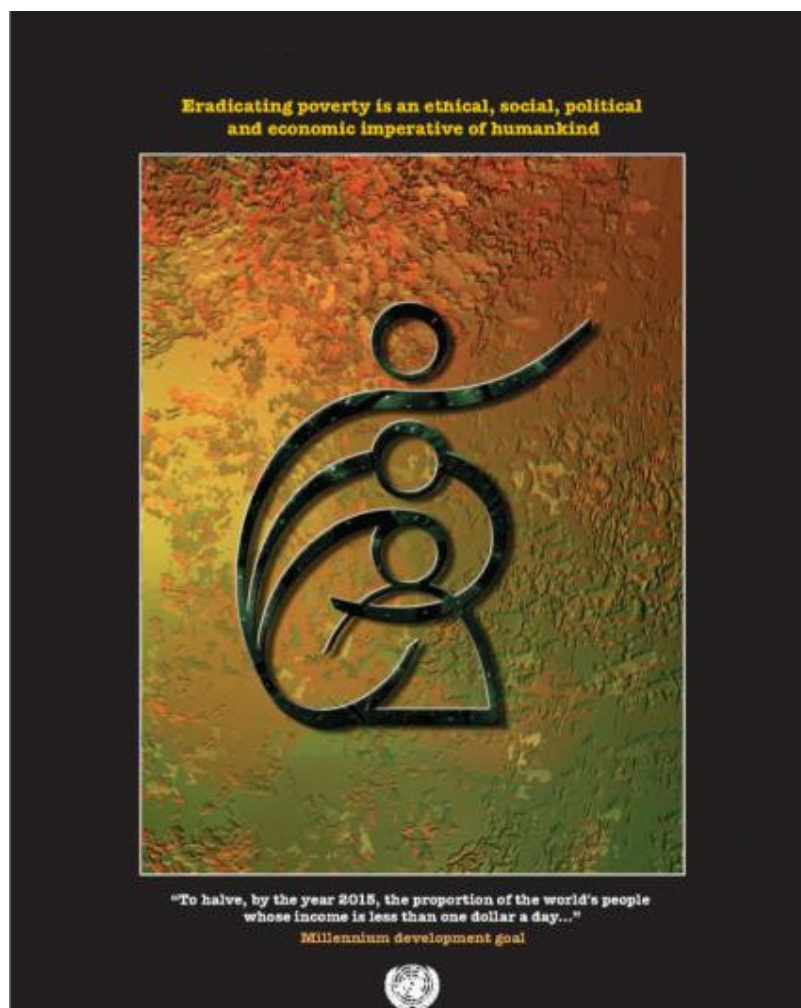
Bulletin



**Centre for Development
and
Human Rights**

VOLUME 1, ISSUE 3

APRIL 2007



INDEX

RIGHTS - ARTICLES.....	4
The Challenge of our Century: Recognising the Rights of Migrant Workers in Rich Democracies - - <i>Mitu Sengupta</i>	4
Media Discourse on Bangladeshi Immigration to Assam - Whose Security? - <i>Ksenia Glebova</i>	7
SAARC - Is Human Rights on the Agenda? - <i>Ipshita Sengupta</i>	11
 RIGHTS – FEATURES	 14
Affirmative Action in Education Through Quotas : The Debate	14
Two out of Every Three Children in India Abused	17
Enabling Persons with Disabilities in India : A Long Road Ahead	19
The price of being poor: Urbanisation, Poverty and Destitution in India	21
Power with Responsibility: India's re-election to the UN Human Rights Council	24
 RIGHTS – COMMENTARIES.....	 26
NHRC Issues Notice on Bonded Labour	26
11 th Five-Year Plan considering Gender Sensitive Allocation of Resources	27
Central Legislation may Replace Model Right to Education Bill for States	28
Follow up to Sachar Committee: National Commission for Minorities (NCM) and National Commission on Religious and Linguistic Minorities (NCRLM) recommendations	29
CEDAW Committee Concluding Observations: India	30
Caste Discrimination and Dalits in India: Indian People's Tribunal on Untouchability and ILO Report	32
Gender discrimination hurts economic growth in the Asia-Pacific region.	33
 RIGHTS - BOOK REVIEWS	 34
Public Health, Ethics & Equity - Edited by Sudhir Anand, Fabienne Peter, Amartya Sen	34
World Poverty and Human Rights - By Thomas Pogge	36

RIGHTS AND DEVELOPMENT

Bulletin



**Centre for Development
and
Human Rights**

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 It has a few short special articles, published and unpublished, in this area, and a section on brief analytical features on some of the major developments.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

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

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

RIGHTS – ARTICLES

The Challenge of Our Century: Recognising the Rights of Migrant Workers in Rich Democracies

- Mitu Sengupta

Every year, millions of men, women and children leave their homes in search of a better life in countries other than their own. International migration is now widely recognised as a defining feature of globalisation: UN estimates suggest that there are some 191 million international migrants worldwide (in 2005), up from about a 100 million, twenty-five years ago (in 1980). While many skilled migrants find, at least, their material aspirations met in well-paying jobs and plush, suburban homes, the majority of poor, unskilled migrants face a starker reality. Disturbing accounts have emerged of the deplorable conditions of life and work that confront many migrants, even in some of the wealthiest countries of the world. Indeed, a growing source of concern for human rights advocates is that most migrant-receiving states are failing to protect not just the economic well-being, but also the basic human rights of migrant workers within their borders. In this brief article, I will explore why even the world's richest democracies, many of which take great pride in their human rights records, have consistently failed the millions of people who migrate to their lands with immense hope and only the best possible intentions. I will also suggest some possible remedies, ranging from stronger union support for migrant workers at the national level, to the development of more effective multilateral instruments designed to protect migrants' rights.

Most poor, unskilled migrants arrive in Europe and North America with little more than their shirts on their backs, and wind up in appallingly low-paying jobs across a spectrum of industries stretching from fruit-picking to bridge-construction. International NGOs like Anti-Slavery International (UK-based), Free the Slaves (US-based), and Justicia for Migrant Workers (Canada-based) have produced extensive documentation of the abuse and exploitation that have become the ugly, everyday reality for many migrant workers. Reports of shockingly poor and even dangerous conditions of housing and transportation have become all too familiar; workers are often packed, ten to a dozen, into small, cramped, windowless rooms, with leaking, collapsing roofs and damp, dirty floors. Also common are reports of intimidation and harassment by employers, the withholding of wages, excessive, unjustified and sudden wage reductions, the retention of passports and other identity documents, and debt bondage. A combination of such practices, one should note, makes it difficult, if not out of the question, for the migrant worker to find alternative employment. An example would be a restaurant 'busboy', who is trying to pay off a large debt to his employer (the cost of travel or a loan to the family) while enduring an abysmally low wage, frequent wage reductions and the confiscation of his identity documents.

The increasingly frequent accounts of abuse and exploitation unearthed by human rights activists have not, unfortunately, found translation into actionable agendas for change at the level of the state. Existing legal and policy frameworks have consistently failed to respond effectively to reports of violations of migrants' rights. How may we explain this? The persistent failure of states to recognise, much less protect, the rights of migrant workers is undeniably a complex problem with many sources. Corporate-dominated

globalisation, and the normalisation of labour exploitation that has accompanied this process, is perhaps one of the deeper sources of the problem. Even in advanced industrialised countries with entrenched histories of welfare capitalism, many of labour's hard-won rights are in a state of disarray or reversion. While developing countries like India and China have created 'Special Economic Zones' to circumvent labour's demands, rich democracies in Europe and North America have relied on temporary migrant workers' programs to do much the same. These programs are governed by strict rules designed to prevent long-term residence, family union, integration into welfare systems, and migrant participation in local labour struggles (workers are barred from unionising).

It also does not help that in the demographic contexts of industrialised countries, most new, low-skilled migrant workers are rather poorly integrated racial or cultural minorities – from Mexican orange-pickers in the United States, to Turkish bricklayers in Germany, to Filipino nurses and domestic servants in Japan. In urban settings, most poor migrant workers live in the peripheries of the city, segregated from their affluent employers. They spend long hours at dawn travelling to work on public transit, only to retreat quietly into their 'ethnic' neighbourhoods at night. Seasonal agricultural labourers also suffer residential segregation and typically dwell in isolated communities – or bleak 'labour camps,' as some critics have called them. Overall, migrant workers who are also racial or cultural minorities tend to lack both social and political visibility. This makes it easier to 'other' migrant workers; to view them as not 'belonging' to one's community of citizens, and thus as not entitled to the same rights as everyone else. To make matters all the worse, racialised migrant workers usually have few to no links with mainstream political parties and

dominant trade unions. Such political marginalisation only reinforces the migrant's experience of social exclusion.

While developing countries like India and China have created 'Special Economic Zones' to circumvent labour's demands, rich democracies in Europe and North America have relied on temporary migrant workers programs to do much the same.

There is a further complicating factor. Large numbers of migrants are 'undocumented', or not legally permitted to work in the country. The International Organisation for Migration (IOM) estimates that there are roughly 30 to 40 million unauthorised migrants worldwide. Most reside in Europe and North America. Human rights groups have suggested that undocumented migrant workers are vulnerable to the worst forms of abuse and exploitation; reports of severe beatings and intimidation, physical confinement, inhumanely long work hours and abysmally low wages have become a matter of routine. One might say that an uncertain legal status completes the migrant's experience of isolation, exclusion and marginalisation – she is invisible not only to society, but also to the law and policy-makers. In effect, the state fails her even before she completes her first hour of work.

The problem of undocumented workers points to a basic mismatch in developed countries between the rapidly expanding demand for cheap labour and an increasingly restrictive body of immigration and citizenship policies. Developed countries have not been able to export all low-skilled work to low-wage countries. While the manufacture of shoes, clothing and cars can be

shifted to China, Mexico or Bangladesh, the service industry (hotels, restaurants, construction, and hospitals) has to be near customers, and thus requires workers. In the absence of sufficient legal methods of migration for low-skilled workers, illegal immigration has flourished. In fact, governments of developed countries face two contradictory pulls. Employers want more and more low-skilled immigrants to take up the jobs that country-nationals are unwilling to do. However, public opinion, fuelled by the vitriolic rhetoric of right-wing parties, has turned against liberalising immigration policies, on the grounds that more low-skilled immigrants (from Third World countries) will change the social and cultural fabric of their countries for the worse. Governments have responded to these conflicting pressures by tacitly tolerating illegal immigration. But while this underhand tactic keeps businesses happy, migrant workers are left to the mercy of traffickers, people-smugglers, and abusive, exploitative employers.



©www.bbsnews.net

The discussion above makes evident that the persistent failure of states to recognise, much less protect, the rights of migrant workers has both multiple and deeply rooted sources. Efforts to address this failure, thus, must also be multifaceted. Strengthening migrants' networks at the level of the neighbourhood or the community might be a

good start. Such networks go a long way in helping migrants overcome their experience of personal isolation and social exclusion, while also affording them access to a variety of resources, from childcare to language proficiency classes to low-cost legal assistance. Mainstream political parties and trade unions must also engage in effective political advocacy for migrant workers. Big, established unions in Europe and the Americas should recognise that the violation of migrant workers' rights is part of a larger process of labour subordination that affects developed and developing countries alike. Indeed, migrant workers should be part of the broader struggle to counter the persistent decline in labour's political power in advanced industrialised countries. Finally, given that 'capital' does not have much regard for national boundaries in this day and age, it is only befitting that national boundaries have weak meaning for 'labour' as well. It only makes sense that immigration policies in rich countries become less restrictive and citizenship policies more expansive. It is thus crucial to push for the regularisation of undocumented workers, and also for the easy access of long-term migrant workers to naturalised citizenship. Developing new channels for the legal migration of low-skilled workers is also a must.

Country-level advocacy for migrant workers must, however, be supplemented by changes at the international level. The recognition and protection of the rights of migrants – as both workers and human beings – must be entrenched in international human rights discourses and legal frameworks. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) is a step in the right direction as it establishes international standards of treatment for migrant workers through an elaboration of their human rights. Fundamental human rights

are extended to all migrant workers, both documented and undocumented, with additional rights recognised for documented migrant workers and their family members, notably, equality of treatment with nationals of the states of employment in key legal, political, economic, social and cultural areas. Unfortunately, the ICMW, which was adopted by the UN General Assembly in 1990, has been ratified by only 36 (mostly migrant-sending) countries, thus far. None of the major migrant-receiving countries (including India) has ratified the ICMW, much less absorbed its key principles into national law. A global campaign for the further ratification of the Convention is ongoing, and is supported by a broad platform of actors, from country-level unions, to the ILO, to groups like Human Rights Watch, Migrants' Rights International and the World Council of Churches.

While it is worthwhile to support this campaign, it is also important to recognise the ICMW's limitations. Due to the conflict-laden process through which it was developed, the ICMW is a treaty that contains many claw-back provisions that allow ratifying states to limit the coverage of the treaty's norms. The most serious defect of the ICMW, however, is that it permits states to curtail the rights of some specific categories of temporary migrants, such as seasonal workers, specified-employment workers and project-tied workers. The ICMW shares this defect with the two ILO Conventions (Nos. 97 and 143) designed to protect migrant workers. Given the growing propensity of states to rely on short-term labour importation schemes, this is a grave flaw indeed. On the whole, the existing international instruments have failed to respond effectively to some major changes in the labour migration landscape in the last twenty or so years, including the ascending importance of private agents (rather than states) in the recruitment of migrant labour, the increasing feminisation of migrant labour,

and the tremendous growth in irregular migration. New instruments that successfully address these developments are in great need. The main obstacle to a better future for migrant workers, however, is the reluctance of states to submit to legally binding multilateral instruments that effectively manage international labour migration and protects the rights of migrants. Developed countries are evidently worried that ceding too many rights to migrant workers will turn them into new ethnic minorities, who will press fresh claims on the state. Yet, a more ethnically and racially diverse future seems unavoidable for rich countries since it is now a given that they will need increasing numbers of young, low-skilled migrants to perform the jobs, their own aging populations are unwilling or unable to do. It is time that developed countries embraced their new realities, as well as the responsibilities that come with them. Rather than taking the low road of tacitly tolerating illegal migration, the world's rich countries must firmly commit to protecting the well-being and human rights of the millions of migrant workers who contribute to their wealth.

(The writer is Assistant Professor, Department of Politics and Public Administration, Ryerson University, Toronto)

Media discourse on Bangladeshi Immigration to Assam - Whose security?

-Ksenia Glebova

Wars are fought not only with arms, but also with words. Borders are drawn not only in pencil, but also with metaphors. In its coverage of Bangladeshi immigration to Assam, the Indian print media have set on a war footing building new borders in people's minds using metaphors, labels and other

linguistic devices. To borrow the vivid imagery, the war paint is on, war drums are beating and the enemies identified. Over time, the media discourse developed set terms and now features routine name-giving and story-telling. As a leading Assamese daily declared, “the war against orchestrated illegal immigration remains to be won¹”, and we are told there is no time to lose.

Examining the Indian print media coverage of Bangladeshi immigration into Assam through the lens of critical discourse analysis reveals that the media rhetorically frame the issue into a series of discourses. Whereas the security framework dominates the discourse, other possible frames of analysis such as humanitarian approach are deliberately left out. The Indian print media is effectively building walls between “us” and “them”, reinforcing communal divisions between “Hindu refugees” and “Muslim infiltrators” and securitising the discourse in such a way whereby one group’s security equals another’s insecurity. The media create and solidify the link between immigration and national security by employing a wide range of linguistic devices to create a sense of urgency and a looming threat to the identity and security of the Assamese people and the Indian state.

This article evaluates print media discourse on Bangladeshi immigration to Assam drawing on a list of English-language dailies published in northeast India and the state of West Bengal – both regions bordering Bangladesh. The examined dailies included The Assam Tribune (Guwahati); The Sentinel (Guwahati); The Shillong Times (Shillong); The Meghalaya Guardian (Shillong); The Statesman (Kolkata); The Telegraph (Kolkata); Nagaland Post (Kohima); Times of

The Indian print media is effectively building walls between “us” and “them”, reinforcing communal divisions between “Hindu refugees” and “Muslim infiltrators” and securitising the discourse in such a way whereby one group’s security equals another’s insecurity.

India (Kolkata); Imphal Free Press (Manipur) over the time span of four years, from 2003 to present. In the process of the analysis, the Indo-Bangladeshi border emerges as the key protagonist in the discourse, whereas the voices of the human agents – the Bangladeshi migrants themselves – can hardly be heard, especially not on individual level. Instead, they are confined to the domains of illegality, criminality and deceit. As a result, the phenomenon of Bangladeshi immigration is socially constructed in state and national security terms by the influential actor that media is. The securitising media discourse accords the issue the status of an ‘existential threat’, which in turn justifies emergency measures outside of the normal political process.

The northeast state of Assam features a unique combination of circumstances including its remote borderland status, long-term security intervention by the state, diverse ethnic composition and divisions along ethnic lines – which all make immigration to the state a volatile political character. Assam shares a 242 km-long border with neighbouring Bangladesh and has historically been the destination of many migrants from what is now Bangladesh or former East Pakistan since the partition. Indeed, the ongoing migration from Bangladesh into Assam cannot be objectively called “unprecedented” as it is often referred to in the media. The arrival and settlement of Bangladeshi immigrants in Assam was met with fierce local resistance

¹ The Sentinel, 13 July 2005.

and the creation in the 1970s of the Assamese anti-foreigners movement, which exploited the fears of ethnically Assamese of being reduced to a minority.

Etienne Balibar argues that immigration is the new type of racism, albeit without races. It helps the modern nation to define itself by providing 'the other' for that purpose and this is especially so in the post-colonial societies of South Asia. Indeed, framing lies at the core of the modern immigration debate² and the case of Bangladeshi migration to Assam is not an exception. Framing defines what counts as a 'problem', constrains the debate to a narrow set of issues and outlines solution options. The overarching conceptual frame of the media discourse on Bangladeshi immigrants in Assam is the existential threat frame whereby the Bangladeshi immigrants constitute a threat to the very existence of Assam and Assamese identity and it needs to be checked urgently. The frame rests on the power of linguistic devices such as metaphors and syntax. Salman Rushdie suggests, "The very word metaphor, with its roots in the Greek words for bearing across describes a sort of migration, the migration of ideas into images"³. A telling metaphor used in the media discourse of Bangladeshi immigration into Assam is that of a deadly disease from the outside threatening to kill the host - "Illegal immigration from Bangladesh to Asom is Asom's most fatal malady", argues The Sentinel. The securitisation of the immigration issue conceptualises the phenomenon as an 'existential threat' and may itself pose a threat considering its calls for arms using the metaphors of war.

The security frame - call it national security anxiety⁴, security phobia or securitisation of migration - dominates the discourse on immigration from Bangladesh to northeast India. To put it simply, this frame positions Assam in the epicentre of threats emanating from Bangladesh including law and order, Islamic fundamentalism, 'border diseases', links it to ULFA and terrorism and thus legitimates the ongoing border fencing project as well as other measures intended to



All over India there are suspected illegal immigrants from Bangladesh ©www.nesimg.bbc.co.uk

bring immigration to a halt. For example, The Sentinel⁵ recently offered a justification for creating new Indian border patrol squad by saying that "the need for such unit has become all the more imperative considered against the backdrop of Bangladesh becoming a hotbed of ISI activities and the BSF has no choice than to form special units". The implication of 'no choice' is also present in the former state governor's report of 1998, which in retrospective proved to be a milestone in the development of the discourse. The report uses a series of biased terms introduced by the print media thus solidifying the tone and terminology of the discourse and remains an official often-quoted source to date. The report concluded that the 'influx' of Bangladeshis into Assam was responsible for the outbreak of

² George Lakoff, 2006.

³ Imaginary Homelands, 1981.

⁴ Term used by Ranabir Samaddar in "The Nowhere People" report of the South Asia Forum for Human Rights, 2004.

⁵ The Sentinel, 14 January 2007.

insurgency in the state, greatly undermining national security.

Postcolonial nationalism is built on the principle of homogeneity and thus it fosters endless violence. If not readily available, 'enemy aliens' are created and recreated in a perpetual cycle because it is the role of the enemy that is crucial and not the enemy persona as such. Immigration brings to the surface the question of difference between 'us' and 'them'. Traditionally, national security is based precisely on the concept of difference, which then justifies all emergency means to control this incoming difference. Thus security and insecurity go hand and hand – one group's security comes at the cost of another's security and hence the key question is: whose security and at what cost?

Contrary to the popular perception, the mass media do not represent reality or act as a medium. Rather, media are active agents in producing and reproducing discourses that structure social reality and hence their role in influencing the way we think cannot be underestimated. This role, however, has often been overlooked under the simple assumption of the representation function. Media works as a lens through which we view the world and especially the way we view and construct 'the other', mainstreaming perceptions, images and constructing borders in people's minds.

In the case of Bangladeshi migration to the northeastern Indian state of Assam, media is effectively constructing a metaphoric border in the minds of the people between the 'intruders' and the 'indigenous' population in addition to the ongoing construction of the wall by the government of India. However, immigration requires a non-traditional approach to security, which focuses on the human rather than state level. Human security differentiates between the notion of state security and that of its people. Moreover,

security and insecurity are not necessarily mutually exclusive as the case of Bangladeshi immigration to Assam shows – security of the Assamese comes at the expense of the insecurity of the Bangladeshis and those whose identity is not confirmed or recognised by the Indian state.

The examination of several Indian newspapers reveals a narrow discourse framing of the Bangladeshi immigration to Assam. The framing is constrained to a set of interlinked issues such as security, illegality and identity and fails to take into account other possible frames such as humanitarian, gender, globalisation and human security approach.

Contrary to the popular perception, the mass media do not represent reality or act as a medium. Rather, media are active agents in producing and reproducing discourses that structure social reality and hence their role in influencing the way we think cannot be underestimated.

Thus the media mainstreams the discourse and defines its limits. As a result, Bangladeshi immigrants are denied agency and voice, dehumanised and juxtaposed to the Assamese. Media plays a key role in producing and reproducing the imagery of the 'unabated' 'infiltration', 'influx' and 'invasion' communicating a sense of urgency, building up hype and fresh borders in the minds of the Assamese and Bangladeshis. As a former chief justice of India noted, 'frontiers of the state are important but so are frontiers of human dignity'. Framing the phenomenon of Bangladeshi immigration solely as an existential security threat reduces its complexity and does not address other dimensions but serves the purpose of perpetrating and feeding the fears at the

expense of the Bangladeshi migrants' security. Instead, human rights of the Bangladeshi migrants have to be given space within the media discourse.

(The writer is Honorary Research Associate, Mahanirban Calcutta Research Group, Kolkata)



©www.answers.com

SAARC – Is Human Rights on the Agenda?

- Ipshita Sengupta

The 14th SAARC Summit was held in New Delhi on 3 - 4 April 2007. Afghanistan was officially inducted as the eighth member of the SAARC at this Summit. Some states from outside the region were given observer status at the Summit, namely, China, Japan, South Korea, United States of America and European Union (EU). NGOs and human rights activists in the South Asian region held numerous meetings both at New Delhi, the seat of the meeting and in different parts of South Asia to draw attention to the human rights situation in the region and include human rights within the SAARC agenda.

Two significant meetings were held in New Delhi itself, just ahead of the SAARC Summit, which members of Centre for Development and Human Rights (CDHR) had the opportunity to participate in. The Human Rights Assembly organised by Amnesty International India aimed to provide a guide to human and peoples' rights agenda under the SAARC, voice how human rights are dealt with by domestic governments and regional International India aimed to provide a guide to bodies and analyse recent developments and challenges to human rights in South Asia. The Assembly conducted discussions in five thematic areas of relevance in the region, namely, security legislation, corporate accountability, violence against women, arms

control and death penalty. Another meeting was held by a network of NGOs in the region and was titled, "South Asia People's Summit". The People's Summit is being held annually in the South Asian region since 2000 to encourage people to people dialogue on regional issues. The main issues included increase in defence spending in the region, restrictions on the freedom of movement of persons across the region, economic, social and cultural rights of the person in the region, like social security, unemployment, health care and education benefits, implementation of the SAARC Development Goals, restoration of human rights and democracy in the region, land reforms and land rights for indigenous populations, right to information, disaster management, armed conflict, climate change etc. The People's SAARC was held at Kathmandu, Nepal ahead of the 14th SAARC Summit which called on SAARC members to address development issues, basic needs like health, food, education, militarisation and nuclearisation of the region, discrimination based on gender, caste, religion, language, ethnicity, visa restrictions etc. Human Rights Watch (HRW) also addressed a letter to the SAARC leaders, requesting them to focus attention on human rights concerns in the region, along with regional trade and security.

One of the most significant recommendations made at both these meetings was that of establishment of a regional human

rights mechanism within the SAARC to monitor the human rights situation in South Asia. Noted human rights activist, Mr. Ravi Nair, while addressing the People's Summit pointed out the dangers of setting up regional Human Rights Council at the South Asia regional level. He emphasised that such a move would divert focus from the domestic human rights situation prevailing in most South Asian countries; where there is scanty regard for human rights and countries are not parties to core international human rights instruments. In Mr. Nair's opinion, a SAARC human rights mechanism would give South Asian countries to settle for the "least common denominator" in terms of human rights compliance and accountability without paying much heed to international human rights standards. Apart from that, none of the SAARC states except India, Nepal and Sri Lanka have established a domestic human rights monitoring mechanism like the National Human Rights Commission (NHRC).



It
Indian Prime Minister Dr. Manmohan Singh opening the 14th SAARC Summit in New Delhi, May 2007 ©www.asiantribune.com

It must be emphasised that the SAARC does not have a 'human rights' focus, as the SAARC Charter itself indicates. Article 1 of the SAARC Charter lays down the objectives of the SAARC, which include promotion of welfare and improvement of the quality of life of the people in the region, acceleration of economic growth, social progress and cultural development, promotion of collective self-reliance, encouraging mutual trust and understanding, promotion of cooperation and assistance in economic, social, cultural, scientific and technical fields, strengthening cooperation with SAARC members, other developing countries and international and regional organisations. The Office of the High Commissioner for Human Rights (OHCHR), which has been trying to develop a human rights mechanism for the region has found support in the adoption of the SAARC Convention on Preventing and Combating of Trafficking in Women and Children for Prostitution in 2002. But the Convention is not without its critics and has received flak for limiting its focus to trafficking for purposes of prostitution and does not include trafficking of women and children for other kinds of sexual exploitation, forced labour, domestic work, begging, camel racing, organ transplantation etc. The Convention also fails to adequately address issues like accountability of state parties and victims' rights. Although the Convention has been signed by all member states, only Bangladesh, Bhutan and Maldives have ratified it. Unless all states ratify the Convention, it will be very difficult to implement it in the region.

SAARC does have a social agenda, which attempts to promote regional cooperation in areas of gender, children and youth, health and population related issues etc. SAARC also adopted a Social Charter at the 12th SAARC Summit held at Islamabad in

2004 that seeks to fulfill the social objectives of the SAARC, through the promotion of people-centric, environmentally sustainable, cooperative, participative, pluralistic, non-discriminatory, inclusive, accountable, transparent and universal social development (Article 2). The areas of focus within the Social Charter include poverty alleviation, health, education, rights and well-being of the child and population stabilization. A National Co-ordination Committee or an appropriate national mechanism has to be established by each member state to ensure the implementation of the Social Charter, which will be reviewed by an appropriate body at the regional level. But the adoption of the Social Charter itself does not endorse SAARC's commitment to human rights.

South Asia Human Rights Documentation Centre (SAHRDC), a human rights monitor in the region, commenting on regional human rights mechanisms in the Asia-Pacific region and analysing both the SAARC and ASEAN as potential human rights bodies, has observed that they are not structured to deal with human rights issues. The fact that human rights is still considered to be largely a domestic/internal matter and the political nature of regional alliances like SAARC, serve as barriers to the establishment of a sub-regional human rights mechanism. Added to this is the fact that a good human rights record is not a pre-requisite for gaining entry into bodies like SAARC or ASEAN. In an oddly bold move, ASEAN recently warned Burma that it should defend its own human rights record and that ASEAN could no longer risk being perceived as a defender of the military regime in Burma. However, at the latest Session of the United Nations Human Rights Council, ASEAN resorted to silence and refused to comment on the human rights situation in Burma, thereby reaffirming its careless attitude towards human rights violations committed by its members.

Despite the praiseworthy attempts made by NGOs and human rights activists to draw attention to human rights concerns in the region, SAARC did not take note. The SAARC meet concluded with the eight member states deciding to cooperate on four major areas, namely, food, water, energy and the environment. Regional security was of primary concern. A SAARC Development Fund was set up for poverty alleviation and a commitment towards the implementation of the South Asia Free Trade Agreement (SAFTA) in "letter and spirit" was made. It was also decided that a regional food bank would be set up which would be administered by the SAARC Food Bank Board. A South

Despite the praiseworthy attempts made by NGOs and human rights activists to draw attention to human rights concerns in the region, SAARC did not take note. The SAARC meet concluded with the eight member states deciding to cooperate on four major areas, namely, food, water, energy and the environment. Regional security was of primary concern.

Asian University would also be established in New Delhi under the SAARC regional cooperation initiative. The 30-point Declaration issued at the conclusion of the Summit (Delhi Declaration) endorsed a collective commitment by SAARC members to combat poverty, disease, natural disasters and terrorism etc, with human rights being relegated to the status of a complete non-issue.

While the 14th SAARC Summit, like all other previous regional meets focused on regional cooperation and regional development, critical human rights concerns of the member states was once again brushed under the carpet. Dr. Manmohan Singh, in his closing speech at the Summit stated that the SAARC's mandate was to better the lives of

“the poorest of the poor and the weakest of the weak” but he, along with other leaders from the region failed to realise that unless the promotion and protection of human rights is made a priority, development would have little meaning for the people in the region. To conclude in the words of Brad Adams, Executive Director (Asia), HRW, *“Regional security and economic progress cannot be achieved unless every citizen is provided with a secure environment to enjoy their civil, political, economic, social and cultural rights. This is especially true for groups historically discriminated against, like women and children. Half of the world’s poor live in this region. Policies and laws to help them will be useless unless effectively implemented”*.

References:

1. Comments on SAARC Convention, at <http://www.fwld.org.np/csaarc.html>
2. SAHRDC, SAARC’s Benchmarks: Human rights still a no-go area HRF/162/07, 31 March 2007, at <http://www.hrdc.net/sahrdc/hrfeatures/HRF162.htm>
3. SAHRDC, Regional Cooperation: Sub regional initiatives wide off the mark, HRF Quarterly, Special edition for the 10th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions (APF), August –September 2005, at http://www.hrdc.net/sahrdc/hrfquarterly/apf10/html/special_issue.htm#iss1_11
4. Pavin Chachavalpongpun, On Human Rights in Myanmar, Opinion Asia, 9 April 2007, at <http://www.opinionasia.org/OnHumanRightsinMyanmar>
5. Letter to SAARC Leaders In Anticipation of Summit In New Delhi, Human Rights Watch, 29 March 2007, at <http://hrw.org/english/docs/2007/03/29/asia15600.htm>

(The writer is Research Associate, Centre for Development and Human Rights, New Delhi)

RIGHTS – FEATURES

Affirmative Action in Education Through Quotas: The Debate

The Indian government intends to promote affirmative action by reserving 27 per cent of admissions for Other Backward Classes (OBCs) in central (federal) institutes of higher learning through the Central Educational Institution (Reservations in Admission), Act, 2006. This Act had been passed after the enactment of the 93rd Constitutional Amendment that introduced clause (5) in Article 15 of the Indian Constitution, to facilitate framing of laws to provide quotas for socially and educationally backward sections. All political parties had supported this amendment and the Centre while introducing it had claimed that, “Reservation facilitated by the new clause 15 (5) is an important measure forming part of all fields including education. The reservation policy is not disintegrative and is not against the unity and integrity of the nation”. But the recent judgment of the Supreme Court putting a stay on the operation of the 2006 Act has brought up a confrontation between the Indian judiciary and legislature.

A two-judge bench of the Supreme Court opined that the exact proportion of OBCs in India’s population had not been accurately identified and that the 27 per cent reservation for them was not based on any reliable estimate of their share in the population. The Court, prima facie, accepted that caste could be the basis of reservation subject to it being established as socially and educationally backward but passed the stay order on the assumption that there was no acceptable data regarding the OBC population being above 27 per cent. The Court has also

observed that setting quotas or reservations might not be an appropriate means of promoting diversity or affirmative action because it discriminates against 'meritorious'



Anti-reservation protests in India@www.indiadaily.org

candidates who do not suffer social disadvantage on account of caste, race or ethnicity. This recent verdict holds quotas as anti-merit as under them, "unequals are treated as equals". It also questions the Mandal Commission's identification in 1980 that OBCs constitute 52 per cent of the population.

But critics have been quick to point out that although it is true that apart from the 1931 census no caste census has taken place in India, the National Sample Survey Organisation (NSSO) data does provide information on OBCs. According to NSSO figures, OBC Hindus had risen from 38.3 per cent in the 55th round (1999-2000) to 43 per cent in the 61st round (2004-2005) and OBCs among Muslims rose from 31.7 per cent in the 55th round to 41.7 per cent in the 61st round. Thus, it seems rational to expect that OBCs in India comprise 27 per cent of the population, if not more. As Justice Rajinder Sachar notes,

"The stay on the new Act seems to have been granted because, among other reasons, the NSSO data was not brought to the notice of the court." (*Mainstream*, April 20-26, 2007, p.6)

For weeks, the quota debate has been witnessing protests from upper-caste dominated student bodies, which have heartily welcomed the recent judgment. On the other hand, huge numbers of OBC students have protested and insisted that they too should get a fair chance to study in not just Central colleges and universities but also prestigious institutes of higher learning like Indian Institutes of Technology and Indian Institutes of Management. Their protests have found support in scholars like Prof. Zoya Hasan, Member, National Commission of Minorities, who said, "It is a retrograde judgement, which strikes against the very principle of affirmative action in favour of the underprivileged...In India, most universities, barring exceptions like JNU, don't follow a points-based system of affirmative action....Quotas have long been the standard instrument for it. The constitution itself has since 1950 reserved government jobs and school and college admissions for Dalits and Adivasis (tribals and indigenous people) The government merely extended this established principle to the OBCs."

The protests against quotas have been led by most of the Indian universities and elite institutions and these anti-reservation outfits have hailed the court order. Thus, the government decided to soften the impact of quotas by increasing the number of seats in these institutions by 54 per cent so that the share of the 'general category' students, dominated by the upper castes is retained. Some of these institutions were planning to expand their educational infrastructure and volume of admission in a phased manner over three years. The Court has now put this on hold at least until August 2007, so that the

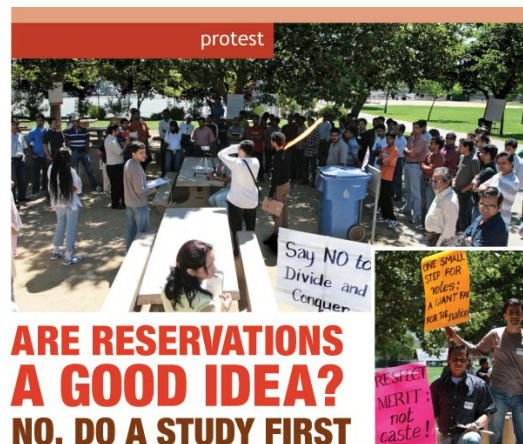
admission process for the current academic year is not affected and the government has no other option but to allow central educational institutions to admit students in line with the previous year's intake.

The quota debate has largely led to polarised positions between those for and against it and has pitted the judiciary and legislature against each other. Prashant Bhushan, a Supreme Court advocate warns, "A judiciary acting arbitrarily to protect the rights of the privileged or perpetuate discrimination in education can be even more harmful than a legislature gone haywire, as happened during the 1975-77 emergency". The Communist Party of India strongly criticised the judgment and called it 'retrograde'. Prakash Karat, General Secretary, Communist Party of India-Marxist called it 'unfortunate and uncalled for' and argued that as already several states had implemented reservation on the basis of OBC lists even in Central services, the same should be extended to educational institutions.

Pro-reservation political parties have largely criticised the court stay order and supporters of reservation like the Chief Minister of Tamil Nadu. M. Karunanidhi, have expressed shock over the judgment. In fact, on 2nd May 2007, the Tamil Nadu Government filed an application in the Supreme Court seeking to implead itself in the writ petition filed, so that it can be heard on 8th May 2007, along with the other respondents. The State argued that it had provided for 69 per cent quota and the apex court had been passing interim orders for every academic year to create additional seats in professional colleges to accommodate students who would have been selected had the 50 per cent reservation been followed.

The Tamil Nadu application stated that, "The scheme for 27 per cent reservation

for the OBCs in the educational institutions under the control of the Government is nothing but an extension of the 27 per cent reservation already implemented in appointments to Central services, which has been approved by the Supreme Court and therefore there is no reason to deny the same." The state justified the 1931 census as the basis for arriving at the 27 per cent quota saying, "collection of case-wise details was dispensed with after the 1931 Census. The only source in which the details are available is the 1931 census and therefore there is no harm in adopting the population and other details available in the above Census." The Tamil Nadu government stated that the Mandal Commission's estimation of the OBC population at 52 per cent in its 1980 report has little chance of having reduced below 27 per cent over the years. (*The Hindu*, 03/05/07)



©www.siliconeer.com

The hearing for the writ petition filed by Citizens for Equality challenging the law providing 27 per cent quota in elite educational institutions was heard on 8th May 2007 by the Supreme Court but the Court has reserved its judgment for a later date. The petitioners argue that the present reservation policy, "suffers from serious infirmities, constitutional and legal, and needs to be replaced by a rational policy of affirmative action for uplifting the weaker sections....in

the present policy there is no attempt to remove the educational disparities among the Backward Classes, including SCs and STs inter se. It only allows for the more advanced and educated sections among them to avail themselves of the benefit of reservations leaving the hindmost uncared for.....is arbitrary since it is based on political considerations without collecting and considering relevant data.”

Meanwhile, the Centre continues to deny that its quota policy is against unity and that its legislation would affect the rights of students belonging to unreserved categories. “What is required is a calm appraisal of the issue at hand, so that both the judiciary and the legislature understand their problems with their respective positions...Both wings must display humility in the exercise of their powers in order to avoid unnecessary collision” (Justice Sachar).

- **CDHR Team**

Two out of Every Three Children in India Abused

“This is one report that we are releasing with a heavy heart”, said Renuka Chowdhury, Minister for Child and Women Development, while releasing “Child Abuse: India 2007”, the first official national study on child abuse in India, in New Delhi in April 2007. The study, the largest of its kind, not only compels a re-examination of the question as to how ‘safe’ our families are, but also demands that this issue gain priority on the national agenda. It was sponsored by the Ministry of Women and Child Development (WCD) and conducted jointly by the UNICEF and NGOs like Save the Children and Prayas.

This study was also meant to complement the UN Secretary General’s Global Study on Violence Against Children,

2006. In Asia, the high population density leads to high incidences of child labour and exploitation, but prevention of child abuse remains an uncharted territory. The largest population of children in the world live in South Asia and India, alone is home to 19 per cent of the world’s children. According to the 2001 Census, 42 per cent of India’s population comprising of 440 million people are below the age of 18 years. The responsibility of taking care of such a large number of children amidst unfavourable socio-economic conditions like poverty, illiteracy, caste system, population growth, political instability etc is, undoubtedly, a challenging and daunting task.

Today, child abuse is one of the most critical concerns on the international human rights agenda. The Indian National Policy of Children, 1974, had declared children to be a ‘supreme national asset’ but child abuse is highly rampant in India. The recognition that, not only are child rights universal but also primarily inviolable, is a recent phenomenon in India. The problem lies in the fact that although fundamental rights are guaranteed to children under the Indian Constitution, the approach to ensure their fulfilment has been more needs based than rights based. The WCD Ministry has tried to bridge this gap by adopting a rights based approach and



© www.indiatogether.com

addressing the existing gaps in the area of child rights and child protection. But their

work was hampered by the lack of data on offences or crimes against children. The only data available with the National Crime Records Bureau contained records of only those cases that were reported and excluded the innumerable cases of child abuse that go unreported.

Thus, the WCD Ministry initiated this national study on child abuse not just to fully comprehend the extent and magnitude of this problem but also examine strategies to address the problem and identify further areas of research, based on the findings of the study. The study covered 13 states with a sample size of 12,447 children, 2,324 young adults and 2,449 stakeholders. Physical, Sexual and Emotional Abuse and Girl Child Neglect was examined in five different evidence groups viz., children in a family, environment, children in school, children at work, children on the street and children in institutions.

The results of this study brought home a horrific truth that two out of three or 69 per cent of children faced some form of physical abuse and that 50 per cent of the abusers were people who are either known to the children or are in a position of trust or responsibility. What is worse is that 88.6 per cent of the children were abused by their parents. Other disturbing facts were that 54.68 per cent of the abused children were boys, 70 per cent of the abused children did not report the matter to anyone and that children in the lower age group of 5-12 years faced higher levels of abuse in comparison to those in the age group of 13-18 years. Nearly 65 per cent of school children faced corporal punishment or beatings by their teachers, out of which students in government and municipal schools faced 62 per cent of such punishment. Nearly 22 per cent of child respondents reportedly faced severe forms of sexual abuse and 5.69 per cent reported being sexually assaulted. On the whole, more than 50 per cent were found to

have been sexually abused in ways ranging from severe (rape or fondling) to milder forms that include forcible kissing.

Amongst the 13 states that were surveyed, Andhra Pradesh was found to have the highest percentage of almost all forms of child abuse followed by Assam, Bihar and Delhi. Around 2,324 young adults between the ages of 18 and 24 were also interviewed as part of this study and sadly almost half of them reported being physically or sexually assaulted as children. In Delhi, it was discovered that 87 per cent of young women reportedly had faced one or more forms of child abuse.

The highest incidence of sexual assault was found amidst street children, at work and in institutional care. 50.2 per cent of these children worked seven days a week. The fact that 48.4 per cent of the girl respondents wished that they were boys, suggests that more girls were subjected to abuse than boys. Nonetheless, irrespective of its sex, every second child has reportedly faced child abuse, in some form or the other.

This study has emphasised on the urgent need for both a separate national policy on child protection and appropriate legislation that will address all forms of child abuse. Cognizance should be taken of the fact that levels of awareness about sexual abuse are abysmally low in India and sex education should, thus, be made mandatory. The WCD Ministry is expected to place before the Parliament, the draft Offences Against

The results of this study brought home a horrific truth that two out of three or 69 per cent of children faced some form of physical abuse and that 50 per cent of the abusers were people who are either known to the children or are in a position of trust or responsibility.

Children Bill and a website to track missing children is also expected to be launched by July 2007. It is hoped that this study will break the silence that shrouds child abuse, assist in evolving guidelines in preventing and controlling it, and recommend immediate and appropriate responsive actions that should be undertaken by not just the government and civil society organisations but also the family and community at large.

- CDHR Team

Enabling Persons with Disabilities in India: A Long Road Ahead

India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities on 30th March 2007. Another 89 countries have also signed the Convention. The Convention was adopted by the United Nations General Assembly on 13th December 2006. Nearly 650 million persons, constituting almost 10 per cent of the world population, will benefit from this Convention. However, Jamaica was the only country to ratify the Convention. The Optional Protocol to the Convention, which recognises the competence of the Committee on the Rights of Persons with Disabilities to receive individual/ group complaints and communications relating to State parties, was also adopted, with 49 signatories.

The main guiding principles of the Convention are respect for inherent dignity, independence and freedom of persons, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of persons with disabilities (PWDs), equality of opportunity, gender equality, accessibility and respect for the evolving capacities of children with disabilities and their right to preserve their identity. The Convention also establishes a

monitoring mechanism for effective enforcement, both at the international and national level (Art. 33). The Convention places a lot of emphasis on inclusive social development of PWDs and lays down specific measures to achieve the same (Art. 32).

The 2001 Census reveals that India has 2.13 per cent PWDs, which is equivalent to a population of 21.9 million but the National Sample Survey (58th Round, 2002-03) puts the figure at 18.5 million. In the opinion of Dr. Anuradha Mohit, Special Rapporteur on Disability, National Human Rights Commission (NHRC), these figures are not very convincing as a lot is dependent on the definition of disability a particular country adopts, the nature of questions related to disability that are asked to respondents in surveys and the general cultural and traditional perception of disability. Disability rights activist, Javed Abidi estimates that approximately 6 per cent of India's population is disabled and he submits that if a broader definition of disability is adopted in India, the figures could be much higher, as is the case in Australia, United Kingdom and United States.



©www.udaan.org

Although India is a signatory to the UN Convention, it is yet to ratify it. India has a domestic legal regime governing PWDs, primarily through The Persons with

Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act (PWD Act) and more specific laws like The Mental Health Act, The Rehabilitation Council of India (RCI) Act and The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act.

The PWD Act, passed in 1995, was the first comprehensive legislation of its kind in India. The Act provides for the promotion of integrated education, medical and social rehabilitation, three per cent reservation in education in government institutions and public sector jobs, non-discrimination in employment of PWDs and training, health and safety measures and creation of an enabling work environment, improve physical accessibility in transport etc.

Yet, the Act has failed to improve the quality of lives of PWDs, even ten years after its enactment. The reason for this failure is largely attributable to poor enforcement. The Act provides for integrated education of PWDs up to the age of 18 years, 'in an appropriate environment' with a reference to special schools, as opposed to inclusive

The policy fails to establish a clear plan of action for the implementation of the policy within a specific time period..... The policy has recommended that the community play a vital role in the generation of resources to provide for the infrastructure costs related to implementation. This aspect of the policy has been criticised as a move by the State to absolve itself of its duty to create an inclusive environment for PWDs.

education. However, the reality in India is that most of India's PWDs live in rural areas with no access to special schools and they can attend regular schools only. PWDs face deep-

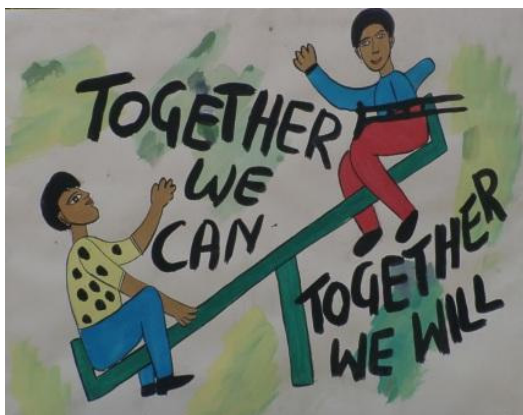
rooted prejudice with respect to employment. Although the PWD Act provides incentives on paper for those employers (public and private sector) who ensure 5 per cent employment to PWDs, the situation is quite different in practice. A survey conducted by the National Center for Promotion of Employment for Disabled People (NCPEDP) among the 'Super 100' companies, showed that the rate of employment of PWDs in the corporate sector was a meagre 0.4 per cent of the total workforce. With respect to improving accessibility of PWDs, the Act provides that the government shall operate "within the limits of its economic capacity and development". Such provisos serve as hurdles to effective implementation of the law and provide the government with a legitimate excuse to absolve itself from liability and accountability.

The Chief Commissioner and the Commissioner for Persons with Disabilities operating at the central and state levels respectively serve as monitoring mechanisms under the Act but are far from effective. They have been given the powers of a civil court yet do not have access to the framework to exercise these powers. Although, the Act provides for a number of affirmative action measures for the welfare of PWDs, in the fields of education, employment etc but does not envisage any mechanisms to ensure compliance with these measures.

The Ministry of Social Justice and Empowerment released The National Policy for Persons with Disabilities in 2006, which was aimed at improving the quality of life of PWDs. The policy recognises that PWDs are a 'valuable human resource' and 'seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society'. The focus areas of the policy are prevention of disabilities, rehabilitation of PWDs through physical, medical and assistive methods and

development of rehabilitation professionals, education of PWDs, economic rehabilitation, employment in government and private sector and self-employment, women and children with disabilities, creation of a barrier free environment, issue of disability certificates, social security, promotion of NGOs to provide services to complement government initiatives, collection of information on PWDs on a regular basis, research on PWDs, sports, recreation and cultural life, amending existing laws on PWDs etc.

However, the policy fails to establish a clear plan of action for implementation within a specific time period. The government has stressed on the community's responsibility for the implementation of the policy. The policy has recommended that the community play a vital role in the generation of resources to provide for the infrastructure costs related to implementation. This aspect of the policy has been criticised as a move by the State to absolve itself of its duty to create an inclusive environment for PWDs.



©www.disabilityindia.com

The existence of legal mechanisms promoting rights of PWDs has not significantly changed their plight for the better. While better implementation of these laws is necessary, what is even more important is a change in attitude towards disability and full participation of PWDs in the decision

making process as to their well being. The sheer insensitivity and neglect shown towards PWDs is shocking and shameful and cannot be improved without spreading education and awareness about disability. A welcome beginning would be the immediate ratification of the UN Convention on Rights of PWDs and incorporation of its obligations in domestic law along with the formulation of strong and adequate measures to implement them. Unless these positive measures are undertaken, India's strong commitment towards mainstreaming and inclusion of PWDs shall be nothing more than an empty promise.

- **CDHR Team**

The price of being poor: Urbanisation, Poverty and Destitution in India

Karl Polanyi's reference to the 'fatal irreversibility of urbanisation' in the 1940s rings true in the Indian context. With the economic boom in India, its cities are growing faster than the smaller towns and villages. Census records show that the urban population is growing at a higher rate than the rural population. Figures of the Planning Commission of India for 2004-05 indicate that more than half of India's poor live in five states and that the urban poor constitute nearly 28 per cent of the total poor population.

Slum dwellers and Housing Rights

The rich, big cities of India have the highest proportion of slum dwellers, living in abject poverty and most inhuman conditions. According to official figures, in 2002, there were 51,668 slums and 42.6 million people constituting 8.2 million households, were living in these slums in 640 towns across India (Census 2001 and NSSO 2002). Every seventh person in India is a slum dweller. Mr. Miloon Kothari, UN Special Rapporteur on



Mumbai Slums ©www.myoops.org

adequate housing, has opined that persons living in urban slums are faced with “urban apartheid”, are segregated and ghettoised, which further deepens the physical divides between the rich and poor in urban areas.

The human right to adequate housing is clearly mandated in international human rights law and the Indian Constitution also covers the right to adequate housing under the ambit of the right to life guaranteed by Article 21. The denial of adequate housing also leads to the violation of other basic rights such as clean drinking water, sanitation, livelihood and access to education and health care, as they are pushed outside the policy spectrum. Governments and local authorities demolish slums or forcefully evict slum dwellers on the pretext of urban planning, beautification of city neighbourhoods and prevention of encroachment, without any care and consideration for their rehabilitation. Strict slum clearance laws exist in many states across India, which legitimise forced evictions and demolition drives. Slum improvement/upgradation is an option only when the Land Owning Authorities (LOAs) do not need to claim the land in the next several years. The Supreme Court’s ruling in the landmark *Olga Tellis* case (AIR 1986 SC) that pavement and slum dwellers cannot be evicted without adequate notice and rehabilitation and the State would violate their right to livelihood, if they do, has not been followed in

practice. In the *Almitra H. Patel* judgment (AIR 2000 SC), the Supreme Court opined, “Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket.” Judicial opinion on the status of slum dwellers has seen a sea change since *Olga Tellis*; they are viewed as land grabbers and criminals rather than victims of poverty and marginalisation, in the eyes of the law. The housing policies of the government have also failed to take care of the housing needs of the slum dwellers and the draft National Slum Policy of 2001 was never implemented.

Beggary, Vagrancy and Criminalisation of Poverty

The urban poor population is not comprised of only slum dwellers but also of beggars and vagrants; who constitute the poorest of the poor in India’s richest cities. Destitution involves income poverty on one hand and social deprivation/expulsion, like loss of social protection, access to common property and public goods and services, political identity and citizenship, on the other. (Harriss-White: 2003)

The Bombay Prevention of Begging Act 1959, made applicable across eighteen states in India criminalises beggary and vagrancy. The definition of begging includes, among others, the absence of “visible means of subsistence and wandering about or remaining in any public place in such conditions or manner”. Singing, dancing, fortune telling, performing or offering an article for sale also constitutes soliciting for alms as per the Act. In other words, all persons who are unable to secure an adequate means of livelihood for themselves or even traditional artists are deemed criminals. Many beggars who suffer from leprosy or other mental and physical illnesses are also criminalised in the process. The Act gives sweeping powers of arrest without warrant to the police, which

they use regularly with devastating effect to terrorise homeless persons living on the streets. The penalty for begging for a first time offender, is detention up to a period of three years in a certified institution or a beggar's home under the Act and for a person convicted for begging on two or more occasions, the detention period is ten years or a prison term up to two years. Most of the cases under this Act are tried in a summary manner and a majority of the beggars are convicted, as they have no access to legal aid and even if they do, they are rarely heard.

Begging rackets or organised begging is becoming increasingly common across India but the Act does not adequately address this problem, penalising those who are the real victims, especially minors, in situations like these. A study by Peoples Union of Civil Liberties (PUCL) shows how the anti-begging law operates in Delhi; police constables raid crowded locations like railway stations, bus terminals, temples etc and target those persons who they think are beggars. Most of those picked up by the police are engaged in some kind of active work, whether it be manual labour or as rickshaw pullers or at roadside shops/stalls etc. Only few among them beg for a living because of their physical or mental disability. The eight government run beggar homes have a limited capacity of 1,810, hardly adequate for the high number of beggars/vagrants in Delhi. These homes are intended to reform the beggars and vagrants by providing vocational training etc but most of the funds allocated to these homes are spent on maintenance and administration. The sub-human living conditions and gross mismanagement at these homes point to the total apathy of the State towards the poor.

India has a total homeless and destitute population of more than 78 million, most of who reside in big cities. A city like Delhi alone has more than 100,000 homeless

persons on any given day and there are just 12 permanent night shelters in the city, with the maximum capacity of less than 3,000. The system is that of 'pay and use'; where in return they are provided with a place to sleep, mats and during winters, warm woollens but these shelters have poor facilities with no toilets, unhygienic living conditions and complete lack of safety. There are only 3 shelters for homeless women in Delhi that can accommodate only 1 per cent of Delhi's destitute women. The conditions are worse, especially for homeless women and children who are more vulnerable to illness, physical and sexual abuse and the brutality of street life.



Beggars on the streets ©www.worldstock.com

Notwithstanding the grim statistics reflecting total violation of human rights of the urban poor, the Delhi High Court recently directed the Delhi government to control begging in the city streets and 'rehabilitate' beggars in detention homes and provide them with vocational training to prevent them from begging. The Calcutta High Court also followed suit with a similar ruling banning begging and hawking inside trains and railway platforms, labeling them as a 'nuisance' that needed to be curbed. The Delhi government and civic authorities have launched a mission to clean the streets of Delhi and rid them of beggars and vagrants before the Commonwealth Games of 2010. We do not

Judicial opinion on the status of slum dwellers has seen a sea change since Olga Tellis; they are viewed as land grabbers and criminals rather than victims of poverty and marginalisation, in the eyes of the law. The housing policies of the government have also failed to take care of the housing needs of the slum dwellers and the draft National Slum Policy of 2001 was never implemented.

need studies to prove that neither beggary nor vagrancy is a matter of choice and stems from conditions of extreme poverty and complete social deprivation. The State's complicity in the process of destitution is epitomised in its active role in the criminalisation of poverty and destitution and at making these people invisible.

-CDHR Team

Power with Responsibility: India's re-election to the UN Human Rights Council

India, along with 13 other countries was recently elected to the UN Human Rights Council. It was already a member of the Council and was seeking re-election for a three-year term. India garnered the highest number of votes, among all the contesting states at the elections and probably, has a better human rights record than some of the other states elected this term, but she should realise that an extended term as a Council member brings with it, a set of duties and responsibilities that must be fulfilled. India must strive towards establishing herself as a true leader and set high standards to promote and protect international human rights norms. Unfortunately, some of the current members of the Council like China, Russia and Saudi

Arabia are persistent human rights violators and can be attributed with "questionable" human rights records.

In an evaluation of the election candidates up for membership to the Council in 2007 by UN Watch, India's qualifications were considered as "questionable", along with countries like Bolivia, Indonesia, Nicaragua, Philippines, Madagascar and South Africa. The well-qualified states, according to the study were Denmark, Italy, Netherlands and Slovenia and those that were rated as completely unqualified, included Angola, Belarus, Egypt and Qatar. This pre-election study rated states on the basis of their domestic human rights record and commitment towards promotion of international human rights standards. The UN General Assembly elected 14 members in all, 4 each from the African and Asian Group and 2 each from the Eastern European Group, the Group of Latin America and Caribbean Countries (GRULAC) and the Western European and Others Group (WEOG). Bosnia-Herzegovina entered the race, a week before the elections following strong resistance to Belarus' candidature by human rights groups. Belarus lost the elections to Slovenia and Bosnia-Herzegovina. Although Belarus' failure at the Council elections upholds the fact that human rights records of states matter, there was no competition in the other regional groups as there were as many candidates as there were available seats. (*Election Marred by Closed Slates in Three Regions, Human Rights Watch, 17 May 2007*)

India substantiated its candidature for election by reaffirming its earlier voluntary pledge on its strong commitment and leadership in the field of human rights. It would be interesting to evaluate India's human rights record with respect to the developments in the past year. India's Permanent Mission to the United Nations has referred to India's

achievements at addressing domestic violence through the enactment of The Protection of Women from Domestic Violence Act 2005 and elimination of child labour through a ban on employment of children under the age of 14 years as domestic helps or at small restaurants/eateries etc. Unfortunately, the ban on child labour is far from effective as children continue to be employed in small businesses and as domestic helps across India and as far as the domestic violence legislation is concerned, it requires the state to set up certain institutional implementation mechanisms and unless that is done, endorsing it as a success story at international circles might prove injudicious on India's part.

India has pledged to maintain the independence, autonomy and genuine powers of investigation of the National Human Rights Commission (NHRC) and other human rights bodies. However, in reality, the independence of the NHRC and all other human rights bodies is stymied by political interference at all levels, right from appointment to day-to-day functioning. The NHRC is not allowed to independently investigate cases of human rights abuse by the Indian armed forces, even when the fact of human rights violations by the armed forces is well established (SAHRDC, HRF/141/06). A promise to foster governmental transparency and accountability through the Right to Information Act have been broken by proposing a retrograde amendment by way of excluding all official 'file notings' from access to citizens, except in case of social development projects. But the public outcry over the proposed amendments, forced the government to withdraw them. The civil society in India is not as free as the pledge seems to indicate. The Foreign Contribution (Management and Control) Bill (FCMC) 2006 seeks to replace The Foreign Contribution (Regulation) Act (FCRA) 1976. The NGO sector in India has been actively protesting against the passing of this Bill as it

proposes a blanket ban on receipt of foreign contributions by 'organisations of political nature, not being political parties' and leaves it to the subjective discretion of the government to decide which NGOs fall under the broad sweep of this law. With regard to advancement of women's rights and gender equality in India, the CEDAW Committee's harsh critique of India's half-baked efforts at promoting the same, echoes serious concerns about the status of women in Indian society.

India garnered the highest number of votes, among all the contesting states at the elections and probably, has a better human rights record than some of the other states elected this term, but she should realise that an extended term as a Council member brings with it, a set of duties and responsibilities that must be fulfilled.

India has also pledged to make the Council an effective body and actively participate in the development of modalities for universal periodic review and strengthening the special procedures system. It would be important to mention that India is yet to ratify some of the core international human rights instruments such as the Convention Against Torture and its Optional Protocol, Migrant Worker's Convention and both the Optional Protocols to the ICCPR. India has not extended a standing invitation to any of the UN special procedures and as far as periodic reporting to treaty based bodies are concerned, there has always been a considerable delay in its submission of reports. For example, India is yet to submit its fourth report to the Human Rights Committee that was due in 2001 and it finally submitted its joint second and third report to the CEDAW Committee in 2005, when the second report was due way back in 1998. Given its weak record with respect to periodic reporting and

compliance with special procedure mechanisms, India's claim to strengthen the Council mechanisms seems unconvincing.

The Council's membership raises grave questions about the election process itself. Candidates are in competition with their regional counterparts and not with those outside their respective groups. The Council was meant to remedy the flaws of its highly discredited predecessor, the UN Commission on Human Rights (UNCHR) but by allowing the election of member states with deplorable human rights conditions and least respect for international human rights norms, the Council is "moving in the direction of eroding, rather than strengthening, the UN's existing independent human rights mechanisms". (*UN Watch, NGOs alarmed at some UN Human Rights Council Candidates, 7 May 2007*)

-CDHR Team

RIGHTS – COMMENTARIES

NHRC issues Notice on Bonded Labour

Sixty-five men, women and child labourers were held captive for months at a brick kiln in Sonapat, Haryana. Since their release in Mid-March, these labourers are now fighting to book the owners of the kiln, who had held them captive for so long. The most challenging task was to get the district administration to act on their complaint. These labourers; mostly Dalits from the Jhanjgir District of Chattisgarh, alleged that the kiln-owners' son had harassed one of the women workers in January 2007. According to them, when they protested and asked to be sent back with their withheld wages, they were detained under vigil at the kiln and forced to work.

Relief came their way only when Raj Kumar, one of the captives escaped and contacted some activists in Chattisgarh. Labour Rights activist, Swami Agnivesh immediately apprised the district police authorities of the situation. But the police, instead of following the appropriate legal procedure with regard to bonded labour, released the captives on the night of 14th March 2007 and put them on a train to Delhi. Swami Agnivesh alleged, "The Deputy Commissioner of Sonapat has flouted all rules in getting them released. It has not been acknowledged that they were bonded labourers and the criminals have not been booked for confining or torturing them under the laws that prevent bonded labour and rights of dalits". (*The Hindustan Times, 04-04-07*) On the other hand, Sonapat Deputy Commissioner, Mr. D.P.H. Nangal counter-alleged that they had verified everything and then released them and that "now facts are being twisted."

These released bonded labourers, led by Swami Agnivesh, protested at the Jantar Mantar in the capital, New Delhi since March 15 and the Union Labour Minister Oscar Fernandes had met them. The Haryana Chief Minister had been apprised of the situation. But the protesting labourers lament that the accused Deputy Commissioner did not budge and that they were thus going to place their demands before the UPA Chairperson, Sonia Gandhi.

The National Human Rights Commission (NHRC) of India, taking suo-motu cognisance of this worrying news that appeared in newspapers issued a notice asking the DC, Sonapat to explain as to why release certificates were not issued to the bonded labourers. The complainant has alleged that despite repeated pleas made to the DC to take immediate steps, he did not visit the spot to record the statements of the victims or delegate the Sub Divisional Magistrate (SDM) to follow procedure according to The Bonded

Labour System (Abolition) Act, 1976. In fact, instead of recording the statements of the labourers, the Deputy District Food Supply Officer got their thumb impressions on a blank paper and released them. It is further alleged that the DC showed utter dereliction and indifference towards his duty under The Bonded Labour System (Abolition Act) 1976. The NHRC had given a time of two weeks to the DC, Sonapat for responding to the notice issued. But there are no reports of whether the notice was responded to and if any subsequent action was taken.

11th Five-Year Plan considering Gender Sensitive Allocation of Resources

In what is being termed as a ‘unique’ move, the Indian government has constituted a committee of economists to advise on gender-sensitive allocation of public resources in the 11th Five-Year Plan. Efforts to promote gender equality have been made through attempted gender budgeting in the Union Budget since 2005. The gender budgeting statement intends to ensure that public resources are allocated in a gender equitable way and more importantly, checks the government’s commitment to women. But the response so far from ministries has not been very encouraging.

Thus, to further this process of gender accountability, a 21 member committee has been created that is headed by Syeda Hamid, Member, Planning Commission of India, and includes other members like Renna Jhabvala of Self Employed Women’s Association (SEWA), Jean Dreze and Bina Agarwal from the Institute of Economic Growth etc. This committee intends to review all the sectoral reports of working groups and steering committees for the 11th Plan with respect to gender content. It shall then make suggestions to ensure that the inclusive growth approach envisaged for the 11th Plan period can be

translated into sectoral plans with appropriate institutional arrangements and adequate financial allocations to ensure gender equality. The committee will also look at the present system of data collection with special reference to gender-related data and identify gaps in the system.

The present United Progressive Alliance government’s National Common Minimum Programme had not just committed to empower women politically, educationally, economically and legally but also to ensure equality for them. The 10th Five-Year Plan contained targets for women like reducing gender gaps in literacy levels and wage rates by at least 50 per cent in 2007, reducing maternal mortality rate to 2 per 1000 live births by 2007 and increasing the representation of women in government services and the Parliament. But the report of the Mid Term Appraisal of the 10th Five-Year Plan had clarified that “the goals appear almost impossible to achieve”. The Approach Paper to the 11th Plan outlines, “the 11th Plan Strategy for gender equity must pay attention to all aspects of women’s lives....from freedom from patriarchy to specific issues such as clean cooking fuels, care for pregnant women, dignified spaces for violated women..” These priorities expressed in lofty words need to be reflected in reality through adequate allocation which the committee must ensure.

Overall strategies to make gender equitable allocation of public resources in the Five-Year Plans should be reflected concretely in the Union and State Budget. But a close look at the gender budgeting statement of the Union Budget 2007-08 shows the mere inclusion of a few more ministries and departments which has resulted in a consequent increase in the size of the gender budget. However, no single scheme or allocation was targeted at women from

minority groups. Also, there is no means of ascertaining whether these funds actually reach the women in need. Thus, the task ahead for this new committee, as the details of the 11th Five-year Plan are finalised, is one of great responsibility.

Central Legislation may replace Model Right to Education Bill for States

Unfortunately in India, the fundamental right to education exists on paper and is yet to be notified. It suffered a deep setback when, in 2006, the government tried to absolve its constitutional responsibility of enacting central legislation to achieve the right to education and instead, passed the entire responsibility in this regard to the states, through the proposed Model Right to Education Bill for the states. But faced with a lot of flak for that measure, the Centre is now considering revisiting the idea of a central legislation.

In 2006, the Indian government dashed the hopes of 170 million children of school-going age by burying the landmark Right to Education Bill, citing lack of funds as the main reason. Instead of tabling the Bill in Parliament, the government asked the states to implement their own laws to guarantee all Indian children free and compulsory education. Educationists and child rights activists, who were disappointed at the demise of the long-awaited Bill, refused to swallow the reasons given by the government, especially when the government appears ready to allocate funds towards the creation of additional seats in higher educational institutions to accommodate its reservation policy. So, six years after the Indian Constitution was amended to make education a fundamental right, the government passed the model Bill on to the states.

Child Rights and You (CRY) has described the decision by the government to return the Right to Education Bill 2005 to the states in a diluted version as the Model Right to Education Bill 2006 as a retrograde step and a direct onslaught on the fundamental right to education. Ingrid Srinath, Chief Executive, CRY said, "It holds our children ransom to Centre-State bickering on funding and betrays the trust that millions of tax payers placed in the government's promise to universalise education via the 2% education cost."

A large number of teachers from all across India and members of the All-India Primary Teachers' Federation (AIPTF) protested in New Delhi and alleged that if the Bill was implemented it would lead to a "total collapse" of the administration of education across the country. They were against the constitution of School Management Committees (SMC) in the new Bill, as they claimed that the SMCs might not have the requisite experience for school administration and teacher supervision. Their lack of knowledge of the Indian education system could result in unimaginable corruption in school administration. AIPTF also opposed the provision pertaining to school-based cadre of the Model Right to Education Bill 2006, according to which if a teacher is appointed in a school, he can be transferred on any ground and has to remain there until retirement.

As most states disagreed with the idea of the Model Bill, the Centre was forced to revisit the idea of a central legislation. Many reasons have forced this reverse look. The Central Advisory Board of Education (CABE) committee, which had worked on the draft bill, included estimates of the National Institute of Education Planning and Administration according to which the government would have to spend nearly Rs. 5,30,000 million, over and above current expenditure. But it has

been pointed out that the actual cost of implementing the legislation may be lower than what had previously been envisaged, if the expenses of the Right to Education Bill and the Sarva Shiksha Abhiyaan (SSS) are dovetailed and this can help allay the fears of a substantially increased fiscal burden on the centre.

Besides, the Model Bill was also ostensibly undertaken to prevent the Centre from being overburdened by an increased volume of public interest litigations (PIL) mandating it to sanction and fund infrastructure, far beyond its financial capability. But if realistic targets are set for states to implement this Bill, this problem can be avoided. For this very reason, the draft Right to Education Bill had provided a time frame of three years but the Model Bill had none. Thus, experts opine, “a time frame which is in tune with the economic development and literacy index of the state would ensure that the legislation is implemented in an atmosphere that will maximize benefits.” (*The Economic Times*, 26-03-07)

Follow up to Sachar Committee: National Commission for Minorities (NCM) and National Commission on Religious and Linguistic Minorities (NCRLM) recommendations

The Union Cabinet of India had accepted all the recommendations of the Sachar Committee on the Social, Economic and Educational status of the Muslim Community in India. To implement these recommendations, the government has decided to set up a National Data Bank that will maintain all relevant data for various socio-religious communities; expert panels to look at the setting up of mechanisms like the Equal Opportunity Commission and formulate a diversity index. The Cabinet also formally

approved a plan to identify 90 districts with a concentration of minorities (53 of them way below the national average in terms of socio-economic conditions) and said that guidelines would be issued to all central ministries to prepare such plans that provide these districts with the required attention and resources. (*The Hindustan Times*, 18-05-07)

The Union Minority Affairs Ministry has agreed to take measures to improve deficiency in civic amenities and economic opportunities in 388 towns and cities with a substantial population of minorities, including Muslims. To improve access of education of girls, this Ministry has promised to implement three scholarship schemes, in addition to a coaching scheme. The outreach of upper primary schools will be expanded, priority will be given to the opening of secondary and senior secondary schools and where necessary, “only girls” schools will be opened. The Madrasa Modernisation Programme will also be revised to enhance the components eligible for assistance. On the whole, a multi-pronged strategy will be adopted for addressing the problem of educational backwardness of the Muslim community. An interministerial group will plan and monitor the implementation of a comprehensive programme for skill and entrepreneurship development among the Muslim community and to ensure smooth access to credit for them. “Clusters” having a substantial presence of Muslim artisans will receive special attention.

Areas with a high concentration of Muslims will have more branches of public sector banks; micro finance among the minorities, especially women, will be promoted; disposal of loan applications of minorities and flow of credit to minorities will be monitored regularly. (*The Hindu*, 19-01-07)

On the other hand, the National Commission for Minorities (NCM) of India

has identified a five-point agenda for the government to uplift Muslims from the state of backwardness that was revealed in the Sachar Committee Report. The NCM recommendations were based on the action-taken report on the Sachar Committee recommendations made by the Ministry of Minority Affairs. The priority areas outlined by the NCM were – education, employment opportunities, bank credit, physical and social infrastructure and recruitment procedures.

Meanwhile, the report of the five-member National Commission on Religious and Linguistic Minorities (NCRLM) set up in March 2005 and headed by Justice Ranganath Misra to look into the criteria for defining backwardness among minorities, has submitted its report to the government on 21st May 2007 after a long delay. The Committee has recommended that the Constitution (Scheduled Castes) Order 1950 be amended, so that religion is delinked from caste while deciding the Scheduled Caste (SC) status; which would make Dalit Christians and Dalit Muslims eligible for reservation. The NCRLM recommended 15 per cent reservation for minorities in India; 10 per cent for Muslims and the remaining 5 per cent for other minority communities.

CEDAW Committee Concluding Observations: India

India submitted its second and third periodic reports before the Committee of the Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) on 18th October 2005, which was considered by the Committee at its 37th Session from 15 January 2007- 2 February 2007. The 14-member Indian delegation was headed by Ms. Deepa Jain Singh, Secretary, Ministry of Women and Child Development and included members like Mr. Nirupam Sen, India's Ambassador to the UN and Mr. G.E.

Vahnavati, Solicitor General of India, other government officials and NGO representatives. It would be relevant to mention that India's second and third periodic reports to the CEDAW Committee were due in 1998 and 2002 respectively and given the considerable delay in submission, the Indian government finally submitted a combined second and third periodic report in 2005. In its report (CEDAW/C/IND/2-3), India described its efforts to eliminate discrimination against women and girl children. The report emphasised that reduction in poverty rates, marked increase in female literacy rates, slight increase in the sex ratio and increased political participation of women had helped bridge gender inequalities in India. But at the same time, the government conceded that gender discrimination still persists and listed some of the challenges faced in this regard.

The CEDAW Committee, however, was not particularly impressed with India's report and raised a number of issues and questions that remained unaddressed and unanswered in India's report in August 2006 (CEDAW/C/IND/Q/3). India's periodic report did not include information on the Gujarat riots and its impact on women and the steps taken by the government to investigate and prosecute the perpetrators of violence against women and the legal and institutional support provided to the victims of violence. The Committee also sought information on existing and proposed legislative mechanisms for the empowerment of women. Details about strategies and policy measures undertaken to address gender-based violence and forced prostitution and trafficking were sought. It further asked India to provide additional information with respect to discriminatory cultural practices and gender stereotypes, women's participation in political life, education, health, employment, condition of rural women, equality in marriage and civil

law and India's efforts at ratification of the Optional Protocol to the CEDAW.

India's response to the issues and questions raised by the Committee listed the steps taken by the government but failed to establish whether these measures were effective or not. India's complete silence or inadequate response to certain issues like gender inequality in the private sphere or the ratification of the Optional Protocol raises serious doubts about India's commitment to these issues (*CEDAW/C/IND/Q/3/Add.1*).

The National Alliance of Women's Organisations (NAWO) submitted a shadow report to the CEDAW Committee, providing their comments on India's periodic reports. This shadow/alternative report draws the attention of the Committee towards the prevalence of 'widespread practices of discrimination and social exclusion of women' with the help of data and media reports. NAWO observes that the reasons for gender discrimination are multiple and is very strongly linked to the historical and systemic culture of structural violence against women, which 'guarantee impunity despite legal safeguards'. The shadow report holds the Indian legislature and judiciary responsible for their failure in implementing laws in favour of gender equality and non-discrimination. (*NAWO, India Second Shadow Report on CEDAW, November 2006*)

In its concluding observations on India's second and third periodic reports, the Committee commended India's efforts in including women's concerns within the policy and planning framework. The Committee expressed concern that India had not taken measures to implement the Committee's recommendations on its initial report in 2000. The Committee urged India to withdraw its reservations to the CEDAW with respect to non-interference in personal affairs of

communities, without their consent and encourage debate and discussion on gender equality and women's rights within communities. India was asked to take active measures for practical realisation of women's rights and develop a national plan of action to combat gender based violence, enforce laws against discrimination of women and increase political participation of women. The Committee recommended that the definition of 'rape' be broadened, include gender based crimes within the ambit of the proposed Communal Violence law, abolition of customary practices like witch hunting, effective implementation of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities (POA) Act to address crimes against Dalit and tribal women and improve women's access to education and health facilities.

The Committee emphasised on the need for disaggregated data on the basis of sex, caste, minority status and ethnicity to enable the formulation of policies and programmes addressing specific needs of women and girls. The Committee was apprehensive that the benefits of the National Rural Employment Guarantee Act and micro finance facilities do not reach the poorest and marginalised women, thereby limiting their access to a steady income and credit. It also stressed on the immediate enactment of laws providing social security to the unorganised workers, elimination of child labour, prohibition of child marriage and compulsory registration of marriages. (*CEDAW.C.IND/CO.3*)

The Committee was disappointed with India's insufficient responses to the questions posed before it and requested it to submit a detailed follow-up report on all these questions in 2008, separate from its fourth and fifth periodic report which is also due for submission during the same time.

Caste Discrimination and Dalits in India: Indian People's Tribunal on Untouchability and the ILO Report

“Contrary to public perception that untouchability has been eradicated, it is expanding and is prevalent in 50 per cent of the villages in India”, said Colin Gonsalves, founder-member of Human Rights Law Network (HRLN) at the Indian People's Tribunal on Untouchability held in New Delhi in May 2007. This unprecedented two-day public hearing on untouchability and Dalit atrocities saw a panel comprising of Nirmala Deshpande, Member of Parliament, Rajya Sabha, and social activists, Swami Agnivesh, Sandeep Pandey and Harsh Mander hear shocking tales from Dalits across the country on discrimination in villages, educational institutions, physical violence, torture, rape, denial of access to common property resources perpetuated by upper caste and non-Dalit persons.

Very few incidents of Dalit atrocities have received media attention like that of Bant Singh of Punjab whose hands and legs were chopped off because he dared to ask for punishment for the upper caste miscreants who raped his minor daughter and the incident of the Dalit medical student at the All -India Institute of Medical Sciences (AIIMS) in New Delhi facing caste discrimination that began at the ragging sessions. Several other unheard stories found voice at this public hearing, like that of Chand Muni, whose son and three nephews were beaten to death for allegedly stealing buffaloes in Ara village in Bihar. Her house was burnt down, she was refused ration in her village and has yet not received any compensation. Paan Bai, wife of Phoolchand Ahirwar from Chhanbilla in Madhya Pradesh laments, “My husband was promised a job and taken away. He was abused by his caste name and then his ears were chopped off with a blade”. Today, she runs her household by

rolling beedis (local cigarettes) while the three accused men, one of whom is an upper caste Brahmin and the other two Yadavs, continue to threaten her and her family.

While pointing out that 12 out of the 17 people killed in the Nandigram firing in West Bengal were Dalits, another Dalit victim, Sheikh Ahmeduddin added, “More than 80 per cent of people in these villages were Dalits and Muslims. The schools have been closed for over four months, people do not sleep in the night, bombings take place often and there are no employment opportunities.” (*The Hindu*, 13-05-07) All stories were horrific and shocking, be it the case of the Dalit woman being paraded naked in Rajasthan, raped and then murdered, that of access being denied to groundwater to Dalits in Andhra Pradesh or that of 21 Dalits being shot in Uttar Pradesh over a land dispute.

After hearing the cases on 12-13 May 2007, the panel along with the victims was to meet the President, the Prime Minister, the Home Minister and the National Commissions for Scheduled Castes, Women and Human Rights on 14-15 May 2007. Besides, as the criminal justice system in India has failed to ensure justice to Dalits, the participants and the jury along with the organisers, viz., the National Campaign on Dalit Human Rights (NCDHR), the Human Rights Law Network (HRLN) and 56 other organisations plan to chalk out a nation-wide action plan or “andolan” to eradicate untouchability. Gonsalves, also a jury member, promised to file public interest litigations in the High Courts, wherever the practise is prevalent.

The Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights to Work titled ‘Equality at Work: Tackling the Challenges’ released at the 96th session of the International Labour Conference 2007 noted that “ Discrimination rooted in caste or similar systems of rigid

social stratification has been observed in Africa, Asia and the Middle East, but the practice is most widespread in South Asia, particularly, in India and Nepal. Although the law prohibits the practice of “untouchability”, caste remains a dominant factor in defining the economic and social status of Dalits across the region. The mobilisation of Dalits in the countries concerned has helped raise the visibility of their plight nationally and internationally.”

However, this Report also mentions that a very encouraging and recent development, following efforts by the National Human Rights Commission (NHRC), was the announcement by the Prime Minister of India of the abolition of the degrading practice of manual scavenging. Subsequent to a number of meetings held by the NHRC with representatives of the central and state governments and other stakeholders, the Planning Commission formulated a National Action Plan for Total Eradication of Manual Scavenging by the end of 2007. But the Commission was quick to point out, very truly, that, “Purely developmental approaches to improving the lot of Dalits are insufficient, if the underlying structural causes and caste barriers are not simultaneously addressed.”

Gender discrimination hurts economic growth in the Asia-Pacific region

A recent report by the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) reveals that the Asia-Pacific economy is set back by U.S \$ 42-47 billion per annum due to lack of access to employment opportunities for women and U.S \$ 16-30 billion due to gender discrimination in education. The Economic and Social Survey for the Asia-Pacific 2007 conducted by the UNESCAP addresses the issue of ‘economic

costs of gender discrimination’ in the region. The survey established that limited access of women to work, education and health facilities, is not only a violation of their basic human rights but also manifests itself in economic terms. Gender discrimination exists in a number of areas, including education, health, employment and political participation.

The survey estimates that if India’s female work force were at par with that of the United States, its Gross Domestic Product (GDP) would increase by U.S \$ 19 billion. The restrictions of women’s access to employment opportunities has led to a difference of 30-40 per cent between male and female work force participation in the region.

Although female literacy rates are rising, the primary school enrolment among females is still 26 per cent lower than that of males. This situation can be easily remedied by incentivisation of female education in families where parents hesitate to send their daughters to school by locating schools close to villages, building separate toilets and wash rooms for girls and appointment of more female school teachers. The deteriorating female sex ratios, especially in North, Central and South Asia, are reflective of women’s lack of access to health services. In some countries, one in ten girls die before they are one year old and one in fifty women die during pregnancy and childbirth. To address female malnutrition and mortality, free lunch at schools and special nutritional packages to pregnant women can be made available and establishing mobile clinics is not a high cost exercise and can be instrumental in reducing infant and maternal mortality rates.

Women’s participation in the political and decision making process is also restricted. They have unequal representation in representative bodies like the Parliament or state/local bodies. India has passed a law

reserving 33 per cent of seats at local bodies for women but this is not the case in most other countries in the region. Although women's representation in politics has increased by 50 per cent since 1997, only seven countries in the Asia-Pacific have female representation of over 20 per cent in their respective Parliaments.

A 2007 report by the International Labour Organisation (ILO) on "Equality at Work" also shows that despite an increase in the female labour force participation rate across the world, both in the formal and informal sectors, many women still work without pay and in high level jobs, the pay gap persists. Citing 2004 statistics, the report estimated that women earn 30 per cent less than men in the manufacturing sector, even in countries like Japan, Hong Kong, South Korea and Taiwan. The report also observes that discrimination at the workplace is taking new forms, other than gender, race or religion and extends to one's age, sexual orientation, HIV/AIDS status or disability.

Simple legislative and policy measures can go a long way in addressing gender discrimination in employment. UNESCAP Secretary recommends that governments should take the lead, with the public sector playing an active and pioneering role in reducing workplace discrimination. Legislation against sexual harassment at the workplace should be enacted. Most importantly, to bring about a change in the attitude of society towards women, gender sensitisation of males is necessary and should begin early.

Although, the economy in the region is growing by 7.4 per cent per annum, the real challenge is to end gender discrimination. The UNESCAP report recommends improvement in the education and health sectors and that full economic participation is ensured. Gender

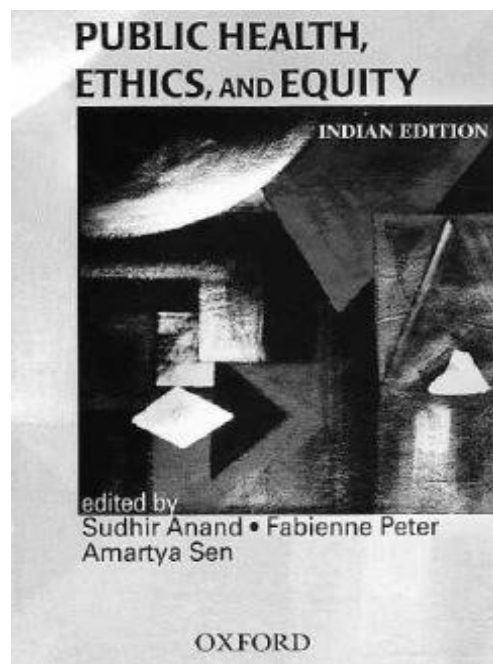
discrimination can be eliminated with limited resources and stronger political commitment.

RIGHTS – BOOK REVIEWS

Public Health, Ethics and Equity

Edited by Sudhir Anand, Fabienne Peter, Amartya Sen

**Oxford University Press, YMCA
Library Building, Jai Singh Road, New
Delhi-110001. Rs. 595.**



What is health? The word is derived from the old English word 'hæleth', which, according to the *Chambers 20th Century Dictionary*, means, "sound bodily condition; soundness; condition of wholesomeness; well being; a state with respect to soundness." The World Health Organisation (WHO) defines "health", as formalised in its constitution nearly 60 years ago, "a complete state of physical, mental and social well-being, and not merely the absence of disease or infirmity"

(emphasis added). In more recent years, in the 1978 Health for All declaration at Alma Ata, this definition has been qualified to mean the ability to lead a "socially and economically productive life."

Today the world is still far from being anywhere near achieving that goal. Inequalities in health in large parts of the world stare us in the face. While life expectancy in the developed world is around 80 years, in many parts of Africa it is less than 40 years. If the under-five mortality rate in the West is a single digit per thousand, in some of the least developed countries it is in three digits. The maternal mortality rate in many European states is less than 10 per 100,000. In Afghanistan or parts of Africa it is over 1000. Indeed, India is closer to the worst off regions, than otherwise, with 81 and 540 for the last two indicators respectively.

Disparities

But, more significantly, there are large disparities within a country, which national averages do not reveal. Systematic health inequalities exist across different social groups, socio-economic classes, ethnic groups, race and gender.

The social gradient in most countries is similar: that is, economically well off groups enjoy better health because they have access to better health care. While public health care systems do result in the improvement of a nation's average health, quite often the policies and measures benefit the rich more than the poor. This is clearly morally unjust, iniquitous and unethical. How does one address these persistent health inequalities of the world in an equitable, just and ethical way?

Notwithstanding its all-encompassing definition of health, WHO's prescriptions for national health policies have tended to focus on national health care systems to improve

national health indicators on the average implying indirectly that a right to health meant only a right to health care. The indices and measures for the health of nations or communities that it has evolved too have been arrived at in this one-dimensional fashion, focussing on the health of the aggregate population and ignoring aspects of distribution from the perspectives of equity and justice.

Health inequalities

The collection of essays in the volume under review is an attempt to bring out in the language of welfare economics — health economics to be more accurate — the fact that the health inequalities arise from several factors that go beyond distributive aspects of health care and prescriptive health care policies *a la* WHO and depend on, as Amartya Sen in his essay "Why Health Equity?" puts it, "The larger issue of fairness in social arrangements, including economic allocations, paying appropriate attention to the role of health in human life and freedom... The extent of inequality in health cannot give us adequate information to assess health equity."

Only recently, in March 2005, the WHO constituted the Commission on Social Determinants of Health (CSDH) to address social factors that lead to ill health and health inequities. The commissioners include Kiyoshi Kurokawa, Amartya Sen and Michel Marmot. The volume includes the contributions of the last two.

The essays authored by distinguished scholars, formed part of a seminar series at Harvard University in 1998 and 1999 to address issues concerning health equity that has been generally lacking in academic discourses on health inequalities.

The book examines health equity from the different perspectives of economists, sociologists, philosophers, anthropologists and public health specialists which have been

broadly classified into five themes: what is health equity?; health equity and its relation to social justice; health inequalities and responsibilities for health; ethical issues in health evaluation and prioritisation; and, anthropological perspectives on health equity. While the contributions are accessible to a multidisciplinary and policy-oriented scholarly audience, not all of them are easy reading. Some of them may, in fact, seem tedious to a general reader.

"What is particularly serious as an injustice," writes Sen, "is the lack of opportunity that some have to achieve good health because of inadequate social arrangements, as opposed to, say, a personal decision not to worry about health in particular... This calls for the further distinction between health achievement and the *capability* to achieve good health... It is important to distinguish between the achievement and capability, on the one side, and the facilities socially offered for that achievement (such as health care), on the other."

Social gradients

Drawing upon the famous Whitehall studies of British civil servants in the U.K., which showed that health is influenced by socio-economic status, Michel Marmot discusses how social inequalities impinge on health and stresses the importance of social gradients in evolving health policies. While conceding that individual responsibility matters, Daniel Wikler emphasises that health gradients exist independent of behavioural patterns and argues that the society cannot, therefore, absolve itself from an obligation to correct social inequalities in health.

Though many of the papers have been published elsewhere earlier, and in that sense there may not be anything new for those engaged in the field, it is useful to have them

together in one volume from the perspective of evolving national policies and interventions to achieve equity in health. But translating the theoretical ideas presented here into policy instruments and practical measures will certainly not be an easy task.

© Copyright – R. Ramachandran, 2000 - 2006 *The Hindu*

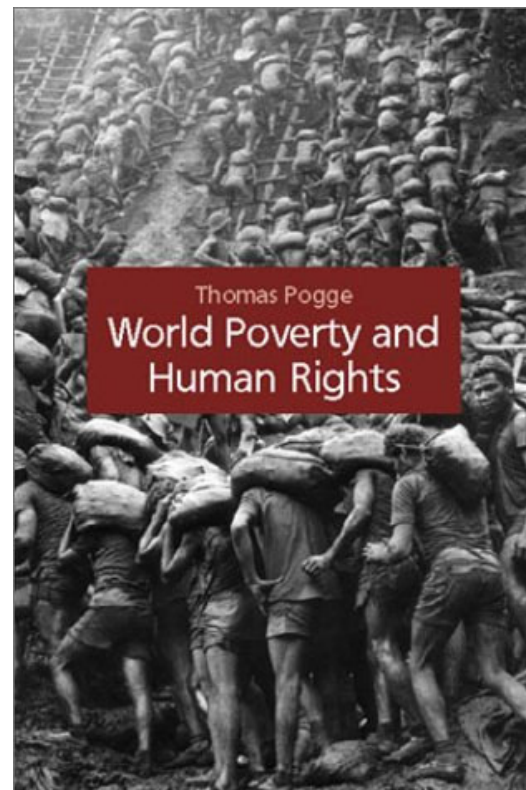
World Poverty and Human Rights

By Thomas Pogge

Cambridge: Polity Press, 2002), 284 pp.

ISBN 0745629954 (pbk).

Hardback/Paperback. £55.00/£16.99.



In a well-known paper, Philippa Foot once contended that it is sometimes morally worse to bring about a bad outcome than merely to allow it. To support her point she offers the following contrast: 'Most of us

allow people to die of starvation in India and Africa, and there is surely something wrong with us that we do; it would be nonsense, however, to pretend that it is only in law that we make the distinction between allowing people in the underdeveloped countries to die of starvation and sending them poisoned food. There is worked into our moral system a distinction between what we owe people in the form of aid and what we owe them in the way of non-interference' (*Virtues and Vices* [Berkeley: University of California Press, 1981], pp. 26-27). Some philosophers, including Peter Singer and Peter Unger, have worried that passages like this encourage us to underestimate our duty to relieve starvation in poor countries. In his book, *World Poverty and Human Rights*, Thomas Pogge points out that this worry implicitly accepts an assumption made by those it is directed against, namely: that people in developing countries are impoverished, because we allow them to be so and not because we—people in rich, powerful countries—impoverish them. According to Pogge, this assumption is incorrect.

In Pogge's view, global institutional structures, e.g. the international trade regime, are largely controlled by powerful Western states and designed to serve their interests. As a result poor countries get a rough deal, and this explains much of the suffering and premature death that they experience. First, it is part of our global institutional order that dictators can borrow money and sell the natural resources of the poor countries that they control and thereby enrich themselves. This creates destabilizing incentives for military coups (p. 142) that inevitably work to the disadvantage of poor people. Second, the international trade regime severely restricts the access of developing countries to the markets of affluent countries.

Many people—probably most people in the West—would deny that intra-national

poverty and inequality on a scale comparable to that existing between nations is permissible, even though they tacitly accept the latter to some extent. The plausible explanation of this asymmetry is *normative nationalism*, i.e. the notion that we have a stronger obligation to help compatriots than to help non-compatriots. Pogge does not reject normative nationalism (p. 78), but he argues that it is inapplicable to a moral evaluation of world poverty. Such nationalism might make sense in the context of omissions, but when it comes to harming others one surely does not have a stronger obligation to refrain from harming one's compatriots (or more generally, people to whom one is specially related) than one has to refrain from harming non-compatriots (or more generally, people to whom one is not related in these ways) (pp. 131, 176).

If Pogge is right, citizens of affluent, powerful states are 'accomplices in a monumental crime against humanity' (p. 24). One might wonder why so many people fail to notice this. Pogge offers several explanations. The distortion of our moral perception brought about by self-interest and our extreme isolation from severe poverty are clearly part of the story (p. 4). Another part is the fact that the global institutional order is a causal background condition and, thus, easily overlooked (p. 200) when we seek to explain poverty. For such purposes, national factors are much more salient. Accordingly, many of us are in the grip of *explanatory nationalism*. We incline to the view that local factors, e.g. bad and corrupt government, are the sole unexplained explainers of poverty in poor countries. We overlook the fact that global institutions explain poverty's enormous scale worldwide.

Many would agree with Pogge that it is a bad thing that serious poverty exists but add that, unfortunately, it would be unreasonably burdensome for us to relieve it, and hence doing so is morally supererogatory.

Not so, according to Pogge. The discrepancy between the wealth of industrialized countries and poor countries is now so big that we could eliminate world poverty at negligible cost to ourselves: 'Shifting merely 1 percent of aggregate global income...from[citizens of the affluent countries] to [the 46 percent of humankind who live below the World Bank's \$2/day poverty line] would eradicate severe poverty worldwide' (p. 2). A shift of this sort may not even be a net cost to affluent people, since eliminating world poverty will also promote democracy, reduce immigration pressures on rich countries, and so on (p. 213).

Readers, who share Pogge's view about the immorality of world poverty, are bound to wonder to what extent Pogge's institutional approach can stand alone. First, some rich, but powerless, countries (e.g. Iceland) presumably bear little or no responsibility for 'upholding', 'imposing upon others' or 'shaping' the global, institutional order. If our moral obligation to alleviate poverty depends on our responsibility for the institutions which cause it, it seems Icelanders may have limited such obligation. This would remain true even if Icelanders were very much richer than, say, the average American. By contrast, on Singer's and Unger's view that the obligation to alleviate poverty follows from the fact that one can prevent it at little cost to oneself, Icelanders would have such an obligation. Second, while the global institutional order may play a causal role in the explanation of any poor person's poverty, presumably, how large this role is varies across different groups of poor people. In the case of some, changing the global institutional order might greatly improve their situation. In the case of others, it might have a marginal effect. On Singer's and Unger's view, such differences would be irrelevant to our moral obligation to help these people. On Pogge's institutional view, we have a stronger moral obligation to alleviate the poverty of the first

group, since they are the ones we have harmed most by imposing the global order. And should there exist a group of impoverished people who would be even worse off under a just, global institutional scheme, it seems (implausibly?) that we would have no obligation to help them on the institutional approach.

Such problems can be mitigated in two ways. First, Pogge does not deny that we have a positive duty to aid poor people. Second, our negative duties, in his view, extend beyond what is normally taken to be their scope. Take his claim that the willingness of affluent countries to buy natural resources from countries where power has been forcibly seized creates incentives for local military elites to overthrow democratically elected rulers. Since such coups invariably are to the detriment of the severely impoverished, this implies that people in affluent countries unduly harm these people, and this constitutes a violation of a negative duty (p. 113). Not all will go along with Pogge's line of argument here. Consider an analogous case. Adam is good at catching fish. Beth likes fish and is willing to exchange delicious coconuts for fish. Because Claude likes coconuts very much, this willingness gives Claude an incentive to seize Adam's fish and exchange them with Beth for coconuts. Suppose Claude does that on a regular basis. Has Beth then unduly harmed Adam in a way that those who subscribe to a moral asymmetry between negative and positive duties would think is morally equivalent to violating a negative duty not to harm Adam? Many asymmetrists will say that since Beth cannot be faulted for being willing to buy fish, and since Claude can be faulted for regularly robbing Adam, the answer is 'no'. Insofar as Beth violates a negative duty in this example, I suspect this is not a duty *not to harm* Adam, but one *not to create strong, but clearly resistible, incentives* for Claude to harm Adam. This makes a moral

difference, because, in violating the former duty, Beth owes Adam greater compensation than she does in violating the latter duty. Pogge could, I think, concede this, adding that this simpler case fails to engage other reasons he gives for holding that we violate a negative duty not to harm the world's poor (e.g. that we help various dictators to keep themselves in power by selling them weapons of repression) (pp. 113-15).

Despite these minor worries, *World Poverty and Human Rights* is a well-argued and thought-provoking book which should be studied carefully by anyone interested in international justice. Pogge is excellent in exposing the ways in which we hide from, ourselves the morally appalling state of global poverty, and in making interesting proposals about how such poverty might be relieved—he discusses, for example, reform of global financial markets of a kind that would make it harder for undemocratic countries to obtain loans and thereby reduce the rewards of military coups. I recommend the book as important in its topic, sympathetic in its aim and outlook, and as a very good piece of work in applied philosophy.

(Reviewed by Kasper Lippert-Rasmussen, University of Copenhagen, lippert@hum.ku.dk)



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

The Centre is involved in:

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

Members

Dr. Arjun K. Sengupta

Chairperson, CDHR

Rohit Sarkar

Special Consultant, Planning Commission
And Secretary & Treasurer, CDHR

Pronab Sen

Vice Chairman, CDHR and Principal Adviser,
Planning Commission

Pulin Nayak

Professor, Delhi School of Economics

Amitabh Mattoo

Vice Chancellor, University of Jammu

Kanti Bajpai

Principal, Doon School, Dehradun

N.J. Kurian

Director, Council for Social Development

S.P. Pal

Former Adviser, Planning Commission

Jayshree Sengupta

Senior Research Fellow, Observer Research
Foundation

Rajeev Malhotra

Development Economist (RTD), OHCHR,
Geneva

Vikram Gupta

Chartered Accountant

Joseph Mathew

Additional Economic Adviser, Ministry of
Finance, Government of India

Advisors

Professor Amartya Sen

Nobel Laureate and Professor, Harvard
University

Professor Stephen Marks

Harvard School of Public Health,
Harvard University

Professor George Waardenburg

Professor Emeritus, Erasmus University,
Rotterdam

