

RIGHTS AND DEVELOPMENT

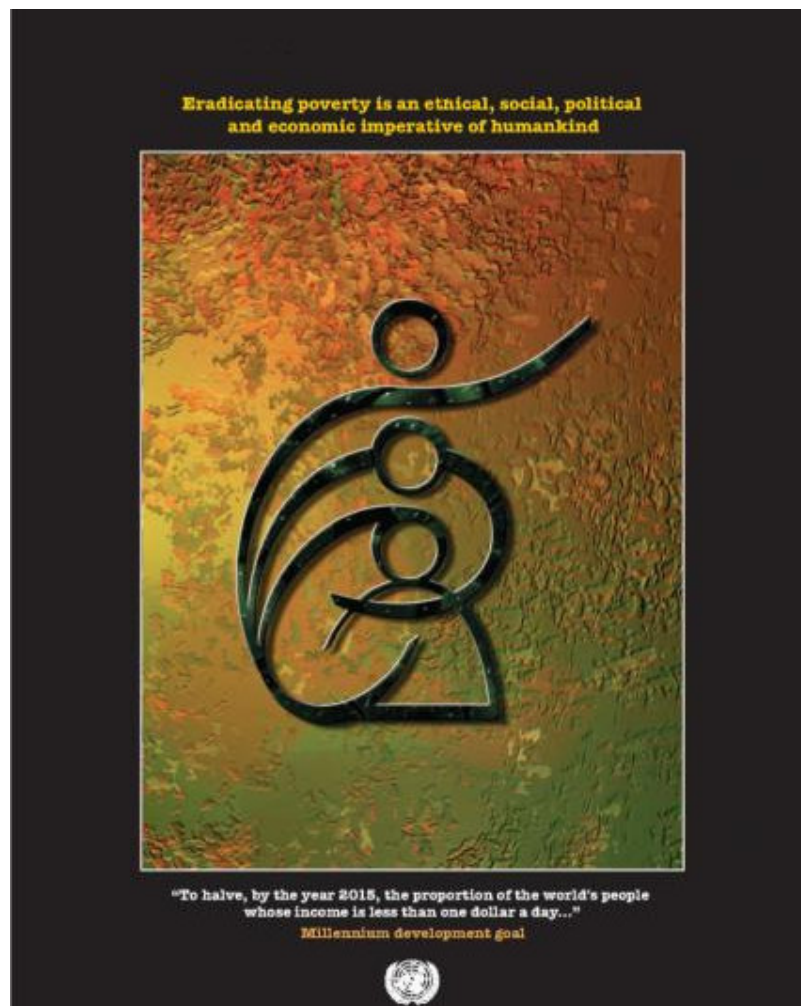
Bulletin



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RIGHTS AND DEVELOPMENT

Bulletin



Centre for Development and Human Rights, New Delhi, brings out a 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, in this area, and a section on brief analytical features on some of the major developments. There is also a section of commentaries on some important news in this area. Another section provides some reviews of recent books on these subjects.

This Bulletin is prepared by a team of researchers comprising of Ms. Priyanca M. Velath, Ms. Preetika Sachar, Ms. Namrata Pathak and Ms Menka Chandiramani as joint editors. The work of the team has been supervised by Ms. Jayshree Sengupta, (Editor-in-Chief) and a Board of Editorial Advisors consisting of Dr. Pronab Sen (Chief Statistician of India), Prof. Pulin Nayak (Professor of Economics, Delhi School of Economics), Dr. Alakh Sharma (Director, Institute of Human Development), Dr. N.J. Kurian (Director, Council for Social Development), Mr. Ravi Nair (Executive Director, South Asia Human Rights Documentation Centre) and Dr. Arjun Sengupta, (Chairman - CDHR).

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

From the Editor-in-Chief's Desk

From the Right to Development to the Legal Empowerment of the poor, this issue of the Bulletin traverses various topical subjects related to human rights and economic and social development internationally and in India. In the context of the recent drought affecting many parts of India, this issue highlights the problems of unemployment especially among the rural workers. We have in this issue an analysis of the implications of the NREGA for the teeming millions who are poor and without work. Both the benefits and loopholes of the newly amended NREGA have been examined in view of the importance and popularity of the country's poverty alleviation programme.

On the industrial front, especially in the case of small scale and in micro industrial units of manufacturing, workers belonging to the unorganised sector have been severely hit by the global crisis. They have been facing slack demand and declining exports for almost a year. The Final Report of the National Commission for Enterprises in the Unorganised Sector, India was submitted in March 2009 and it has pointed out the problems of this sector in detail and the remedial actions that ought to be taken to offer relief to the affected workers. We bring you the highlights of this report.

The important issue of social expenditure of the government of India on health has been discussed because as everyone knows there are huge gaps in the health care system especially in the area of public health in India. The recent outbreak of the Pandemic H1N1 has also exposed these gaps and shortcomings of the nation's health sector. The Bulletin also explores the various dimensions of the Right to Education bill that was passed recently in the Indian parliament

The relief work in West Bengal after the cyclone Aila, has been assessed in view of the enormous gaps that remain. We also have an interesting piece on the ongoing relief work after the cyclone Nargis from inside Burma.

This issue also has commentaries on the Union Budget 2009-10 and the proposed Food Security Act which promises a lot but leaves questions unanswered on if can it deliver without a total revamp of the Public Distribution System. A very important and historic judgement has been passed by the Delhi High Court against criminalising gay sex. We have expressed our views on the subject. We also have revisited the important question of trafficking and sex workers' demand for legalising prostitution.

On the international front, we have examined the question of the displaced persons who have fled conflict stricken zones in the North West Frontier Province of Pakistan and have become refugees in their own country. We have also commented on the release of a human rights lawyer in China and examined the status of human rights in general in China. Could it lead to clearing the path for more humane treatment of human rights defenders ?

I hope you enjoy reading our Bulletin on these very important and topical subjects. We would welcome any comments from you,

- *Jayshree Sengupta*

RIGHTS – SPECIAL FEATURE

The Potential of ‘Legal Empowerment’ in Eradicating Poverty

- Dan Banik

Legal empowerment of the poor’ (hereafter LEP) is an approach that in recent years has attracted considerable attention in the face of strong claims that poverty persists partly because the poor do not enjoy legal rights or the power to exercise those rights. Indeed, according to recent (though unsubstantiated) claims, over four billion people currently live without legal protection. Consequently, the urgency of combating global poverty has resulted in a renewed focus on local complexities and nuances of land rights, the role and status of certain unique and flexible traditions of collective rights among indigenous groups and the capacity of the formal judicial system to live alongside customary law, promote socio-economic equity and prevent elite capture (Banik 2008).

The LEP approach gathered momentum particularly with the establishment of the Commission of Legal Empowerment of the Poor (hereafter CLEP) in 2005, a move actively supported by a group of developed and developing countries. Until then, the relationship between law and development in the international development discourse was traditionally very narrowly focused on law, lawyers and state institutions. By comparison, ‘legal empowerment’ was launched as a broad concept that goes beyond the confines of the purely formal legal system and entails identifying and providing the poor with legal

and institutional tools. In this sense, legal empowerment relates to a rule of law that is just and enforceable, allowing nations to reduce poverty quickly and more effectively (Albright and de Soto 2007).

The starting point for the CLEP has been the fact that ‘four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law’ (CLEP 2008, 1) (hereafter Report). Accordingly, ‘it is not the absence of assets or lack of work that holds them back, but the fact that the assets and work are insecure, unprotected, and far less productive than they might be’ (p. 1-2). The Report argues that wealth creation in rich countries is made possible by the existence of a comprehensive set of legal protections and norms that govern a large set of activities relating to businesses, labour contracts, intellectual property, etc. In contrast, similar types of legal protective mechanisms do not exist in many poor countries and where they do, the poor are often not in a position to access them. Thus, it is claimed that the LEP differs from conventional development approaches by emphasising the ‘legal underpinnings of entrepreneurship, employment, and market interaction’ and with its focus on what transpires in the informal economy, particularly at local levels (p. 2).

The Report argues that the main goal of the LEP approach is ‘expanding protection and opportunity for all: protecting poor people from injustice – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets’ (p. 28). The CLEP arrived at a framework consisting of the following four pillars which promote legal empowerment: ‘access to justice and rule of law’, ‘property rights’, ‘labour rights’ and ‘business rights’. In this framework, access to justice and the rule of

law are considered the ‘fundamental and enabling framework’ that supports the realisation of the remaining three pillars since ‘the core bundle of rights cannot be fully effective unless there is a realistic option of enforcing them’ (p. 27).

The Report identifies five central features that distinguish LEP from related approaches: bottom-up and pro-poor (in design and implementation), affordable (measures and procedures), realistic (understanding of formal and informal systems including how local institutions actually function), liberating (removal of economic and institutional barriers), and risk aware (monitoring and assessment of potential but unintentional harm may occur to certain groups of the poor) (p. 77). In this scheme of things, access to justice and rule of law provides the overarching umbrella for development activity.

Law and its foundations are crucial on two counts. First, law provides the ‘platform’ on which important socio-economic and political institutions exist, ‘and to be legitimate, power itself must submit to the law’ (p. 3). Second, laws cannot be considered as legitimate or ‘revered as a foundation of justice’ if they create barriers for the wellbeing of the poor (p. 4). Thus, the CLEP’s definition of legal empowerment is ‘a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.’ (p. 2). This applies not just in relation to the state but also the market (p. 26).

The CLEP has been particularly concerned with emphasising that the LEP approach does not substitute existing approaches of development; rather it complements existing efforts in the fields of trade, education, public services and

infrastructure, mitigation and adaptation to climate change, etc. – and helps multiply the impact of such initiatives ‘by creating conditions for success’ (p. 5). Towards this goal, the Report highlights the relationship and linkages between LEP and democracy on the one hand and LEP and human rights on the other, although these have not been examined in detail.

One way of strengthening the linkages to the human rights discourse would perhaps be to view the LEP approach as a sub-set of the broader human rights based approach (HRBA) discourse. Thus, Arjun Sengupta (2008) examines the legal empowerment process from the human rights perspective and argues that in order to effect real change, it is important to define LEP in terms of the recognition of basic human rights and ensure that the poor actually have the opportunity to exercise these rights. Aware that this may be overly optimistic if applied to all categories of right-deprivation, Sengupta proposes the identification of certain basic rights – for example those related to an understanding of extreme poverty, where there is a strong likelihood for achieving consensus – and then identifying specific obligations for societal actors (including national governments and corporate actors) for the designing and implementation of feasible anti-poverty programmes that are technically capable of delivering LEP rights. And the obligation of the international community, in Sengupta’s view, will be to assist national actors in facilitating the implementation of such policies.

However, despite its growing popularity in some circles, an excessive amount of attention on the HRBA is currently directed at the rhetorical level rather than on the practical implementation of development policies (Eide 2006). Given the limited global support for the prioritisation of socio-

economic rights in general – and continued doubts of their justiciability in relation to available resources – tying the LEP agenda to the human rights agenda may not necessarily make it more politically feasible. There is therefore a huge risk that something similar awaits the LEP if its theoretical underpinnings and its operational capability are not further strengthened, particularly vis-à-vis related approaches such as the HRBA or those that focus on the notion of ‘human development’.

The availability of a vast armoury of arguments in favour of an LEP approach amounts to little unless conscientiously applied to various contexts at the national, regional and local levels in developing countries. I believe that it is crucial to recognise the links between legal and political empowerment. I also believe one of the major challenges ahead is the need not only to closely link the LEP with the general development experience so far, but also to systematically attempt to connect these to other currently accepted approaches, to learn and understand the language and the concepts of ‘others’. It also appears clear that the LEP – like approaches that emphasise linking human rights and development – requires better conceptual clarity at national and local levels; indeed, greater efforts are needed at the programmatic level and in the identification and awareness of what it means to be a right holder and a duty-bearer and how one can effectively claim one’s rights and carry out one’s duties. This also means considering the realistic ability of the poor and their representatives or supporters to hold international agents to account for failing to respect, protect and fulfil human rights principles in the development process.

It will be interesting to follow the LEP discourse in the years ahead, particularly to see how national governments and civil society organisations together with support from

multilateral and bilateral donors (and developed countries in the world that can influence these institutions) work towards ensuring that legal empowerment does not simply end up being yet another buzzword.

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RIGHTS – FEATURES

Living my Burmese days!

Burma is more than just a country locked among five nations. It is more than just a country ruled by the Junta. And I would not have known the depth and the diversity of this country had my work not brought me here.

I would not say I was overjoyed at the prospect of coming to a country infamous for many things from the socio-political point of view, but yes, I was somewhat curious to see

how the massive initiative on recovery and reconstruction in the delta area in a post cyclone Nargis framework was faring. I was on a mission to contribute to that framework. Therefore, prior to flying out for Yangon, I did not know what to expect out of Burma apart from the steely looks of the military, poverty and harassment to foreigners. I was in for a surprise.

Right from the moment, I landed in Yangon, I felt welcomed by the smiling immigration officers, the very modern international airport and the broad road that brought me to my hotel. From my visits to many developing countries, I know that the ride from the airport to the hotel does not tell the real story about the country, and so I waited for my chance to go beyond the next day onwards.

The country is divided into 7 divisions and 7 states. While the states are all dominated by major ethnic groups, the divisions are more multi-cultural. Ethnic diversity ranges from people from various neighboring countries such as India and China. The Burmese are predominantly Buddhists but Christians also constitute a large number of the population. There are some Hindus, Muslims and Sikhs as well. However, what will strike you the most is the impact of colonial architecture. Many colonial bungalows and office buildings are still used. Many colonial houses are turned into beautiful restaurants, hotels and spas.

Over the next few days, I went around Yangon and just could not believe how beautifully the city has been designed and kept. Lush green parks, the famous and by now infamous lakes, the beautiful houses, fashionable restaurants' and clubs and most importantly the very polite and non-interfering Burmese people made a lasting impact on me. I was pleasantly surprised, and felt at ease with

the country. Little did I know that I had just scratched the surface.

The following week, I attended a meeting organized by the Tripartite Core Group – a committee formed by the government of Myanmar, UN agencies and ASEAN with representatives from Inter Agency Standing Committee of INGOs. The TCG has been facilitating the implementation of Post Nargis Recovery and Preparedness Plan (PONREPP) for the delta. The PONREPP proposes a three year medium terms recovery plan which means there will be shift from emergency relief and early recovery to a more development based approach. PONREPP has three major segments: Productive life (livelihoods recovery and food security), healthy lives (health care and nutrition), and protected life (protection of vulnerable groups, Disaster Risk Reduction). The TCG has been trying to raise funds to deliver the goals of PONREPP with limited success due to the sanctions imposed against Burma by various donor countries for its failure to comply with the UN norms of democracy. It's a crisis situation where TCGs cry for help against the extreme needs of the Burmese people is getting a lukewarm response from the international donors community and in the bargain the recovery of the post-Nargis delta is getting delayed indefinitely.

And this is where the clash between action against human rights violations and the crises in humanitarian field occurs. Over the last few months, I have visited many villages in the delta area. It's the main land for rice production, and so you would imagine it to be reasonably wealthy. However, the moment you step out from the bubbled life of Yangon, you see how the quality of life spirals downwards so fast and so cruelly. The concrete roads give away to muddy pathways, the nice bungalows are taken over by tiny

shacks and the nicely manicured parks turn into large plots of salinated lands.

In sharp contrast to the relief work of Tsunami, where villages were turned into beautiful housing societies, the relief projects in the delta have only been able to rebuild the shacks. Therefore, the notion of Build Back Better and Safer, which has over the years become a common practice in emergency relief and recovery work, was hardly followed in Burma. POREPP review suggests that 90% of the households do not consider their shelter safe from extreme weather disturbances such as another cyclone. Consequently, by the middle of monsoons, many shacks were blown away, and many sank in the rising water, exposing the survivors of cyclone Nargis to more hazards and discomfort. While the INGO/NGO sector blames the international sanctions for the poor quality of the houses, many experts say that due to lack of local government's support to the recovery process, permissions to procure and transport appropriate raw materials did not come through. The PONREPP framework has pledged to raise almost 100 million USD over a period of three years (2009-12) but so far only one third of that money has been raised.

Livelihoods also remain largely insecure as the majority of households in the delta depend on agriculture. Confronted with a lack of capital and farming inputs, farmers are unable to start their farming activities. This is also adversely affecting the casual labourers who depend on farming and fishing activities for survival as the job opportunities are extremely limited. It has been reported by various assessments that close to 60% of the households in the delta depend on agriculture.

The woes and wails of the Nargis survivors fail to reach bubbled Yangon or the gatekeepers of international relations. Agencies are still working and making the



most of what they can with the existing funds. At least 60-70 international agencies have their presence, and many local NGOs have mushroomed over the months. There are highs and lows associated with work here. Incidents such as denial of visa to the pilot of the World Food Programme who distributes food in the under assisted areas, harassment of NGO staff at the local level, delays in signing on multi-donor pool fund concept paper create roadblocks. The amazing dignity with which the local people live, the support from certain highly motivated members from various ministries and the achievements from our interventions lift our spirit. As in the case of any major disaster, the relief work is followed by recovery and then long term rehabilitation that makes its way into development projects, the post Nargis interventions are still ongoing and will continue to run through until 2012 as planned by the PONREPP framework.

The post Nargis periodic review II states “although traces of devastation that disrupted the lives of approximately 2.4 million people and killed another 140,000 still linger among the fields and villages of the cyclone-affected region, the resilience of the affected population amid adverse seasonal and economic conditions is evident, as demonstrated by their efforts to rebuild their lives, homes and communities.”

Given the above situation, there is strong sense of despair in the humanitarian sector in Burma. The urge to the international donor community is to separate politics from

humanitarian issues. Although it is easier said than done, as political issues and humanitarian efforts are inter linked, there is a strong need to advocate action in favour of the sufferers and the suppressed. As IFRC said in its world disaster report, disaster does not discriminate, people do – there is a need to take a stand in favour of the Nargis affected people so that they can live a dignified life and don't get crushed in the political struggle between the Junta and the international community.

- The author is currently working for an international NGO inside Myanmar and would like to remain anonymous for security reasons.

National Commission for Enterprises in the Unorganised Sector - Final Report

The National Commission for Enterprises in the Unorganised Sector (NCEUS) in India released its final report titled *The Challenge of Employment in India: An Informal Economy Perspective* on 30th April 2009. The Commission was set up on 20th September 2004, to “review the status of unorganised/informal sector in India including the nature of enterprises, their size, spread and scope, and magnitude of employment.”

The report takes an aggregative perspective of the central problem of the challenge of employment particularly, deficit in its quantity and quality. It finds that despite India's rapid strides in its economic front, 77 per cent of Indians live on Rs. 20 a day, most of whom belong to the informal sector. Thus, it shows that India's post reform economic success story has bypassed its unorganised sector comprising of 395 million workers, which cover a whopping 85 per cent of the total workforce.

The report observes that the net growth of employment in the quinquennium 1999-00 to 2004-05, from 396 million in 2000 to 456 million in 2005, has been largely of an informal kind, offering neither job nor social security to workers. Within it the change in the organised or formal employment was merely marginal (33.6 million to 35.0 million). Therefore, it can be inferred that the increase in total employment has been of an informal kind (around 16 per cent).

Despite their vast numbers and their substantial contribution of about 60 per cent to the national economic output, the unorganised workers are amongst the poorest sections of our population, with no social security benefits like provident fund, restricted or poor access to education, land and resources, and extremely poor work conditions vis-à-vis space, ventilation, temperature, lighting, hygiene and cleanliness. The informal segment still faces constraints like lack of access to credit, technology, marketing, skill development and also incentives. The report found that there are further gradations of vulnerability guided by gender, socio-religious identity and other disadvantages in both the agricultural and non-agricultural sector. For instance, women workers face inherent disadvantages and systematic discrimination, especially when gender is coupled with lower social and educational status.

The report, notably, also found that the poverty ratios are highest within the social groups of the Scheduled Castes and Tribes among the Hindus and the Other Backward Classes among the Muslims. The LFPRs (Labour Force Participation Rate) have also been high for these segments highlighting their poor condition. Other vulnerable and deprived groups include migrant labour, bonded labour, and children.

Taking into consideration a holistic view of the problems and prospects of the informal sector economy, the Commission recommends a strategy of levelling up instead of a trickle down approach, wherein employment is primed as the central objective.

The key recommendations include the need for creating a social floor in terms of universal minimum social security, setting a statutory National Minimum Wage and minimum conditions of work. The Commission also recommends formulation of a National Labour Code.

With regard to skill development, the report recommends that such programmes should be operationalised by a District Skill Development Council (DSDC) with the Ministry of Human Resource Development at the apex level continuing to coordinate the development of vocational education in the country. It adds that the proposed expansion in training systems should foster gender sensitivity and gender equity in training through proper design, advocacy, and incentives.



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Upscaling of cluster development efforts is recommended assuming that clusters once developed would unleash the multiplier effects, expand production and employment, help tap positive externalities (production linkages, common social overhead capital, and

different service delivery networks) and tackle negative externalities. The Commission recommends that 25 growth poles (one in each state) be supported during the 11th Plan and that the Growth Poles should be given SEZ-type (Special Economic Zones) treatment in order to facilitate the unorganised sector enterprises and stimulate a multiplier effect on the economy. For instance, the units operating in these Growth Poles of cluster of small and micro units should receive the same fiscal incentives as those operating in SEZ. The developers and infrastructure service providers should also get similar benefits. Further, if the developers can promote export, they should get all the benefits of exports available to SEZ.

The Commission also recommends expanding the list of assets under NREGA (National Rural Employment Guarantee Act) and vesting these assets in the poor along with expansion in the employment days the coverage in class B and C municipalities. Further the report recommends improving gender sensitive implementation, worksite management practices, strengthening the administrative and operational efficiency, enhancing the administrative expenditure limits of NREGA funds.

To tackle the problem of poor access to credit, the Commission recommends revision in the priority sector lending policy, adequate safety nets to the banks, adoption of Agency Model thereby utilizing the service of civil society organizations, innovative financing instruments such as venture capital, credit rating, and a single multipurpose Swarojgar Credit Card. Suggestions also include promotion of formation of marginal and small farmers' self-help groups and linking these groups to banks to ensure access to institutional credit.

-CDHR Team

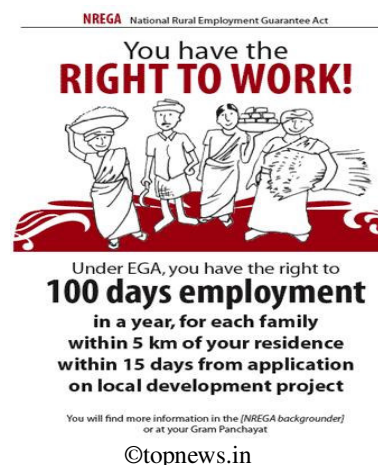
NREGA : “A Right- to-Work Entitlement to the poor”

Fourteen organisations and several activists like Aruna Roy of the Mazdoor Kisan Shakti Sangathan, Jean Dreze, Dunu Roy of the Sanjha Manch and others have opposed the United Progressive Alliance government’s amendment¹ made to the National Rural employment Guarantee Act (NREGA) to allow NREGA works on private land of small and marginal farmers which would lead to subsidising semi-agricultural activity of the more powerful vested group and place the controls of the NREGA in the hands of the landed peasantry. Another apprehension is that of the potential disintegration of the strong transparency and accountability provisions that have been woven into the NREGA, as collective work on community land is replaced by work on individual landholdings which makes monitoring difficult for government agencies.

The activists have also condemned the government’s decision to freeze wages as it’s the prerogative of the State governments to decide the issue, and that none could be denied the minimum wage. They have also condemned the decision to allow the use of machines for works in violation of the law that makes labour component mandatory in expenses. The proposal for convergence of the scheme with other departments is another attempt at usurping the powers of gram sabhas

¹ The amendment was made on July 22, 2009 to the Schedule I of the NREGA to allow the “provision of irrigation facility, horticulture plantation, and land development facilities to land owned by households belonging to the Scheduled Castes and Scheduled Tribes or below poverty line families or to beneficiaries of land reforms or to the beneficiaries of the Indira Awaas Yojana of the Government of India, or that of the small or marginal farmers as defined in the agriculture debt waiver and debt relief Scheme 2008.”

to the disadvantage of the poor.² Activists like Roy and Jean Dreze instead want some basic issues to be sorted out first. They want job cards to be given to all workers. They have also pointed out that advisory bodies like the Central Employment Guarantee Council are virtually dysfunctional, and there is increasing interference from government departments in determining how to use NREGA funds.



Before tinkering with the NREGA and crafting the architecture of the so-called “NREGA- II,” the principles that constitute the basic foundation of the NREGA must be kept in mind. NREGA is a legislation passed by the Indian Parliament providing a legal guarantee for one hundred days of employment to any adult who is willing to do unskilled manual work at the statutory minimum wage. The objective of the Act is to enhance the livelihood security of the rural people, enabling them to escape poverty and starvation deaths thereby laying a foundation for inclusive growth. The Act was notified in 200 districts, out of total 593 in the country, in the first phase with effect from February 2, 2006 and then extended to an additional 130 districts in the financial year 2007-2008 (113 districts were notified with effect from April 1st 2007, and 17 districts in UP were notified

² The Hindu, “Tinkering with NREGA will hit poor”

with effect from May 15, 2007). The remaining districts have been notified under the NREGA with effect from April 1, 2008 thus covering the entire country with the exception of districts that have a hundred percent urban population.³

The NREGA is one of the revolutionary steps of the United Progressive Government marking a paradigm shift from all preceding employment and poverty alleviation programmes as it has rights based framework with a legislatively-backed guarantee. The right to work, as spelt out in Article 6 of the International Covenant on Economic, Social and Cultural Rights, is the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts and NREGA is a step towards its progressive realization, realizing the right at present for the extremely poor vulnerable groups. It recognizes Article 39 in the Constitution of India, according to which the State must ensure that “citizens, men and women equally, have the right to an adequate means to livelihood” and Article 41 whereby “the State, shall within the limits of its economic capacity and development, make effective provision for securing Right to Work...”⁴

More importantly it bestows an entitlement and the Act has a number of “trigger mechanisms” designed to activate and establish people’s entitlements. It provides a statutory guarantee of wage employment – 100 days of work per rural household per year, which depends upon the worker exercising the choice to apply for registration, obtaining a Job Card, and seeking employment for the time and duration that he/she wants. There is a 15-day time limit for fulfilling the legal guarantee of providing employment otherwise an unemployment allowance is to be paid.

The successful people’s struggles for the payment of unemployment allowance — in Barwani District of Madhya Pradesh, Raichur of Karnataka, Bolangir, Navrangpur and Kalahandi of Orissa, Latehar in Jharkhand, Sitapur District of UP (*‘NREGA: Breaking new ground’*, *The Hindu*, June 21, 09), has been a breakthrough in accountability, and an inspiration to other workers struggling for entitlements. The payment of unemployment allowance emanates from an administrative lapse, and is eventually deducted from the pocket of erring officials and not doled out of the government exchequer. Like the Right to Information Act, this has created an important mechanism for enforcing the right while holding the bureaucracy accountable.

The right to have a Job Card is another trigger mechanism indicating a step towards the realization of the right to work. The Act mandates that anyone who applies at their Panchayat for a Job Card must be given one within 15 days. Without a Job Card, people cannot even apply for work, nor corroborate the records. More than 50 million families in rural India today have a job card (*‘NREGA is not artificial employment’*, *Jean Dreze, Civil Society News, May 2009 Edition, New Delhi*), with each card guaranteeing 100 days of employment at the statutory minimum wage thereby focusing on an entitlement approach to livelihood as opposed to simply doling out assistance.

The application for work and the dated receipt are other crucial mechanisms. The receipt is also the basic record for claiming unemployment allowance if the work is not provided within 15 days. States like Rajasthan have fared well in providing Job Cards and this trigger has worked out when workers groups have been organised.

³ <http://muktsar.nic.in/> : The Official Government Website

⁴ IHD, 2009



Workers at an NREGA project site.

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Other transparency safeguards include Citizen Information Boards at worksites, Vigilance Monitoring Committees, regular block, district and state level inspections and social audits. The mandatory “social audit” has made the scheme more transparent which will help the poor and rural India in the long run by creating durable productive assets. It goes a step further and secures the legal right of the people of the Gram Sabha to conduct social audits of work being performed under the NREGA.

The public delivery system has been made accountable, as it envisages an Annual Report on the outcomes of NREGA to be presented by the Central Government to the Parliament and to the Legislature by the State Government. Specifically personnel responsible for implementing the Act have been made legally responsible for delivering the guarantee under the Act.

The NREGA is also an outstanding example of how the RTI Act can be woven into the fabric of the delivery system and the whole legal and governance paradigm. The entire expenditure on works and workers — 94 per cent of the total amount — is required to be put on the website of the NREGA, with every transaction revealed in detail. Using this Management Information System (MIS), Vijaypura Gram Panchayat in Rajsamand District has begun to build a Janata

Information System (JIS) painted on the walls of government buildings in the Gram Panchayat. The boards reveal the details of the number of days of work provided and payments made in the year to every Job Card holder in the Panchayat, the list of works sanctioned, the expenditure on labour and material, and item-wise expenditure on material in each work in the Panchayat (‘NREGA: Breaking new ground’, *The Hindu*, June 21, 09) This is like a web wall that reveals to every interested visitor all that they want to examine.

India has to acknowledge the critical role the NREGA has played in providing a measure of inclusive growth. It has given people a right to work, to re-establish the dignity of labour, to ensure people’s economic and democratic rights and entitlements, to create labour intensive infrastructure and assets, and to build the human resource base of our country. At a time when the spectre of drought looms large, the focus should be on providing work and wages on time instead of second-generation reforms. The NREGA is the first law in the country that has economic and social rights in a legal framework. We need to make its foundation strong before beginning to construct NREGA II. The government first needs to ensure an effective implementation of the legal provisions of the Act - providing work and wages within 15 days, redressing grievances within seven days, paying unemployment allowance, etc.- thereby entitling the poor the right to work.

-CDHR Team

Trend in Social Expenditure of Government of India on Health

Central Government expenditure in India on social services in its total expenditure has gone up consistently over the years from 5-7 per cent in the 1990s to 9.79 per cent in 2005-06 and to 13.19 per cent in 2008-09

(Revised Estimate). Within the expenditure on social development, the Central Government expenditure on health (as per cent of total expenditure on social services) has also shown a gradual increase since the 1990s. In 1990, the percentage of expenditure on health was 1.21 percent; whereas 5 years later in 1995, it increased to 1.51 percent. The per cent of expenditure on health by the Central Government rose to 1.63 percent in 2000, whereas, in 2005, it rose to 1.89%. Simultaneously, a trend of increasing expenditure on health as per cent of GDP (Gross Domestic Product) has been witnessed over the years. In 1990, the expenditure on health as per cent of GDP was 0.12 percent, which increased to 0.18 percent in 1995. The expenditure on health services as a proportion of total expenditure on GDP increased to 0.28 percent in 2000; whereas after 5 years, in 2005, there was an increase to 0.37 percent on health expenditure.⁵

Despite the increase there is evidence of disparities in health status among social groups. Undertaking a comparative analysis of social groups in India in terms of various quantifiable health indicators - mortality, nutritional status, incidence of anaemia, access to vaccination, treatment for diarrhoea and maternal health care - brings to fore startling disparities in health status and access to healthcare.⁶

Surveys such as NFHS (National Family Health Survey) reveal that health services either do not reach disadvantaged sections or are not accessed by them. According to NFHS-1 (1992-93), IMR (Infant Mortality Rate) for India as a whole was 86.3

per thousand. While the level was much higher for SCs (Scheduled Castes), for STs (Scheduled Tribes) it was close to national average. Estimates according to NFHS- 2 (1998-99) were lower for all- India IMR at 73 per thousand. Here the social gap was more or less similar for SCs but it has widened for STs. NFHS-3 (2005-06) indicates a still lower IMR at 57 per thousand for all- India but the social gap still remains. Overall, both SCs and STs are disadvantaged in terms of infant mortality rate compared to Non SC/ST. The rate of child mortality is much higher for SCs and STs compared to Non SC/ST according to all the three rounds of NFHS.

Among children, at the national level, the degree of under-nutrition was higher among the SCs and STs as compared to the Non SC/STs. According to both surveys, NFHS-2 & 3, the conditions of the SC and ST children were worse than children from Non SC/STs. For instance, looking at the vaccination coverage, one finds disparities among social groups - the coverage among the SCs/STs being much below that for Non SC/STs. Similar disparities are evident in the percentage of children receiving treatment for diarrhoea and acute respiratory infection.

Among women, the percentage of women with a Body Mass Index below 18.5 kg/m² is higher for the scheduled classes than for others. Similarly, the incidence of anaemia is higher among these deprived classes. Also, less number of dalit women reported to have received any assistance during delivery.

Given the evidence of social disparities in health despite the impressive spending amounts by government on health, proper implementation of health programmes is essential and consequently the role of states and district administrations in the implementation of welfare schemes is vital. Better governance and improved service

⁵ Source: *Economic Survey*

⁶ Baraik, Vijay Kumar & Kulkarni, PM (2006): "Health Status and Access to Health Care Services: Disparities among social groups in India", working paper, Volume 1 Number 04, IIDS.

delivery are essential to ensure that leakages are plugged and the funds under the schemes reach the intended beneficiaries to the maximum extent. The Government has taken the initiative of introducing outcome budgets and this should be taken seriously. Local governments and Panchayati Raj Institutions as well as social and non-government organizations can play an important role in this area. Proper monitoring and evaluation against the laid down benchmarks along with the use of modern technology like e-governance can help in ensuring that higher outlays result in better outcomes and inclusive growth in the true sense.

With the objective of inclusive growth taking center stage, the government must further strengthen its efforts for social sector development in general, and health sector in particular. Given the evidence of social disparities in health, improving health services is only a part of the solution. A constellation of health services and other dimensions of development like food security, education, and sanitation are inevitable to attain the goal of removing social disparities.

-CDHR Team

Relief work in West Bengal post Cyclone Aila – The Bigger Disaster?

Cyclone Aila ravaged the Indian state of West Bengal on May 25, 2009, affecting more than half of the world famous coastal mangrove forest area of the Sunderbans in the southern coastal region of the state, rendering more than 45 lakh people homeless, killing their cattle, and leaving innumerable displaced persons helpless with virtually no food or safe water for days. Many places in the state capital city, Kolkata, were left floundering without electricity and water supply for 2-3 days, and hundreds of trees uprooted all over, even after the gale had subsided. It showed the ferocity of the cyclone as it just missed the city yet left

it shaken. The day after this cyclone plummeted south Bengal it then turned north and plundered the Darjeeling Hills with landslides and torrential rain. Besides West Bengal the cyclone also struck the neighbouring country of Bangladesh and left a death toll of 168 in the South Asian region. But this number of casualties is bound to rise as rescue workers were cut off from the affected areas for a long time. According to rough estimates, nearly 100,000 people have been displaced by this cyclone in the region. (<http://ibnlive.in.com>)

While more than Kolkata city it was the neighbouring South 24 Parganas district that was affected. Aila also created swirling mountain currents in the Darjeeling hill station and its nearby areas that devastated the Hill Cart road (NH-55) and cut the area off from the plains. Here too, with the strong winds uprooting trees, electric and telephone poles, all the above facilities were cut off and along with the fire brigade and police even the army had to be called out for rescue operations and saving lives caught amidst the landslides. (*The Times of India, Kolkata, 27.05.2009*) At the end of two days the state-wide toll of people was above 80. While the landslides in Darjeeling claimed 22 lives, the storms in North 24 Parganas District killed 16. Fifteen deaths were reported from South 24 Parganas, nine in Kolkata, seven in Howrah, five in Hoogly, three in Murshidabad, two in Birbhum and one each in Malda, East Midnapore and Bankura. (<http://timesofindia.indiatimes.com>)

While there was warning of the arrival of the cyclone what was most lamentable was the ineffective disaster management of the state after it left. As soon as news reports started pouring in of the cyclone Aila lashing the eastern coast of India, all schools in the city of Kolkata were asked to shut down by noon, May 25th 2009. The Netaji Subhash

Chandra Bose international airport in the city also closed down and diverted all flights that day. In fact people all along the coast line right from Orissa in India to Bangladesh were forewarned and asked to take precautionary measures. The disaster bigger than the cyclone itself was the one to follow it – the shocking



People make their way from the flooded village of Minakhan after cyclone Aila swept through West Bengal. (AFP Photo)

absence of immediate and adequate relief materials reaching the cyclone-affected population that created a lot of angst amongst them. The officials who finally reached them had to face their wrath in full form. Even the Chief Minister (CM) of West Bengal, Buddhadeb Bhattacharya, when he came to Gosaba Block Development Officer (BDO) to meet with the cyclone-affected had to hear many an angry voice. The people alleged that the relief materials released from the state headquarters had not reached them as they were all being pilfered on the way by intermediaries like block development officers. The CM was even heckled at the Bali relief camp, where he reportedly couldn't control his anger. Local newspapers were quick to point out that "No Bengal chief minister had seen such a backlash at first hand since Left rule began in 1977, though the Congress's B.C. Roy and P.C. Sen faced similar heat after the 1959 food riots and 1966 hoarding scandals, respectively." (*The Telegraph*, 01.06.2009)

While some pointed out that most of the public anger post-Aila erupted in areas like Basanti and Bali which are in Mathurapur constituency, which the Trinamul party won and so the angry mood of the people there was in line with that of the political opposition. However the reality cannot be denied that the disaster affected people were being forced to flee simply because they had been denied drinking water and relief for nearly a week. When the CM's convoy stopped before the Gosaba BDO's office in Basanti, 130km from Calcutta, the outraged people alleged that the CM's visit had hampered R & R as the boats meant to ferry aid had instead been requisitioned for his visit and that for 'sanitisation' purposes the police had even locked up around 50 villagers distributing relief like tarpaulin sheets in a tin shed. Apparently after his visit the CM too admitted that the sheer fact that medicines had not reached and dead cattle had not been removed showed that the state health and animal husbandry departments had failed to deliver. (*The Telegraph*, 01.06.2009)

Even a bigger disaster post-Aila was revealed when its impact on the forests and the 265 Royal Bengal Tigers in the Sunderbans began to unfold. The entire estuarine Sunderban region of West Bengal that also comprised of several delta islands had been inundated. Although forest officers claim that no actual assessment could be possible till the waters receded totally, it is feared that even if the tigers had survived the giant waves that flooded their habitat forest area during the cyclone and had managed to climb to higher areas, they may not be able to find prey for days in the flooded waters. While dead crocodiles and spotted deer were found, there were also isolated incidents of a few tigers being discovered alive washed away many miles away. But the fate of the others and the rest of herbivores is uncertain. As Mrinal Chattopadhyaya of the Institute of Climbers

and Nature Lovers said, “A storm like this has never hit the Sunderbans in the last three decades. Going by the extent of damage of the villages, the state of the forest could be terrible.” (*The Times of India, Kolkata, 27.05.09*)



Buddhadeb Bhattacharjee speaks to cyclone-hit villagers in the Bali camp on Sunday. Picture by Sanjoy Chattopadhyaya
 ©<http://www.telegraphindia.com/archives/archive.html>

It is believed that the east and sanctuary range of the Sunderban Tiger Reserve were worst affected. Even though forest guard teams and local forest protection committee (FPS) members spread out to assuage the full extent of the calamity, it is feared that along with many tigers hundreds of prey animals may have been washed away and chances of recovering carcasses were low. Tigers would have escaped to higher and drier parts of the country but according to experts the ferocity of Aila would not have left behind much dry areas for the entire tiger population of that region to find their feet on. (*The Times of India, Kolkata, 28.05.09*)

With people in the rest of the state being inundated with images in the media of streams of helpless and homeless people fleeing the inundated areas and heading towards drier and safer areas, there are countless questions as to why so many displaced and marooned people had to go without basic food and water despite huge stocks being sent off to them from the state headquarters. Why does every successive natural calamity like the Bihar flood and the

Aila cyclone become spectacles of failure of our state disaster management programmes? While places like western Orissa face the natural long-term impact of this cyclone, with Aila having sucked away all the moisture and weakened the monsoon system leading to sweltering heat conditions, it cannot be denied that inadequate and ineffective relief mechanisms are only a man-made creation.

-CDHR Team

The Right of Children to Free and Compulsory Education Bill, 2009

On August 4, 2009, the Lower House (Lok Sabha) of the Indian Parliament finally adopted ‘The Right of Free and Compulsory Education Bill, 2009’. This Bill which had been passed by the Rajya Sabha (Upper House) on July 20, 2009 was envisaged as a ‘national enterprise that would shape India’s future’ by guaranteeing free and compulsory education to children in the 6 – 14 age group.

It is a landmark legislation in India’s 62 years old history as an independent nation. The Constitution of India had loosely attributed the State to ‘endeavour to provide free and compulsory education to all children upto age 14’ but even more than six decades since access to elementary schools has remained elusive for most children in India. This Bill finally notifies the 86th Constitutional Amendment in 2002 that gave every child between the age of 6 and 14 the right to free and compulsory education by making education a fundamental right, as guaranteed in Article 21 (A) of the Indian Constitution. A draft bill was initiated by the NDA government in 2004 and the present UPA’s version had been lobbying between the Centre and the states on issues of funding and responsibility for the past 5 years. Now, after being passed by both Houses of the Parliament, the Bill recently received

Presidential assent and is now on its way to becoming a law.

Under this Bill the all-round development of children would be the focus as the curriculum would be made less rigorous. There would neither be any donation or capitation fee on admission nor any interviewing of the child or parents as part of the screening process. Physical punishment, expulsion or detention of a child is prohibited and so is the deployment of teachers for non-educational purposes other than census or election duty and disaster relief.

There would be 25 per cent reservation of seats in every private school for children from 'disadvantaged' groups from the neighbourhood, at the entry level. This particular provision has been viewed as an attempt to push the private sector to discharge the State's constitutional obligation. Besides, 50 per cent of seats in the minority institutions would be offered to students from their communities.

Under this Bill all schools would have to fulfil the minimum requirement of infrastructure within three years. There would be a recognition authority in every state for monitoring the above, else the schools would lose recognition. Similarly the appointment of teachers would also have to be approved by the academic committee.

The age provision laid down in this Bill has been criticised and why children below the age of 6 and above 14 have not been included has been questioned. In fact, civil society organisations spearheading child rights campaigns have pleaded with the President that this Bill be reconsidered on this very issue. The National Campaign for ECCE Right (NCER) has particularly attacked this Bill as having 'comprehensively and unwisely undermined the very important aspect of the

rights to education – the Early Childhood Care and Education (ECCE) of children under six years of age as their legitimate right to education.' In fact it further points out that although, Section 11 of Chapter 3 of the Bill recognises the necessity of ECCE for Universal Elementary Education (UEE), by stating that 'with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children', the usage of the word 'may' does not pressurize the state to provide for the same as a right. (www.righttofoodindia.org)

Already existing problems like shortage of teachers, low skill levels of many teachers, and lack of infrastructure in schools are issues plaguing for long. Their existential reality has to be addressed first before additional infrastructure can be added on top of it.

The essential problems that this Bill has been facing are related to its financial implementation primarily, particularly the states' financial contributions as the human resource development ministry had estimated the total cost to be around Rs.55,000 crore (US\$ 11.5 billion) every year. The Centre was forced to reconsider funding the entire bill itself when the states expressed their unwillingness to bear even part of the expenses. Under this Bill the state is obliged to tide over any financial compulsion that may keep a child out of school. Education being on the concurrent list of the Indian Constitution, this Bill will need complete support from the states to make it viable.

There are allegations that the Bill is indirectly seeking to legitimise the use of public funds and other resources by keeping silent on the public-private partnership policy

of the Eleventh Financial Plan and is thus keen on strengthening private enterprise within the schooling system. (www.tribuneindia.com)

Schools have already started voicing disapproval on the onus of paying the fee component being put on the government. Besides, simply making it legal is in no way going to ensure that children go to school as actors, state or parent, may comprehend their social responsibility but it does not ensure that the children for whom it is meant have real access to the programme. Thus, the trickle-down effect of the Bill has to be ensured.

There were also loud and distinct voices of protest from disability groups, even a day before the Bill was coming up before the Rajya Sabha, that the draft did not address the rights of 30 million disabled children to a formal education and that within the definition of the term 'school' there is no mention of the unique infrastructure needed by various types of children with disabilities. Javed Abidi, Convenor of the Disabled Rights Group, had particularly pointed out that the fundamental flaw in the Bill was definitional, in that disabled children had been left out excluded from the definition of children belonging to 'disadvantaged groups'. He was also indignant that the term 'disability' had been there in previous drafts right until last year, but this time had been deliberately left out. He was quick to elaborate that reference in the Bill was to children "suffering" from disability but this definition of disability was that laid down in the Disability Act of 1995 that covered only physical disabilities (like blindness, deafness, locomotor impairments etc) and not others like cerebral palsy, autism, multiple disabilities etc. (*The Indian Express*, 03.08.09)

Thus it can be concluded that although this Bill is undoubtedly a major milestone towards the legalization of the fundamental right to education, its still leaves

many questions unanswered. Will it be fair to take punitive and 'legal' action against parents who cannot afford to send their children to school or who have no school in their vicinity?? While it is one of the major concrete steps taken to actualize one of the plans within the 100 day agenda of the new UPA government at the Centre, it cannot be denied, as noted by the HRD Minister, Kapil Sibal, that 'We as a nation cannot afford our children not going to school.' It's been too long a wait. Hopefully it is now over.

-CDHR Team

RIGHTS – COMMENTARIES

Budget 2009-10: An Analysis

The Budget 2009 is quite different from previous Budgets of the UPA government. This is because unexpectedly, it reveals no evidence of the government hurrying up with the reforms agenda and instead, clearly caters to increasing the welfare of the 'aam admi', the common people who voted the UPA government to power. In the backdrop of the current global financial crisis, the government has assumed a paternalistic role with a big dose of public investment. However, the critics would point out that there is very little in the Budget to encourage private investment.

Large sums of money have been doled out to various welfare and poverty alleviation schemes with 'inclusive growth' as the mantra. Instead of simply providing another stimulus package the government has aimed at reviving the rural demand by pumping money in the rural areas, hoping that the demand stimulus for economic revival will come from the rural economy. But inclusive growth would require much more work over a long period because unless there is a

substantial improvement in the delivery systems in health, education, power, and sanitation, the 'other India' will continue to persist.

After a long time, agriculture has received the focus it deserves especially this year when drought conditions are prevailing in some parts of India. The farmers have been given incentives for growth mainly through better credit facilities which remain one of the main constraints in farming. For the first time, there is going to be a nutrient based subsidy regime in fertilizers that will cover a larger basket of fertilizers and there is going to be direct transfer of subsidy to farmers. But the question remains as how will the government monitor these transfers? As implementation has been the bane of the government in the past, who will see that there is proper trickle down and the actual beneficiaries are the real poor? Unless proper implementation of the rural development and infrastructural schemes is ensured with regular monitoring and supervision at every stage, the poor are not going to be empowered overnight. Although the Budget is not a panacea for all ills from the past it is indicative of policies to come and hopefully a proper monitoring body will be in place soon.

Guaranteeing food to the urban and rural poor at cheap rates (25 kgs of rice and wheat at Rs 3 per kilo) and increasing employment under NREGA are noble goals and it shows the government is serious about the problems of the poor. But putting more money here and not ensuring that the delivery mechanism is sans corruption would mean a waste of resources.

Many have been disappointed that a strong private sector stimulus has been missing and that big ticket reforms have not been announced (after hinting about them in the Economic Survey). These will take place hopefully in the remaining years of the UPA

government but the situation is quite volatile right now. Tax concessions however have been rendered to boost the demand of automobiles making electronics (LCD TVs becoming cheaper) as well as IT and mobile phones. Yet many industries languishing under recession have received little help. The Finance Minister also removed the commodity tax and fringe benefit tax. Besides, the removal of income tax surcharge and raising of the exemption limits for pensioners and women are aimed at making the salaried class happy and the FM assured the House that all his direct tax proposals are revenue neutral. The big move in the indirect taxes was the announcement that the Uniform Goods and Services Tax would be in place by 2010 which would simplify the existing tax structure and also lead to an increase in revenue. But preparations for it are far from complete. The increase of Minimum Alternate tax put off industry and stock markets alike.

The failure to announce a decisive agenda for disinvestment is understandable as it would ruffle the feathers of UPA partners who have shown displeasure at the idea. There is no doubt that disinvestment will take place otherwise one channel for funding the rise in public expenditure will be closed. Already the big fiscal deficit at 6.8 per cent is creating the fear of a downgrade in India's credit ratings by international agencies. There is fear that it will also mean heavy government borrowing from the market and crowding out of private investment that would translate to a higher interest rate regime that could snuff out industrial recovery. But as Finance Minister Pranab Mukherjee reminded everyone-- this year is an unusual one because of the global crisis and since every government is overshooting its expenditure target, he can also indulge in extra spending. It is the increase in revenue deficit from 1 per cent in 2008-09 to 4.8 per cent which however is a cause for worry.

There is fear of high inflation also. Already people are struggling against high food prices and other commodity prices are likely to go up because of China's appetite for stockpiling. Stunted growth and high inflation or stagflation is a real possibility.

Thus, it is clear that the Budget is a political one and has addressed many important issues confronting the common person. But it is too early to say whether the Budget moves can take the country into the higher growth trajectory and whether the gap between the two Indias would shrink. However The Finance Minister has shown guts in addressing problems of development first and has not pandered to the demands of the corporate sector alone.

-CDHR Team

India's Proposed Food Security Act

The World Bank estimates that one third of the world's poor reside in India. With India listed at 66 in the Food and Agriculture Organisation's World Hunger Index of 88 countries, policies enabling some guarantee of food security were very much required. The Supreme Court Rulings also reinforce the view that right to food is essential to achieving the right to life as provided in Article 21 of the constitution. The United Progressive Alliance (UPA) Government's decision to enact a Food Security Act is thus good news.

In its May 2009 election manifesto the UPA had guaranteed a 25 kg of rice or wheat at Rs.3 per kg per month to people living below poverty line (BPL). The manifesto also promised subsidised community kitchens in all cities for homeless people and migrants with central government support. The list includes households headed by single women, those suffering from leprosy, HIV and mental illness, bonded labour, destitutes dependent on alms for survival for 20 days a month, landless

agricultural workers and self-employed artisans. The plan proposes for senior citizens, single women and physically challenged persons to eat at Integrated Child Development Scheme centres or during midday meals at schools. Families affected by natural disasters and communal violence are proposed to get 35 kg of cereal at Rs 3. Besides, double food quota (70kg) for BPL households that have children below six years of age, adolescent girls, pregnant women and lactating mothers is being planned. (*After NREGA Now an Act on Food Security, <http://infochangeindia.org>*)

Since the legal accountability of implementing the NFSA would also have to be looked into, the government is planning to divide responsibilities for more efficiency. While the Centre would be responsible for providing the food grains, states would be responsible for distribution to the targeted beneficiaries. This will prevent either of them from putting blame for any failure on the other. The onus of identifying and delivering grains to the consumers will be on the panchayats in rural areas and local governments in the urban areas.



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However, various contentious issues have to be sorted out before this plan becomes an Act. One major hurdle is States' and the Centre's disagreement over who should be the beneficiaries of the scheme. The Centre uses the 1993-94 estimates of poverty as projected on the 2001 census to allocate food grains. By

these estimates, there are 6.52 million households that survive below the poverty line. Compared to this, 8 crore BPL cards have been distributed by the State governments, making them all beneficiaries of the food schemes. The proposed scheme would also have to cater to the 2.5 crore “Antyodaya Anna Yojana” beneficiaries taking the total number of BPL card holders to 11 crore.

Besides, today an Antayodaya family is entitled to 35 kg of wheat at Rs. 2 per kg, paying Rs 70 per month. If the Food Security Act is implemented this sum will rise to Rs 75 and the family will get 10 kg less of the subsidized food grain. To make it up it will have to buy 10 kg from the market at the current rate of Rs 12 per kg, which would amount to Rs 120. A BPL family’s ration bill for 35 kgs of wheat is around Rs. 157.50 at the average rate of Rs. 4.50 a kg. Brinda Karat points out that since the Act proposes to cut the BPL quota by 10 kg, the benefits of lower prices will be negative and families will end up spending Rs. 195 for the same quantity.

(The Hindu, 30.6.2009)

Another major challenge to the attainment of this objective could be lack of food availability. It has been estimated that with the implementation of this Act the demand for food grains will go up. If export of food grains is not curtailed, prices will rise. To keep adequate reserves and prevent rise in prices, ban on export of food grains would have to be considered

Implementation of the Act would also face hurdles if the government fails to procure the required quantity of food grains due to higher prices or failure of crops due to weather conditions. Government procurement for public distribution and other schemes is quite low in comparison with the production level of the food grains. While rice and wheat procurement in 2008-09 may have been high

(23 million tonnes of wheat and more than 29 million tonnes of rice) in 2006-07 wheat procurement was only 9.2 million tonnes as against the target of 15 million tonnes (<http://epaper.timesofindia.com>). Similarly, in 2007-08 procurement of wheat was around 14 percent of the total wheat output and rice was 18 per cent of the total.

Then there is need for providing for the storage of large quantities of food grains and for this the major godowns of the Food Corporation of India require almost Rs.600 crore to overhaul their storage capacities.

Whether the Food Security Act will be a success remains to be seen. To begin with, ensuring availability of buffer food stock the ineffective public distribution system needs to be corrected and proper monitoring mechanisms that identifies the real beneficiaries of the scheme need to be put in place. In the long run however, food security could be better ensured by improving the purchasing power of the poor by generating employment opportunities and enhancing their income.

-CDHR Team

Delhi Court strikes down criminalising of gay sex

On July 2, 2009, the Delhi High Court passed a historic judgement that legalised homosexual acts between consenting adults in India. In a 105-page judgement delivered in a jam-packed courtroom, a Division Bench of Justice A.P. Shah and Justice S. Murlidhar, overturning a 149-year old colonial law, ruled that, “We declare that Section 377 of the Indian Penal Code (IPC) insofar as it criminalises consensual sexual acts of adults in private as violative of Articles 21 (Right to Protection of Life and Personal Liberty), 14 (Right to Equality before Law) and 15 (Prohibition of Discrimination on Grounds of

Religion, Race, Caste, Sex or Place of Birth) of the Constitution.”

However the court very clearly also stated that the provisions of Section 377 would continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors, that by an adult they meant everyone who is 18 years of age and above and that a person below 18 would not be presumed to be able to consent to a sexual act.

The court held that, “as it stands, the section denies a gay person a right to full personhood,” that it violated fundamental rights (of the sexual minorities) to life, liberty, equality and the provision regarding prohibition of discrimination on grounds of sex. Earlier under Section 377 of the IPC, oral and anal sex was treated as unnatural, punishable under the same section. But now this verdict has legalised all consensual sexual acts of adults in private and thus it stands also to impact heterosexuals. The judges also rejected the Home Ministry argument that homosexuality was a mental disease and instead said that, “it was just another expression of human sexuality.” The judgement also said that, “We hold that sexual orientation is a ground analogous to sex and discrimination on sexual orientation is not permitted under Article 15.”

This verdict was delivered in response to a Public Interest Litigation (PIL) filed by NGOs Voices against 377 and Naz Foundation, that works among sex workers in Delhi, on the argument that criminalization of homosexual acts severely hampered their AIDS intervention programmes that was bolstered by a 2006 statistics submitted by National AIDS Control Organisation that 8 per cent of the 25 lakh homosexuals in India were infected with HIV, while they comprised only less than one per cent of the general population. The NGO had also further

elaborated that it was the fear of harassment by law enforcement agencies that was leading to hurried sex and not leaving partners with the option of considering or negotiating safer sex practices. Being thus forced to hide their true nature, gay groups had poor access to condom, health care services and safe sex information. “Now it seems we are in the 21st century as the rights of homosexuals have been recognised by the court. This is a very progressive judgement which recognises the right of equality of homosexuals,” said Anjali Gopalan of Naz Foundation. (*The Hindustan Times, New Delhi, 03.07.09*)

The law that has been struck down by this judgement had been enacted by the British colonial rulers in 1860 and shockingly had continued to exist in India despite being removed from law books in England. It had been responsible for the blackmail, harassment, fear and death of many lesbian, gay, bisexual and transgender (LGBT) people in India and thus this judgement to that effect is a positive step in affirming the rights of LGBT persons in India. But, Anand Grover of Voices Against 377, a coalition of groups and individuals working on a wide range of issues including same-sex desiring and transgender people, was right in hoping, “that it would be aptly executed with the support of the government, police departments and other courts.” The UNAIDS Executive Director, Michel Sidebe also lauded this judgement saying that it was an encouraging development particularly for those countries where such laws still existed that forced people underground making it harder to reach them with HIV-prevention treatment and care services. “The Delhi High Court has restored the dignity and human rights of millions of men who have sex with men and transgender people in India.” (*The Hindu, 03.07.09*)

Not all accepted this judgement. Some religious leaders, like Baba Ramdev, who

anyway consider homosexuality deviant and term it as a disease, have said that they would challenge the order. Besides, the judges clarified that this judgement would not lead to the reopening of criminal cases involving section 377 of the IPC that have been finalised. The court also said that its judgement would hold till Parliament amended the law in tune with the recommendations of the Law Commission in its 172nd report on decriminalizing sex between consenting adults in private. Meanwhile the government responded with no comments and the Union Law Minister, M. Veerappa Moily, just stated that they would look into the details of the judgement.

-CDHR Team

Sex Trafficking in India and the Demand for Legalization of Sex Work

Recently, the Supreme Court has criticized the government for failing to rehabilitate victims of trafficking once they are rescued from brothels (*Indian Express, August 7, 2009*). In India most sex workers have been victims of trafficking and thus the demand for legalization of sex work, by some quarters (In May 2009, sex workers in Kolkata came forward with a charter of demands for legalization of their profession) has to be looked at with caution.

The Central Bureau of Investigation chief of India has pointed out that human trafficking for prostitution is one of the most serious organized crimes in India. In 2007, India reported the presence of 2.8 million sex workers in India, with 35.47 per cent of them entering the trade before the age 18 years.

In majority of cases children are fed into the system by their own families because of extreme poverty. Social evils like the *Devadasi* traditions, forced “arranged” marriages and the growth of India as a

destination for sex tourism including child sex tourism aggravates the situation further.

The Indian constitution explicitly prohibits “traffic of human beings” (Article 23(1)) and the Indian Penal Code states that kidnapping or abducting a person with intention of “slavery or to the unnatural lust of any person” is punishable by imprisonment for upto 10 years and a fine(Article 367)

The Immoral Traffic (Prevention) Act (ITPA) deals with sex trafficking and prohibits prostitution related activities though prostitution is not prohibited. Pointing out the discrepancies of the Act, Mohammad Mattar, (*Mattar M., A Victim Centred approach to Immoral Traffic Prevention Act : A Call for a New Anti-Trafficking Law, 2004,*) says that the Act is not an anti trafficking law, since it deals with trafficking only as a prostitution related activity as Section 5 suggests.

Though it calls for special courts to decide cases of trafficking for speedy trial of offence, a big drawback is that of a double witness program. Added to this is the absence of any witness protection program. In addition to this, to be able to recognise the trafficked victim as a victim of a crime, there is need to non criminalise the act of the victim of trafficking and this is missing in the Act (*ibid*). Trafficking for sexual exploitation in India has various aspects such as sex tourism, dance bars and forced “arranged” marriages, all of which have a sexual element. The ITPA focuses only on trafficking for purpose of prostitution in brothels.

The ITPA till date has remained ineffective as provisions to counter exploitation in sex work remain unutilised. In 2006, 685 suspected sex traffickers were attained but only 27 convictions were made for entire India. Costs related to penalties for the trade remains so low that where a single sex

slave can generate on average \$28,278 during her enslavement, the maximum penalty related to sex slavery is only \$2,222 if the slave owner is at all caught and convicted (*Kara Siddarth, Sex Trafficking: Inside the Business of Modern Slavery, 2009*)



Child sex-worker ©www.captivedaughters.org

Responding to the situation, in 2006 the Indian government created a central anti trafficking law enforcement “nodal cell” and conviction rate has increased to 3220 in 2007.

Will Legalizing Sex Work Impact Trafficking?

The legalization approach acknowledges sex work as lawful activity but subjects it to heavy regulation and stringent state control. Once legalized, advocates claim, women in such work will not be harassed by police. Besides, sex workers will have more negotiating powers in terms of price and condom use.

Legalization, however, would work in cases where sex work is voluntary, for example in China and Africa (*Kristof Nicholas D, .On the Ground, New York Times, December 20, 2006.*) In contrast, in India, Nepal and South East Asian countries, the majority of prostitutes have been trafficked-they are initially forced into prostitution and are literally under slavery. In India where majority of sex workers are minors, are

enslaved and have no ability to negotiate safe sex practices, or price, legalization would not serve the desired purpose.

In most countries, whether prostitution is legal or illegal, there is an element of organized crime, particularly in human trafficking for sexual purposes. The Indian scenario is so dismal in this regard that the Supreme Court recently noted that even the judiciary and the investigative agencies fail to differentiate between victims and persons who are involved in sex trafficking. (*Indian Express, August 7, 2009*) Overhauling of the Immoral Traffic Prevention Act and increasing conviction rates is required before any attempt to legalise sex work is made.

-CDHR Team

The Displaced in Pakistan – Refugees in their Own Country

A humanitarian crisis is looming large as millions are displaced in the war-torn North West Frontier Province (NWFP) of Pakistan. With the military in Pakistan intensifying its offensive against the Taliban in the NWFP region of Pakistan since May 2009, innocent civilians have been left with no choice but to flee their homes, a situation that has an uncanny similarity with the recent large-scale displacement and human suffering that followed with the Sri Lankan Army’s bombardment of LTTE dominated areas in Sri Lanka.

Following the violent clashes, in the recent months between the Taliban militia and Pakistani army, people in large numbers have fled to safer areas, rendering the Swat valley almost empty. The UNHCR (UN High Commissioner for Refugees) has called for urgent help, while pointing out that nearly 2 million have become refugees, including those displaced in the year 2008. Apart from the swelling numbers of families streaming

steadily into refugee camps, the speed and short time-span within which so many people have fled their homes has taken everyone by surprise. Pakistan's Prime Minister, Yousuf Raza Gilani, has in fact termed the large-scale displacement as the country's "worst refugee crisis" since the partition of India and Pakistan in 1947. In fact, the UNHCR's spokesman, Ron Redmond has gone on to compare the refugee crisis in Pakistan to that of Rwanda.



Pakistani children wait in queue for food and water in Swabi, Pakistan © www.upi.com

In a prompt response to the crisis situation in Pakistan, various international humanitarian organizations like UNHCR, UNICEF have stepped up their efforts in providing immediate relief to those affected by the war. These organizations have set up makeshift camps for the ever-increasing displaced people who have been pouring in hundreds and thousands. Temporary schools for children have also been set up, as a means of providing some normalcy to the otherwise traumatized young lives, while at the same time providing them with a routine to follow. Hundreds of displaced children have already been enrolled with 32 primary schools that have been set up by UNICEF in 20 official camps for the displaced. However, the overburdening of the camps and shortage of resources has led aid workers in the refugee camps, to make appeals for more funds and aid material from the international community. Moreover, being exposed to extreme weather conditions, the refugees become even more

vulnerable. With Pakistan having witnessed torrential rains in 2008, it remains to be seen how the refugees will cope if the rains are heavy this time too.

Moreover, overburdening of the camps and harsh weather conditions are not the only problem; the situation is aggravated by the fact that there are reports of thousands of refugees seeking shelter with their extended families and even with absolute strangers, who are living in safer places near big cities like Islamabad and are thus not included in the official lists of refugees. These refugees form a large majority of the millions of refugees who have fled their homes in the Swat Valley. Most of these refugees are thus not registered with the aid agencies, making them virtually "invisible". For the displaced people, the trauma is exacerbated, with them living in stifling and overcrowded homes, at the same time coming to terms with their new "refugee" identity. The ripples of the massive displacement are now being felt in cities too, with the burden on cities' resources also increasing. Moreover, the host families are also feeling the heat, who according to a survey conducted by Save the Children, have given shelter to more than two families each, the average family size being 10. The survey has also come out with the finding that only a third of the refugees are living with relatives; the rest are living with friends and even strangers. Amidst all the suffering and chaos, it is these widespread acts of charity by common Pakistani citizens that stand out. If not for the host families' act of charity, the already otherwise unmanageable situation would have completely gone out of hand.



Internally displaced persons facing harsh conditions at a relief camp in Swabi, Pakistan
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Recent world developments with regard to wars and displacement are no doubt a matter of great concern. The Asian region has been shaken up by the scale and speed of displacement that has been a direct consequence of intense fighting and conflict in the region. As seen in the case of Sri Lanka and Pakistan, the future of millions of displaced is in jeopardy. With fears of the refugee camps in Sri Lanka taking on a permanent nature, it is hoped that the same is not repeated in Pakistan and that conditions in the Swat Valley become conducive for the safe and quick return of the refugees to their homes and lands.

-CDHR Team

Release of Human Rights Lawyer in China

On 23rd August 2009, Chinese authorities unexpectedly released human rights lawyer Zu Zhiyong who had been detained since July 29. Zu whose arrest and release has sparked international attention is known for taking up human rights cases and has founded the legal aid group called *Gongmeng* which means "Open Constitution Initiative". Given China's poor human rights record his release is a pleasant surprise. One does not know what

lies ahead for Zu or his organisation since he still faces trial.

Human rights in China has for long been an international concern. Lack of acknowledgement of basic human rights range from areas such as religious freedom, to political freedom to basic civil liberties such as freedom of speech or to move freely.

While members of the communist Party are required to be atheists, the government tries to control choice over religious leaders. A case in the point is the intervention to seek control over the Dalai Lama's successor after his forced denunciation from Tibet, and limiting membership of any monastery in Tibet to 600. Same is the case with Christianity with the official church in China being state controlled. The growing popularity of the *Falun Gong* has also been curtailed by outlawing the organization. Xinjiang is another case in the point. While the state has failed to prevent employment discrimination against Uighur muslims in Xinjiang province, which has resulted in high rates of unemployment in the community and has been a cause of discontent, it has launched an aggressive campaign leading to arbitrary arrest and detention of Uighurs on charges of 'terrorism', religious extremism and separatism'. (<http://www.amnesty.org.uk/>)

Legislations on one child policy and state's control over the press have been criticized. Its execution rates are so high that Amnesty International reports China as having had the highest number of executions in any country.

China has opposed imposition of western human rights standards by arguing that it pays more importance to collective human rights as compared to individual human rights in the west. Besides, it argues, the connotation of what constitutes human rights

differs in different societies. It is based on the level of economic development, social development, and the varying cultural traditions and values.

But change is visible, although gradual and in terms of government's stated policy. From 1991, when the Chinese government published the "Chinese Human Rights Situation" white paper, the first government document to positively affirm the status of the concept of human rights in China's political development, to 2004, when the phrase "the state protects and respects human rights" became part of the constitution, there has been increasingly clear and resolute identification of human rights as a common achievement of human civilization and a mainstream value of international society. (<http://www.duihua.org/hrjournal/2009/04>) In April 2009 the State Council Information Office issued a "National Human Rights Action Plan (NHRAP)(2009-2010). This is the first time China has established a national program focused on human rights and its action plan sets the goals for the government in future.

Change is also visible in many fronts. For example, elections do take place in 650,000 villages of China, reaching 75% of the population, according to the Carter Centre, (<http://www.cartercenter.org/news/documents>) However, in keeping with the communist philosophy candidates must be selected from a pre approved list, most of whom are Communist Party Officials. The state has a long way to go before it fully acknowledges human rights as per "western standards". As China celebrated 60 years of its founding, officials were under orders to stop people from travelling to Beijing to complain about local injustices (*The Economist*, September 5-11, 2009)

Today, as compared to the past, in China, the term human right is no longer a

sensitive subject. However, many aspects of human rights so recognized on paper are yet to be translated into practice. For people like Zu, the future is still uncertain.

-CDHR Team



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

The Centre is involved in:

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

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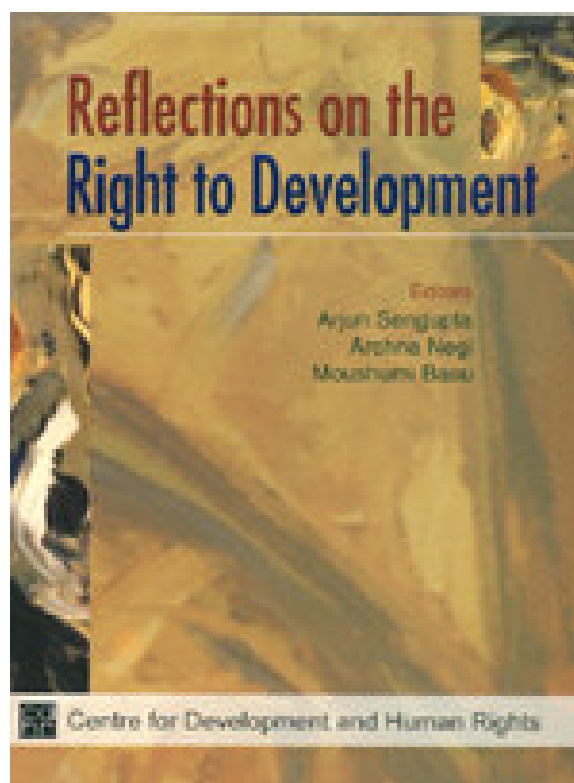
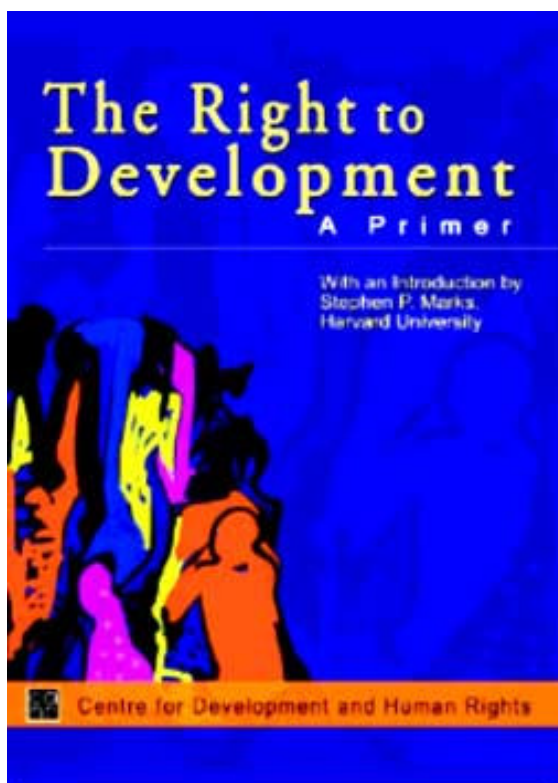
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