

Workshop Report
Third Workshop on the Right to Development,
August 2 and 3, 2003, New Delhi

The third Right to Development Project Workshop was conducted jointly by the Harvard University and CDHR on 2nd to 3rd August, at the Nehru Memorial Museum and Library, Teen Murti Marg, New Delhi 110 001. The workshop was jointly organized by CDHR and the Nehru Memorial Museum and Library. 75 participants attended it from different disciplines such as academicians, economists, social scientists, law and development specialists.

Country studies relating to India, Bangladesh and Sri Lanka were presented in the workshop, besides a number of special studies relating to the rights approach to development in India. The workshop began at 10.00 A.M. on Saturday, 2nd August 2003 at the Nehru Memorial Museum and Library. Country studies and other studies relating to India were presented in the afternoon on the same day followed by reception and dinner at the India International Centre, New Delhi. The concluding session was held in the morning session on 3rd August, followed by a wrap-up session in the afternoon.

Professor Amartya Sen attended the Workshop on 2nd August. He commented on the reports in an interactive session with the participants.

Objectives of the Workshop

The workshop sought to:

- Bring together the coordinators of the country studies of Bangladesh, India and Sri Lanka.
- Provide a platform to the researchers to present their research areas, methodologies and results of their research.
- Attempt to find ways to operationalise the definition and content of the Right to Development (RTD)
- Make RTD amenable to planning or a policy model
- Provide direction for future investigations.

Day One 2nd August 2003

The Chair for the morning session was Prof Stephen Marks, Professor FXB Centre of Health and Human Rights, Harvard University. He gave a brief introduction to the RTD project. The workshop began with an introductory speech by Dr Arjun Sengupta. He welcomed the participants and tabled the agenda for the workshop. This was followed by presentation by the Sri Lanka, Bangladesh and India country coordinators. Prof Amartya Sen participated in the interactive session after this.

Prof Arjun Sengupta was the chair for the afternoon session. Sectoral studies of India were presented in the afternoon session. The day concluded with a discussion on the presentations.

Day Two 3rd August 2003

Prof Arjun Sengupta and Prof C.H. Hanumant Rao were the chairs for the morning and afternoon session respectively. The presentations and discussions on this day covered a gamut of issues relevant for the RTD project and the country studies. The workshop concluded with closing comments regarding the future direction for the RTD project in particular and RTD in general by Prof Stephen Marks.

Structure of the report

This report focuses on the core issues that were discussed in the workshop. The report is divided into the following parts:

- Introduction to the RTD project
- RTD
- Country Studies
- Other Presentations

Section I

Introduction to the RTD project

RTD project is a collaborative effort to assist Dr. Arjun Sengupta in fulfillment of his mandate as an Independent Expert to the United Nations on the Right to Development. **(Brief introduction from previous report + mention the 2 earlier workshops)**

Section II

RTD

During the course of the workshop diverse and often contentious views were presented on the core issues. Some of the main themes addressed were as follows:

Mainstreaming RTD

- Prof. Arjun Sengupta clarified that there was a need to operationalize the content and definition of the concept of RTD.
- The attempt must be to translate the concept into something amenable to planning and policy model in which different rights, as composite rights are realizable.
- There is need to harmonize individual rights and an overall policy that takes into account growth. Growth is the positive element without which realization will “hit a ceiling”.
- He stressed the importance of growth as an element of RTD. Thus any RTD policy must consider economic growth.
- Need to bring RTD into mainstream of development thinking.

RTD and Growth

Arjun Sengupta clarified that the difference between the welfare and the rights discourse is that the rights in the former are based on the benevolence of the state while in the latter they are entitlements. Many participants held that the nature of the state was also very important for realizing rights.

Prof Arjun Sengupta reiterated his earlier stand of growth as an essential element of the RTD process. He stressed the need to make growth rights-based. However, Prof. Amartya Sen warned against claiming growth as a human right. He argued that growth is not an attribute of human beings and cannot be claimed as a right. According to him, it would be a “political and conceptual mistake” to go into that direction. He was concerned whether the growth element would be productive or counter productive. It could provide fodder for reactionary arguments as the growth element reduces the ethical quality of human rights to incorporate economic growth.

However, many participants supported its inclusion in the RTD vector. Manimoy Sengupta clarified that the Independent Expert was not insisting on growth for growth’s sake but as an enabling process. The notion of growth is equated with equitable growth and not merely economic growth. In support for the need for growth, N.J. Kurian illustrated this point by citing an example from the Indian experience, where often due to limited resources and the powerful lobbies in a democracy many rights cannot be realized. He argued that the presence of growth would lead to the fulfillment of various rights. B.B. Bhattacharya said that one couldn’t detach growth from human rights. The need is to establish a balance as policy formulation might get skewed if we neglect one.

Indivisibility

There was wide consensus regarding the indivisibility of all rights. However, Prof Amartya Sen raised his concern regarding the dangerous possibility of ESCR swallowing other equally important CPRs. The weakening of CPR is seen in the Millennium Development Goals, which despite its broad coverage does not refer to CPR. This trend is also evident in the papers presented. Jois Moiji said that while it was accepted that CPR couldn’t be promoted without ESCRs, the reverse is more apparent in the mainstream. Prof Osmani clarified that although no one wants a trade off in intergenerational rights, it might occur due to compulsions from exogenous sources.

Justiciability

There were many diverse perceptions regarding the justiciability of rights. Many participants held that the only channel to ensure realization of rights was through courts, legal system and Acts of Parliament. There were others who rejected this claim. Prof Amartya Sen held that law, although an effective mean was not the only means of pursuing a moral objective. He suggested other ways such as socio-economic reforms and a prevention mechanism. Prof Kannan provided the Kerala experience as an example to support this claim. He held that although the Mid day Meal is not a legal right in Kerala it has the status of an ‘acquired social right’ that no government can disregard. Jean Dreze added that even for courts to function other instruments like the media and the electoral

process are also required. He thus said that there was a need to temper the enthusiasm for legal action but one should not disregard it. Prof Stephen Marks added that international human right instruments mention “other measures” and steps that can be taken to realize rights.

Obligations

Prof Satish Jain held that the state centric nature of CPR results in clearly distinguishable duties. However, this is not the case for ESCRs and hence duties are blurred. Prof Stephen Marks held that it was correct of Prof Sen to point out that there are perfect rights and imperfect obligations. Given the shrinking role of the state, Donovan held that there was a need to rethink the theory of rights and look at non-state actors as duty holders. An essential element in the human rights discourse is the complementary responsibility of the international community. Duggal voiced his reservations in any attempt to fix the civil society as a unanimous duty holder. One reason being that it is not homogeneous. In the course of the discussion, concern was raised regarding the diffusion of obligations due to the introduction of decentralization that necessarily introduces many tiers of government.

Enforceability

Prof Madhava Menon while acknowledging that law is enforced through courts and legislation admitted that accountability and growth are important. However, for enforceability, law and legal support in a democratic polity is important. Rajeev Malhotra identified accountability and redressal mechanism as important for enforceability. Kannan held that there was a need to anchor enforceability in the democratic perspective.

International cooperation

A few of the participants were concerned with what they perceived as the overemphasis on the need for international cooperation.

Rights as constraints

Prof Osmani argued that while it maybe okay to perceive rights as constraints with reference to libertarian negative rights, ESCR are positive freedoms and they are not constraints but goals. He said that even Sen upheld this view when he wrote ‘Rights as Goals’.

RTD as a process

RTD must be viewed as a process to a ‘process plus outcome.’

Some sector specific observations are presented below.

Right to Education

In the course of his discourse, Anil Sadgopal the discussant on the right to education, focused on four issues.

Concept-Post - Jomtein there has been a dilution of education in India. It has added confusion and made education a cause rather than a constitutional right. The stress is now on basic learning needs instead of 8 years of minimum education. Further dilution has occurred as a result of market forces.

Status and progress-He challenged the idea that recent times have seen an expansion of educational facilities. He held that it was the 1960s and not the 1990s was the era of expansion of educational facilities. In recent times we have legitimized a non-formal system of education where teachers have no role and 6 year olds are expected to receive education through a postal system. This will maintain status quo and lead to further social fragmentation. The 93rd amendment according to Anil Sadgopal has also diluted education by shifting responsibility to the parent.

Role of the civil society-Devolution and decentralization are the terms used by the government to start a hidden agenda of abdication. Previously NGOs only sought to fill the gap in education. Today, there are NGOs exerting pressure on the government. This is different from the older models.

Role of Political parties-Despite public and media misgivings about the 93rd amendment it was seen that all parties unanimously voted in favour.

Right to Health

Dr Sunil Nandaraj the discussant on the right to health commented that Dr. Ravi Duggal's presentation was removed from reality. He claimed that there was nothing in our past experience to suggest that the radical measures recommended will be adopted. He stressed on the role of international organizations, NGOs, bureaucracy and the government in the health field. According to him, international organizations often impose conditionality that is accepted willingly by Indian bureaucrats. NGOs play an important and informing role as was seen in the Sex Selection Campaign and some other campaigns. According to him, there is a perceptible shift in the role of the government. The government is pulling back resources. He urged participants to clarify whether we were discussing Right to Basic Health or the Right to all types of health care. He cautioned that the new economic policy and the new trade agreements would adversely effect the financing health care services. He suggested the need for conceptualizing goals in terms of phases that is, short term goals and long-term goals.

Right to Food

Prof Jean Dreze, the right to food discussant, admitted that the concept of a right to food is a very complex notion. The definition does not provide conceptual clarity. According to him the term 'adequate' in the definition is itself very vague. Entitlements are not well defined and responsibilities are blurred. It can become clear only with practical experience.

On the issue of justiciability of the right to food he held that certain areas within the right were justiciable (Example: Mid Day Meal). However, he said that the courts were not the

only channels for enforcing rights although it helps in shaping perception and has brought about a positive change.

Commenting on the paper, he said that it was an excellent survey of the present situation but was not radically different approach. However, the author cannot be blamed for this, rather it is a reflection of the state of the subject.

He argued that there is a “loss of vision” in our society where there are massive violations. The need of the hour is to escape this mental prison and create a new vision. Elements of this new vision would include, the belief that every child has the right to food. It implies that every child would have to be followed under state auspices. This is infact happening in Kerala and Tamil Nadu. Secondly, attention should be focused on monitoring, accountability and redressal mechanisms. In many states, Mid Day Meals need to be monitored, as they are non-existent. This is a result of the belief that they are not rights but charity. Thirdly, the right to food must be linked to the right to information. He stressed that the right to information was linked to the right to education, which was linked in turn, to the right to food. Fourthly, more radical measures are needed. While some progress has been made, there is a need for more radical initiatives such as a national minimum guarantee programme. Finally, the new vision must be focused on providing freedom from hunger which is the real indignity suffered by many.

Section III ***Country Studies***

Sri Lanka

Dr. Godfrey Gunatilleke presented the overview of the reports on Sri Lanka. The structure of this study was as follows:

- The Introduction: main thrust of the study

Many of the targets envisaged in RTD in health, education and other conditions of well being were already achieved by the 1970s. Even the development processes leading to these outcomes had many attributes of RTD. The social gains were accompanied by slow economic growth and escalating political conflict. Sri Lanka had reached the second phase of RTD. However, he raised the question regarding the indivisibility of rights.

- An overview of the development policies and processes in Sri Lanka in relation to RTD

He divided this post independence period into two parts- in the era of state-centred and state regulated development and in the post 1977 market oriented economy. He identifies some elements of RTD that were present in the economy, political and social and economic arena as well as the challenges of the pre 1977 era. He then contrasted this with the process of structural adjustment after 1977 and identified the outcomes in various sectors vis-a vis RTD. This section concluded with a brief overview of the unmet needs of the first phase and the challenges for the progressive realization of RTD.

- The current development process and the major development challenges analyzed within the RTD framework

In this section he made a brief presentation of the government responses such as the public investment programme, sectoral programme, Triple R programme, Poverty Reduction Strategy among others. He identified that high economic growth became a priority for human development in Sri Lanka.

- The evolution of the constitutional legal and institutional framework and its link to the RTD

In this part of the presentation Dr GG identified the domestic as well as the international commitment to human rights and development. He explained the legal system and the institutional framework.

- Operationalizing and integrating the ongoing and future development process in Sri Lanka with RTD development

He suggested that the task of integrating human development with right to development in Sri Lanka must include a number of variables such as defining legitimate expectation, developing clearly defined responsibilities and rights, enabling people to have recourse to this structure of rights and responsibilities. He identified the PRS and Triple R as the programme that had aimed at such a process but clarified that much work remains. He also identified a framework for integrating the development process with RTD

- External assistance in the context of RTD and the nature of the development compact.

He clarified that a development compact of a kind has existed between Sri Lanka and the international community since 1965. He briefly listed the main elements of this.

Bangladesh

Dr. Siddiqur R. Osmani presented the overview of the reports on Bangladesh. The presentation was co-authored by R. Osmani, O. H. Chowdhury, M. K. Mujeri and Q. Shahabuddin. The structure of the paper was as follows:

- Introduction

An overview of the structure of the presentation was given.

- A Brief Overview of the Bangladesh Economy

The Bangladesh economy was characterized growth acceleration, accelerated poverty reduction and rising inequality in the 1990s. Moreover, non-income dimensions of poverty were improving faster than income.

- Methodology

He suggested that it would be useful to break policy formulation into three parts-process, content and monitoring. And they must be in line with RTD. The process must be participatory. The characteristics of the contents of rights-based policies were progressive realisation of rights, equality and non-discrimination, complementarity of rights, non-

retrogression and core obligations. Accountability was the characteristic of the rights-based monitoring of policy implementation.

- Implementation of the rights to food, health, and education: A brief progress report

Implementation has been assessed in terms of availability and accessibility (economic and physical) for food and availability, equity and quality for education.

- Major policies and programmes in food, health, and education sectors

Some programmes were listed such as health and population sector programme, Bangladesh Integrated Population Sector programme and the drug policy. For promoting the Right to Education the food for education programme and the international programme on the elimination of child labour .

- Assessment of policies and programmes from the RTD perspective

Assessment from the RTD perspective would involve assessing the process of policy formulation; content of policies in terms of progressive realisation of rights and concern with disadvantaged groups and monitoring and accountability.

- Concluding Remarks

He identified some positive features consistent with the RTD approach. With regard to right to food this includes a decline in chronic hunger and resilience against natural disaster. In the education sector there has been massive primary education expansion and disappearance of gender disparity at the primary level. Encouraging sign in health includes improvement in child mortality rates. He also mentioned that all this improvement has been within economic growth. A commendable feature has been the increased budget expenditure on health, food and education.

However, despite the quantitative expansion in these sectors some negative features are palpable. These include poor equity and quality of services; complementarity of rights; lack of participation and accountability at various levels; decreasing role of foreign aid in the international dimension.

India

N.J. Kurian the country coordinator for India presented the overview on India.

- Introduction

This section gave a brief overview of India's commitment at the national (Constitution and legal provisions) and international level to human rights.

- Independent Expert's Interpretation of RTD

N.J. Kurian briefly summarized the interpretation of RTD given by the Independent Expert on RTD.

- Indian Planning Process

- Critique of the India planning process

A number of points were raised regarding the planning process. A major critique of Indian planning has been that though Indian plans are good on paper, they are rarely good in implementation. The hierarchical nature and the extreme complexity, rigidity and diversity of the Indian society have added to the difficulties.

- Indian Planning from the Rights Perspective

According to Mr. N.J. Kurian, the Planning Commission and the planning process, though not constitutionally mandated, were genuine attempts at fulfilling the obligations contained in the Directive Principles. The Five Year Plans were “the blueprints of a process of socio-economic development that promised fulfillment of basic needs of all the citizens”. Apart from an independent judiciary, an array of independent watchdog institutions exist at the national and international and many are on the anvil.

- Realization of RTD

Some data was presented to illustrate the poor realization of RTD in India. For example, about a third of Indians still live below the poverty line implying that even their basic food requirements are not met; quarter of boys and a third of girls still do not attend schools and vast majority of Indians still do not have any social security and old age benefits worth mention.

- Regional Disparities in Realization of RTD

There are vast regional, social and gender disparities in the realization of RTD. An objective of Indian planning has been reduction of these however; the planning process has been a massive failure.

- Rural Urban Divide in the Realization of RTD

Rural-Urban divide is equally stark in educational facilities and attainments, health and food sectors. Public distribution system for food grains and other essential commodities, by and large, works only in urban areas. Urban population has access to vastly superior healthcare facilities as compared to their rural brethren. As a result there is significant difference in health and education indicators between urban and rural areas. The rural-urban disparities are equally acute in respect of housing, water supply and sanitation.

- Realization of RTD of the Underprivileged

The Indian Constitution has provided several safeguards to protect the rights of the under-privileged. However, this has not yielded adequate results.

- Gender Gap in the Realization of RTD

Female literacy, the key to realization of several other rights, is abysmally low. The adverse sex ratio is becoming skewed towards men especially in the younger age group. For example, even in progressive Kerala the ratio has been moving adversely for girls under 6 years. This is in part due to technology being used even in villages, to eliminate the girl child. There has been an increase in violence against women – some attribute this to increased reporting. The tribulations of the Women’s Reservation Bill for Parliament seats is a classic example of men not giving women more public space.

- Indian Planning and the Tenets of Rights Approach

In this subsection, the coordinator has investigated whether the elements of equity, accountability, transparency, non-discrimination and participation have been achieved in the planning precept and practice.

- Democratic Decentralization and Rights Approach to Development-

With the 73rd and 74th Constitutional Amendments in 1992, a third tier of democratic institutions has come into existence at the district, block, village, city and municipality levels. This has introduced the participatory element. Great progress has been achieved on the decentralization front yet this has not been smooth and much remains to be achieved.

- Democratic Decentralization and People's Plan of Kerala

Kerala has set new standards in democratic decentralization. It has empowered panchayats through the process of participatory planning or the people's plan.

- Federal Fiscal Transfers and Rights Approach to Development

There is an imbalance between revenue sources and expenditure responsibilities between Centre and the States. Planning process has greatly augmented the Centre's effective powers of command over the States and the private sector economy

- Right to Food, Education and Health – Issues and Concerns

In this subsection, information, statistical data and comments were given to highlight the advancements made and the obstacles present in these three sectors.

- Other issues for Discussion

In this final section, Mr. N.J. Kurian highlighted various issues relevant to RTD in India. These included, role of civil society, quality of governance, intra-State disparities, elite bias in social spending

Right to Education

Prof Ravi Srivastava presented the paper on the Right to Education in India. The structure and content of his presentation was as follows:

- Right to Education – the Conceptual Framework

His main stress was that it was a Right 'to' education, but also rights 'in' education and rights 'through' education. It also encompasses, all levels and forms of education, including public and private education. He also highlighted the observations of the General Comments on the right.

- Issues pertaining to the Right to Education

He then analysed the right to education in India in the light of the 4As. He presented both the achievements and shortfalls vis-à-vis the 4As. For instance, in terms of availability, while there has been an improved availability as a result of the high expansion in the 1990s this has been accompanied with inadequate basic amenities. He presented similar observation for accessibility, acceptability and adaptability.

- Free and Compulsory education

He focused on the costs associated with education in India. There are direct costs associated with all types of (primary) schools, although government schools are cheaper. The costs per pupil rise with levels of education. In recent years, a good number of governments have increased education charges even at the primary level, although fees other than tuition have been raised on education.

He also gave a brief historical overview since pre- Independence of attempts to introduce free and compulsory education. Although, many states passed legislations in this regard these remained on paper. He also clarified the implications of compulsion on the State to provide adequate facilities for schooling and subject to an obligation of the parental community to send children to school. He also referred to the need to eliminate scope for penal provisions.

- Ninety-Third Amendment (RTE)

In this section he focussed on the provisions as well as the duties as envisaged by this Amendment. He commented that many things need clarification. Some crucial issue in this respect are **age coverage, obligation to provide education of adequate quality, fix responsibilities and duties of citizens and touched upon the issue of finance.**

- Finances

Focusing on the adequacy of finance he briefly outlined the current trends in public. Some points that he highlighted were that the share of elementary education in the total education budget has increased from about 20 % to over 40% in the last decade although there has been no change in total education expenditure as a percentage of GDP. He also examined the adequacy of state finance and the financing of universal elementary education.

- Global Environment

He commented that while there has been an increased aid flows to elementary education few donors with a few exceptions adhere to a rights based approach.

- Decentralization and Community Participation

Decentralization and participation is recognized as key to participatory development and better schooling. Despite emphasis on this effective decentralization has been limited and is perceived as a tool for shedding fiscal responsibility by the Centre/State.

- Conclusion

He concluded that one could perceive “contradictory impulses under structural adjustment and liberalisation”. For instance, the increasing domestic concern has been accompanied by insufficient clarity on the state’s obligation at different levels of education.

Right to Health

Dr. Ravi Duggal presented the paper on the Right to Health in India. The basic postulates of his presentation were as follows:

- Development Paradigm

He was critical of the development planning process. Planning has resulted in the dilution of a health policy as focus has narrowed from large grand schemes for the entire populace through narrower schemes to target specific programmes.

- Healthcare development

He gave a brief overview of health care development starting with the Bhore Committee to the present strengthening of private healthcare.

- Health policy and planning.

He traced the dilution and revival of health care in Indian policy and planning both before and after Alma Ata and concluded that there has been a decline in public healthcare.

- Context, Justification and Framework of Right to Health and Health Care (RTHH)

He outlined the national and international context of the right to health. Thus, he gave a brief overview of national constitutional provisions and international laws and declarations. He attempted to justify the right in context of poverty, adverse socio-economic condition and the unregulated private health care. He presented a framework in the light of the experience of countries, international human rights instruments and Bhore Committee Plan.

- Where India stands on 3AQ

Ravi Duggal presented an assessment of the state of the right in the light of 3AQ. For instance, he holds that in terms of quality there is a lack of standards, protocols and ethics.

- Establishing RTHH in India

He stressed the need to establish a universal right as an entitlement and not as protection with a non-negotiable core.

- Historical Baggage

Ravi Duggal focused on the many problems that plague the Indian health care system such as wasteful expenditure, inadequate and declining investments, unregulated private healthcare and selective health care to mention a few.

- Steps

Some immediate steps for States were proposed such as block funding, compulsory public funding by medical graduates, price control for essential drugs, accountability, regulated private sector and a better health information system. First essential steps such as equating fundamental rights with directive principles and a national health act were proposed.

- Minimum Core Content and other issues

The system should incorporate different services related to referral hospitals, immunization, and reproductive health, pharmaceutical, epidemiological and

rehabilitation services among others. He briefly mentioned other issues such as monitoring audit and accountability.

- Suggestions for Consensus Building.

PIL, lobbying, research, policy level advocacy, pressuring international bodies were some of the proposed means to build consensus.

Right to Food

Dr. S. Mahendra Dev presented the study on the Right to Food in India. The objective was to study right to food in India from a rights perspective. This paper had four broad sections:

- Definitions, contents and obligations of the right to food

He presented the definition, content and obligations of the right to food as presented in the GC 12.

- India's progress on fulfilling the right to food

He examined India's progress in terms of availability, changing consumption patterns, adequacy, nutritional intake and accessibility. He presented a large amount of data to support his claims that there is violation of the right to food- "Hunger amongst plenty". His claim is supported by some micro studies that have documented the prevalence of hunger and starvation deaths in various parts of the country particularly in Orissa, Jharkhand and Andhra Pradesh.

- Programmes and policies India followed to achieve the right to food

International and national obligation to realize the right to food were briefly discussed. He concludes that while poverty alleviation was part of the national agenda even before Independence, there has been no legal assistance for right to food and right to work. Focusing on Supreme Court orders he traces the recent orders given on the right to food and right to work. Many state governments have violated these interim orders although there has been pressure on them. He then trace sand identifies the various policies and programmes that have been adopted by the government to promote availability, accessibility and adequacy of food and nutrition. For instance, with reference to availability and adequacy, steps have been taken to achieve adequate production, deliver foodstuffs of the right quality and quantity to the appropriate places and persons at an affordable price.

- Measures to achieve it for all citizens.

He argued that state, civil society, NGOs, international governments were all responsible for fulfilling right to food. In this respect he examined the approach of the 10th 5 Year Plan. State's obligation is to respect and protect, provide and fulfill, promote and progressively realize right to food. To this end he has proposed a host of measure to improve accessibility, availability, adequacy, employment and livelihood, sustainability and funds for nutrition. In implementation, the role of the government and NGOs are important. Ensuring that the five principles of rights based approach (ENTAP) should be upheld at all levels.

The main conclusions drawn were India has an obligation to realize the right given that she is a signatory to many international human rights instruments that uphold the right to food. In spite of many programmes, concerns persist. There are problems in implementation of various programmes and there is need for reforms for achieving food security, better procurement, buffer stock and effective distribution. Moreover, the right to employment is crucial for achieving right to food. Ensuring and monitoring five principles of rights based approach

Section IV ***Other Presentations***

In the course of the workshop a number of special presentations were made that focused on broad discussions related to various aspects of the RTD in India.

- Prof. N.R. Madhava Menon Presentation of paper on Rights To Development (Fulfillment of Basic Needs for a Life with Dignity) and the Poverty of Human Rights Jurisprudence

Prof. Menon clarified that in his mind there are only two categories of rights and he does not want to create a third. CPR can be read in the context of the Freedom Movement. A social science analysis of the Indian parliament from 1950-73 and its attempts at land reform that were in conflict with the Right to Property will help to understand ESCRs. He traced the tussle between the Parliament and the Parliament, which ended with a Constitutional Amendment. He listed some morals learnt. First, India has learnt to read ESCR and CPR in the context of the Constitution. Second, the concept of growth with social justice, which is used in Indian Plans, is synonymous with the notion of “growth with distributive justice” that we are discussing today. Regarding core obligations he said that even before international core obligations, India had identified a minimum core set of obligations in the Constitution. Third, it is not lack of resources that hampers implementation but corruption and bad governance. His last submission was that the concept of the social state that is decentralized and participatory is well suited to human rights. He argued that India a socialist state is well prepared to deal with human rights issues. His conclusion was that there is a poverty of human rights jurisprudence.

- Dr. K.P. Kannan Presentation of Participatory programme for Realizing the Right to Development

He proposed that an interdisciplinary approach is required to understand RTD. Kannan focused on the experience of Kerala. In his view, the Kerala experience substantiated Amartya Sen’s claim that growth is not required to fulfill a composite set of rights.

He understands rights as a “class of decisions” by society and not necessarily an outcome of jurisprudence. Socially accepted demands transformed into acceptable norms, which create entitlements, and conditions are rights. He introduced the notion of “effective demand” interpreted as political public demand. So far, only the state supply

side or the role of the state was addressed. His paper thus focuses on the demand side of rights rather than on the supply side.

Kerala's story is not a smooth linear process. Rather the secular, progressive realization of rights and the move to incorporate ESCRs to CPR has taken approximately 100 years. He presented a brief sequential overview of the historical socio-economic development and movements in Kerala. Although the social reforms started much later in Kerala it gathered strength and was characterized by a 'diffusion of political ideologies' across space that gave it a broad based nature. The backward classes propelled these movements; had an enlightened leadership were secular, nationalist and radical political movements. Enforceability is not required as actual level of enjoyment of rights is much higher than the prescribed minimum level. For example, actual wages are higher than minimum level. Earlier public action was demand based, confrontational and adversarial vis a vis the state (Trade union and Student Union Movements). Now the movement is horizontal with people seeking co-operation, creation and enhancement of collective public goods. There is a qualitative difference with the past, which had created new challenges. Decentralization has cut the roots of patronage; a critical mass has been created and a new kind of political activist. There is a rise of new social movements like the women's movement, environmental movement and the fisheries movement. Previously individuals were the direct beneficiaries while now focus is on enhancement of collective benefits. This is an enormous challenge for the political parties.

- Prof Pulin B. Nayak Presentation of paper on the Right to Development: Reflections on the First Four Reports of the Independent Expert on the Right to Development, Edited by Franciscans International, Geneva, January 2003

The volume under review contains the first four reports of the independent expert, Dr Arjun Sengupta, on the right to development as well as a number of reflective pieces on the first four reports.

Prof Pulin B. Nayak traced post Second World War concern with development economics to Greek antiquity. Given dismal socio-economic status of the world poor there was an urgent need for dramatic and substantial changes in the lives of the poor and the marginalized. He holds that such unacceptably large pockets of poverty are a conundrum for serious economists and social scientists. He attributed this poverty in part to the historical development of a large number of nation states in the 1940s and then asks what can be done to alleviate this problem. He also considered whether the policy prescriptions, which have been tried out thus far, might not have missed out some basic truths.

He then looked at the RTD approach. A brief overview of its content, implications, and some crucial features of the RTD approach were presented. Thus, he focused on RTD as a process, the vector approach, and international cooperation. He says that the RTD approach seems to be a moral imperative for the present times and that developing nations may gain by paying serious consideration to a right based approach to development even if one might not expect too much out of the development compact.

He concluded that although the RTD approach has evoked skepticism it is undeniable that it is desirable that certain irreducible basic rights must be ensured. The approach needs to be given a fair consideration if it can help by making rights explicitly justiciable. Instead of looking at the whole notion of development as an expansion of the goods space as an obvious and natural goal we could possibly look at an alternative paradigm of development where one could think in terms of placing voluntary limits on human wants. This would free substantial resources from undesirable activities to use on subsistence food, basic health and education. This could bring the RTD paradigm within reach in a much shorter span of time than otherwise.

- Shri Rajeev Malhotra Presentation of paper on the History of the Notion of Right to Development

The diplomatic and political process at different levels is not synchronized. Rajeev Malhotra focused on some issues that need resolution. He identified the following issues RTD as process or outcome; the constituent elements of RTD; priority setting; artificial divide between the national and international; international dimension (resource transfer); implementability; Millennium Development Goals and value addition.

Some of his observations were that the Independent Expert perceives it as a process and both the outcome and process are important. Although doubts are raised about whether rights are universally determined or contextually determined, the need is for better articulation and to strike a balance. There is also a need to address the issue of priority setting and determine whether the participatory process from which it can emerge is adequate. Although it is analytically convenient to have a divide between the national and international the two must be seen in an integrated manner. He identified the gap in so far as there is a lack of country studies. He briefly examined whether, the international dimension incorporated only resource transfer or new architecture or trade regime. He cautioned that the Millennium Development Goals might result in a dilution of obligations and goals. The value addition has occurred from the movement from the good development approach to rights approach to the RTD approach.

- Dr. Pronab Sen Presentation of paper on the Elements of a Planning Model for Model for Poverty Reduction in a Rights framework

Dr. Pronab Sen observed that the difficulty is that except for the background paper for the Fifth Five Year Plan, there has not been an attempt to even include poverty reduction as a goal of planning. Therefore, to formalise poverty reduction in an RTD framework through a planning exercise involves first identifying the income distribution of poverty, relate consumption patterns to poverty incidence and then linking poverty to macro-economic variables. Identification of core rights, such as the right to food, education and health (with their related indicators) would be linked to the same set of variables as for poverty incidence. In this way, public expenditures on food subsidies, education and health must be included and lag structures have to be estimated.

Therefore, theoretically, a planning model can be implemented for realising RTD, but the data requirements are going to be a bottleneck. Since RTD is a process of progressive

realisation of basic rights, a planning exercise will take care of exactly such a “process” of realisation of the right to development.

- Dr. Jos Mooij Presentation of paper on the Political Economy Dimensions of the Rights Approach to Development.

Hospitals in AP have relatively good infrastructure. However, based on practical experience, she argued that in India there is a gross indifference to human suffering; poor organization of facilities; lack of respect of patients especially of the poor and the *dalits* and humiliation of individuals. The example of the callous treatment of some poor accident victims in a hospital raises some issues with regard to the Right to Development. She emphasized that the right to development is not only about the existence, reach and quality of government programmes but about human rights in the strict sense: about being treated with dignity, with respect, about being able to act (and be considered) as a full citizen.

There are three different kinds of structures in Indian society that all play a role in withholding rights. These are:

- a set of social and cultural hierarchies and inequalities such as the notions of caste and gender inequality
- class relations and unequal distribution of economic assets and resources. The poor do not command respect, as they are poor, lack education or influential networks to rely on.
- the state is both an instrument of oppression and of development. The issue of governance has to be addressed. The abysmal governance can be improved by giving people the rights and the means to take the government to task. For example, the right to information leads to transparency about policy objectives, implementation decisions, budget allocations and real expenditures, etc. Moreover, strategic considerations must play a larger role.

Dr Jos Mooij commented that right to development has become restricted to the right to social services and stressed the need to include other rights like right to water, land, forestry, property rights.

She made some concluding observations. First, there has been a narrowing of the concept. RTD is not only about access, availability, quality and suitability of services, but also about human dignity and the first generation of rights. Moreover, it is not only, about increasing expenditures, but raising people’s voice and knowledge. Second, there are different rights discourses. The discourse that focuses on 4As is a top-down discourse, as it perceives rights as provisions that have come from above. But there is also a bottom-up discourse that is about participation, knowledge and inclusion. In this workshop, the focus has been on the supply side or the top-down discourse than the bottom-up discourse. Third, observed the absence of non- economists and other social scientists in this dialogue. Fourth, need to think strategically about the form and process of government programmes and role for civil society.

- Prof. Manimoy Sengupta Presentation of paper on Social Choice Perspectives of Right to Development

Dr. Manimoy Sengupta's paper deals with the justiciability and enforceability of human rights in the Social Choice literature.

According to him the basic requirement for justiciability of rights is identifying a duty-holder. In the social choice framework rights are viewed as constraints on social choice. In case where the rights under consideration are political rights, the responsibility lies with the civil society. The rights incorporated in the notion of RTD are essentially political rights. Therefore the civil society, as represented by the state, should be held responsible for those rights.

Dr. Sengupta pointed out that the idea of enforceability is logically distinct from that of justiciability. He further argued that Human rights are not all or nothing categories. One can think of levels of fulfilment of the different components of RTD. Human rights are fulfilled to the extent a component of RTD is fulfilled when the level of fulfilment of the other components remain the same. Based on this the idea of enforceability and implementability can be concretised.

- Prof. Satish Jain Presentation of paper on A Survey of Social Choice Theory and the Rights Approach to Development

The questions that Professor Satish Jain addressed in his presentation are the following:

Whether the Social Choice Theory is the correct framework for discussing rights?

Whether it is possible to draw some lessons from the Social Choice Theory on rights?

He argued that Social Choice theory is not the correct framework for discussing rights. Starting with Sen's Pareto Liberty Paradox, which demonstrates that in a very basic sense liberty, even in a very mild form, conflicts with the Pareto criterion Professor Jain very briefly reviewed the literature on rights. People have argued that Sen's formulation of the idea of liberty is problematic. Although there have been attempts to formalize the idea of liberty in other different ways none of them seem to be consistent with the Pareto criterion.

Why is the Pareto criterion so important? One obvious reason is that it is based on the notion of unanimity and unanimity is appealing. The other reason is its lineage in Utilitarianism. Utilitarianism has had profound influence and most of normative economics, as practiced today, is based on utilitarian ethics.

The reason why Liberty conflicts with the Pareto criterion lies in the nature of this all-important criterion. Essentially the Pareto criterion is a criterion of aggregative evaluation, which is subjective in nature. Any aggregative criterion, which is subjective, cannot be consistent with something, which is disaggregate. Rights being disaggregate cannot be consistent with the Pareto. If rights have to be consistent with any aggregative criterion then that criterion should be an objective one.

Therefore human rights in general and RTD in particular, cannot be derived from the utilitarian ethics.

- Prof. Abhijit Sen Presentation of paper on Right to Development: A Constructive Critique

In a wide-ranging critique of the RTD approach, Prof. Abhijit Sen elaborated several key concerns with the formulation of the RTD, while at the same time clarifying some points of debate and suggesting further examination of other key components of RTD. Prof. Sen summarised the RTD process as a way of defining what national plans are compatible with human rights improvement and to evaluate, monitor and implement them mainly through national dialogue and consensus as well as by way of relaxing the resource constraint through economic growth and overseas financial assistance.

The issue of economic growth in the RTD framework, according to him, would be viewed differently by economic planners and human rights activists. In the planning sphere, by putting rights as constraints to the policy making process, one would presumably lower the maximum achievable growth of GDP, which in the extreme case can even lead to a negative growth rate if the constraints are strong enough. On the other hand, by giving instrumental importance to growth as part of a process to realize rights of individuals, RTD curtails arguments of rights activists who claim that economic growth has no role to play in the protection and fulfillment of human rights obligations. The underlying tensions can be a crucial factor to manage, especially when human rights “improvement” is an amorphous concept that would make monitoring and evaluation difficult without comprehensive indices to account for such improvements.

The other concern that Prof. Sen raised was the importance given to “development compacts”, which are essentially commitments from the international community to provide financial assistance in the case of a particular developing country undertaking the RTD approach. His concern was that such commitments normally come with strings attached, and the sovereignty of national policy making can be under threat if rights are imposed on the country and the monitoring and evaluation of such rights are made the prerogative of the international community. This might lead, in extreme cases, to a justification for “regime change” in case a particular State cannot live up to its commitments under the “development compact”. What Prof. Sen argued was that RTD has to be essentially a nationalist program, with the onus on the State and the civil society to plan, monitor and evaluate rights improvement in keeping with the RTD approach. Whether one looks at rights solely as constraints or views some rights as goals in itself should be the prerogative of sovereign decision-making and consensus.

- Dr. Shylashri Shankar Presentation of paper on Legal Dimension of Rights Approach to Development.

The fundamental purpose of this paper is to identify the conditions under which social rights to development can become justiciable in democracies. The paper argues that social rights can be made enforceable (at least *de jure*) by judicial and societal

activism. Four caveats were made. First, the focus is on the rights to food, health and education. This does not imply that others are unimportant. Second, the paper focuses on *de jure* justiciability but recognizes that it does not automatically ensure the actual realization of these rights. The transition to *de facto* justiciability may be constrained by many factors. Third, the paper recognizes that the court is only one of the tools that a citizen uses to access rights. Finally, the purpose is to show how motivated judges can bring social rights into the ambit of legally enforceable laws.

The first section deals with theoretical literature on the content and justiciability of the rights to food, health and education within the broader context of a right to development. The second section highlights how social rights have become justiciable in India. The third section analyzed the reasons for the shift to *de jure* justiciability. According to her, the union of three developments made it possible for social rights to become justiciable in India. These were evolution of a human rights discourse, judicial autonomy and social activist judges and increasing civic activism by non-governmental agencies. Review of a number of cases was undertaken to illustrate the point. The conclusion speculates on institutional and legal mechanisms that may allow other countries to learn from the Indian case. In sum, the judiciary has shown its ability to initiate and support NGOs in establishing *de jure* justiciability of social rights. However, *de jure* justiciability alone will not transform ground realities. There is need for grass roots action and pro-activity on the part of the government. Court judgments can only strengthen governmental accountability.

- Prof. Stephen Marks Where do we go from here?

Prof. Stephen Marks made three broad suggestions. First, in the political arena he suggested that there was a need to introduce this debate into a broader debate, that is, governmentalize the study. He suggested that this study must be brought to the attention of the Ministry of Foreign Affairs and other related agencies. Second, in the scholarly setting, he noted that the country studies have produced products beyond what was expected. These manuscripts should be published locally. This will result in a positive impact. He also made some broad suggestions regarding the content of the papers. Lastly, in the practical arena, he suggested that these studies should gather dust on bookshelves. Rather, these excellent scholarly contributions should be integrated into concrete development steps.