

RIGHTS AND DEVELOPMENT

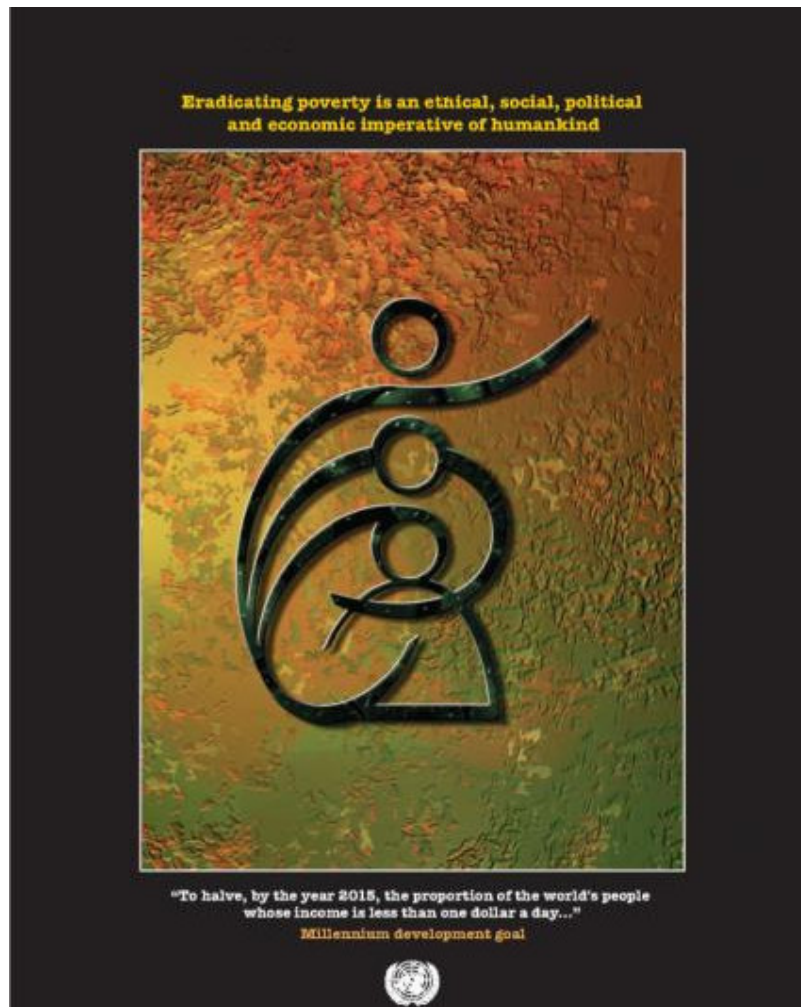
Bulletin



**Centre for Development
and
Human Rights**

VOLUME 1, ISSUE 5

AUGUST 2007



INDEX

RIGHTS - ARTICLES.....	4
The Naxalite Insurgency-Time for a New Strategy- <i>Ravi Nair</i>	4
The Sustainability of China's Growth - <i>Jayshree Sengupta</i>	8
 RIGHTS – FEATURES	 10
Stateless Persons and Citizenship Rights in South Asia	10
Judicial Accountability and Judicial Reforms in India	13
Flood Relief and Faulty Disaster Management in India	16
Police Brutality in India: Is there any Accountability?	19
The World Bank on Trial	22
Vigilante Justice in Bihar: Mob Fury or a Lawless State?	24
 RIGHTS – COMMENTARIES	 27
U.S Congress outlaws Caste Discrimination in India	27
Immoral Traffic Prevention (Amendment) Bill 2006	28
A stringent Anti-sati Law has to wait	29
India Ratifies UN Disability Rights Convention	30
National Commission for Enterprises in the Unorganised Sector's Report on the Unorganised Sector	31
India up for Universal Periodic Review under HRC mechanism	33
 LETTERS TO THE EDITOR	 34

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 It has a few short special articles, published and unpublished, in this area, and a section on brief analytical features on some of the major developments.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, Ms. Avani Kapur and Ms. Aparajita Mazumdar as joint editors. The work of the team has been supervised by a Board of Editors consisting of Dr. Pronab Sen (Chief Statistician of India), Prof. Pulin Nayak (Professor of Economics, Delhi School of Economics), Dr. Alakh Sharma (Director, Institute of Human Development), Dr. N.J. Kurian (Director, Council for Social Development) Ms. Jayshree Sengupta, (Senior Fellow, Observer Research Foundation), Mr. Ravi Nair (Executive Director, South Asia Human Rights Documentation Centre) and Dr. Arjun Sengupta, (Chairman - CDHR) as Editorial Advisor.

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

RIGHTS – ARTICLES

The Naxalite Insurgency-Time for a New Strategy

-Ravi Nair

In early October 2007, the Central government drew up a “blueprint” to counter Naxalism, the armed Maoist movement that is spread across nearly half of India’s states. The plan reportedly includes various development initiatives in addition to measures taken to strengthen the security set-up in those areas.¹ It can only be hoped that the development approach will be give adequate attention and emphasis.

The Naxalite insurgency, for the most part, has been conceptualised as a security issue. Using that approach, the Indian government has taken a number of measures to stamp out the insurgency, but the movement shows no signs of abating. It must be recognised that it is a social, economic, cultural, and political problem just as much as it is a security issue. It is an outgrowth of wider societal ills, and therein lies the crucial human rights dimension of the conflict.

Taking the state of Chhattisgarh as an example, this article will recommend a number of reforms which, taken together, would significantly undermine the appeal of armed revolution.

Education

Over the past decade, education in Chhattisgarh has improved substantially.

Since the launch of the Education Guarantee Scheme (EGS), according to which a new school is opened whenever the parents of 30 or more children petition the state government to set one up, literacy has improved for both males and females, enrolment has gone up, and dropout rates have been reduced.² Around 255,303 children are currently enrolled in EGS schools.³ This is clear evidence that Chhattisgarh is moving in the right direction.

The Naxalite insurgency, for the most part, has been conceptualised as a security issue. Using that approach, the Indian government has taken a number of measures to stamp out the insurgency, but the movement shows no signs of abating. It must be recognised that it is a social, economic, cultural, and political problem just as much as it is a security issue.

It is absolutely essential that the government of Chhattisgarh preserve and further these positive developments. The most obvious way to accomplish this would be to continue the highly successful EGS, and to ensure that the schools opened under the scheme maintain a high standard of academic quality. High pupil-to-teacher ratios are a major obstacle to educational advancement, so the government should take active steps to increase the number of qualified teachers in the state.

This can be accomplished by offering higher salaries and better benefits to teachers, as well as by putting greater emphasis on the development and recruitment of teachers within Chhattisgarh. It is also vitally important to ensure that schools remain distanced from

¹ Aloke Tikku, “Centre declares war on Naxals”, *Hindustan Times*, 3 October 2007.

² United Nations Development Programme (UNDP) and Government of Chhattisgarh, “Human Development Report: Chhattisgarh 2005,” 2005, p. 104. Available at http://www.undp.org.in/index.php?option=com_content&task=view&id=239&Itemid=322.

³ Ibid.

the ongoing Naxalite conflict, and that school buildings are not used by security forces for shelter or for any other purpose.

Health

Improving public health in Chhattisgarh is a complex undertaking, yet this goal can be achieved through sustained attention and investment. The most glaring need is to provide universal access to medical care—because Chhattisgarh's dense forests and poor infrastructure make transportation difficult, many rural-dwellers are not within reach of basic medical facilities or trained health professionals.

One promising strategy for rectifying this situation would be the continuation and expansion of the local-level community health programmes that have been so successful in reducing infant mortality. Even where it is financially or logistically impractical to build a hospital, the government should ensure that each village has immediate access to trained doctors and nurses, as well as to basic medical equipment that can be used to provide at least a rudimentary level of care. Training more healthcare professionals would therefore be advisable, as would offering better compensation packages to doctors working in rural areas and working in concert with international bodies and NGOs to supply medical resources to neglected areas.



The Naxalite movement in India shows no sign of abatement © www.outlookindia.com

Land reform

Although the underlying causes of the Naxalite movement are complex and multifaceted, it is clear that conflicts over land are at its core. The vast majority of India's rural poor is landless and enjoys very little upward mobility.⁴ Overall, the landless and the near-landless (owning less than half an acre of land) make up 43 percent of rural Indian households,⁵ thus creating a steep socio-economic inequity that supplies much of the impetus for the Naxalite movement.

Tenancy reforms, and land reforms in general, have fallen well short of their objectives, and the consequent discontent of poor rural Indians has been vital to the Naxalite resurgence. Legal ambiguities, inadequate enforcement, and landlords' practice of rotating tenants to prevent them from acquiring ownership rights are obstacles that must be tackled for land reform to succeed.

Forest rights

The issue of forest management has also long been contentious in India, pitting the interests of developers and industrialists against the rights of indigenous tribal communities that depend on forests for sustenance. The long struggle of indigenous peoples to preserve their rights over ancestral lands has played a pivotal role in the recent

⁴ Andrew Foster and Mark Rosenzweig, "Democratization and the distribution of local public goods in a poor rural economy," Bureau for Research and Economic Analysis of Development (BREAD) Working Paper No. 10, January 2003, at p.3. Available at <http://www.cid.harvard.edu/bread/papers/working/010.pdf> (last accessed 15 October 2007).

⁵ Patralekha Chatterjee, "Land reform in India: Necessary but not sufficient to fight poverty," *D+C Development Cooperation*, March 2002, at <http://www.inwent.org/E+Z/1997-2002/de202-8.htm> (last accessed 15 October 2007).

spread of the Naxalite movement— most new Naxal recruits are reported to be poor tribals.⁶

In the hope of alleviating the problems facing forest-dwelling tribals, the Central government adopted the Provision of Panchayat Extension to Scheduled Areas Act (PESA) in 1996. Although PESA presented a bold reform package on paper, implementation has left much to be desired, with many state governments yet to operationalise the reforms that the Act was to have brought about.

Similarly, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 sought to improve upon the draft Scheduled Tribes (Recognition of Forest Rights) Bill. It rightly made the envisaged reform measures more inclusive. However, this, coupled with the later cut-off date and higher land ceiling, gives state governments and local elites more room to exploit the situation.⁷

Moreover, it is likely to create or worsen local conflicts between tribal communities and non-tribal indigenous peoples, and between indigenous forest-dwellers and those who have only recently settled on forest land, often at the expense of the traditional inhabitants.⁸ These problems will be worsened by the Act's failure to create a voluntary resettlement programme for forest-dwellers who wish to relocate, a provision that might defuse nascent conflicts over forest lands.⁹

The 1988 National Forest Policy, PESA, and the 2006 Forest Rights Bill were all steps in the right direction, but until they are fully implemented and given more legal muscle to safeguard the rights of vulnerable forest-dwellers, the deep-rooted conflict over forest lands will continue to feed into the Naxalite insurgency.

Economic opportunities

A lack of economic opportunities in the countryside is one of the main spurs to the expansion of the Naxalite movement. Alienation arising from heavy-handed government and corporation-run development projects, coupled with endemic rural poverty, has given the Naxalite insurgency much of its forward thrust in recent years.¹⁰

The foremost responsibility of a government is to provide security to its citizens, but democratic institutions lose their integrity when a government seeks to impose this security by extra-legal means. The government must come to the forefront and cut off its support for the unaccountable Salwa Judum militia.

The National Rural Employment Guarantee Act (NREGA) 2005, which was intended to improve the economic conditions of the rural poor, suffers from a number of practical difficulties. These are exacerbated by corruption, confusion and mismanagement, which brought the programme to a standstill in some states.¹¹ Careful revision and substantial improvements in the implementation of the

⁶ "A Spectre Haunting India," *Economist*, 17 August 2006. Available at http://www.economist.com/world/asia/displaystory.cfm?story_id=7799247 (last accessed 15 October 2007).

⁷ Ashish Kothari, "Rights and promises," *Frontline* 23(14), 15-28 July 2006. Available at <http://www.flonnet.com/fl2314/stories/20060728000706400.htm>.

⁸ Ibid.

⁹ Ibid.

¹⁰ Rajat Kumar Kujur, "Underdevelopment and Naxal movement," *Economic and Political Weekly*, 18 February 2006.

¹¹ "Staff shortage, delayed wages under NREGA in Ranchi," *The Financial Express*, 25 June 2007. See also Manoj Prasad, "Corruption clouds UPA job scheme," *The Indian Express*, 23 May 2007.

NREGA, coupled with making credit available and affordable, would go a long way in reducing rural poverty and taking the edge off the armed Maoist campaign.

Rule of law

The foremost responsibility of a government is to provide security to its citizens, but democratic institutions lose their integrity when a government seeks to impose this security by extra-legal means. The government must come to the forefront and cut off its support for the unaccountable *Salwa Judum* militia.



Salwa Judum: An Instrument of State Repression ©www.hinduonnet.com

More than that, it must put a definitive end to the culture of impunity by which the *Salwa Judum* has thus far been allowed to operate. Special courts should be set up to examine and prosecute human rights abuses by *Salwa Judum* members, including but not limited to extrajudicial killings, illegal detentions, and torture. Citizens must also be assured the full range of civil and political rights without which democracy would not be worthy of the name. One recent piece of legislation—the Chhattisgarh Special Public Security Act 2005—is sharply inimical to this end, and will only serve to clamp down on essential freedoms and exacerbate the climate of fear and arbitrariness that allows the Naxalite insurgency to thrive.

Conclusion

Because it is the product of a complex confluence of factors, the law-and-order approach, by itself, will not help erode the armed movement. This does not, however, mean that the problem is irresolvable. Through a comprehensive, holistic, carefully crafted and implemented series of positive steps aimed at improving the conditions of its poorest citizens, the Indian government can chip away at the foundations of discontent upon which the movement is built.

Success in combating the Naxalites cannot be attained through strictly law enforcement means, and the government must therefore break out of its security-first mindset if it hopes to quash the insurgency. The Naxalite movement is shadowy, decentralised, and elusive: it cannot be overwhelmed with a crushing display of force. It will not die with a bang, but it might fade if the problems that fuel it are meaningfully addressed. That is why the human rights perspective on the Naxalite insurgency is so instructive: it illuminates the underlying causes of Naxalism rather than the effects. The Indian government would do well to analyse the problem through the lens of human rights, and use a broad-based, non-security strategy to resolve it.

(The writer is Executive Director, South Asia Human Rights Documentation Centre (SAHRDC) New Delhi)

The Sustainability of China's Growth

-Jayshree Sengupta

China's recent and spectacular growth makes one wonder how stable it is and how soon it will overtake U.S.A. as an economic power. One is amazed at the huge, gleaming, futuristic buildings that can be seen on both sides of the main highways in Shanghai. At night, downtown Shanghai, especially the Bundh area, resembles a carnival in progress with buildings lit in multi-coloured hues. It is not just the buildings but the highways themselves that are something to marvel at. At places, the flyovers are at four levels and full of impressive shiny cars. Shanghai's Pudong airport is connected to the city by a super fast train (that reaches the maximum speed of 460 KM per hour) and powered by magnetic levitation. China is determined to show the world that it has arrived as an industrialised country. The Olympic stadium and swimming pool for 2008 Olympics in Beijing are like exhibits in the Museum of Modern Art —so exceptional are their design and concept. There are huge apartment blocks and office buildings in Beijing that vie with each other for novelty of design. Can this frenetic pace of growth be sustained?

China's spectacular development may be difficult to comprehend but it is real and not illusory. It is based on years of rapid human development that has enhanced the capabilities of the people and that has formed the core of all manufacturing activity. For years, China has invested in human development, which is essential for making a country's development stable and sustainable. With almost 91 per cent literacy level, it has come to possess one of the best, highly skilled and disciplined work force that is also the main attraction for foreign investors. A visit to any textile or garment factory confirms the way the efficient

workforce is churning out products without defects.

China is able to compete with the best in the world, in terms of understanding processes and designs as it possesses a highly skilled labour force. The dexterity of the Chinese workers and their low wages is enabling China to be the most important manufacturing outsourcing centre in the world. It is no wonder that all big brand names of the West are manufacturing garments made in China and attaching their own labels to them. So far it has been possible for China to maintain high quality despite low wages. Manufacturing activity is the mainstay of industrial growth, which is the main driving force for GDP growth. China's manufacturing sector contributed 39 per cent to its GDP growth whereas in India, it was only 16 per cent in 2004-05. All the neighbouring countries are also outsourcing their labour-intensive activities in China by sending them the raw materials and getting back parts, which they assemble and export. They are also exporting components and parts to China in order to get them expertly assembled.



©<http://ly.china-embassy.org/eng/jmgx/>

The western countries' main grouse against China is regarding the implementation of intellectual property rights (IPR). China has a real problem about enforcement of IPR and has little control on how manufacturers in different provinces are handling it. The violations of patent rights and copyrights have

led to innumerable disputes between the western countries and China but duplication carries on unabated. All kinds of fakes of the most important brand names are openly available in the markets of both Beijing and Shanghai at a fraction of the price of the original. China can copy anything in the world and produce it at a fraction of the cost and this is possible due to cheap labour.

Chinese wages have remained stable for years and labour productivity is much higher in China than in India. In 2004-05, India's labour cost in manufacturing was U.S.\$1,192 per year and in China, it was U.S. \$729. China has a real advantage on labour intensive manufactures vis-à-vis India. Inflation is, however, beginning to cause a problem and in July 2007, the consumer price index went up by 5.6 per cent--the highest so far. Food prices, mainly the high prices of pork are driving up the price level. The rate of inflation is being controlled by increase in the supply of pork and if the yuan is kept stable against the dollar, the prices of Chinese imports into the U.S. are likely to remain competitive. China has been resisting pressure to revalue the yuan against the dollar, after it did so, last year by only 2 per cent.

China will also have to usher in democracy and human rights as it goes forward at the high speed of 11 per cent GDP growth. It will be difficult to maintain high growth that gives prosperity to a large section of the population but does not give them a voice to air their discontent with the government's policies openly.

Other factors pushing inflation up are excess liquidity in the banks and the rapid growth in money supply. Due to China's reserves of U.S. \$1.3 trillion, which are with the central bank and from which other banks

can borrow, there has been a rapid growth in liquidity in the banks and they are able to retain a high profit margin. Even so, China's lending rates are much lower than India's. If China wanted, it could easily lead in a move for the dollar's crash but it is not in China's interest to make its exports expensive in the US market and so it is restraining itself from doing anything drastic. Yet the world knows that China can bring the U.S. dollar down and cause a financial crisis if it unloads its cache of US Treasury bonds in the market.

China's exports, which are at U.S.\$1.17 trillion and foreign investment and around U.S.\$60 billion, are important for maintaining the high rate of GDP growth. What if there is a problem with both these drivers of growth? China is prepared for a slow down in the American demand and has diversified its markets to EU, ASEAN and South Asian countries. There is an increasing amount of domestic demand also as the prosperous Chinese are spending on buying quality products, eating out, seeking high class entertainment and indulging in domestic tourism. As mentioned above, China is becoming a major industrial hub for neighbouring countries and some Indians are also setting up business in China as it is profitable for them to get their skill-intensive products made in China than manufacture them in India. Chinese investment in India is less than Indian investment in China. The Chinese are viewing the whole of Asia and Africa as their potential market in the next ten years.

Though China insists on being called a developing country, it is going to overtake all the western industrialised countries in the next 20 years in terms of infrastructure, skilled manpower, and manufactured output. The only brakes can be resource and raw material/fuel crunch. Awareness of the dangers of pollution may also lead China to slow down industrial

growth. China will also have to usher in democracy and human rights as it goes forward at the high speed of 11 per cent GDP growth. It will be difficult to maintain high growth that gives prosperity to a large section of the population but does not give them a voice to air their discontent with the government's policies openly. In India, elections are a safety valve for the people when the government fails to address their needs. In China, dissent and discontent are not openly expressed perhaps because of the harsh ways of suppressing dissent.



©www.flonnet.com

Besides, one of the reasons why the economic progress has been smooth so far is because the government owns all land and there are no hassles in land acquisition for making highways, SEZs or public buildings. People are given alternative locations and they have to move when asked to do so. Although the number of protests and strikes against the government's land acquisition policies have been increasing rapidly, they are snuffed out quickly and not allowed to disturb the production process. Corruption is also part of Chinese life but when caught, the guilty are punished in the harshest manner possible-- yet it continues. Discipline, hard work and keeping in focus only a one point agenda of making China great in the future, is keeping the country together and allowing it to maintain a high speed of growth. But people's

rights have to be taken heed of as development proceeds and China's many anomalies regarding its treatment of human rights will have to be addressed soon.

(The writer is Visiting Fellow, Observer Research Foundation)

RIGHTS – FEATURES

Stateless Persons and Citizenship Rights in South Asia

Nearly three million stateless persons in the South-Asian countries of Sri Lanka, Bangladesh and Nepal will be granted citizenship rights, in what is being termed as a 'major breakthrough' by the United Nations High Commission for Refugees (UNHCR). Stateless persons are those who have been denied or stripped of their citizenship, for a variety of reasons like political upheaval, racial and ethnic discrimination, transfer of territory, differences in laws between countries, laws relating to marriage and birth registration, expulsion of people from a territory, nationality based on descent, renunciation of nationality, working conditions, abandonment, and lack of means to register children. Article 15 of the Universal Declaration of Human Rights (UDHR) states that "Everyone has a right to a nationality" and "No one shall be arbitrarily deprived of his nationality, or denied the right to change his nationality." Yet, there are around 15 million stateless persons, who are not considered as nationals of any state in terms of nationality legislation or constitution and are scattered all across the world today in at least 49 countries, according to the UNHCR.

Nearly all South Asian countries have stateless persons living within their territory, in woeful conditions, deprived of all rights that are guaranteed to their citizens. As Jennifer Pagonis, UNHCR spokesperson recently said, "Despite the recent advances, millions of people remain without an official identity, living in the Kafkaesque world of the stateless. In many cases, they are unable to educate their



A Bihari mother and child in a refugee camp in Bangladesh. © Thatcher Cook / Refugees International

children, benefit from government health care, work, travel abroad – or do any of a wide range of things most of us take for granted.” (UNHCR, 25.09.07 <http://www.unhcr.org/news/NEWS/46f9272e4.html>) Although stateless persons differ from refugees, (as refugees possess citizenship in their country of origin) they can also become refugees if they are forced to flee and cross an international border. However, stateless persons usually, do not leave their countries and remain deprived of citizenship rights wherever they are.

The international protection regime for stateless persons comprises of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Originally intended as a Protocol to the 1951 Convention Relating to the Status of Refugees, the 1954 Convention was adopted to cover stateless persons who are not refugees and covered by

the 1951 Refugee Convention. While it is the primary international instrument to regulate the legal status and treatment of stateless persons, the main goal of the 1961 Convention is to help avoid statelessness as it is the only international instrument that outlines specific ways to identify a person's nationality where statelessness would result otherwise. While 62 countries have ratified the 1954 Convention Relating to the Status of Stateless Persons, only 33 countries have ratified the 1961 Convention. Thus, states have the sovereign right to determine the procedures for acquisition and determination of citizenship and they usually justify their stringent citizenship policies with national security and other economic concerns.

Biharis constitute one such group of stateless persons, who have been living in Bangladesh since 1971. They are Urdu-speaking Muslims, originally from the Indian state of Bihar, who were living in East Pakistan after the 1947 partition of the Indian Subcontinent and who were stripped of their citizenship and property rights for having sided with West Pakistan during the East Pakistani struggle for independence in 1971 out of which the state of Bangladesh was born. In September 2007, the Bangladeshi government announced that it was willing to grant citizenship to at least 160,000 Biharis born after 1971.

An inter-ministerial meeting made this ruling on citizenship in early September 2007, and its decision has been referred to the law ministry for final approval. The U.S. based humanitarian organisation, Refugees International had sent its last mission to Bangladesh in February 2006 to urge the government to take appropriate measures for the Biharis most of whom have been living in Bangladesh in camp-like settlements, with no access to health care, education, or appropriate sanitation facilities.

A 2003 amendment to India's Citizenship Act has implied that children born to an Indian parent in India with one foreign "illegal" parent will not receive citizenship, increasing the risk of statelessness. Certain provisions within the Indian Constitution have also given rise to statelessness for e.g. Article 370 of the Indian Constitution.

The UNHCR has also been repeatedly urging the Bangladeshi government to let the Biharis move and work freely in accordance with the 1951 UN Convention Relating to the Status of Refugees.

In countries like Nepal, it is very difficult to obtain an estimate of the actual number of stateless persons. The UNHCR estimates that there are 4 million stateless persons in Nepal. As a result of the implementation of the peace plan between the government and former Maoist rebels, more than 2 million persons living in Nepal were issued citizenship certificates in early 2007. This was an extraordinary operation in which hundreds of mobile teams fanned out across Nepal's 75 districts, visiting even the remotest of mountain villages, to ensure that certificates were issued to as many stateless persons as possible.

India also has a large number of stateless persons like Chakmas, Hajongs, Kashmiris and Punjabis living within its territory deprived of the right to nationality. A 2003 amendment to India's Citizenship Act has implied that children born to an Indian parent in India with one foreign "illegal" parent will not receive citizenship, increasing the risk of statelessness. Certain provisions within the Indian Constitution have also given rise to statelessness for e.g., Article 370 of the Indian Constitution. This article gives special status to Jammu and Kashmir (J&K) and prevents any non-state resident from either owning property or getting citizenship rights

in the state. Ethnic conflict had forced nearly 80,000 Sri Lankans to flee to India as refugees during the early 1980s. Of them, nearly 28,500 are Sri Lankans of Indian origin who do not have citizenship rights due to lacunae in existing legislation, and who have been living in refugees camps in Tamil Nadu as stateless citizens. In September 2007, the Sri Lankan Cabinet approved a memorandum moved by its Prime Minister Ratnasiri Wickramanayaka detailing amendments to relevant sections of the entitlement of Citizenship of the Grant of Citizenship to Stateless Persons Act of 1988 and the Grant of Citizenship to persons of Indian Origin Act of 2003 that will enable these stateless persons to obtain Sri Lankan citizenship to return to Sri Lanka.



An ethnic tamil tea-picker in the highlands of Sri Lanka. Sri Lanka granted citizenship to more than 190,000 descendednts of tea plantation workers ©UNHCR/G. Amarasinghe.

Thus, those families who migrated from West Pakistan during the 1947 partition of the subcontinent and settled in J&K have been stateless and bereft of citizenship rights for years, while others who settled in other parts of the country had gained citizenship. There were more than 100,000 Punjabi refugees who had fled to the J&K from the neighbouring Sialkot (now in Pakistan), who have not yet been granted Indian citizenship. The descendents of these stateless persons continue to be denied the right to citizenship.

India has reportedly amended its Citizenship Act of 1955 and Citizen Rule of 1965 authorising the district magistrate of Jaisalmer to grant Indian citizenship to Pakistanis who have been living in the border district for the last five years. These individuals may acquire citizenship soon. There are many Chakmas and Hajongs, who had migrated from the Chittagong Hill Tracts of erstwhile East Pakistan to India and are staying as stateless persons in Arunachal Pradesh. Though many Chakmas have the right to vote children of these migrants are not granted the right to nationality. They live a life wherein they are systematically denied access to most of the social, economic and political rights that they should be entitled to. (SAHRDC, 1997)

Thus, stateless persons need more attention and concern, as, unlike refugees and internally displaced persons, they generally do not benefit from the protection and assistance of governments and aid agencies. At the UNHCR headquarters there are only two staff persons employed to focus on them. "They are international orphans...When human rights are violated, the doors to creating statelessness are opened." (Maureen Lynch, *Lives on Hold: Human Cost of Statelessness*)

-CDHR Team

Judicial Accountability and Judicial Reforms in India

The Indian judiciary is in shambles with increasing reports of corruption at all levels of the judicial hierarchy. The Indian judicial system has been screaming for reform for several years, but placing judges at a higher pedestal, on the pretext of maintaining judicial independence seems to be the norm. As Prashant Bhushan, Advocate, Supreme Court of India puts it, "Independence of the

judiciary means independence from the executive and legislature, but not independence from accountability".

The Indian Constitution provides for a mechanism of judicial accountability under Article 124(4) read with Article 218, which stipulates that a judge of the Supreme Court or High Court can only be removed/impeached on grounds of proved misbehaviour or incapacity by a Presidential order passed after support by a majority of the members of Parliament has been obtained. However, the term "proven misbehavior and incapacity" is not defined and according to Article 124(5), the Parliament may regulate the for the investigation procedure to prove misbehavior and incapacity of the judge concerned.

The Judges (Inquiry) Act 1968 lays down that an investigation to prove misbehavior or incapacity of a judge of the Supreme Court or High Court can only be initiated if a motion to this effect is passed in either House of Parliament. Upon admission of the motion, a Committee of three members comprising of, namely a Chief Justice or Judge of the Supreme Court, a Chief Justice of any High Court or a distinguished jurist chosen by the Speaker of the House of Parliament shall be constituted who will frame charges against the judge concerned who shall, then, be provided with a reasonable opportunity to be heard. The Committee shall submit its investigation report to the Speaker or the Chairman of either House of Parliament, who would table the report before Parliament for voting, if the judge were to be found guilty.

Surprisingly, a single judge has not been removed using the available mechanisms of judicial accountability, despite the ever-increasing instances of corruption and indiscipline within the judiciary. Justice V. Ramaswami, former Judge, Supreme Court of



©www.ndtv.com/convergence/images

India was the only judge to face impeachment proceedings on the floor of Parliament in 1993 on grounds of proven misbehaviour and misfeasance but could not be removed because the motion against him failed at the Lok Sabha, as the ruling party abstained from voting against him. It is evident that tainted judges cannot be removed without Parliamentary intervention. The existing impeachment procedure has failed to check judicial misconduct or punish errant judges and has proved to be cumbersome, ineffective and impractical. Further, in *K. Veeraswami v. Union of India and others* (1991 SCC (3) 655), the Supreme Court clearly held that in order to initiate prosecution against a judge of the superior court for criminal misconduct, prior sanction of the Chief Justice of the High Court or India is necessary. In 1997, the Supreme Court adopted an in-house procedure to discipline errant judges through a peer review and self-regulatory mechanism.

However, the rising number of complaints against judges of higher courts on grounds of corruption and moral turpitude led the government to introduce The Judges (Inquiry) Bill 2006 in Parliament in December 2006. The Bill aims to remedy some of the inherent flaws of the 1968 Act. Although the Bill covers within its ambit, any judge of the Supreme Court and High Court, a complaint cannot be filed against the Chief Justice of

India under its complaint procedure. The Bill imposes 'minor measures' like issuing advisory, censure, warnings, withdrawal of judicial work etc on errant judges whose acts of judicial misconduct warrant punitive measures short of 'removal', as was observed by the Supreme Court in *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee* (1995 SCC (5) 457).

After years of failed deliberations, this Bill seeks to establish a National Judicial Commission (NJC) consisting of the Chief Justice of India (CJI) as Chairperson, two senior most judges of the Supreme Court and two Chief Justices of the High Courts, nominated by the CJI as members. The NJC is empowered to investigate and inquire into allegations of misbehaviour or incapacity of a judge of the Supreme Court or High Court/s. The proposed Bill also contains provisions of appeal against an order of removal passed by the President or the final order of the NJC imposing minor measures before the Supreme Court.

The proposed Bill seeks to create the 'complaints' and 'reference' procedure for registering complaints against members of the higher judiciary. This Bill removes the restrictions in the complaints mechanism in the 1968 Act, which was only limited to Members of Parliament (MPs) extending it to 'any' person. Under the reference procedure, the Rajya Sabha Chairperson or the Lok Sabha Speaker can make a reference to the NJC for the initiation of an inquiry into allegations of judicial misconduct as per a notice for removal submitted before the House of Parliament. Such notice for removal will require the support of 100 MPs of the Lok Sabha or 50 MPs of the Rajya Sabha. If the notice is admitted, the matter shall be referred to the NJC for investigation and inquiry.

The rising number of complaints against judges of higher courts on grounds of corruption and moral turpitude led the government to introduce The Judges (Inquiry) Bill 2006 in Parliament in December 2006. The Bill aims to remedy some of the inherent flaws of the 1968 Act. Although the Bill covers within its ambit, any judge of the Supreme Court and High Court, a complaint cannot be filed against the Chief Justice of India under its complaint procedure.

The Bill, however, is not without its critics. The Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice submitted its 21st Report on The Judges (Inquiry) Bill 2006 before the Parliament in August 2007. The Committee felt that the powers vested in the NJC under the proposed Bill will “reduce the role of the Parliament to a post office”. It stated that the Constitution of India etches out a very specific role for the Parliament as far as impeachment of a judge is concerned and that constitutional obligation cannot be diluted or shifted to another body like the NJC.

The Committee was of the opinion that the NJC should not be an exclusively judicial body and that the principles of judicial accountability will be adversely affected if judges are allowed to judge their peers. The Committee recommended that the NJC should either be made a broad based representative body comprising members from the Executive, Parliament, Bar etc or an “Empowered Committee” should be constituted comprising of members of NJC, Executive, Parliament and the Bar. The Committee pointed towards the discrepancies in the complaints and reference procedures under the proposed Bill, which equates an individual complaint to a notice of removal supported by several MPs.

The Committee, thus, emphasised on the need to reconcile both the procedures and create a mechanism that would determine complaints received from both the sources at the first instance before they are referred to the NJC for further investigation.

It came down heavily on the imposition of minor measures on an errant judge on the ground that it will ‘lower the prestige of the judiciary’ and ‘a judge facing inquiry under the provisions of the proposed Bill will have his integrity in doubt’. Thus, in the Committee’s opinion, before proceedings are initiated against a judge, it should be clearly established by a body other than the NJC that a case against him exists and this can be done through the “Empowered Committee”. The Committee also expressed its disapproval of the provision of appeal against the President’s order of removal and the exclusion of the Chief Justice of India from the purview of the complaint procedure saying that such measures would defeat the very purpose of the Bill. The Committee, while considering the constitutionality of the Bill, observed that the Bill does not intend to offer an alternative interpretation to Article 124 of the Constitution but merely provides a statutory basis for the in-house procedure already in practice and details relating to the constitutional validity of the Bill must be thoroughly examined before it is finally enacted.

The Campaign for Judicial Accountability and Judicial Reforms (CJAR) comprised of eminent members from the judiciary, legal professionals, social activists etc has faulted the Bill on grounds of lacking transparency because complaints against a judge are examined by their fellow judge/s. Seven of the ten High Courts in India have demanded the scrapping of the proposed Bill as, in their opinion the establishment of the

NJC undermines independence of the judiciary
(*The Times of India*, 6 September 2007).



The Supreme Court of India
©www.tribuneindia.com

In the wake of serious allegations of judicial misconduct against Justice Y.K. Sabharwal, former Chief Justice of India who allegedly passed orders in a case in which his sons stood to benefit financially, it is becoming increasingly clear that the judiciary should no longer remain insulated from public scrutiny. The Delhi High Court *suo motu* initiated contempt of court proceedings against Mid Day newspaper for publishing news stories against Justice Sabharwal and sentenced four of its employees. The Court observed, “The publications in the garb of scandalising a retired chief justice of India have, in fact, attacked the very institution, which according to us, is nothing short of contempt”. Truth is a defence in contempt of court cases but the Court passed an adverse order against Mid Day without disputing the factual accuracy of the reports in question,

although the newspaper provided factual evidence establishing the “truth” of their news report, (*The Hindu*, 23 September 2007). The Supreme Court, however, has stayed the sentencing order passed by the High Court.

The Judges (Inquiry) Bill 2006 suffers from certain inconsistencies that should be addressed before its enactment but there is no reason to scuttle a move of this kind that seeks to restore judicial accountability and is a positive step towards much needed judicial reform in India. To conclude in the words of Justice Rajinder Sachar, former Chief Justice of the Delhi High Court, “...Those in the judiciary should welcome this legislation rather than take it as an onslaught on their independence-the judges should be of sterner stuff than to feel bent down by such innocuous but essential legislation”. (*The Economic Times*, 12 September 2007)

-CDHR Team

Flood Relief and Faulty Disaster Management in India

Indian farmers pray for the monsoon rains from the months of June to September every year as these rains are crucial for their crops. This monsoon season brought along with it, the worst floods in India in years and resulted in a trail of destruction and loss of lives, homes and livelihoods. Since July this year, the monsoons have wreaked havoc in the states of Maharashtra, Orissa, Punjab, Rajasthan, Gujarat, Kerala, Assam and other parts of North East India and, more recently, in the states of Bihar and Uttar Pradesh. While the floodwater has receded in a few states like Bihar, the problem regarding flood relief continues. According to relief agencies, the essential problem confronting the 20 million people affected by floods in India is lack of both governmental and international attention

towards assisting them. The administrative agencies, on the other hand, say that, given the sheer number of those affected, ensuring quick relief is almost an impossible task and thus a serious challenge lies ahead.



The Mumbai floods of 2005 ©www.idrf.org

The northeastern state of Assam has been the worst hit, reeling under three successive waves of flood this year. Out of this state's population of 27 million, nearly 10 million have been affected, more than 3 million people rendered homeless (and living in temporary shelters and government and school buildings) and around half a million left marooned in their swamped villages. Nearly one million acres of farmland in this state have been flooded and huge areas of crops and infrastructure damaged. In the neighbouring state of Manipur, at least 55,000 people have been rendered homeless, in the state of Sikkim, landslides on the main highway have disconnected the state from the rest of the country, and in Mizoram too, food grains are having to be airlifted to its stranded citizens as the only national highway there has been badly hit.

In fact, these landslides, having blocked highways and stranded trucks carrying food and medicines, and the ensuing isolation and lack of access has caused prices of essential commodities to skyrocket. In some of the marooned areas, there is no place to even cremate the dead. According to the

administration, there is no shortage of food or relief supplies but it is the short supply of boats that is causing problems in transporting the aid to areas cut off from the main highway.

Tarun Gogoi, Chief Minister of Assam, said that more than 9,000 of Assam's 23,000 villages had been inundated, forcing people out of their home onto higher ground. (*The Associated Press, 11.09.07*) Although the government has started more than 500 relief camps, thousands still remained stranded in the makeshift shelters on higher grounds near their homes. The defence forces have come to the aid of civil authorities in executing what has now come to be seen as a routine rescue and relief operation. The army and paramilitary troops had been called in to rescue marooned people and food was being air dropped by helicopters to them. This year's monsoon has reportedly claimed more than 2,200 lives; Assam and Bihar being the worst hit. According to the relief workers, the real challenge lies in providing relief to those left displaced and homeless.

Governmental agencies have been accused of ignoring flood threats, undertaking inadequate flood control measures and instead, passing the buck to nature's fury. What is disturbing is that states had not taken adequate advance measures despite the availability of a much more precise forecast from the Indian Meteorological Department and the wide-reaching media networks that can ensure prompt delivery of cyclone and flood warnings to people. In Assam and Bihar there were reports of thousands of marooned families and relief supplies not reaching them even a week after the floods. (*The Hindu, 09.08.07*) "Experts find poor planning and gross bureaucratic negligence under the NDA government the main reasons behind the floods that shredded Bihar's already poor economy to smithereens and converted the

While the floodwater has receded in a few states like Bihar, the problems regarding flood relief continue. According to relief agencies the essential problem confronting the 20 million people affected by flooding this monsoon season in India is lack of both governmental and international attention towards assisting them.

state into “water islands” with over 21 million marooned on rooftops, railway lines, river embankments and roads and literally left to fish in troubled water for over a month.....As a leading South Asian disaster management expert, Mr. Niraj Labh said that by blowing the magnitude of the floods out of proportion, someone or a group or people were trying to escape from their responsibility.” (*The Statesman*, 11.09.07)

India has a slow-footed bureaucracy that has been unable to maintain reliable infrastructure to disaster management. The existence of corruption in disaster management and distribution of flood relief cannot be denied. In 2004, the Bihar government had authorised Gautam Goswami, Patna District Magistrate (DM), to coordinate flood relief, for which he was honoured by the TIME magazine only to be found guilty and imprisoned on charges of flood relief scam.

Relief agencies have lamented the absence of adequate governmental and international attention towards assisting flood victims in India. Those fleeing their flood affected homes usually camp beside the road. Thus, it becomes very difficult for relief agencies to reach essential supplies to them. Dr. Henry Alderfer, Director of Project Concern India International emphasised that, “Because flooding happens every year, it goes under-reported because its old news.... It’s not

catastrophic. Its slow onset disaster that affects lives slowly, but in a very devastating way.”(As told to ABC Radio Australia, 13.09.07) International NGOs like Oxfam, World Vision, Connect and others have assured that aid will be arriving in Bihar, while UNICEF already has relief supplies stocked in that state. But transportation of relief supplies remains a problem.

While the Indian government affirms that it is taking measures to help the affected and has deployed army soldiers in the most devastated areas to provide immediate assistance, it also needs to undertake long term measures like reconstruction of the roads and providing financial assistance to the affected families to help regain the livelihoods and rebuild their homes. For example, in the state of Assam, at least Rs.500 crore is needed to repair as many as 1,112 roads and 600 timber bridges that were severely damaged. The flood-hit states need more assistance from the Centre, not just in reaching food and relief supplies and providing temporary shelters but also in addressing the urgent crisis in the public health system that unfolds in the aftermath of such continuous torrential rains. Relief agencies have been warning that immediate action has to be taken in tracking and taking early action to prevent outbreaks of diseases such as dengue, leptospirosis and gastroenteritis. A proper system of monsoon preparedness needs to be put in place. Despite a lot of claims of disaster preparedness, in the post-tsunami scenario, the real situation on the ground this monsoon season has shown that relief infrastructure is woefully inadequate in India. Unnikrishnan PV, ActionAid emergency advisor, said, “Government’s response to the flood is often more of a knee-jerk reaction. Relief is not in tune with the reality of the ground.” (*The Indian Express*, 08.08.07)



Temporary flood relief camps in Bihar

© www.thp.org

Understanding that long-term precautionary measures need to be taken, Tarun Gogoi, Assam Chief Minister, has advised those living in the more flood prone areas to construct houses with raised platforms, so that people learn to live better with the floods. He has also urged the Centre for more financial assistance for the continuing process of reconstruction and repair of embankment on the river Brahmaputra that overflows during the monsoons every year.

-CDHR Team

Police Brutality in India: Is there any Accountability?

The extent of police brutality in India was truly exposed when shocking images of a man named Salim Ilyas alias Aurangzeb accused of stealing a gold chain being tied to a motorcycle, dragged, whipped and beaten by the police and a mob in the city of Bhagalpur in Bihar were flashed in the media. Reports suggest that Aurangzeb who allegedly stole a gold chain was captured and severely beaten by a lynch mob when the police arrived. Instead of rescuing Aurangzeb, the policemen joined the angry mob in torturing the 20-year-old by tying him to a motorcycle and dragging him while others pushed and kicked him until he fell unconscious. The two policemen involved in this incident were immediately

placed under suspension by the Bihar government.

Instances of police violence and use of extra judicial means of torture by the Indian police force are rampant and it is unfortunate that human rights violations of this magnitude elicit strong reactions only when graphic details of such gruesome violence appear on television. Police atrocities in India are conducted with impunity. In fact, extra judicial killings in India, known as 'encounter killings' are glorified by the media and 'encounter cops', rewarded by the government.

The Indian police enjoy virtual immunity under Sections 132 and 197 of The Code of Criminal Procedure Code (Cr.P.C) 1973 which provide that a police officer, accused of an offence committed during discharge of his official duty, cannot be prosecuted without the sanction of the government. This implies that a police officer, unlike an ordinary citizen, cannot be charged for the commission of an offence under the law, unless the state government permits the same and such sanction is rarely granted.



©www.quebec.indymedia.org

The special anti-terror legislations also give sweeping powers to the police to act with impunity. Laws like the Disturbed Areas Act operational in many states in North East India,

National Security Act 1980, Jammu and Kashmir Public Safety Act 1978, the now repealed Terrorist and Disruptive Activities Act and Prevention of Terrorism Act and the Unlawful Activities (Prevention) Amendment Act 2004 give the police arbitrary powers of arrest and detention, thereby widening the scope of abuse of the law by the police. For example, these special laws allow for pre-trial detention between a period of 90 days to two years. The broad definitions of a 'terrorist act' and 'abetment' to a terrorist act and the subjective listing of terrorist organisations as those 'involved in terrorism' serves to implicate any individual or organisation suspected to be terrorists or supporting terrorist activities arbitrarily, without following due process of law. Further, these laws perpetuate a culture of impunity by providing official immunity in acts committed to combat terrorism (*SAHRDC, HRF/106/04*).

The Armed Forces (Special Powers) Act (AFSPA) 1958 also gives similar powers to officers of the armed forces. The law empowers a non-commissioned officer to arrest, search and seize without warrant, destroy property without verification and even, shoot to kill on mere suspicion with impunity. Demands of repeal or substantial review of the AFSPA, which is inconsistent with international human rights standards, and the Indian Constitution by human rights activists have been largely ignored by the government and such laws continue to operate on the pretext of maintaining national security.

Official immunity is not the only form of protection that the Indian police enjoy. The police administration, governed by colonial legislations like the Police Act 1861 serve as a barrier to the upgradation, sensitisation and professionalisation of the police force. The National Police Commission (NPC) established in 1977 submitted seven reports recommending a comprehensive review of the

policing system in India. The Padmanabhaiah Committee on Police Reforms whose membership only consisted of serving and retired police personnel was instituted in 2000, which made certain recommendations with regard to increasing police accountability.

The Committee's recommendations were however, considered regressive by many, as it suggested that public complaints against the police be investigated, at the first instance, at the departmental level before a formal enquiry is initiated against the concerned police official. The decision of the departmental enquiry can be appealed before a non-statutory District Police Complaints Authority headed by the District Magistrate (DM) and the Senior Additional Sessions Judge, District Superintendent of Police and an eminent citizen nominated by the DM as members. This has been criticised by human rights groups like the Commonwealth Human Rights Initiative (CHRI) on the ground that such a body will fail to inspire public confidence as it does not have powers of independent investigation and is dependent on reports of the police themselves and is also constituted of individuals representative of the police administration at large.

Instances of police violence and use of extra judicial means of torture by the Indian police force are rampant and it is unfortunate that human rights violations of this magnitude elicit strong reactions only when graphic details of such gruesome violence appear on television. Police atrocities in India are conducted with impunity.

In 2005, the central government set up a Police Act Drafting Committee (PADC) headed by renowned Supreme Court advocate, Soli Sorabjee to draft a model law governing police administration in India. The proposed Model Police Act 2006 seeks to establish a state level Police Accountability Commission

to investigate public complaints against police officials for serious misconduct. The state government shall also establish a three member District Accountability Authority in every police district to monitor departmental inquiries into complaints against police misconduct.

Serious misconduct under the model law includes acts of omission or commission by a police officer involving death in police custody, grievous hurt, rape or attempt to commit rape or arrest or detention without due process of law. The Commission shall consist of five members headed by a retired High Court judge as Chairperson and a retired Director General of Police (DGP) from another state cadre, a person with a minimum of ten years of experience as a judicial officer, public prosecutor, practicing advocate or a law professor, a person of repute from the civil society and a retired officer with experience in public administration in another state as members.

It shall have all the powers of a civil court with respect to cases it is directly inquiring into, can require any person to furnish information that may be relevant for the purposes of the inquiry and can inspect any police station, lock up or any other place of detention as it deems fit etc. On completion of the inquiry, the Commission shall submit its findings to the Director General of Police and the state government and may recommend that a First Information Report (FIR) be registered or departmental proceedings be initiated. The Commission shall also reveal the number and types of serious misconduct inquired by it in its annual report.

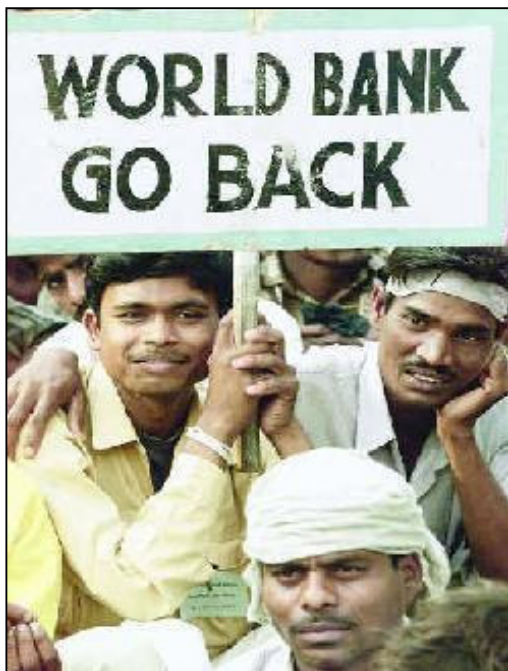
The Supreme Court directives issued on 22 September 2006 in *Prakash Singh and others v. Union of India and others* (Writ Petition (civil) 310 of 1996) dealt with the question of police accountability. The apex

Court ordered that a Police Complaints Authority be established at the district and state level headed by a retired District Judge and retired judge of the High Court or Supreme Court to be chosen by the state government to look into complaints of serious misconduct involving death, grievous hurt, rape in police custody, extortion, land/house grabbing and any incident involving serious abuse of authority against police officers of the rank of Superintendent of Police and above. The Police Complaints Authorities should have full time members earning a suitable remuneration and the recommendations of the authority, both disciplinary and criminal should be binding. The authorities should be independent and adequately funded. Members and staff should be trained in investigative skills and techniques and there should be coordination between the complaints authorities, police departments and human rights commissions.

Despite these encouraging developments with regard to police accountability, none of these recommendations and judicial directives has been implemented. The National and State Human Rights Commissions who receive the highest number of individual complaints against the police have also failed to effectively curb police atrocities. The endemic and extreme nature of police atrocities, custodial violence and extra-judicial executions is a blight on India's human rights record and is in complete violation of the fundamental right to life and unless police reforms are urgently introduced, along with a thorough relook at the Indian criminal justice system, police brutality will continue unabated in complete derogation of international and domestic human rights standards.

-CDHR Team

The World Bank on Trial



Protests in New Delhi against the World Bank
 ©www.hinduonnet.com

The World Bank has yet again been indicted of “serious violations of democracy, human rights and sovereignty.” These renewed charges come from an unprecedented Independent People’s Tribunal on the World Bank Group in India that met at the Jawaharlal Nehru University, New Delhi from 21-24 September 2007, supported by the Jawaharlal Nehru Teacher’s and Student Union, to analyse the Bank’s impact on India. The Independent People’s Tribunal (IPT) accused the Bank of having an “undue and negative influence in shaping India’s national policies disproportionate to its contribution, financial or otherwise.”

Established as the International Bank for Reconstruction and Development (IBRD) in 1944, with the objectives of post-war reconstruction of Europe and investing in development, today, it has expanded to the World Bank Group (WBG), claiming to work for a world free of poverty. The Bank’s early

lending was primarily for infrastructural projects for the construction of highways, railways, dams etc, which was subsequently forked to policy changes based on “conditionalities” that aimed at reorienting the borrowing countries’ economies. More recently, the Bank has branched out to sectors like education, health, water, sanitation, agriculture, etc.

However, in the past few years, the Bank’s mandates and activities have been subjected to protracted monitoring and assessment from external as well as internal quarters, especially in the context of rising resistance to neo-liberal economic policy and concerns in favour of social, human rights and environmental issues. It has been the target of serious scrutiny regarding its credibility and persistence, evident from the massive protests and demonstrations that have accompanied its last few annual meetings. The Bank has been volleyed with a plethora of criticisms ranging from impoverishment of people, environmental destruction, abetting corruption, diminishing human rights standards and promoting privatisation.

The jury found “a disturbing and shocking picture of increased and needless human suffering since 1991 among hundreds of millions on India’s poorest and most disadvantaged in rural areas and in the cities,” directly or indirectly caused by Indian government policies and projects financed and influenced by the Bank. This increased misery and suffering has taken place in the backdrop of a miniscule Indian middle and rich class enjoying the fruits of a supposed economic boom.

India is one of the oldest members of the Bank having joined the institution in 1944. It is also the Bank’s single largest cumulative

borrower. At the end of the 2006-2007 financial year, the Bank had 67 active projects in India with a net commitment of about US\$ 14.3 billion for these projects (www.worldbank.org.in). The Bank claims that the advantage of borrowing from it “is the low cost and stable financing it provides with longer maturity periods that better match India’s investment needs.” In this context, the IPT attempted a broad-spectrum enquiry into the functioning of the Bank, reviewing its impact nationally and demanding accountability. Not only were the individual sectors evaluated, but the Bank’s role as the repository of development knowledge, shaping macroeconomic priorities and influencing legislative and policy changes in India, were questioned.

Evidences through facts, figures and data were exposed by researchers, economists, social scientists, academicians and civil society groups, corroborated by testimonies from the representatives of the communities, who have directly borne the brunt of Bank funded projects in India, before a jury that included economist Amit Bhaduri, scientist Meher Engineer, historian Romila Thapar,

writer Arundhati Roy, activist Aruna Roy, former Supreme Court Justice P. B. Sawant, former Finance secretary S. P. Shukla, former Water Secretary Ramaswamy Iyer, Justice Usha and Thai spiritual leader Sulak Sivaraksa among others.

The IPT had the endorsement of sixty organisations and institutions and its proceedings were attended by over six hundred people. Arranged broadly under two aspects, how the Bank works and its impact on human rights, the presentations were arranged into thematic areas (macro economics; financial sector reform; governance, democracy and sovereignty; impact on poverty and employment; environment; private sector ownership of the Bank; knowledge provider; role of consultants and bureaucrats; role of women; role of NGOs; policy coherence); sectoral issues (water; health; education; housing; energy; transport; post disaster; forest; mining; agriculture; public sector disinvestment; tourism; and unorganized sector); and state presentations (Karnataka; Andhra Pradesh; Rajasthan; Orissa; and North East).

Dispositions were diverse and wide-ranging: a nine year old Dalit girl from a remote village in Bihar spoke about how she was discriminated against under the Bank funded District Primary Education Programme (DPEP) in her district; tsunami victims from the coastal region of Tamil Nadu described the deplorable housing conditions and access to water and health under the Bank funded programme for post-disaster management; a vegetable vendor from Manipur narrated the condition of the road to be built by the Bank funds to name a few. The essential crux being the adverse impact, forced dislocation and abuse of human rights caused by the Bank funded projects.



©www.tribuneindia.com

The jury found “a disturbing and shocking picture of *increased and needless* human suffering since 1991, among hundreds of millions on India’s poorest and most disadvantaged in rural areas and in the cities,” directly or indirectly caused by Indian government policies and projects financed and influenced by the Bank

The Bank has been unable to ensure compliance to its social and environmental regulations. According to Meher Engineer, it is, “Pro-rich, pro-urban and anti-environment”. Labeling the Bank as “neo-liberal and neo-imperialist”, Arundhati Roy held that the Bank seems to have developed “a language in which words like empowerment mean disempowerment, sustainable means unsustainable, public-private partnership means using the public to promote the interests of the private”. Aruna Roy said that the continued existence of the Bank signifies that, “The enemy has changed; their tools and strategies have changed. Therefore, tools and strategies to counter it will have to change, control over decision-making should be diluted and accountability should be demanded through institutions of democracy and disclosure of information and facts”.

The representatives from the New Delhi office of the Bank and from the Government of India were conspicuously missing from this public event in spite of being invited, with spaces reserved on each day for their responses. Their absence not only rendered a severe blow on the democratic flavour of the proceedings but also portrayed their marginal accountability to the civil society and public at large and their reticence to criticisms of their perspectives on development. Responding to the IPT, the World Bank posted a statement on its India home page defending the reason for non-participation as, “the institution does not agree

with the format of a “tribunal” established with juries and judges to “try” the Bank.”

Moreover, in the “Q & A: The World Bank’s Work in India” section, in response to allegations of pushing privatization, the Bank held that “there is no one-size-fits-all model of development... privatization is only one of many options available.”

The jury has advanced a preliminary statement regarding its findings. It remains to be seen whether any concrete policy recommendations emanates as the final outcome of the IPT, which then could be communicated to the Bank. It is doubtful whether the Bank would be positively receptive to such assertions and suggestions. But the effort of bringing common people and intellectuals on a common platform to question an international multilateral organization is definitely noteworthy and holds the potential to sensitise the Bank towards its actual social, economic, environmental and human impacts. In order to keep the Bank accountable and responsive, it is required that such public events are organised on a regular basis.

-CDHR Team

Vigilante Justice in Bihar: Mob Fury or a Lawless State?

On 13 September 2007, eleven members of the nomadic Kureri community were lynched by an angry mob with sticks and iron rods in Dhelapurva village in Vaishali district in the state of Bihar on mere suspicion that they were thieves. Out of the eleven attacked, ten succumbed to their injuries while Ranjit Kureri, the sole survivor from the incident was admitted to a nearby hospital with critical injuries.

Instances of mob vigilantism are not new in Bihar and more than five such incidents have been reported from the state in

the last one month. The victims of such extreme forms of mob fury almost always belong to the poorest and most marginalised sections of society, evident from the Vaishali killings, where those attacked and killed belonged to the poor Kureri community whose main source of livelihood is bird catching and honey gathering. This incident has forced the local Kureri tribals to flee the village, as they fear being picked up by the police as suspects or attacked by an irate mob.



From Gujarat to Vaishali: Mob violence has taken many lives © www.gujaratplus.com

According to Anupama Nilekar, Superintendent of Police, Vaishali district, villagers had formed patrol committees to protect the village in the wake of increasing thefts in the area. One such community patrol team had allegedly spotted a group of outsiders near a robbery site who fled on being questioned about their identity. The patrol team allegedly chased and lynched them. Nilekar also informed that stolen jewellery and cash were recovered from these suspected thieves who were subsequently lynched to death. A First Information Report (FIR) was lodged against 300 persons in connection with the lynching incident at the Rajapakar police station. Ranjit Kureri confessed before the police that he, along with ten others had 'committed theft' at two houses. It is indeed, shameful that the police were unable to prevent this gruesome episode, although it

occurred within a distance of one and half kilometres from the police station.

The district administration was tasked with the responsibility of the cremation of the bodies. A few days later, the half burnt, decomposed and half-eaten bodies of seven of the victims were found floating in the Gandak river. Three district officials, including two policemen, who had not only failed in their duty to get the bodies cremated but had also sent false reports about the cremation to the district headquarters were suspended when this shocking news came to light. The state government also immediately ordered the transfer of Lallan Singh, District Magistrate and Anupama Nilekar, Superintendent of Police.

Further, the state government decided to fix public accountability by imposing a collective fine of Rs. 5000 per person in those neighbourhoods or villages where such incidents of mob violence take place. A Criminal Investigation Department (CID) probe, along with a high level probe by the Inspector General (IG) (Headquarters), Bihar into the administrative lapses leading to the massacre, was ordered. The National Human Rights Commission (NHRC) has on its part, taken cognizance of the incident and issued a notice to the Director General of Police (DGP), Bihar.

Instances of mob vigilantism are not new in Bihar and more than five such incidents have been reported from the state in the last one month. The victims of such extreme forms of mob fury almost always belong to the poorest and most marginalised sections of society

Mr. Anil Sinha, IG (Headquarters), Bihar, has stated in his report to the Bihar government that those killed were not thieves and that the massacre was a result of gross

administrative and police negligence. The CID report is yet to be submitted but the local court first rejected and then accepted the CID's plea for issuing non-bailable warrants against ten persons accused of lynching ten persons to death, when sufficient evidence linking them to the incident was provided by the CID. A fact-finding team of the People's Union of Civil Liberties (PUCL) who visited Dhelapurva village described the incident as 'cold blooded murder' and observed that there was no immediate provocation for the mob's angry reaction. The Supreme Court has also observed that such instances of vigilante justice arise from public frustration due to judicial delays and the fear that justice may never be done.

As mentioned earlier, the victims of street justice in this case were members of the nomadic Kureri community. Nomadic communities in India suffer the stigma of criminality on the basis of a colonial piece of legislation called The Criminal Tribes Act 1871, no longer in existence. The 1871 Act notified certain tribes as criminal at birth, including many nomadic tribes like the Kureris who were confined in reformatory settlements across India. After independence, these criminal tribes were 'denotified' by the government. The 1871 Act was replaced with The Habitual Offenders Act in 1952, which removed the 'criminals at birth' tag from these communities but branded them as 'habitual offenders' instead. The 1952 Act made certain cosmetic changes to the 1871 Act but the fact of stigma and discrimination faced by the so-called denotified tribes remained unchanged. The members of these communities are still subjected to harsh societal prejudices and are denied basic human rights that our Constitution and other laws guarantee.

The label of criminality associated with these communities immediately implicates them in many instances of crime

and they are regularly harassed at the hands of the government, police and society at large. Many of such nomadic tribes fall within the ambit of Scheduled Castes (SCs) and Scheduled Tribes (STs). Crimes against SCs and STs are covered by a special protective legislation called The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (POA Act) but complaints under this Act are rarely registered due to existing caste biases, especially in rural areas.

A three-member team of The National Commission for Denotified, Nomadic and Semi Nomadic Tribes, comprising of Chairperson, Dr. Balakrishna Renke, Director-Research, Dr. Meena Radhakrishna and Member, Mr. Laxmanbhai Patni visited Vaishali district to investigate into the killings of members of the Kureri nomadic tribe. The team condemned the media for misreporting the lynching incident as one of vigilante justice. The team investigation revealed that the victims were not caught red handed and the scene of mob violence was five kilometres away from the scene of theft and none of the items alleged to have been stolen from the house were recovered from the victims, although the Superintendent of Police had confirmed otherwise. It is deplorable that the police and the media perpetuate the false impression that those killed were thieves.

Ranjit Kureri revealed to the team that he had confessed under pressure from the police who had assured his release on providing such a version of events and was threatened with dire consequences, in case he did not comply. Interactions with police officials show that there was no evidence of a criminal history of members of the Kureri community. Sections of the media had also incorrectly reported that those killed belonged to the Nat/Nut community. The Bihar government does not have an exhaustive list of nomadic communities living within its

borders. In fact, the Bihar Scheduled Caste list includes 'Kurariar' community, also known as Kureris but none of the members of this community could be traced during the investigation.

The Commission has demanded that the lynching incident be thoroughly investigated and the culprits be punished in accordance with the law and Ranjit Kureri, the sole survivor from the incident be protected and when he recovers, he should be taken to identify the community/s whose members were killed and trace the missing members of the victimized Kureri community. The Commission also drew the government's attention to the fact that a forced confession was extracted from Ranjit Kureri and that such practices are very common with regard to denotified and nomadic communities. Further, the Commission requested the government to take note of the sub-human living conditions of nomadic communities, initiate a survey of these communities across India and rehabilitate them accordingly.

A Patna District Court awarded capital punishment to Anand Mohan, a former Member of Parliament and two other politicians for lynching the District Magistrate of Gopalganj, Bihar to death thirteen years ago (*The Indian Express*, 4 October, 2007). Incidents like the Vaishali killings, reveal the insensitivity of the state towards its poor and cannot be merely countered by taking to task guilty officials as a damage control measure. There is urgent need for large-scale civil service, police and judicial reforms to restore public faith in the criminal justice system. The public also needs to be sensitised against the use of vigilantism to realise instant justice and any such retributive action or reaction should be dealt with a firm hand.

-CDHR Team

RIGHTS – COMMENTARIES

U.S. Congress Outlaws Caste Discrimination in India

Discrimination against Dalits and tribals in India has been prohibited by the United States House of Representatives vide House Concurrent Resolution 139, passed at the 110th Congress on 23 July 2007. The resolution was introduced on 2 May 2007 following a report of Human Rights Watch and the Centre for Human Rights and Global Justice, released in February 2007, describing the extent of caste discrimination in India. As the first official statement on caste discrimination in India by the U.S. Congress, it is likely to impact organisations in India that have business relations with or receive funding from the US government.

Likening caste discrimination in India to apartheid in South Africa, Congressman Trent Franks (Representative-Arizona), who had introduced the Bill, said that "...untouchability is an unacceptable practice in America's largest trading partner and close ally...this resolution will ensure that we as a government and as a people in no way encourage or enforce untouchability through our policies with India or through foreign direct aid..." (www.house.gov). The resolution proclaims that addressing the condition of the Dalits and tribals in India would equip the U.S. to better address mutual social development and human rights goals.

The resolution defines caste as "the socioeconomic stratification of people in South Asia based on a combination of work and descent" and highlights that Dalits (untouchables) and tribals (indigenous peoples) are the primary victims of caste

discrimination, who together number approximately 200 million. Dalit and tribal women are violently targeted, killed before they are born, forced into prostitution, raped, trafficked and attacked with impunity.

According to the national police statistics averaged over the past five years by the National Commission on Scheduled Castes and Scheduled Tribes, a crime against a Dalit is committed every 18 minutes. According to Human Rights Watch and India's official National Family Health Survey (NFHS), most Dalits and tribals live on less than \$ 1 per day. Despite Article 17 of the Indian Constitution, which bans untouchability, and other laws enacted for the protection and betterment of the Dalits and tribals, in practice, they still face educational, economic, medical and religious discrimination, and physical abuse. The resolution aims at raising these issues "through diplomatic channels both directly with the Government of India and within the context of international bodies".

Prioritising funding for projects that positively impact Dalit and tribal communities, especially women, the resolution enjoins that the "Dalit organisations are incorporated in the planning and implementation of development projects" from the United States Agency for International Development (UNAID) and other United States development organisations. It also ensures "that cooperative research programme on rural health care, HIV/AIDS and rural technology contain proper focus on the Dalits and tribals". It prohibits all organisations receiving funds from the US government through the Indian Government from engaging in caste discrimination or discouraging qualified Dalits from working in their organisation. Instead, they must implement "transparent and fair recruitment, selection and career development processes", and ensure that "procedures exist to detect and remedy

any caste discrimination in employment conditions, wages, benefits or job security". The resolution encourages US citizens working in India "to avoid caste discrimination in all business interactions".

Nanci Ricks, Executive Director of the Dalit Freedom Network, welcomes the resolution by saying that, "We have seen history made in this resolution" (www.dalitnetwork.org). According to Dr. Kancha Ilaiah, an eminent scholar, "What those who oppose globalisation of caste should understand is that the masses who suffered from caste and untouchability will have to get their share of benefits from every pie that operates in India and in the global market. This resolution certainly helps that process." (www.deccanherald.com)

However, given the protracted history of caste discrimination in India, the practical implication of this resolution remains doubtful. Without any supervisory body, it will be difficult to ensure that the provisions of the resolutions are actually adhered to or that non-compliance would be met with punitive action. Nevertheless, the ensuing debate on caste discrimination that the resolution evokes has grave implications on the Indian socio-political and cultural system as well as on the related intergovernmental organisations, national and international NGOs. The resolution definitely holds the potential to positively assist the process of addressing caste and untouchability in India.

Immoral Traffic Prevention (Amendment) Bill 2006

The Immoral Traffic Prevention (Amendment) Bill 2006 has been referred to a group of Ministers after objections were raised to a few of the proposed changes to the Bill at a Union Cabinet meeting. This Bill, intending to amend the Immoral Traffic Prevention Act

(ITPA) 1956, was introduced in Parliament (Lok Sabha) in May 2006 and also discussed in a Parliamentary Standing Committee. The proposed amendment seeks to combat trafficking and sexual exploitation, as the ITPA Act, though amended twice, has not been an effective deterrent. However, the amendments have been criticised as directly targeting the rights of women sex workers.

The amended version of the Bill treats sex workers as victims of trafficking and hence, enables the police to charge clients who bargain with sex workers for sexual services. The Bill provides for fine and punishment “for any person found in a brothel for sexual exploitation of any victim or trafficking”. If clients have sex with a trafficked woman, then he is automatically deemed to be a trafficker and all clients are liable to be charged, until it is established that the sex worker was not trafficked. The Bill not only renders children and other members of a sex worker’s family liable to be removed from the premises, but also implicates family members who are dependent on the earnings of a sex worker. “The new amendments neither target trafficking nor protect women. Instead, the reforms are driven by a morally conservative and myopic vision. By criminalising clients, the new law will drive prostitution and sex workers underground. As a result, the women will be more vulnerable to abuse, and more importantly, trafficking.”(*The Times of India*, 10.09.07)

Some ministers in the Cabinet meeting also reportedly wanted a clearer definition of the term ‘client’. The bill seeks to punish a client who visits a brothel for “sexual exploitation of a trafficked woman”, but the client can escape this provision by differentiating between a trafficked and a non-trafficked person. What will happen if, for instance, a client is found outside a brothel? Further, since the Bill does not explicitly

define “sexual exploitation”, how does the enforcement agency decide the “purpose” of the client’s visit and differentiate between various brothel visitors? Besides, the Bill, while defining prostitution and a brothel does not specify whether prostitution is legitimate, if the person is exercising the choice to earn a living in this manner. Also, since the Bill mentions trafficking only in the context of prostitution, women and children trafficked for non-sexual but exploitative and pernicious practises obviously do not fall within its ambit. (*EPW*, Sep 15-21, 2007, pp 3680-3681)

The Health Ministry has objected to this amendment arguing that penalising the client will forcibly drive prostitution underground and obstruct anti-AIDs programmes. According to Dr. S. Jana, (Durbar Mahila Sammanwaya Committee and National AIDS Control Organisation (NACO) advisor) this not only means, “loss of collective bargaining power for sex workers, but their isolation would also jeopardise the outreach of safe sex practise programmes meant for them...Moreover, by making sex work and trafficking synonymous, the Bill would dis-empower sex workers and instead empower police authorities to harass them.” (*The Hindu*, 29.08.07) NGOs allege that this will only isolate the sex workers further and make them more susceptible to violence and exploitation. Instead, as Akhila Srivastava, Director, Centre for Advocacy and Research, suggests, the solution perhaps lies in leaving sex workers to devise their own legislation and not provide for the same because the Government’s past efforts to rehabilitate sex workers have mostly failed.

A stringent Anti-Sati Law has to wait

The likelihood of making the anti-sati law more women friendly seems to have been postponed *sine die* with the proposed amendments to the Commission of Sati

(Prevention) Act, 1987, which had failed to obtain the Union Cabinet's nod. The amendments, suggested by the National Commission for Women (NCW) and the Central government proposals, were sent back to the Ministry of Women and Child Development for reconsideration owing to some "technical issues" that needed to be examined. However, what those technical issues are have not been revealed.

The proposed amendments included treating the women attempting to commit sati as a victim rather than as an offender. The original Act holds the attempt to commit sati as an offence punishable with imprisonment up to one year (Part II, Section 3). It is also suggested to term sati as 'sati murder' and increase the punishment for its glorification to a minimum imprisonment of three years extending upto ten years. In the present Act, while abetment of sati is punishable with death or life imprisonment and also a fine (Part II, Section 4), punishment for glorification of sati is minimum imprisonment for one year, extending up to seven years (Part II, Section 5).

The Act also disqualifies any person convicted for abetment of sati from inheriting the property of the woman who has committed sati or of any other person which he/she would have been entitled to inherit on the death of the woman committing sati. The present Act holds only the State Government, the Collector and the District Magistrate responsible and liable for any acts of sati.

The proposed amendments endeavour to make communities more accountable by suggesting the imposition of a collective fine on the entire community where a sati incident takes place. It attempts to extend the punitive jurisdiction of the Act to the priest performing the ritual, the immediate relatives of the woman, the village pradhan, the district

magistrate and the local police, and provides for making the panchayat functionaries responsible for implementation of the Act.

The controversial issue, however, pertains to reconciling the traditional practice of worshipping in the Sati temples with the provisions of the Act, which empowers the State Government (Part III, Section 7 [1]) and the Collector or the District Magistrate (Part III, Section 7 [2]), to remove any temple or other structure pertaining to sati, existing for not less than twenty years. While some suggested that only the sati temples established after the Roop Kanwar incident should be subjected to the Act, others considered it retrograde to grant immunity to the old sati temples.

The existing Act was passed hurriedly in the wake of the huge media publicity and public outcry following the burning of 17 year old Roop Kanwar on her husband's pyre in Deorala, Rajasthan in 1987. An immediate ordinance promulgated by the Rajasthan legislature, eventually became a state act and then central legislation. However, in the first case filed under this Act, the persons accused for participating in the 'sati' of Roop Kanwar were acquitted after a 17 year trial in 2004 for lack of evidence. Hence, it is probably time that the anti-sati law be looked at in new light, the existing ambiguities be rectified and made more stringent on the perpetrators

India ratifies UN Disability Rights Convention

India has ratified the UN Convention on the Rights of Persons with Disabilities on 1 October 2007. It became the seventh country to ratify the Convention after Jamaica, Hungary, Panama, Croatia, Cuba and Gabon when Mr. Pranab Mukherjee, Minister for External Affairs, submitted the instruments for ratification. The Convention and the Optional

Protocol to the Convention has been signed by 117 and 66 countries respectively (as of 3 October 2007). Twenty ratifications are required for the Convention to come into force.

The 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. The Convention places a lot of emphasis on inclusive social development of PWDs and lays down specific measures to achieve the same.

At a national consultation on issues relating to the UN Convention on Rights of PWDs held in New Delhi in July 2007, attended by disability rights activists, legal experts and government representatives, the significance of the ratification of the Convention for millions of PWDs in India was discussed in detail. The government was urged to ensure immediate ratification of the Convention. At the consultation, Mr. Ashish Kumar, Secretary, Ministry for Social Justice and Empowerment assured that areas where legal intervention is needed were identified although the government had set no timeline for the ratification of the Convention.

India became one of the first signatories to the Convention when it was opened for signature in March 2007. Disability rights groups in India had been rallying for the ratification of the Convention for the last few months. According to United Nations

estimates, India is home to the highest number of PWDs amounting to nearly seven million. The domestic legal regime governing the rights of PWDs in India has failed to positively affect the lives of PWDs. The ratification of the Convention would mean that the obligations under the Convention would become binding on member states and they would have to establish proper enforcement mechanisms to implement the provisions contained in the Convention.

National Commission for Enterprises in the Unorganised Sector's Report on the Unorganised Sector

A Report on the 'Conditions of Work and Promotion of Livelihood in the Unorganised Sector' was released by the National Commission for Enterprises in the Unorganised Sector (NCEUS), on 9 August 2007 in accordance with the Government's commitment to understand and undertake appropriate measures "to enhance the well-being of farmers, farm labour and workers, particularly those in the unorganised sector and assure a secure future for their families in every respect." (*Common Minimum Programme, UPA*)

Using National Sample Survey (NSS) data, the report is one of the first attempts to classify the unorganised workers - who comprise 92 percent of the country's total workforce, as of 2004-05 into six groups in terms of poverty line (PL) based on their consumption expenditure. A per capita expenditure of Rs. 8.90 per day represents the "extremely poor", while the "poor" constitute those who spend up to Rs. 11.60 a day, the "marginally poor" and vulnerable spend Rs 14.60 and Rs. 20.30 per day respectively, while the middle income groups constitute those earning Rs 37 and the high income above Rs. 93 per day. The report concludes that a staggering 836 million people, reflecting

77 percent of the population, live on a per capita income of less than Rs. 20 a day as of 2004-2005, despite supposed very high growth rates of the economy.

There also appears to be a high congruence between the “poor and vulnerable” sections and the unorganised sector. Nearly 79 per cent of unorganised workers, 88 percent of India’s SC/STs and 80 percent of all Other Backward Castes (OBCs), except Muslims, and 85 percent of Muslims, excluding SC/STs belong to the “poor and vulnerable” group. Further, 86.2 percent of all illiterate and 78.6 percent of all those who received education below primary level belong to this group. Similarly, women remain highly disadvantaged.

Articles 39 and 42 of the Constitution of India emphasise the goals of just and humane conditions of work, and Article 43 requires the state to work towards the provision of a minimum wage and “conditions of work ensuring a decent life”. The NCEUS reports that over 394.9 million workers (86 percent of which, belong to the unorganised sector) work in “utterly deplorable” conditions, with only 0.4 percent having access to social security and “extremely few livelihood options”. In fact, contrary to regulatory norms, long working hours (10-12 hours) seem to be a regular feature of the unorganised sector and a large proportion of the unorganised workers remain outside the protection of Minimum Wages Act. Using Rs. 66 as the prevailing wage rate standard for industries, as recommended by the Ministry of Labour, more than 85 percent of all rural workers were found to earn below this standard. If, however, one was to use the National Commission on Rural Labour (NCRL) (‘basic minimum wage’) standards of Rs. 49 in rural areas and Rs. 67 in urban areas, 40 to 50 percent of male workers and 81 to 87 percent of female workers get wages below

this rate. For the self-employed, the daily earnings per worker were below the minimum wage for 47 percent of rural enterprises and 29 percent for urban enterprises.

The report also found that a majority of the wage and self-employed workers in rural non-agricultural unorganised sector are either landless or sub-marginal landholders with holdings of less than 0.4 hectares. Moreover, for agricultural labourers, taking Rs 45 as the cut-off wage for all states, the Report noted that, with the exception of the states of Kerala, Haryana and Punjab, in 1999-2000, a majority 76 percent got wage rate below this cut off. In fact, the casual agricultural workers in rural areas were worse off than the non-agricultural workers with nearly 87 percent of the men and 97 percent of the women receiving wages below the NCRL minimum.

While the government has spent a lot of money on development programmes and undertaken a number of measures for the unorganised sector, including the National Rural Employment Guarantee Act, the Swarnjayanti Gram Swarozgar Yojana (SGSY) amongst others, the Report’s findings indicate that the policy implementation seems to have bypassed those who really need them.

The key recommendations of the Report call for the need towards more targeted economic policies in their 13-point Action Programme for the sector, which includes protective measures for workers (including conditions of work and social security), measures for marginal and small farmers (including credit facilities, establishment of Farmer Debt Relief Commissions), improving growth of non-agricultural sectors (through improving employment, up-scaling cluster development, rural employment guarantee, skill development) and creation of a National Fund for the Unorganised Sector (NAFUS), amongst others.

On 10 September 2007, Union Labour Minister, Oscar Fernandes, introduced, the Unorganised Sector Workers Social Security Bill in the Rajya Sabha. The bill, however, has met with a lot of criticism because contrary to the NUEUS recommendation of two separate Bills for agricultural and non-agricultural workers, it has been released as a single Bill. Moreover, the Bill spells out no financial obligation nor time frames on part of either the Centre or State governments and has provisions only for social security as opposed to the one recommended by NUEUS which covered health benefits, life and disability insurance, welfare, apart from a minimum social security, to be implemented within the next five years.

India up for Universal Periodic Review under HRC mechanism

Universal Periodic Review (UPR) is a new mechanism that has been introduced through UN General Assembly Resolution 60/251 that established the Human Rights Council (HRC). The Council shall “undertake universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”. The resolution provides that the review shall be a cooperative mechanism with full involvement of the State concerned, complementary to the already existing treaty body mechanisms. The process of carrying out the review has not been detailed in the resolution but leaves it to the HRC to develop the modalities of the review process.

The UPR intends to remedy the flawed and selective response of the erstwhile United Nations Commission on Human Rights (UNCHR) to human rights situations in various States. The UPR mechanism shall

analyse the human rights records of *all* States based on principles of “universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights”.

An intersessional open-ended intergovernmental working group was established by the HRC through its Decision 2006/103 to develop the modalities of the UPR mechanism. At the Sixth Session of the HRC, the general guidelines for the preparation of information under UPR were adopted by the General Assembly. These guidelines include a description of the methodology and the consultation process for the preparation of information under UPR, country-specific background information for the purposes of the review, promotion and protection of human rights at the ground level, identification of achievements, best practices, challenges etc, national priorities to achieve human rights objectives, expectations of the state concerned in terms of capacity building, requests for technical assistance and follow up to the review (*A/HRC/6/L.24*).

The HRC also selected the countries to be reviewed under the UPR review between the period, 2008-2011. India, along with 16 other countries was chosen to undergo the UPR process at the first instance in 2008. According to Louise Arbour, UN High Commissioner for Human Rights, “We are acutely aware that the credibility of the United Nations human rights system hinges upon satisfactory implementation of the review, since the UPR has the potential to greatly influence and address human rights situations on the ground” (*UNHCHR, 13 September, 2007*)

India was re-elected for a three-year term as member of the HRC in May 2007. India’s human rights record is far from perfect

and suffers from several discrepancies, whether it is her compliance with international human rights standards or reporting to human rights treaty bodies. It is hoped that the UPR mechanism, if well executed, will not only establish the credibility of the HRC as a universal human rights monitor but will also serve as a reality check on countries under review, bringing to light their actual human rights situation.

LETTERS TO THE EDITOR

Thank you for the copy of the Rights and Development Bulletin. And congratulations on another issue. Best wishes.

Prof. Paul Hunt

United Nations Special Rapporteur on the Right to Health

Thank you for the first three issues of "Rights and Development Bulletin". I must say that the quality of the bulletins is excellent and you have every right to be proud of the efforts that have gone into their production. My only concern is that eventually you should aim to make this bulletin a vehicle for debate and discussion on the issues of right to development, but as yet there does not seem to be too many debates on any of the issues that have been covered. We should actively solicit responses from the readers by including it in the introductory statement and by having a section on public responses. I hope that in the near future we will be able to encourage this. Also, ideally we should try to keep it within 30 pages, otherwise there tends to be a loss of focus.

Dr. Pronab Sen

Secretary, Ministry of Statistics and Programme Implementation

Many thanks for the copy of the bulletin. This is a fine initiative of the Centre for

Development and Human Rights. Warm congratulations and every good wish.

Prof. Stephen P. Marks

François-Xavier Bagnoud Professor of Health and Human Rights, Harvard School of Public Health

Thank you very much for sending me the issues of Centre for Development and Human Rights Bulletin titled "Right and Development Bulletin". I have gone through these and found them to be interesting and of a very high quality.

Prof. Amitabh Mattoo

Vice-Chancellor, University of Jammu

Several of us in the international affairs program are interested in the cluster of issues you are confronting and I will share this around. I cannot promise that manuscripts for your bulletin will necessarily come your way as a result, but who knows. Why not?

Prof. Barry Herman

Visiting Senior Fellow, Graduate Program International Affairs, The New School

I congratulate you for writing a truly revealing article (*The Missing Girl Child*, Vol. 1, Issue, 4, June 2007), unleashing some blatant flaws in our understanding and beliefs. Would expect more like this in future. However, you perhaps failed to reconcile the figures for Haryana, Punjab and Delhi with national figures from NFHS, because, instances of sex decline is more localised and not a nation-wide phenomenon. I fully agree that the problems of feticide are a combination of demand and supply side problems.

Kaushik Bandopadhyaya

Centre for Economic Studies and Planning, Jawaharlal Nehru University



Centre for Development and Human Rights

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

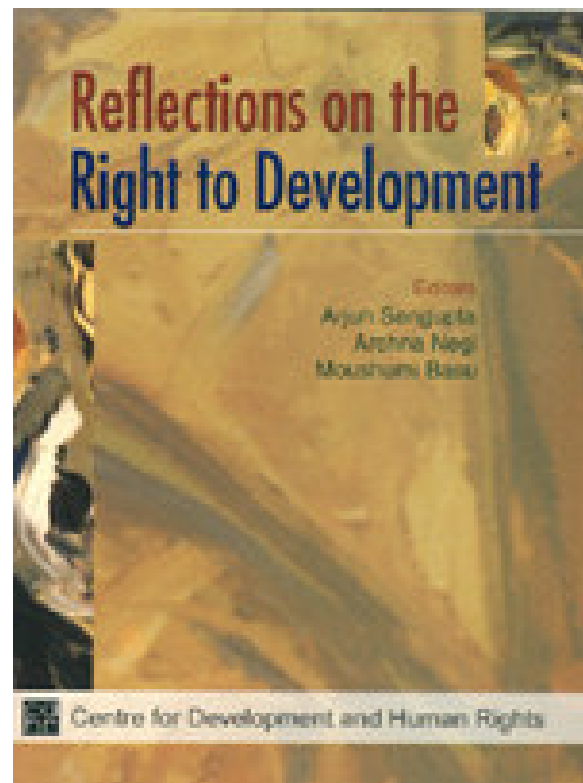
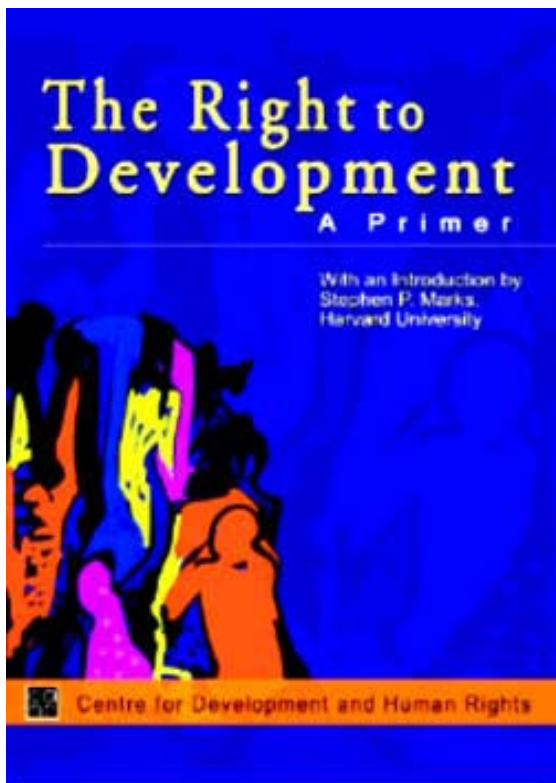
Advisors

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

Publications of CDHR



**Centre for Development
and
Human Rights**

Registered Office : NIDM Building, IIPA Campus, IP Estate, New Delhi – 110002

Chairman's Office : 100 Lodhi Estate, New Delhi – 110003 Email : chairman@cdhr.org.in