

# DIVIDED ESTINIES

# UNEQUAL LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

NGO report to  
The United Nations Committee on  
Economic Social and Cultural Rights

May 2008

People's Collective for Economic, Social and Cultural Rights

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Coordinated by



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# PREFACE

On 10<sup>th</sup> July, 1979, India - by ratifying the International Covenant on Economic, Social and Cultural Rights (ICESCR) - became a State party to this treaty body. Reporting guidelines of the Covenant require States to submit periodic reports every five years. After submitting the initial report, India failed to report to the Committee on Economic, Social and Cultural Rights (the Committee). Now, after almost two decades, India is scheduled to be reviewed by the Committee in May 2008. India's upcoming review also provides an opportunity to civil society groups in India to engage with our government, using international forums and spaces. This NGO Report to the Committee was prepared by the People's Collective for Economic, Social and Cultural Rights for May 2008 review process.

PWESCR (Programme on Women's Economic Social and Cultural Rights) initiated a collective process under the broad umbrella of the People's Collective on Economic Social and Cultural Rights to articulate the myriad voices from India's civil society. The short term goal for the Collective was to develop an NGO Report in response to the Government of India's Report. The long term goal, however, was two fold: to develop a core group of organisations to monitor women's economic, social and cultural rights (ESCR) in India, and to raise awareness around international human rights standards and their relevance to local and national struggles.

It has been a long and challenging journey for PWESCR to coordinate the process of developing this Report. The idea to form a Collective started with a core group of 12 members who met twice – once in Delhi and then in Mumbai. It was felt that it was important to participate in the CESCR review process and to develop a report. With the help of these core group members, a collective process with extensive outreach was developed. By 12<sup>th</sup> December, 2007, when we had our first national consultation, the Collective already had sixty plus organisations on board. At that day long meeting clear guidelines, timelines were laid down and various subgroups were formed. The sense of shared responsibility was strongly expressed. People volunteered to work in various thematic subgroups to collect information/evidence for the report. To make communication and information sharing easy, a listserv was set up and moderated by PWESCR.

For next month and a half, various activities were carried out in the different subgroups. Several meetings and outreach consultations were organised by leaders of these subgroups to connect diverse groups to this process. PWESCR continued to stage workshops to train these subgroups on treaty bodies, guidelines, reporting process, and so on. After weeks of hard work, draft chapters started to take shape.

The Collective then met on 4<sup>th</sup> February, 2008, in Delhi for a National Consultation. Presentations were made by all subgroups, with critical inputs from others. After discussions on various issues

the draft chapters were then submitted to the drafting committee, a group of individuals responsible for ensuring the accuracy of data and evidence, as well as clarity in terms of arguments. Additional research assistance was provided by a team of researchers at PWESCR. The draft chapters were also shared by various independent experts who provided very insightful advice. After spending over four weeks on the document, drafting committee members finalised all these chapters.

This report by the Collective has five sections divided into 20 chapters. The divisions of sections are based on grouping articles following the Committee's review process. The last section was added as 'Critical Concerns', since these issues were indispensable for a Report of this kind. We would have wished to include many more issues and themes, but lack of time and other constraints came in the way. However, the absence

of these themes does not in any way indicate their lack of importance or relevance to India's ESCR scenario.

It was a great opportunity for PWESCR to engage with numerous very diverse groups and individuals who contributed towards making this Report possible. The biggest challenge was to keep to the deadline of time and the constraints of space in coming up with this Report.

Let me reiterate that it was a tremendous honour to work with over hundred groups and individuals to make this Report possible. The collective responsibility that the process generated gave us the encouragement to take on this immense responsibility.

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# DIVIDED DESTINIES

## Section 1

UNEQUAL  
LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

# ICESCR

## Articles 1 to 5

# International Covenant on Economic, Social and Cultural Rights

## ARTICLE 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## ARTICLE 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

## ARTICLE 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

## ARTICLE 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

## ARTICLE 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.
2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

# 1

# INDIGENOUS PEOPLES' RIGHTS

## Key Issues

### Violence against Indigenous Communities

There have been several instances of violence against indigenous communities.

- On February 19, 2003, 15 Adivasis (tribals) were killed in the Muthanga Wildlife Reserve, Kerala, when the state police opened fire against members of the community protesting against the government's failure to comply with an agreement made to provide 53,000 landless Adivasi families with land and include these areas under the Fifth Schedule of the Constitution.
- On January 2, 2006, the Orissa state police opened fire and killed at least 12 Adivasis who had gathered at the site of the TISCO steel plant in Kalinganagar, Orissa, to oppose the inauguration of the plant. Civil society fact-finding groups indicate that the incident was precipitated deliberately by the State and district administration to crush the resistance of Kalinganagar's displaced Adivasis<sup>1</sup>.
- On November 24, 2007, the AASAA (All Adivasi Students' Association of Assam) organised a large rally at Guwahati, Assam, to press for the demand of Schedule Tribe status to the community that had been de-scheduled in 1950. A mob of unidentified persons attacked the defenceless Adivasis with stones, iron rods and sticks. A 16-year-old girl was stripped and chased by the mob while the police remained mute spectators. Official sources report that five people died and 200 were injured as a result. However, ground reports indicate that 20 Adivasis were killed, with over 25 still missing; and over 250 injured. Five Adivasi student activists were detained and arrested, while no action was taken to identify and punish the culprits who attacked the Adivasis<sup>2</sup>.
- On February 13, 2008, Forest Reserve Police in Antarsuba village, Sabarkantha district, Gujarat, opened fire killing two people and injuring three others. A fact-finding report by the People's Union for Civil Liberties has indicted the state police for firing without provocation. The local Member of the Parliament has gone on record to state that the incident is a case of 'killing to spread fear among the tribals to prevent them from demanding their rights under the recently adopted Forest Rights Act'<sup>3</sup>.

<sup>1</sup> The firing came less than 15 days after the adivasis of Kashipur, Orissa, observed Martyr's Day on 17 December to mark the fifth anniversary of the killing of three youths from Kocheipadar, Orissa by police during a peaceable demonstration against the Utkal Alumina Plant proposed to be set up over their lands without their consent.

<sup>2</sup> The Adivasis of Assam have been demanding Schedule Tribe (ST) status for more than 50 years. The movement demanding ST status was led by the Adivasi Council of Assam soon after Adivasis were de-scheduled in 1950. Later after 1996 carnage of Adivasis in Lower Assam where about 10 thousand Adivasis were killed and over 250 thousand were rendered homeless, AASAA emerged to protest against this gruesome genocide and fight for the rights of the survivors. Since then AASAA has been leading the movement demanding ST status for the Adivasis of Assam.

<sup>3</sup> The Parliament of India has passed the Forest Rights Act in 2006. The law provides tribals and other forest dwellers the right to land - a maximum of 4 hectares - if it has been cultivated before 13th December 2005. In addition, the law confers the right to ownership, collection and sale of minor forest produce. It also provides rights to graze cattle and right over ancestral land in their possession.

- Counter-insurgency measures of the state, such as the ‘Salwa Judum’ promoted by the Chhattisgarh government, and the Armed Forces Special Powers Act (AFSPA), have further intensified the fear and insecurity of indigenous communities, by giving extra-constitutional powers to the State over the lives and liberties of local communities. Hundreds of tribals have been killed. People have left their villages in fear and are living under the open sky. Since they do not have any livelihood options, they are starving. Corruption is rampant everywhere. ‘Salwa Judum’ is estimated to have displaced over 50,000 people, many of whom are living in camps. There are reports of plans to establish around 600 new villages and to convert some of the camps into long-term strategic settlements, attached to police stations, with a permanent base of informers<sup>4</sup>.

### Questions

- Despite the existence of the SC/ST (Schedule Caste and Schedule Tribes) Prevention of Atrocities Act, why has the government failed to protect the lives and dignity of indigenous communities who are being attacked and intimidated to prevent them from accessing their Economic, Social and Cultural Rights?
  - What actions have been taken by the State to prevent or punish those who have resorted to such violence to prevent indigenous communities from staking their legal claim to land, forests and opportunities for their development?
  - What actions has the State taken against its own officials who have been responsible for killing and injuring indigenous people, as seen in Kalinga Nagar and Sabarkantha district; and failing to protect their lives and dignity in situations such as the one that took place in Guwahati?
- How has the State intervened to institutionalise its commitment to protect the Economic, Social and Cultural rights of indigenous people, and ensure that this principle is integrated in the functioning of its agencies?
  - What measures has the State taken to mitigate the impact of conflict and counter-insurgency measures on the Economic, Social and Cultural rights of indigenous people?

### Forced Eviction and Alienation from Land Resources

- Indigenous people are and continue to be evicted and alienated from their land resources. The first dam on the Narmada river<sup>5</sup>, the Bargi Dam, which was completed in 1990, reportedly displaced 114,000 people from 162 villages. Today, it irrigates only 5% of the land it was said to benefit. Most of the evicted got no compensation for lost land and livelihoods. In 1979, the official estimate for the number of families that would be displaced by the Sardar Sarovar Reservoir was about 6,000. Today, the official estimate ranges between 40,000 and 42,000 families, which means about 2,00,000 people. The Narmada Bachao Andolan (Movement to Save Narmada) however, estimates that close to half a million people will be affected by the project<sup>6</sup>.
- Despite the Supreme Court of India’s judgment in 1997 (*Samata v/s. State of Andhra Pradesh*), which negates the transfer of land in scheduled areas for mining, the government has introduced new legislation to allow commercial activity on land belonging to indigenous people, including the Special Economic Zone (SEZ) Act, 2006<sup>7</sup>. In Kevadia, Narmada district, land acquired by the government under the “public purpose” of constructing the Sardar Sarovar dam was far in excess of what the government needed. Decades later, instead

<sup>4</sup> Marianus Kujur, “Adivasis & the NCMP”, published by Wada Na Todo Abhiyan, May 2006.

<sup>5</sup> The Narmada Valley Development Project envisages building 3,200 dams that will reconstitute the Narmada and her 419 tributaries into a series of step-reservoirs. Of these, 30 will be major dams, 135 medium and the rest small. The World Bank withdrew from the Narmada project in 1993 and the construction of the Sardar Sarovar Dam was stopped shortly afterwards. But, on October 2000 ruling by the Indian Supreme Court authorises renewed construction of the Sardar Sarovar Dam.

<sup>6</sup> Roy 5 February 2000; Also see <http://www.internal displacement.org/idmc/website/countries.nsf>

<sup>7</sup> The Special Economic Zone Act has paved the way for large scale industrial activity through the provision of land and facilities at subsidised rates, and also by allowing the transfer and sale of land beyond the purview of the local self government.

of ensuring justice to displaced tribals, the government has initiated massive and exclusive tourism projects. Private companies are being aided by the State and the very same land is now being handed over to them.

- The government has provided clearances for commercial mining operations in tribal-dominated areas, including areas that are protected under Schedule V of the Indian Constitution<sup>8</sup>, forcing Adivasis and rights action groups to seek legal recourse to protect the interests of indigenous communities from the actions of the State. These cases include ones against the World Bank's Coal India project (across states since 1997); the KIOCL project in the Kundremukh National Park, Karnataka (2001); the BALCO disinvestment and mining case in Chhattisgarh (2001); the UAIL mining project in Kashipur, Orissa (2004); and the Vedanta project<sup>9</sup> in the Niyamgiri Hills of Orissa (2007).
- On April 19, 2007, in the remote Ghateha village in the Rewa district of Madhya Pradesh (MP), located on the MP-Uttar Pradesh border, a large contingent of MP state police and forest departments descended on some 1,500 landless tribal families who had settled on a stretch of some 1,000 acres of land near the village and evicted them using fire power and tear gas. Four police personnel were injured, while six tribal settlers were reported by local people's groups to have been hit by bullets. Most of the tribal families evicted from the land are reported to be absconding for fear of police persecution.
- In June 2007, over 500 people were reported to have migrated from Jagatsinghpur, Orissa, as a result of the uncertainties surrounding the development of a large steel plant by POSCO, which had been granted SEZ status in November 2006. Civil society groups working in the area have estimated that over 20,000 people from 15 villages in the district will be displaced by this project and be

deprived of their traditional livelihood of betel leaf farming. The government does not have a uniform national policy on Resettlement & Rehabilitation (R&R) that would safeguard the interests of indigenous communities against the conflicting interests of the corporation, and the state and central governments. The newly introduced Bills on R&R and Land Acquisition (2007) fail to outline concrete measures to ensure the resettlement of indigenous communities and protect them from forced eviction. At the same time, the introduction of a new National Mineral Policy 2008 and the Amendment Bill to the Mines & Mineral Act, 1957, also threatens to take away whatever little the R&R and Land Acquisition Bills may ensure for indigenous communities<sup>10</sup>.

### *Questions*

- Despite provisions to secure land rights for indigenous people, such as Schedule V, the Forest Rights Act, 2006; and the Scheduled Tribes and Other Traditional Forest Dwellers Act, 2006, the government has failed to protect indigenous communities from the loss of their land and livelihoods through the commercial acquisition of their resources. What provisions have been made by the government to safeguard indigenous communities and lay down norms, regulations and sanctions against industrial activities taking place in areas inhabited by indigenous communities?
- How will the government address the contradictions in legislation, which are meant to prevent the transfer/sale of land belonging to indigenous communities? How will it stop the transfer of land for industrial/ commercial purposes which bypass the authority of the local self-government (such as through the SEZ Act, 2006)?
- What measures are being taken to provide an accessible and affordable system of redress for communities facing threat of displacement,

<sup>8</sup> The Fifth Schedule of the Indian Constitution provides for the administration and control of tribal lands (termed 'scheduled areas') within nine states of India. The Fifth Schedule provides protection to the Adivasi (tribal) people living in scheduled areas from alienation of their lands and natural resources to non-tribals.

<sup>9</sup> Operating through an Indian subsidiary by the name of Sterilite Industries (India) Limited.

<sup>10</sup> The legislative brief from PRS which can substantiate the R&R Bill is enclosed: [http://www.prsindia.org/legis\\_page.php?bill\\_id=168](http://www.prsindia.org/legis_page.php?bill_id=168) and Link to the Mining Act amendments: <http://www.mailtoday.in/epapermain.aspx?queryed=9&eddate=3/14/2008>

loss of natural resources and livelihood? What actions are being taken to put in place a comprehensive national legislation for resettlement and rehabilitation which ensures that the State and other parties involved are accountable in protecting the Economic, Social and Cultural rights of indigenous communities?

- What measures are being taken to list and regulate activities that are potentially threatening to the habitat of indigenous communities from industries dependent on ecological resources?

### Decision Making and Access to Resources

- In keeping with the 73rd Constitutional Amendment, the PESA<sup>11</sup> Act was adopted by the government in 1996. All 10 states of India with tribal areas were to adopt this law within one year. The PESA was to enable the gram sabha, i.e., the collectivity of village adults, and gram panchayat (village council) to protect community resources, control social sector functionaries, own minor forest produce, manage water bodies, give recommendations for mining leases, be consulted for land acquisition, enforce prohibition, identify beneficiaries for poverty alleviation and other government programmes and have a decisive say in all development projects in the villages. However, across states, the provisions of PESA have been limited to conferring the ownership of minor forest produce and due recognition of indigenous communities has not been forthcoming. For instance, in Bastar district, Chhattisgarh, the gram sabhas of Nagarnaar, Amaguda, Kasturi and Maganpur have been subject to coercive and manipulative tactics by the state administration into consenting to the acquisition of their lands by the public sector National Mineral Development Corporation. The tactics used included the forgery of the proceedings books of the gram sabhas to present a majority consent, as well as the detention and harassment of village leaders in order to break local resistance.<sup>12</sup>

- The Mid-Term Appraisal Report of the 10<sup>th</sup> National Five Year Plan shows that the central and state governments have not earmarked funds proportionate to the Scheduled Tribes population, as mandated under the Special Component Plan and the Tribal Sub Plan. In 2007-08, 4.88% of the total Plan allocation of the central government was earmarked for Scheduled Tribes (STs) as opposed to the 8% required in keeping with the proportion of the ST population in the country<sup>13</sup>.
- Given this reality, it is less surprising that the survival indicators of the Scheduled Tribes are far lower than the averages for the country, pointing to the State's failure in reaching the benefits of public infrastructure and essential services to indigenous communities.

Indicators <sup>14</sup>	Scheduled Tribes	National Average
a Infant Mortality	84	68
b Under 5 Mortality	126	95
c Children under 3 yrs underweight	56.7	45.9
d Literacy Rate	47.1	65.4

### Questions

- How does the government explain the absence of time-bound measures to enforce provisions that will enable indigenous communities to be equal partners in decision making and development, such as through the PESA, 1996?
- What measures are being taken to ensure that financial resources of the government are being invested to ensure that quality public services and infrastructure are being provided to indigenous communities; and that resources earmarked for their development reach the intended beneficiaries?
- What evidence does the government have to show that the concern for indigenous communities is being integrated in all its programmes and policies which directly or indirectly have a bearing on their Economic, Social and Cultural rights (ESCR)?

<sup>11</sup>Panchayat Extension to Scheduled Areas Act, 1996.

<sup>12</sup>Kisan Sangarsh Samiti, 24 Nov 2001.

<sup>13</sup>Shakti Golder, "National Convention on Union Budget 2008-09", published by CBGA, Nov 2007

<sup>14</sup>Sachar Committee Report, quoted by Shakti Golder, *ibid*.

# 2

## THE QUESTION OF RESOURCES

### Key Issue

**Issues in the National Common Minimum Programme (NCMP) need financial commitments and therefore have budgetary implications**

In recent years, most of the commitments towards restoration of Economic, Social and Cultural Rights (ESCR) have taken shape in the form of government promises at different fora both at national and international levels; the most prominent being the National Common Minimum Programme (NCMP).

The following table lists a set of crosscutting issues in the NCMP that need financial commitments in order to be implemented. No doubt, the tasks are huge and require planned investment efforts for proper implementation.

- Employment guarantee for 100 days.
- A national fund for support of unorganised sector.
- Revamping Khadi and Village Industries Commission (KVIC) through new programs.
- Rapid expanding credit facilities for small-scale industry and self-employment. Achieving potential growth of the services sector.
- Public investment in agriculture, rural infrastructure and irrigation to be stepped up in a significant manner. Irrigation to get highest investment priority.
- Flow of rural credit to double in the next three years.
- Special programme for dryland farming in the arid and semi-arid regions of the country. Watershed and wasteland development programs will be taken up on a massive scale.
- Raise public spending in education to at least 6% of the GDP.
- Raise public spending on health to at least 2-3% of the GDP over the next five years.
- Universal food security.
- Antyodaya cards for all households at risk of hunger.
- Adequate funds to the National Minorities Development Corporation.
- Highest priority to the development and expansion of physical infrastructure like roads, highways, ports, power, railways, water supply, sewage treatment and sanitation.
- Public investment in infrastructure will be enhanced, even as the role of the private sector is expanded. Subsidies will be made explicit and provided through the budget.
- Massive expansion of social housing in towns and cities, paying particular attention to the needs of slum-dwellers.
- All existing irrigation projects will be completed within three to four years.
- Household electrification will be completed in five years.
- The UPA government will make a comprehensive assessment of the feasibility of linking the rivers in the country.
- End to the acute drinking water shortage in cities.
- Overseas investments in the hydrocarbon industry will be actively encouraged.

### **Too much emphasis given on reduction in deficits owing to the Fiscal Responsibility and Budget Management (FRBM) Act**

The deficits of the Central Government are controlled at a level far exceeding the FRBM targets. The primary deficit has actually turned out to be negative. A negative primary deficit (surplus) indicates that the government is no more interested in financing through current borrowing. Primary deficit may be beneficial for an economy that does not have any excess capacity or has already achieved a full employment situation. In a country like India with huge excess capacity of the factors of production, a higher primary deficit is actually beneficial for the economy as it creates more effective demand and thereby employment in the economy. Also, the Government, under the premise of the fiscal contraction, has taken resort to restraining from various activities that require new capacity creation and investment in the economy. A simultaneous decline in capital receipts and capital expenditure indicates a squeezing size of capital account of the government.

### **Decline in Government Expenditure as proportion to GDP**

There has been a 6 percent increase in total expenditure of the Central Government from around 7.09 lakh crore rupees in 2007-08 RE to around 7.5 lakh rupees in the 2008-09 BE. However, as a proportion of GDP it has declined from 15.1 percent to 14.2 percent during the period. Compared to the year 2003-04, the revenue expenditure as a proportion of GDP has declined from 13 percent of GDP to 12.4 percent in 2008-09 BE. The Capital Expenditure declined from 3.95 percent of GDP to 1.75 percent during this period.

The Non Plan expenditure as percent of GDP has declined from 12.6 percent in the year 2003-04 to 9.6 percent in 2008-09. Even after accounting for adjustments in the Non-Plan expenditure, there is a decline from around 8.13 percent to 5.97 percent during the period. Though, there has been an increase in the total Plan expenditure by the Central Government, the Plan Assistance to States and Union Territories has declined from

around 1.8 percent of GDP in 2003-04 to 1.2 percent in 2008-09 BE.

### **Increasing Revenues, Reducing expenditures**

Revenue receipts as a proportion of GDP have shown a remarkable improvement during the recent years. From 9.54 percent of GDP in the year 2003-04, the Revenue Receipts of the Central Government have increased to around 11.37 percent of GDP. This is a very favourable situation for any Government committed for expansionary policies. The Government has, however, chosen to meet the deficit control targets although the net annual external debt has declined from around 0.4 percent of GDP in 2004-05 to 0.2 percent of GDP in 2008-09 BE. The decline in the Capital Receipts also show a reduction on the total borrowing requirements of the country.

### **Huge amounts of revenue forgone as exemptions**

Though the government claims that the corporation tax rate is around 30 percent, the effective tax rate is only 20 percent on an average. Huge amount of resources are foregone every year on account of various tax exemptions in the central tax system only. The total revenue estimated to be foregone in the central tax system alone for the year 2007-08 is around 7.2 percent of GDP. Such an amount is more than sufficient to pay for total budgetary support for Plan expenditure and more than half of the gross tax collections.

### *Recommendations*

Through prioritisation in its expenditure planning the government should mobilise resources.

- In the short run, the resources can be mobilised through redirection of the government subsidies from unproductive uses to productive ones. It is estimated that the government loses enormous tax revenues every year, which accounts for around 7% of GDP. The table below shows that the total tax revenues foregone every year on account of different exemptions are sufficient to finance around 50% of the central government's budgetary expenditure.

### Tax Revenue Foregone in Central Tax System

	2006-07	2005-06
Rev. Lost (Crore Rs.)	<b>288,959</b>	<b>244,290</b>
Rev. Lost % of GDP	7.0	6.8
Combined Fiscal Deficit (Crore Rs.)	264,506	239,323
Surplus left over after financing Deficit (Crore Rs.)	24,453	4,967
Combined Deficit as % of Tax Rev. Lost	91.5	98.0
Subsidies	18.5	19.5
Combined Interest Payments as % of Rev Lost	80.3	84.2
Combined Interest Payments + Subsidies as % of loss	99	104
Rev Lost As % of Cent. Budget Exp.	49.7	48.3
Rev Lost as % of Gross Tax Collections	<b>61.76%</b>	<b>66.7%</b>

Source: Mohanty Siba Sankar and Singh Ramgati (2007) "FRBM- A Review", Centre for Budget and Governance Accountability, New Delhi. [http://www.cbgaindia.org/publications/books\\_reports/FRBM%20-%20A%20Review.pdf](http://www.cbgaindia.org/publications/books_reports/FRBM%20-%20A%20Review.pdf)

- If the government is committed enough towards protection of ESCR, then it can finance them by increasing public expenditure by up to 50% through abolition of all tax exemptions made in the central tax system alone. ESCR is, therefore, not an issue of resources, but an issue of prioritisation.
- As important are allocations, equally important is the utilization of allocations made. There is an urgent need to deepen the analysis in order to see how central-state flows reach district level and are spent at local level; and identify the constraints and gaps in institutional processes that impede the planning, allocation and expenditure of social sector schemes

# 3

## RIGHTS OF WOMEN

### Key Issues

**Socio-economic indicators show a disturbing trend in the enjoyment of economic social and cultural rights (ESCR) by women**

The equal enjoyment of economic social and cultural rights (ESCR) by women as envisaged in Article 3 of the Covenant is de jure in India and not de facto. The Constitution guarantees equality and there is a plethora of laws and policies - including the National Policy on the Empowerment of Women, 2001 (which is yet to be operationalised) and the commitment made by the present government in the National Common Minimum Programme to ensure equality for women. Nevertheless, socio-economic indicators show a disturbing trend in the enjoyment and exercise of these rights. This is evidenced by a falling sex ratio, rising levels of poverty and unemployment, starvation deaths linked to the denial of right to life and livelihood, and increased violence in all spheres. Globalisation, fundamentalism and rising caste and religious intolerance have given an impetus to increasing violence against women<sup>1</sup>.

**India ranks 114<sup>th</sup> in gender gap according to the World Economic Survey (2007)**

India ranks 114<sup>th</sup> in gender gap according to the World Economic Survey (2007). According to the Economic and Social Survey of Asia and Pacific, by UN Economic and Social Commission for

Asia and the Pacific, India is bearing a great economic cost for low female labour force participation. A mere 10% increase in participation can net a gain of US\$ 5 billion in a year.

**Feminisation of poverty is on the increase**

Feminisation of poverty is on the increase<sup>2</sup>. Malnutrition and hunger continue to claim lives of tens of thousand children in Maharashtra and Uttar Pradesh. 350 million Indians, according to a report<sup>3</sup>, go to bed without food every night. There is no sex disaggregated data nor has the government put in place any anti-poverty scheme for women, apart from asserting the principle that one third of benefits under the general anti-poverty schemes are reserved for women. Furthermore, there are large gaps in the implementation of public services and government schemes. This results in the poor and marginalised sections of women suffering a denial of basic rights. The strategy of micro-credit through Self Help Groups (SHGs) has not been a significant measure for poverty reduction.

**Low value is attributed to women's work**

Low value is attributed to women's work. They earn only 38% of the average male wage in spite of the Equal Remuneration Act (1976). The work done by women is non-market labour, considered "unproductive" and not included in economic statistics. For example, in rural India nearly 3

<sup>1</sup> India, Second and Third NGO Alternative Report on CEDAW, National Alliance of Women, 2006.

<sup>2</sup> It is also important to note that none of the economic indicators in India have sex desegregated data.

<sup>3</sup> Ibid.

billion days per year are spent gathering fuel and 700 million days processing it - i.e. chopping, storing and handling- work almost exclusively done by women<sup>4</sup>, and invisible in statistics.

93% of the female workforce is in the unorganised sector, which faces job insecurity and unfavorable conditions of work and lacks provisions for social security. In addition, there is an increase in the population of poor urban women engaged in unskilled labour with poor work conditions and lack of access to basic amenities and health care.

### **Macro economic policies continue to be gender blind**

Macro economic policies continue to be gender blind. Liberalisation has impacted women adversely. The National Commission for Women has documented through Public Hearings, the loss of livelihood of women in different sectors such as gem-cutting, tea gardens and construction work. A number of studies have also established the exploitative and vulnerable conditions in which women work in the SEZs/ EPZs (Special Economic Zones/Export Processing Zones).

### **India's ability to achieve MDG 3 is a big question**

Gender gaps in literacy and education persist although they are gradually narrowing. It took two decades to reduce the gender gap in literacy from 26.92% in 1981 to 21.69% in 2001. Whether India will be able to achieve MDG 3 is a big question.

### **Employment is not increasing at the pace at which women are acquiring professional qualifications**

Ironically, while the rate of female literacy is going up and more women are acquiring higher education and professional qualifications, employment is not increasing at the same pace.

Due to public sector downsize, women's representation in government jobs has decreased from a meagre 11% in 1990 to 5.8% in 2000<sup>5</sup>.

### **Cases of honour killings are on the increase**

Article 10 provides that marriages must be entered into with the free consent of the intending spouses. Yet cases of honour killings of girls who dare marry against the wishes of the family are increasing. Youngsters daring to cross the boundaries of caste, creed or religion are dealt with most severely by the caste panchayats, running as parallel courts and comprised of the influential and the dominant elite in villages. Likewise, 'fatwas' are issued by the clerics and the worst is the politicisation of such issues, thus making a mockery of the judicial system in India.

### **Child marriages continue to be performed**

Child marriages, notwithstanding the ban, continue to be performed. 57% of girls married in India are under the age of 18<sup>6</sup>.

### **The devdasi system and witch hunting practices are rampant.**

The devdasi system and witch hunting practices are rampant - the latter, more often than not, because of property and land interests. Even the CEDAW Committee has expressed its concern on this issue in its

Concluding Comments in 2007 and has called upon the State to take appropriate measures to eliminate it.

### **Women's concerns and issues continue to be a low priority in development plans and budget allocations**

Women's concerns and issues continue to be a low priority in the development plans and budgetary allocations. For engendering the Eleventh Five year Plan, the women's groups did a massive effort, but the Plan document, apart from setting up Monitorable Targets with regard to raising the Child Sex Ratio, reducing the Maternal Mortality

**93% of the female workforce is in the unorganised sector**

<sup>4</sup> Parikh Jyoti et.al., "Toll on Human resources due to lack of Energy, Water, Sanitation and their Health impacts on Rural North India", in Bowling Point No 49, 23/24, 2003.

<sup>5</sup> Economic Growth without Social Justice, Christa Wichterich, WIDE, 2007.

<sup>6</sup> Ibid.

Rate, reducing anaemia and the dropout rate for primary and secondary schools, does not go far enough to achieve the Plan goal “of developing women’s full potential and sharing the benefits of economic growth and prosperity.”

The Women’s Component Plan (WCP) and Gender Budgeting form important constituents of India’s Five Year Plans now. The Planning Commission in its Mid-Term Appraisal of the 10th Plan conceded that “women still remain largely untouched by gender just and gender sensitive budgets as well as WCP”.

### **Discrimination faced by Dalit and Adivasi Women**

Women are not a homogeneous group. Despite the talk of social inclusion at the high levels of policy making, Dalits and Adivasis continue to be at the receiving end of all forms of exclusion. Untouchability, though constitutionally banned, is still predominant in many parts of the country. Manual scavenging is banned but women from Scheduled Caste communities continue to work as manual scavengers. Dalit children face subtle forms of caste discrimination in the school system, especially from teachers. Even the mid-day meal scheme that provides a hot lunch to school children is a site of caste discrimination with dominant caste parents refusing to let their children eat food cooked by Dalit women.

Women’s rights are cross-cutting. Most of the chapters in this Report do touch on how issues

impinge upon the rights of women, therefore the entire spectrum of concerns are not discussed in this Chapter.

### **Government Initiatives**

Fifty-four ministries/departments are stated to have set up Gender Budget Cells. It is a great step but these Gender Budget Cells have yet to achieve results. Further, the total magnitude of gender budgeting is a minuscule percentage of the total, that is 3.6% of the total expenditure. It has declined from 4.77% in 2005-06 to 3.6% in 2008-09, with a mere 0.3 % increase over the last year’s budget (2007-08).

This leads to the question: Is women’s equality a priority for the Indian Government?

### *Recommendations*

- Ensure gender analysis and gender auditing of all laws, policies, financial resources and allocations, so that *de jure* rights become *de facto* rights.
- Sensitise the central and state governments at all levels to gender concerns.
- Compile sex-disaggregated data, especially disaggregated along caste, minority, ethnicity, rural/urban lines. This is essential so that the concerns and needs of all sections and strata of women are addressed.
- Economic growth without social justice is not real growth.

# 4

## RIGHTS OF DALIT WOMEN

**“Instead of dispersed inequalities, we find in “caste system” an accumulative inequality where social and political power is concentrated into the hands of the same group.”**

- Andre Beteille

### Key Issues<sup>1</sup>

Dalit Women are referred to as Scheduled Castes (SCs) in the Indian Constitution and they continue to suffer Economic Social and Cultural rights

**Dalit women in India** are perhaps the world’s foremost example of a community whose rights are under constant violation. Today, the status of over 200 million Dalits - also known as untouchables – remains extremely poor despite the existence of constitutional rights and other affirmative action that are meant to address the issues. This situation can best be described in terms of lost humanity who live in segregated conditions. Notwithstanding India’s democratic values, caste hierarchies continue to dominate the feudal society.

Dalits, particularly women, are often offended, discriminated, deprived of human dignity and subjected to inhuman treatment and ugly forms of untouchability. They are largely illiterate, suffer

from poor health and are discriminated against in the labour market. All these factors have created lives of abject poverty.

In India, around 66 million women are Dalits, and they comprise 48% of the total Dalit population. Of this 81.4% live in rural areas<sup>2</sup>.

### Dalit women face extreme economic deprivation

Dalit women workers constitute the backbone of the Indian agricultural economy - 71% of them are agricultural labourers and 90% are cultivators (1991). Around 32.4% work in the household sector and a large number are employed as unorganised labour in urban areas. They are denied just and equal wages, a fair share in economic distribution, and maternity benefits.

Almost all Dalit women enter the labour market before the age of 20. In fact, 31.6% of all girls from the Dalit communities in the Guntur district of Andhra Pradesh are child labourers.

**DALIT WOMEN:  
They Are Poor;  
They Are  
Women; And  
They Are Dalits.**

<sup>1</sup> References for this chapter are from the following documents and Reports: A) “Shadows to Self - NGO, India Country Report Beijing + 10, 2005”, Co-ordinated and compiled by Dr. Pam Rajput, India Women’s Watch , “Dalit Women Issues and Perspectives” by Dr Ruth Manorama B) “Dalit Women”, India Second NGO – Shadow Report on CEDAW, The National Alliance of Women, Chapter 15 C) Dr. Ruth Manorama, “ Caste and Gender: Dalit Women’s Perspective” D) “3,000 years How Much Longer? – In search of Justice”, The Hague Dalit Women’s conference E) Concluding Comments of CEDAW, India – 2000 and 2007 F) Readings materials from the National Leadership Training Institute for Dalit Women.

<sup>2</sup> Ibid.

Evictions in the name of development, SEZs (Special Economic Zones), and urban renewal programmes have resulted in multiple displacements leading to further impoverishment. Even in disaster relief and rehabilitation, Dalit women are excluded.

### **Illiteracy and Lack of Access to Education**

The Dalit female literacy rate is 23.76%, with the lowest in rural areas (19.46%) - especially in Bihar (5.54%), Rajasthan (4.73%), and Uttar Pradesh (8.47%). Many girls drop out in the primary (53.96%), middle and secondary levels. Caste discrimination and other stereotyping in relation to marginalised groups, is a critical reason for the high dropout rate. Dalit girls are denied educational opportunities because of caste and gender discrimination.

### **High Incidence of Poverty and No Basic Amenities**

As most Dalit women have to depend on wage labour employment for their livelihood, they have a poor economic base and a higher unemployment rate. This is seen in terms of their lower standard of living and higher level of poverty. Around 51% of Dalits in rural areas and 56.48% in urban areas were below the poverty line in 1993-94. This means more than half of the Dalits do not get enough to eat and therefore, suffer from malnutrition. Poverty levels were quite high among the agricultural labourers.

Most Dalits have a very low standard of living. Around 7% of Dalit households have no electricity and 90% have no sanitation facilities. In rural areas, women have to walk long distances to collect fodder, fuel and water. Women also have to shoulder more responsibilities and their families have to survive on their meager wage labour.

### **Deteriorating Health Condition**

Since Dalit women take nutrient-deficient food - most of them are below poverty line, according to a district level study in Maharashtra- around 56% suffer from some form of anaemia, as compared to 49.1% of non-SC/ST women. Similarly, a much higher percentage of Dalit women are

under-nourished, as compared to their non-SC/ST female counterparts.

With significant cuts in government expenditure for public health services—on which the majority of Dalit women continue to rely—and increasing commercialisation and privatisation of public health-care services, poor Dalit women are being forced to either live with ill-health or enter into health-related debt. This also affects the health status of their children and families, besides lowering their income-generating capacity.

### **Dalit Women as Victims of Caste Hierarchy and Atrocities**

Dalit women are highly vulnerable to sexual exploitation due to caste violence. They are forced to be involved in caste-based occupations such as manual scavenging, bonded labour and sweeping.

Even when Dalit women are elected in local self-governments, they are not allowed to exercise their leadership qualities because of the dominant caste hierarchies.

### **GAPS identified / Critical areas of concerns**

In theory Dalits, including women, are granted equality under the Constitution. However, due to their lower social status, lack of access to equitable employment, education and legal rights including ownership of economic resources, Dalit women face severe structural constraints. They are denied basic human rights and laws are flouted or improperly used against them. State mechanisms/ State actors have a nexus with the dominant and the upper castes, and support private actors committing discriminatory acts.

### **Obligations of Central and State Governments and to the International Treaties**

The State is obliged under various international treaties to ensure that there is no discrimination on the grounds of caste and sex with regard to government or public employment (Article 16 of the Constitution). It also has to ensure men and women have equal rights to an adequate means of livelihood (Article 39a of the Constitution). It has to ensure equal pay for equal work for both men and women (Article 39(d) of the Constitution)

and renounce any practice that is derogatory to the dignity of women (Article 15(a) of the Constitution). It has to ensure to women equal rights with men in the areas of education, economic and social life (Articles 9 and 10, CEDAW) and prevent discrimination against women, which is fundamentally unjust and constitutes an offence against human dignity (Article 1, CEDAW).

The concluding observations of the Committee on the Elimination of Discrimination Against Women in India (CEDAW/C/SR 452, 453 and 462) in the year 2000, recognised social practices of the caste system, (52); expressed concern about the customary practices of the *devadasi* system (68); and asked the State to enforce the law prohibiting it (75). It recognised that discrimination against women belonging to a particular caste also manifests itself in extreme forms of physical and sexual violence and harassment (68). The Committee urged the State to implement existing legislation to prohibit caste-based discrimination (69). It was concerned by the continuing discrimination, including violence, suffered by Dalit women despite the SC/ST Atrocities Act of 1989 (74). It urged the State to put in place affirmative action in education, employment and health, provide life chances to Dalit women and girls, and create an environment conducive to their progress within a set time frame (75).

The Convention to Eliminate Racial Discrimination (CERD) – General Recommendation No. XXIX on Descent Based Discrimination (Aug. 2002, 61<sup>st</sup> Session of CERD) addresses multiple discrimination against women of descent-based communities - sexual exploitation and forced prostitution, personal security, employment and education. The ICCPR (1997) - 60<sup>th</sup> session on Human Rights Committee observed that SCs/STs endure severe social discrimination. De facto perpetuation of the caste system entrenches social differences. The ICESCR (1966) reiterated the right to enjoy just and favourable conditions of work/fair wages/remuneration for work of equal value.

### *Recommendations*

- Evolve a comprehensive development policy on Dalit women, which should spell out concrete and time-bound strategies and programmes for their socio-economic and political uplift.
- Adopt and implement policies and measures to enable Dalit women to gain a minimum of five acres of cultivable land, registered in their name.
- Implement reservations in employment in both the public and private sectors for Dalit women, and specifically target Dalit women for capacitation.
- Take into account all programmes and projects planning free education at the formal schooling, technical, and professional education levels for Dalit girls.
- Implement appropriate measures to prevent globalisation from exacerbating the situation of Dalit women's unemployment and poverty, including evolving national- and state-level perspective plans for mainstreaming Dalit women into developmental programmes and market enterprises.
- Evolve a national labour policy for the unorganised sector, especially agriculture, where the majority of Dalit women are concentrated, to protect workers' rights.
- Ensure Dalit women equal access without caste or gender discrimination to health-care and social security services.
- Ensure that the fundamental rights of Dalit women are protected in all situations, and that swift measures are taken to bring justice to those whose rights have been violated as per the law.
- Appoint a Special Rapporteur to expose the abhorrent and discriminatory practice of temple prostitution (*devadasi* or *jogin*) and recommend adequate social security measures that take care of life subsistence for these women.



DIVIDED  
DESTINIES

Section 2

UNEQUAL  
LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

ICESCR

Articles 6 to 9

## International Covenant on Economic, Social and Cultural Rights

### ARTICLE 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

### ARTICLE 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### ARTICLE 8

1. The States Parties to the present Covenant undertake to ensure:
  - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
  - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
  - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

### ARTICLE 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

## RIGHT TO WORK

### Key Issues

The high growth rate of the Indian economy in the recent years has failed miserably in generating adequate “decent” employment for the labour force.

- Although the annual average growth rate of the economy in the last decade has been between 7% and 8% and reached almost 9% during the past four years<sup>1</sup>, the annual rate of growth of employment declined from 2.01% during 1983 - 1993/94 to 1.84% (1.45% in rural areas and 3.14% in urban areas) during 1993/94 - 2004/05<sup>2</sup>. With the rising rate of growth of the economy, there has been a deceleration in the rate of growth of employment.
- The incidence of poverty declined from 36% in 1993-94 to 28% 2004-05. This implies that poverty has declined only by 0.74% per year. Even this was possible through an exercise to redefine the poverty line itself - through a “lowering of the bar” - rather than in any real change in the lives of the poor. Estimates other than that of the government in fact report an increase in the incidence of poverty<sup>3</sup>.
- The focus is to achieve higher rate of increase in labour productivity. This leads to the larger

gap between the rate of growth of GDP and the rate of growth of employment.

- Links between economic growth and poverty reduction; between economic growth and human well being/human development, between economic growth and employment are weakening.

### Significant numbers of the employed are underemployed and poor.

- The incidence of poverty has been estimated at 28.27% in 2004/05, against 3.1% of unemployment rate (usual status unemployment in 2004/05)<sup>4</sup>. There is informalisation of the labour market, implying poor quality of employment for most of the poor.

### Recommendation

A well designed employment guarantee programme that would contribute significantly to the sustainable development of the economy and thus

- Reduce poverty and bring about human development
- Ensure labour market outcomes include guarantee of work

<sup>1</sup> *Economic Survey*, Ministry of Finance, Government of India, 2006-2007, and 2007-2008.

<sup>2</sup> National Sample Survey on Employment and Unemployment, Ministry of Statistics and Programme Implementation, Government of India, 1993-1994, 1999-2000, 2004-2005.

<sup>3</sup> Utsa Patnaik, “Neoliberalism and Rural Poverty in India”, *Economic and Political Weekly*, Issue: Vol. 42 No.30, July 28 – 3 August, 2007.

<sup>4</sup> Estimated by the Planning Commission, Government of India, 2004-2005.

- Generate productive assets
- Address aggregate demand deficiency
- Bring about gender equity and employment guarantee.

**A significant part of women's work remains invisible**

- Women continue to perform unpaid work within the household and in family farms and enterprises. Despite its obvious economic and social worth, much of the work that women do remains 'invisible' in national accounting and the census, as well as unrecognised and unpaid within the family. This constrains women's equal opportunities in life and discourages their participation in the labour market.

*Recommendations*

- Ensure better accounting systems for women's unpaid work, and recognition of it in GDP in keeping with CEDAW commitments.
- Promote government-initiated campaigns and efforts to create assets in women's names.

**Other areas of deceleration and deterioration**

The growth patterns under the neoliberal policies have resulted in degradation and depletion of natural resources. The Planning Commission's 11th Five Year Plan's approach paper does not even include natural capital as one of the sources of growth. Instead employment is perceived as a by-product of economic growth that happens through capital-intensive technology. This approach has failed to consider the fact that natural resources are sources of livelihood for the general masses and therefore has not taken care of massive un/underemployment.

**Economic and social inequalities have increased even while there is high economic growth.**

- Inequalities of incomes and growth have increased across regions and different

socio-economic groups and between men and women. A gender neutral approach in policies cannot resolve these disparities.

*Recommendation<sup>5</sup>*

- Growth needs to be more equitable and more broad based in its employment generating aspects.
- Greater attention to the promotion and strengthening of traditional livelihoods
- Enhancement of productive assets such as land in women's hands
- An increase in women's participation in all levels of decision making.

**Government Initiatives**

The government has introduced a number of schemes for work guarantee such as the Sampoorna Grameen Rozgar Yojana (SGRY), the Prime Minister's Rozgar Yojana (PMRY) and the National Rural Employment Guarantee Act (NREGA).

In fact, under the NREGA (2005), every rural household living in the most backward 200 districts of the country is guaranteed at least 100 days of wage employment in unskilled manual work. This legal commitment is a landmark measure for poverty reduction strategies in India. It is also a unique event in the pro-poor strategies in the world, and for the first time the provision of such a right to such a large section of the population is being provided.

The NREGA was launched in February 2006 to cover 200 districts. More districts were added each year so that it now covers a total of 330 districts in India. It is expected to cover the entire country by 2009.

Despite being a landmark measure for poverty reduction strategies in India, there have been wide variations across region, class and gender in the achievements of the NREGA reported so far.

<sup>5</sup> These recommendations are based on, *Towards Inclusive Growth: The Gender Dimension*, Submitted to the Planning Commission by the Committee of Feminist Economists during the formulation of the Eleventh Five Year Plan (2007-2012), November 15, 2007.

- In 2006-07, the generation of employment of 905.1 million, with 40% share of women is much less than the expected 2,000 million person days by the National Advisory Council (Dreze and Oldiges 2007). Only Rs 88,233 million, or 73.08% of the allotted funds, were spent in the year.
- There has been wide inter-state variation in the performance of the programme in terms of expenditure of the allotted funds; generation of person days per participating households; share of women in the employment; and wages paid in NREGA, as they are not the state-level stipulated minimum wages.
- A critical factor in the successful implementation of NREGA is the mobilisation of communities. The State of

Rajasthan has performed well primarily because community organisations in the state have mobilised people around the Right to Information Act, the Minimum Wages Act and the NREGA, despite evidences of apathy or resistance by the state machinery. On the other hand, Uttar Pradesh, Uttaranchal and Bihar have done poorly.

*Major problems of NREGA can be listed as follows:*

1. *Is it adequate?:* Is 100 days of unskilled work at minimum wage per household enough to pull an entire family out of poverty and provide for a dignified life? Though the immediate short-term goal is highly valid, it is not adequate, as NREGA does not give due importance to long term goals such as enhancement of livelihood security.

**Table 1: Performance of NREGA in 2006-07 and 2007-08**

Sr. No	2006-07	2007-08
<b>1. Person days of employment generated</b>		
Total (in million)	905.1	435.4
Share of Women(%)	40.79	46.5
Share of Schedule Castes (%)	22.95	25.65
Share of Schedule Tribes (%)	32.99	32.57
Share of others (%)	34.57	39.96
<b>2. Expenditure on NREGA</b>		
Funds allotted (in million Rs)	120735.56	104617
Funds spent (in million Rs)	88233.56	31078.9
% funds spent	73.08	29.79
Expenditure per person day (Rs)	97.48	71.38
<b>3. NREGA Works</b>		
Taken up (in million)	841588	763710
Completed (in million)	396782	153375
On going (in million)	444806	510335
% works completed	47.15	20.08

Source: www.nrega.nic.in

2. *Resistance to Institutional accountability:* There is an apparent tendency in the administration to go slowly to avoid legal problems, or not to disseminate information about the Scheme to people, or to avoid enforcement of the rights of workers as far as possible.
3. *Problems Related to Implementation:*
- Poor dissemination of the Employment Guarantee Schemes (EGS) among people, i.e. weak ICE (information, communication and education), of the Scheme.
  - Weak planning capability of the administration at the district and below district level.
  - Low efficiency in projecting and estimating demand and supply of labour, and in balancing the two with planning for works.
  - Poor ability to work with non-government civil society organisations and elected bodies.
  - Rampant corruption.
4. *Structural resistance:* Implementation of the guarantee disturbs the socio-economic power structure and hurts the vested interests of the rural power elite. Since workers are likely to prefer EGS work with higher wages to local farm work, a shortage of workers is felt by local employers, who have tried to prevent the implementation of the scheme through various means, sometimes even threatening workers to keep them from participating in the scheme. The fact that the scheme is also likely to impact the migration of workers has led to contractors and employers in areas and sectors dependent on migrant labour to work towards undermining the implementation of the scheme at the field level.

### *Recommendations*

- Develop a well-designed employment guarantee programme that addresses long-term

goal of enhancing livelihood security of rural households.

- Strengthen the planning component for works to be undertaken so that they reinforce the natural resource base, help agricultural development, contribute to flood control or drought proofing in a planned manner.
- Integrate the EGS with all major on-going programmes.
- Recognise the role of civil society and their organisations in activities like ICE, planning and social audit related activities.
- Enable speedy registration, provision of job cards and the availability of application for work needs to be facilitated as also the guarantee of work and other entitlements.
- Ensure non-adherence to the unemployment allowance guarantees by state governments is recorded and unemployment allowance paid in genuine cases.
- Strengthen the EGS by involving women in planning at the village, taluka and district levels and creating suitable work for pregnant women, young mothers and others, in order to enhance their livelihood options and reduce their drudgery. Crèches and shade, along with other amenities, should be ensured at every work site and separate payments made to women as workers rather than to household heads.

### **Conclusion**

The trends in employment during the past decade and a half in India indicate that the economic reforms are not likely to lead the economy towards full employment, as there is no built in mechanism under the neo liberal policies to ensure full employment. A well designed employment guarantee programme can be a first step in moving towards full employment. Such programme can also address some of the critical concerns that the Indian economy is facing at present.

# 6

## RIGHTS AT WORK

### Key Issues

#### Increasing informalisation of work

Data from the National Sample Survey (NSS) 61<sup>st</sup> Round<sup>1</sup> reveals a significant **erosion in formal and full-time jobs**, with a corresponding increase in informal part-time jobs and self-employment. While women's employment has increased in urban areas, the new opportunities are of low quality and are unremunerative, being primarily self-employment, home-based work at piece rates or part-time work in the informal sector<sup>2</sup>.

The impact of informalisation is further exacerbated by the **decreasing trend in real wages**, visible for the first time in the NSS 61<sup>st</sup> Round, which reports a decline in the average daily real earnings of regular workers in both rural and urban areas, as well as a decline in the real wages of casual workers in urban areas.

The NSS data also points to the high levels of **income insecurity** of women workers in the informal sector. An income of less than Rs 2,000

per month is considered to be "remunerative" by as many as 30% of the women working in the informal sector in urban areas<sup>3</sup>, revealing the levels of unemployment and their low expectations.

For all intents and purposes, informal sector workers are workers without rights. There is no legislation and no effective mechanisms to ensure minimum wages, congenial working conditions, social security or occupational health and safety norms for women workers in the informal sector.

#### Questions

- In the context of displacement – have those evicted been rehabilitated, have they been provided with adequately favourable conditions of livelihood opportunities?
- Has the situation of women worsened post eviction and in rehabilitated sites?
- Unorganised sector Workers Social Security Bill 2007 – will it see the light of day?

**Chikan embroidery workers**, who form a significant proportion of the workforce among the rural population of Lucknow district, Uttar Pradesh. Their work has brought fame to the local handicraft, which provides an income for 50% of the population. These workers are mainly in the informal sector, and earn about Rs 30 per day. Wages for this arduous and time consuming work are determined on the type of stitches and, therefore, can vary enormously. Women get work through middlemen on a piece-rate basis and this arrangement reduces their bargaining power. Consequently, they receive far below the prescribed minimum wage.

<sup>1</sup> National Sample Survey, 61<sup>st</sup> Round, 2004-05.

<sup>2</sup> C.P. Chandrashekhar and Jayati Ghosh, "Women Workers in Urban India", Macroscan, February 2007. <[www.macroscan.org](http://www.macroscan.org)>

<sup>3</sup> Ibid, National Sample Survey.

**Beedi workers** are another vulnerable category engaged in highly labour-intensive work. These (as well as other categories of unorganised sector work, such as 'agarbatti' rolling and handicraft work) are primarily home-based, and the workers form the lowest rung of the economic hierarchy being illiterate, unaware of their rights and unable to organise due to the manner in which the industry is organised. Practices such as payment for bundles and rejection are used to deny workers fair wages. The National Commission for Labour 2001, as well as the National Commission for Self Employed Women & Women in the Unorganised Sector (Shramshakti), have highlighted the situation of exploitation leading to the lack of bargaining power and an inadequate living wage to ensure the right to life. Women remain marginally remunerated and unprotected despite numerous proclamations and legislative provisions.

### **Some forms of work are stigmatised, criminalised and excluded from the ambit of protective legislation**

The oppressive influence of caste on Indian society and on women in particular, is nowhere more visible than in the systemic stigmatisation of occupations traditionally reserved for the oppressed castes, such as cleaning of human waste (manual scavenging) and sex work. Women in these forms of work are subject to discrimination, violence and the complete denial of rights.

Manual scavenging or conservancy work is a predominantly female occupation that is completely unprotected by any labour legislation - a violation of Articles 14 and 15 of the Indian Constitution. The Ministry of Social Justice and Empowerment released statistics for 2002-2003, which show that there are 6,76,000 people employed in manual scavenging over 21 states and union territories, working at 96,00,000 dry latrines in the country. Over 98% of these people, predominantly women, belong to Dalit communities. Their major employers are the Military Engineering Services, Army, Public Sector Undertakings and Railways<sup>4</sup>.

An overwhelming number of women in sex work are from the oppressed castes and communities. There are an estimated 10 million sex workers in India<sup>5</sup>, who are denied status, rights and entitlements as workers and are vulnerable to violence from police, clients and self-appointed guardians of morality.

A study in the six metropolitan cities of India suggests that 94% of trafficked women in India are from rural areas and from the lower socio-economic strata. The study identifies Andhra Pradesh, Karnataka, Tamil Nadu and West Bengal as the highest supply states with 24%, 22%, 17% and 14% of trafficked women, respectively<sup>6</sup>.

Acting on orders by the Goa bench of the Bombay High Court, around 250 huts belonging to sex workers on Goa's Baina beach were bulldozed in an effort to 'clean up' Goa. 'Operation Monsoon Demolition' appears to have been based on the assumption that sex workers have no right to shelter. The huts are the homes of women who have been living there for the past 40 years. They have valid ration cards, voter identity cards, electricity bills and tax receipts as proof of their being bonafide residents of Baina; their children attend schools in the area. In fact, many children born in Baina are today vote-casting adults. Now, attempts are being made to class them as 'outsiders' from Andhra Pradesh and Karnataka and send them back once their homes have been demolished.

The Immoral Trafficking Prevention Act (ITPA) criminalises the selling, procuring, and exploiting of any person for commercial sex, as well as profiting from the prostitution of another

<sup>4</sup> Data from Report of National Commission on Safai Karamcharis, 2000.

<sup>5</sup> Figure quoted in Reports of Durbar Mahila Samanwaya Committee, Kolkata.

<sup>6</sup> Convention on the Elimination of all forms of Discrimination Against Women, Shadow Report India, NAWO, 2006.

individual. Prostitution is not illegal when no third party is involved, is not done in or near a public place, is not forced, if not solicited, or when the prostitute resides alone. However, the moral stigma attached to sex work serves as justification for police, the authorities and even civil society actors to oppress and exploit sex workers. In several cases, adult women in sex work have been forcibly “rescued”, confined to correctional institutions and deprived of their livelihoods. Section 8 of the ITPA criminalises the act of solicitation for prostitution, which has been used in the past to arrest and punish women and girls who were victims of trafficking. A proposed amendment to Section 5C also effectively criminalises clients.

Consistently high rates of HIV infection among sex workers signal their physical vulnerability and lack of access to health information and services, but is used to further stigmatize them and justify violations of their human rights.

### Questions

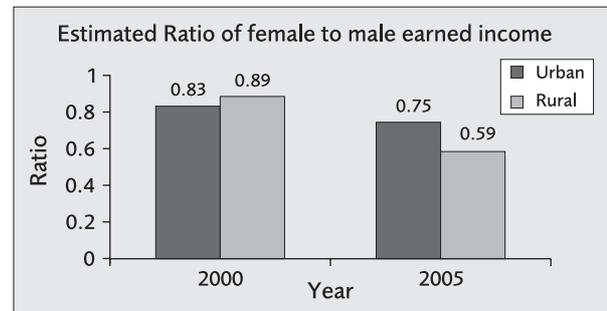
- What is the status of implementation of measures for abolishing degrading forms of work, and in particular manual scavenging? How many manual scavengers are there and what government schemes exist for reskilling them and providing them with alternative work opportunities?
- What steps is Government of India taking to ensure protection for the human rights of sex workers?

Women workers are subjected to discriminatory treatment, sexual harassment and exploitation

The Mid-Term Appraisal of the 10th Plan recognises the vulnerability of women workers and notes the feminisation of poverty and the exploitation of women in low paid, hazardous and insecure jobs in the unorganised sector and in the export processing or Special Economic Zones (SEZs).

In no sector and state do women and men receive equal wages for equal work. Mechanisms for

implementation and monitoring of equal wage legislation are weak or non-existent. The ratio of female to male earnings has fallen, a process that has been more rapid in rural areas according to most recent data.



(Source: Govt of India, NSS 55<sup>th</sup> Round Estimated Ratio of female to male earned income Year Ratio<sup>7</sup>)

A 2005 ILO survey<sup>8</sup> of small manufacturing units found women working mainly in textile, garments and carpet clusters. More women than men reported injuries at work. Two-thirds of the women surveyed said the average duration of maternity leave was 90 days, but without remuneration. Surprisingly, the survey found that over 90% of the women did not report sexual harassment, though “verbal comments and remarks” were reported.

Economic reforms have adversely affected the rights of workers and their bargaining capacity vis-à-vis employers. While trade unions have weakened, the militancy of the employers is on the rise. This has manifested in a significant increase in the incidence of lockouts and decline in the incidence of strikes. Women are preferentially hired based on their lack of affiliation to trade unions or workers’ organisations. They are also under-represented at the decision-making levels of mainstream trade unions.

In a 1997 judgment (*Vishaka v/s State of Rajasthan*), the Supreme Court directed the central and state governments to adopt suitable measures including legislation on sexual harassment at the workplace. The judgment itself mentioned CEDAW as the source of such law, but the law has still not been passed.

<sup>7</sup> ISST, *Progress of Women in South Asia*, UNIFEM, 2007, Page 4.

<sup>8</sup> International Labour Organisation “The Other India at Work”, 2005.

# RIGHTS TO TRADE UNIONS

Indian law ensures strong protection for the rights of workers but gives unions limited access to the workplace. This is one of the reasons why India's trade union federations have historically aligned with political parties.

India has also not ratified the ILO Conventions on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Global economic trends have put severe pressure on the working class. Global institutions, like the World Bank (WB), the International Monetary Fund (IMF), and the World Trade Organisation (WTO), are putting pressure on countries to rationalise labour laws and undermine trade union rights. This emerging global economic environment is conducive to the growth of multinational companies (MNCs), which have regained absolute control over the movement of global commodities for the consumer markets of the developed world.

Companies are increasingly adopting methods designed to lower wages and social security costs by putting in place measures like privatisation and sub-contracting as well as arbitrary closures, lay-offs, retrenchments, and voluntary retirement schemes. They have adopted labour intensifying incentive schemes, the key element of which is greater flexibility in labour relationships.

## Key Issues

### Trade union rights under threat

- Companies and corporates are undermining the collective bargaining rights of workers. The new trend impacts workers by undermining their Right to Freedom of Association. It also slows down or totally puts an end to their struggles for better wages, living conditions, health and safety, safe environment, right to food security and safety.
- The Judiciary is increasingly reinterpreting law in a manner that is derogatory and restrictive of trade union rights and rights of the workers and unions, as provided by law<sup>1</sup>. Changes in the labour law are aimed at downgrading, firstly, the legal protection of employment and the conditions of work and, secondly, the legal rights and powers of unions to collectively bargain for wages, better conditions of employment and work.

### Recommendation

- India should ratify the ILO Convention Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

<sup>1</sup> *J.K Synthetics Ltd. v. K.P.Agrawal*, 2 SCC 433 (Supreme Court has said that a pragmatic view has to be taken with regard to backwages and that nothing is automatic even if dismissal from service is to be found unjustified) 2007, *Punjab State Electricity Board & anr v. Sudesh Kumar Puri* 2 SCC 428 (High Court has said that termination of contractual employees on expiry of tenure of contract is excluded by sub-clause (bb) to section 2 (00) of Industrial Disputes Act, 1947) 2007, *M P Housing Board v. Manoj Srivastava* 2 SCC 702 (The Supreme Court has held that a person appointed ad hoc is not eligible for permanency even after 240 days in spite of the applicability of the Madhya Pradesh Industrial Employment [Standing Order] Act, 1961) 2006.

### *Attack on workers of Honda Motorcycle and Scooter India: A case study<sup>2</sup>*

On July 25, 2005, the police brutally lathi-charged 2,000 Honda workers in Gurgaon. Hundreds of workers were cornered from all sides near the Mini Secretariat in an area that was walled in, with few routes of escape. They were badly beaten. The right to form a union was what the Honda management questioned. The scale, effectiveness, and the blatant manner in which the violence was perpetrated, as well as the tendentious claims that 'outsiders' had instigated it, clearly show that the authorities were well aware of its execution - having invited the workers to talks in the first place and confining them to a walled space. The workers clearly had no plans to cause violence as they were preparing to go to work at 3 pm after a peaceful meeting.

### **Special Economic Zones without rights**

More than 200 Special Economic Zones (SEZs) are coming up all over India<sup>3</sup>. The present labour administration and labour courts will have no jurisdiction in SEZs. The Development Commissioner is designated as the sole authority under the Special Economic Zones Act, 2005 (Act 28 of 2005). This would lead to the concentration of regulatory power in the hands of a single person with the attendant possibility of abuse. Industrial units to be set up in SEZ are deemed to be Public Utility Services, with potential negative implications for workers enjoying the rights to organise, bargain collectively and strike.

#### *Question:*

What concrete steps in terms of policy is India taking to ensure that rights of workers are not curtailed in the SEZs?

#### *Recommendations*

- All labour laws and fundamental rights of workers should be protected in SEZs.
- Labour courts should be operational in SEZs.
- SEZ units should not be arbitrarily declared as Public Utility Services
- Labour mobility should not be curtailed in SEZs.

### **Decreasing unionisation in the manufacturing industry**

Many industries in the manufacturing sector have shown a negative trend in union membership;

among these are cement, chemicals, engineering (electrical), iron & steel, paper products, printing & publishing<sup>4</sup>. The overall increase in membership in manufacturing industries during 1989 and 2002 was only 3.31% although total union membership rose by 5.35 % during same period. The manufacturing sector used to be largest unionised sector during the 1970s and 1980s, accounting for over 15% union members. Now only 3% of such workers are union members. The trend is deunionisation.

### **Right to Strike being violated**

The Supreme Court has also joined the anti-labour agenda by putting breaks on the Right to Strike, undermining the right to lawful protests<sup>5</sup>

#### *Question:*

What impact has the Supreme Court's judgment on the Right to Strike had on the articulations of workers? Is the Government considering any enabling legislation in this matter?

#### *Recommendation*

- The Government should take legal measures to protect workers' right to strike. No worker should be penalised for participating in a strike.

### **No protection for the Unorganised Sector Workers**

The current labour legislation does not reach the vast majority in the unorganised sector, keeping these workers under-waged, unprotected and under-nourished.

<sup>2</sup> "Lathicharge on the HMSI Workers on July 25, 2005 in Gurgaon", A Citizens' Committee Enquiry Report conducted by The Centre for Education and Communication, 2005.

<sup>3</sup> See, [www.sezindia.nic.in](http://www.sezindia.nic.in)

<sup>4</sup> The Ministry of Labour, Government of India, Central Trade Union Membership Verification Report (provisional; Dec 1, 2002 as date of reckoning), See also Ministry of Labour website: (<http://labour.nic.in/ir/implimentation-1.htm>)

<sup>5</sup> T.K Rangarajan v. Government of Tamilnadu and ors 6 SCC 581, 2003.

### *Recommendation*

- Government should enact comprehensive legislation for the social security of unorganised workers.

### **Disinvestment has kept labour representation at bay**

The government's move towards disinvestment has also kept labour representation at bay. The Empowered Committee on Disinvestments set up by the previous and current governments has excluded representation from the Ministry of Labour. It is also significant that the corpus which was meant to be used for skill development of the workers opting for Voluntary Retirement was used solely for the "Golden Hand Shake" given to the workers. Consequently there is a huge workforce that does not have the requisite skills to get gainful employment.

### **Bonded Labour, Child Labour and Trafficking**

The changes in the economic scenario are increasingly forcing labour to migrate within the country, often accepting conditions of work that amount to new forms of bonded labour and which result in trafficking and an increase in child labour.

### *Question*

What steps are being taken to address contemporary forms of bonded labour, new forms of child labour and trafficking? Is the existing legislation adequate to address the new forms of violation of labour rights?

### *Recommendations*

- Labour departments in Indian embassies in countries receiving Indian workers should be strengthened. Proactive programmes for immigrant workers need to be put in place.
- Change the Bonded Labour System Abolition Act to make it capable of addressing contemporary forms of bondage.
- Remove the distinction between hazardous and non-hazardous employment with regard to child labour.

- Declare higher minimum wages for adults and ensure its implementation.

### **Increasing sexual and gender harassment at the workplace**

There are also increasing cases of sexual and gender harassment at the workplace, both in the formal and informal sectors. Gender discrimination in the labour market is also increasing.

The recent unpublished case study and fact finding report of verbal and physical abuse in Fashion Express, Gurgaon, conducted by the Centre for Education and Communication in 2007, highlight the facts that the management used outside muscle men to prevent unity of workers, formation of trade union and registration of the union. Women employees faced suppression, intimidation, sexual harassment and violence from outsiders engaged by employers. Many were terminated from service. When they made a police complaint, the inspector came for inquiry but did not take any action against the employers for sexual harassment, abuses and other misbehavior. Finally, on March 21, 2007, workers declared a strike, which continued for 20 days. The strike ended after negotiations. The labour department, the police and other authorities remained biased towards the employers throughout the dispute period of five months (January to May, 2007).

### *Question*

What steps are being undertaken to prevent sexual harassment at the workplace, particularly in the context of women's increasing presence at work and in the light of the Vishakha judgment<sup>6</sup> by the Supreme Court?

### *Recommendations*

- Provide strict punishment to perpetrators of sexual harassment at workplace. Ensure redressal committees for sexual harassment complaints at the workplace.
- Increase women's representation in labour administration.
- Ensure the safe transportation for all women workers.

<sup>6</sup> Vishakha Guidelines on Sexual Harassment at the Workplace, issued by the Supreme Court of India, 1997.

## RIGHT TO SOCIAL SECURITY

**There is no Social Security for 370 million workers (93% of workforce)<sup>1</sup>. One third of these are women.**

- Social security in India exists only for 7% to 8% of the workers - those who are in the formal sector<sup>2</sup>. This means that the social security laws enacted - The Employees State Insurance Act, 1949 (ESI Act); the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act); the Workmen's Compensation Act, 1923 (WC Act); the Maternity Benefit Act, 1961 (M. B. Act), and the Payment of Gratuity Act, 1972 (P.G. Act) - provide protection only to the organised sector workers, which is a small group.
- On the other hand, 92%<sup>3</sup> or 370 million working people are in the unorganised sector, such as those in agriculture, rural industry, home work, the service sector and the self-employed. This large group is denied any statutory social protection coverage. Only about 0.4% together of the unorganised sector workers receive social security benefits like Provident Fund<sup>4</sup>.
- Estimates based on the National Sample Survey (NSS 1999-2000), women account for one third, about 118 million unorganised sector workers. This number would be much higher if the unpaid work done by most women is recognised and included. Nearly 95% of all female are engaged in the unorganised sector. An extremely large section of women in the country thus remains unprotected as a result of the non-existence of social security provisions for the unorganised sector.
- Furthermore, none of the proposed bills that are in circulation take into account the unpaid work that women do. Under any social benefit scheme, women are only looked upon as dependents of male breadwinners, not equal citizens contributing to the national economy.
- The unorganised informal workers contribute over 62.3% to the GDP of the country<sup>5</sup>. People living below the poverty line were 28.27% in 2004-2005 against 3.1% of those unemployed<sup>6</sup>. That means a significant number of poor are working, yet cannot afford basic rights.
- Most insurance schemes are contribution based. In India where many people are denied their basic human existence and survival, any contributory kind of system cannot be relied

<sup>1</sup> The National Commission for Enterprises in the Unorganised Sector (NCEUS) estimated 423 million workers in informal/unorganised sector, out of which 256 million are in agriculture sector and 167 million in the non-agriculture sector, 2007.

<sup>2</sup> Government of India report to CESC: Article 6, E/C.12/IND/5, Page 7, Para 9

<sup>3</sup> "Social Security for Unorganised worker", Report by National Commission for Enterprises in the Unorganised Sector, Preface, 2007.

<sup>4</sup> National Commission for Enterprises in the Unorganised Sector, "Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector", Government of India, 2007.

<sup>5</sup> Ravi Srivastava, Widening Exclusion: Informalisation in the Indian Economy, 2007. Also see: [www.macroscan.com/spfea/jun07/PPT/288,5](http://www.macroscan.com/spfea/jun07/PPT/288,5).

<sup>6</sup> Estimated by the Planning Commission, Government of India, 2004-2005.

on. It automatically denies the right to social security to millions of men and women who are not working, who do not have any capacity to contribute and who do not have any other support to rely on<sup>7</sup>.

- The Workmen's Compensation Act, 1923<sup>8</sup>, does not provide any benefits to contract workers, self-employed, migrants and agriculture/rural workers. Its implementation is ineffective. The 10<sup>th</sup> Five Year Plan (2002-2007) emphasised the need for social security coverage for the unorganised sector. Approximately 14 bills have been floated since then but social security remains a dream for 92% of Indians. **Social security is not a priority for the government.**

### *Question*

Why has the government not provided social security to all, including 370 million informal and unorganised workers in the unorganised sector?

### *Recommendations*

- There is a critical need to ensure everyone has all their basic rights met. Based on General Comment 19, India should develop a comprehensive legislation for social security for all including the unorganised sector that ensures non contributory, non insurance based universal coverage of basic rights (food, income security, maternity benefits, shelter, education, water, sanitation) to all<sup>9</sup>.
- 5% of GDP should be earmarked cover social security benefits for all in the unorganised sector<sup>10</sup>.
- Women's unpaid work should be recognised as part of unorganised sector work.

- Women should be entitled to all benefits including social security as independent citizens and not as dependents on male earning members or as part of the family/ household.
- Social security plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion. Special needs of Dalits, Adivasis, displaced people and migrants should be considered.

### **Social Assistance Programmes are Inadequate**

- While the government has implemented various social assistance programmes, several of the following seem inadequate:
  - The national floor level minimum wage in India is a paltry Rs. 50/- per day wef. 1.9.2002<sup>11</sup>.
  - Equally paltry is the Rs 75 per month pension given to those over 65 under National Old Age Pension Scheme (NOAP)<sup>12</sup>.
  - Only Rs 500 given as maternity benefits to pregnant women of households living below the poverty line under National Maternity Benefit Scheme<sup>13</sup>.
  - According to World Labour Report, 2000, the public expenditure on social security is only 1.8% of the GDP. (Government of India report to CESCR, E/C.12/IND/5, page 57, para 179).
  - Employees State Insurance Act (ESI Act, 1948) does not cover unorganised sector workers. ESIA are available to only organised industrial workers with wage ceiling of Rs 6500 per month<sup>14</sup>.

<sup>7</sup> Priti Darooka, "Social Security: Women's Human Rights Issue", PWESCR upcoming publication, 2008.

<sup>8</sup> Government of India report to CESCR, E/C.12/IND/5, Page 58, Para 183.

<sup>9</sup> Committee on Economic Social and Cultural Rights, General Comment No.19, The Right to Social Security, (Article 9), 23rd November 2007.

<sup>10</sup> Social Security Now' Campaign, www.socialsecuritynow.org, a national campaign in India comprising of more than 500 members including civil society organizations, people's groups and trade unions.

<sup>11</sup> Government of India report to CESCR, Article 7, E/C.12/IND/5, Page 36, Para 101.

<sup>12</sup> Government of India report to CESCR, Article 9, E/C.12/IND/5, Page 65, Para 202.

<sup>13</sup> Government of India report to CESCR, Article 9, E/C.12/IND/5, Page 65, Para 202.

<sup>14</sup> Government of India report to CESCR, Article 9, E/C.12/IND/5, Page 65, Para 202.

- The Maternity Benefit Act, 1961 does not cover all establishments. Women workers are denied benefits. Mostly semiliterate women find it impossible to raise claims to proper authority/court. Pregnant women are often denied employment.
- Community based self help schemes indirectly rely on women's 'invisible' work<sup>15</sup>. Micro credit was conceptualised as a social security product and network, but research shows that it has excluded the poorest, and often becomes a debt trap when access to resources is denied at times of crisis. This as a form of social protection for families and communities moves state responsibility onto already over worked and over burdened women.

#### *Recommendations*

- Social Assistance programmes should be adequate to ensure to a minimum essential level of basic essentials to all individuals and families that will enable them to a dignified life.
- Amount of pension must be based on living wages.
- In general, women are not land or property

owners. Social benefits are not tied to land or property and should not require a physical property address to receive it.

#### **There is an increase in migrant workers. Short-term migrant workers are increasingly women.**

With option for rural livelihood such as agriculture becoming more and more inadequate, the number of migrant workers are increasing. There is an increase in short term migrants who are increasingly women. There is no policy to address concerns of migration at either the points of origin or destination.

#### *Recommendations*

- Migrants, especially women migrants, need to be protected from violence and exploitation and provided various assistance.
- Public service delivery based on residence based qualification needs to be revisited.
- Social security needs of migrant workers should be met. This should include housing/shelter with basic amenities like water and sanitation, access to education and health facilities and regulation of conditions of workers including wages.

<sup>15</sup>Priti Darooka, "Social Security: Women's Human Rights Issue", PWESCR upcoming publication, 2008.



DIVIDED  
DESTINIES

Section 3

UNEQUAL  
LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

ICESCR

Articles 10 to 12

## International Covenant on Economic, Social and Cultural Rights

### ARTICLE 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

### ARTICLE 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
  - b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

### ARTICLE 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
  - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
  - (b) The improvement of all aspects of environmental and industrial hygiene;
  - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
  - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

## RIGHTS IN A FAMILY

### Key Issue

The narrow interpretation of the term ‘family’ makes critical concerns of women invisible and leads to non-fulfilment of the obligation to protect the family in its true spirit.

In a bid to build its claims to protecting the family as an institution, the State has made invisible critical concerns of women within the family. It has drawn a **narrow interpretation of the term ‘family’, positioning it strictly within the heterosexual and patriarchal framework.** The State report mentions that *‘there is clear division of labour’* in joint families and *‘women are responsible for the household works, the care of children, aged and ailing members’* (para 207).

This is a clear reflection of a deeply entrenched stereotypical ideology. In reality the division of labour in a family is blurred, as women are doubly burdened with longer hours and arduous work patterns. Caste-class divides only go to add to their burden. For instance, socio-economically marginalised women have to work as home-based and agricultural labourers. Many Dalit women have to undertake scavenging and head loading despite the same being legally banned since 1993. However **most of women’s work remains invisible and goes unrecognised.**

The State report indicates that “[t]his inherent inequality in the patriarchal society has been a constant source of exploitation of and violence against, the weaker members in the family especially women and children” (para 209). Data from

National Crime Records Bureau’s (NCRB) Annual Report (2005) provides a glimpse of the de facto position of violence against women within the family - incidents of dowry deaths showed a jump of 46.0%, from 4,648 in 1995 to 6,787 in 2004-05. And in 2005, the police alone investigated 56,709 cases of cruelty against women by their husbands and relatives.

While discussing the steps taken to protect family, the State report refers to the Protection of Women from Domestic Violence Act (PWDVA), enacted on October 26, 2006, which guarantees woman a right to live free from violence. However, even after a year of the enactment, the Act is still not being implemented effectively, mainly due to **the lack of both resource allocation and administrative will.**

### Question

- What measures (legislative and other) are taken to address sex selective abortion of female foetuses, female infanticide, widow immolation, dowry deaths, physical, emotional and sexual violence and abuse in such circumstances? How effective are these measures?
- How does the state prevent violence on women and others for exercising sexual choices and based on sexual orientation and gender identities?
- In what ways have the State addressed gender biases, cultural beliefs, attitudes and gender bases roles which have hindered equality

between men and women and women's enjoyment of ESC rights? In particular, what steps are being implemented to realise the concluding observations of the CEDAW committee relating to ESCR of women in India.

### Marriage and Matters related to Marriage

Article 10 also recognises that "*marriage must be entered into with the free consent of the intending spouses*", thus securing the right to enter (or not) a relationship.

At first glance, it appears that the law is on the side of the individual(s) exercising choice. However, the de-facto situation is different as in practice the law does not function in a way to support this, indeed even the wording of the statutes is not as clear as initial readings may suggest<sup>1</sup>. Despite all legal provisions securing the right to marry (or not to marry), when a woman exercises her right to choose a spouse/partner and infringes socio-cultural norms, the community reacts, in most cases violently. There is sufficient documentation done by human rights groups and National Human Rights Institutions to prove that couples that enter into matrimonial/sexual alliances without adhering to the rules of caste, religion and class, are faced with extreme violence.

The Committee on the Elimination of Racial Discrimination, in its Concluding Observations (2007), has raised its concern "on the persistence of social norms of purity and pollution which de facto preclude marriages between Dalits and non-Dalits; it is also concerned about violence and social sanctions against inter-caste couples and the continuing practices of child marriage and dowry, and *devadasi* system whereby mostly Dalit girls are dedicated to temple deities and forced into ritualised prostitution. [Art. 5 (d) (iv) and 5 (b)] The Committee has urged the State Party to effectively enforce the prohibition of child marriage, the Dowry Prohibition Act (1961) and State laws prohibiting the practice of *devadasi*. The State Party should punish such acts and acts of discrimination or violence against inter-caste couples and rehabilitate victims. Furthermore, it

should conduct training and awareness-raising campaigns to sensitise police, prosecutors, judges, politicians, teachers and the general public as to the criminal nature of such acts."

Women's status within a family/relationship is - both de jure and de facto - unequal and discriminatory. The system of personal laws which govern the private sphere of society is one of the key contributors to this. However, the State has not taken steps to address the substantive, legislative and procedural inequality within personal laws. The government in its Initial Report to the CEDAW committee acknowledged this inequality within marriage and has stated that this inequality flows from deficiencies in the personal laws. But it absolves itself from accountability using its policy of non-interference in the affairs of minority communities except on the initiative of the community, as a justification.

In the periodic report for CESCR the State again uses the same argument that "*Government abides by and ensures that these provisions are in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent*". Since the State has been making the same claim of abiding by its policy of non-interference, it should articulate the efforts it has made to ensure effective inclusion and participation of these communities in the process of reviewing the personal laws.

### Questions

- What steps are being taken by the government to
  - (a) modify social and cultural patterns of conduct to achieve elimination of prejudices and practices based on stereotyped roles for men and women and
  - (b) review and reform personal laws of different ethnic and religious groups to ensure de jure gender equality and compliance with the CEDAW Convention and to;

<sup>1</sup> AALI, "Choosing a life-Crimes of Honor in India: The Right to, if, when and whom to Marry – A view from Uttar Pradesh and Rajasthan", Supported by CIMEL, 2004.

- (c) withdraw its declaration Art16 (1) and 5(a) of CEDAW in order to protect and fulfil human rights of women in the private sphere?

Throughout the section of marriage and matters related to marriage, the Indian government report to the Committee liberally uses statements which reflect the prejudiced approach of the State towards religious minorities. For instance, the statement, ‘*A Muslim man can also have four wives. So also there is not provision for registration*’, endorses the perception that polygamy in the Muslim community is prevalent. Experiences, however, reveal that bigamy is practiced in the Hindu community despite it being prohibited by law. The State also claims that “*the position of women under Muslim law is not as favourable as the women under Hindu Law*” while the de facto situation of all women within the family, cutting across religion, class and caste is the same: unequal and discriminatory.

Furthermore, Section 497 of the Indian Penal Code (1860) criminalises adultery only when it is committed by a married woman. The procedural criminal law (Section 198, Criminal Procedure Code), allows the husband, who is called the ‘aggrieved person’, to prosecute the man who has had adulterous sexual intercourse with his wife. It, however, does not allow the wife of a man to prosecute the other woman with whom *he* might have had an adulterous relationship. At the same time, if the husband has consented for sex between his wife and the other man – it does not qualify as adultery. The control of men over women’s underpins the laws related to abduction, kidnapping and also in institutional bodies and mechanisms. The State takes custody of adult women if they are found to be in “moral danger”. They are then kept in deplorably-run state shelter homes, until they are “redeemed” - through marriage, through reclamation by parents, or through a court order.

Conjugality in various communities is different. However, inequality and discrimination faced by

women within the institution of family remains a common concern across communities. Lack of access to justice and an effective redressal system, delays in court procedures, the poor role and status of family counselling centres and family courts, all undermine the protection and fulfilment of women’s economic, social and cultural rights (ESCR) within the institution of family and marriage.

#### *Recommendations*

- The State must take steps towards reforming the discriminatory provisions of personal laws.
- Uphold the right to autonomy in decision making with regard to entering and exiting any relationship as a fundamental human right. The State should ensure this by reforming legal provisions and creating an enabling environment for the application of these provisions.
- Initiate effective and time-bound birth registrations.
- The State should ensure the effective implementation of the Protection of Women from Domestic Violence Act.
- Amend and enforce in a timely manner the legal provision related to alimony, maintenance and guardianship.
- Ensure amendments/notifications in legislative provisions to enable effective redress against discrimination and violence faced by women (Sati Prevention Act 1987, Family Courts Act 1984, Child Marriage Prohibition Act, Rape Laws, PNDT Act, 1994, Special Marriage Act 1954, etc.).
- Ensure a holistic social security policy and programmatic provisions to protect ESC rights of the most vulnerable sections of society.
- The State should withdraw its declaration to Article 16(1) & 16 (2) of CEDAW.
- Ensure the implementation of the Concluding Comments given by the CERD and CEDAW.

## RIGHTS IN THE FAMILY: DECLINING SEX RATIO

### Key Issues

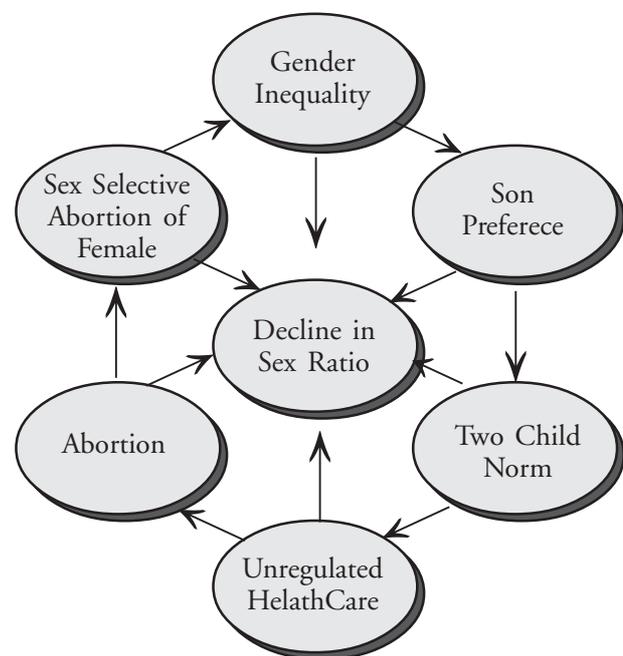
#### India's declining child-sex ratio

Millions of women were missing from the population totals of many countries<sup>1</sup>. In India, the widening gap in the ratio of girls to boys is clearly brought to light in the Census of 2001, confirming a trend that has been in place since 1901. The decline is most pronounced in the youngest age group - 0-6 years - which has fallen to 927. This amounts to 18 points since 1991.

Changes in the sex ratio largely reflect the underlying socio-economic and cultural patterns of a society in different ways. It is an important social indicator to measure the prevailing equity between males and females in a society at a given point of time. An examination of the causes for discriminating against the girl child indicates that they are rooted in rituals and perceptions that go back several centuries: the fear of having to pay for a girl's dowry, the belief that for true salvation a son should perform the last rites, the conviction that lineage and inheritance run through the male line, and that it is the son who will look after his parents in their old age, whereas the daughters will "belong" to another family. Implicit in these perceptions is the antiquated idea that men are the sole bread earners in society.

#### Social Devaluation of Women and Girls

The patrilocal nature of marriage in Indian society transfers the girl from her natal home to her husband's family. She is considered 'paraya',



(belonging to another family) from the day she is born. The prevalent mindset of treating daughters as 'paraya dhan', as burdens to be offloaded at the earliest possible opportunity, denies coparcenary rights to daughters and considers only sons and their sons as worthy of carrying on the family line. A woman's primary role is to produce sons to continue the husband's family lineage. In modern times, marriages in India, whether they occurred within the Hindu, Muslim or Christian communities, involved the giving and taking of dowry. Parents perceive a daughter as a burden as they must meet the demands from the boy's family in order to find a suitable match for his daughter. Although dowry is not legal according

<sup>1</sup> Amartya Sen (1990). 'More than 100 million women are missing', *The New York Review of Books*, Volume 37, Number 20, December

to the law, it is given and taken openly. Dowry is a burden and the marriage of a daughter is a major cause of debt for her family. Ironically, malpractices that defy the provisions of anti-dowry laws continue to flourish and the daughter becomes a burden to be eliminated. The male line of descent and inheritance give an exalted status to sons and reduces the daughter to a secondary position, dependent on and controlled by different men in the family - father, brother, husband, son - at the various stages of her life. The culture of 'son preference' therefore continues to manifest itself.

One important manifestation of the continuing gender bias in our society is the practice of sex selection. This includes a wide range of interventions, ranging from violence in the form of female infanticide and the abandoning or systematic neglect of girl children, to the misuse of medical procedures and technologies like amniocentesis, chorionic villi biopsy, ultrasound and, more recently, sperm separation, for purposes of sex selection. This misuse is a result of a deep-seated, gender-biased mindset and unethical practices aided by a poorly regulated health sector. All efforts to reduce sex selection must continue to address issues of gender discrimination, but they must not further constrain women's access to safe abortion services. Limiting access to safe abortion services would not address the concern of sex-selection. It would only push women towards unsafe procedures and services, thereby endangering their health and survival.

The two-child norm, promoted by the State's family planning policies and programmes, with a view to reduce the national birth rate, stressed on a balanced family consisting of one girl and one boy. But the approach needs to be critically scrutinised, given its negative consequences. The reduction of desired fertility and declining family sizes often results in increasing the pressure on couples to ensure the birth of sons within their smaller families.

Along with an expanding and unregulated private health sector, there has been a wide proliferation of ultrasonograph technology across the country,

especially in the more prosperous states like Punjab, Haryana, Gujarat, Maharashtra, and Delhi. Economic liberalisation and the easy availability of finance further promoted - even in remote villages - access to ultrasonography.

Sex-selective techniques and machines have been in use in India since 1975 – but primarily for the determination of genetic abnormalities, which was after all their designated use. However, over the past few decades, they are being misused in order to determine the sex of the foetus. A study<sup>2</sup> conducted by Kulkarni (1986) revealed that 64 per cent of the 42 gynaecologists interviewed were performing amniocentesis solely for the purpose of sex determination. Only in less than 10% of the cases was it for the detection of genetic abnormalities.

Very early on, in the early 1980s, advertisements of sex-determination tests, put out by private medical practitioners motivated by the prospect of making huge profits by providing abortion services, began to appear both in urban and rural areas. One sales pitch went like this: "Pay Rs 500 (USD 10) now rather than Rs 500,000 (USD 10,000) later". These advertisements were specifically addressing prospective parents, encouraging them to abort female foetuses in order to avoid future dowry expenses. The advertised message projected daughters as a 'liability' for the family and, in a way, exhorted women to avail of the services of such procedures in order to escape the future financial burdens arising from having to get their daughters married (Mazumdar, 1994). This perverse use of technology is encouraged and boosted by money-minded practitioners who are out to make Indian women "male producing machines" (Patel, 1989). New reproductive technologies will only unleash more havoc in an already gender-biased system. Now Assisted Reproductive Technologies (ART) or IVF clinics in fact offer Pre-implantation Genetic Diagnosis (PGD) and provide sex selection through these procedures.

The government, in response to Article 10 of the International Covenant on Economic, Social and

<sup>2</sup> Kulkarni, S. (1986). Prenatal Sex Determination Tests and Female Foeticide in Bombay City- A Study, Foundation for Research in Community Health (FRCH), Bombay.

Cultural Rights, has stated (para 264 in India Country Report to CESCR) that it is committed to the protection of the girl child in India. It goes on to elaborate upon the various steps taken by the government to protect the interests of the child. However, the steps taken by the State have failed to achieve the expected results due to the lack of political will in their implementation, as outlined in the report.

### *Recommendation*

**NGO recommendations to the government** to effectively control the declining Child Sex Ratio are under Article 10 that covers right of family:

- Recognise and respect the rights of women and girls within the family, ensuring gender equality and equity in socialisation.
- Disseminate information on reproductive health and informed choice to create awareness on reproductive rights, unwanted pregnancy and unsafe abortion.
- Prevent children and young persons from social and economic exploitation so that the girl child is not discriminated against and allowed to grow up in a gender just society.
- Make the anti-dowry law more stringent and ensure that it is strictly implemented.
- Reexamine the family planning norm to make it more gender sensitive.
- Frame family welfare policies that focus on the value of the girl child and guarantee the right to education and employment.
- Ensure that a women's right to family property is guaranteed under the law.
- Make sure that the PCPNDT Act<sup>3</sup>, 1994, is strictly implemented and that a watchdog committee is set up to monitor its implementation.

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<sup>3</sup> The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994

# RIGHT TO FOOD

*“... (A)lthough famine has been overcome, millions of Indians still suffer from chronic undernourishment and severe micronutrient malnutrition, especially women and children and people of lower- castes scheduled castes and tribes. Starvation deaths have not been fully eradicated, nor has discrimination against women and against lower castes, corruption, impunity and a wide range of violations including forced labour, debt bondage and forced displacement (destroying people’s access to productive resources) remain serious obstacles to the realization of the right to food.”*

–Jean Zeigler, Mission to India<sup>1</sup>

## Key Issues<sup>2</sup>

### Hunger and starvation amidst “India Shining”!

- India has the highest level of child **malnutrition** in the world, with more than two million children succumbing to hunger every year. Around 47% of children are underweight, 46% stunted in their growth, and nearly 30% are born underweight. Incidences of death due to malnutrition are reported to be highest among children in the rural areas, particularly girls.
- Incidences of anaemia exist in more than 80% of women and girls, as iron intake is less than 50% of the recommended amount.
- Moreover, 80% of the people live on less than US\$ 2 per day and so cannot afford adequate food. Based on the National Sample Survey Organisation (NSSO) data on the basis of calorie intake, a figure of 2,400 calories per person per day was fixed by the Planning Commission<sup>3</sup>; 70% of the Indian population was found at or below the poverty line in 1999-2000.
- Those in the informal sector, especially those who depend on agriculture for their livelihoods - small and marginal farmers, casual workers and sharecroppers - are extremely vulnerable to hunger and malnourishment.
- Migrants, refugees, the urban poor and the homeless do not have ration cards and, therefore, cannot access public services, including food distribution systems.

<sup>1</sup> Jean Ziegler, Report of the Special Rapporteur on the Right to Food, Mission to India, *United Nations, Economic and Social Council (E/CN.4/2006/44/Add.2)*, 2006.

<sup>2</sup> This chapter draws heavily on (a) The Report of the UN Special Rapporteur on Right to Food, Jean Zeigler, Mission to India in 2005 (b) The FIAN Right to Food Report, 2005 (c) Documents emanating from the Right To Food Campaign in India which started in April 2001 and (d) The Mid Term Appraisal to 10<sup>th</sup> Five Year Plan (2002-2007), Government of India.

<sup>3</sup> Dr Utsa Patnaik, “The Republic of Hunger”, 2004, also See [http://www.ideaswebsite.org/featart\\_apr2004republic\\_hunger.pdf](http://www.ideaswebsite.org/featart_apr2004republic_hunger.pdf).

- Dalits and tribals suffer the most from hunger and malnutrition, comprising 25% of the rural population and a disproportionate 42% of the poor<sup>4</sup>.
- Tribals living in forests and hill areas are extremely marginalised and are increasingly losing access to traditional resources, including land. They are being constantly displaced in large numbers due to development projects such as dams, industries, coal mines, power plants and Special Economic Zones (SEZs). Out of the estimated 33 million people displaced, 40% - 50% are tribals. This displacement impacts the tribal way of life, denying them access to natural resources such as fruits and tubers. They are left with no option but to work as agriculture labourers in harsh environments and hostile conditions. The men in the community, especially, are compelled to migrate for long periods and greater distances for their livelihoods. The worst affected by this trend are women, children and the elderly, who show increasing incidence of malnutrition.

### What Is the Government Doing?

India has mainly focused on increasing food availability and access of food but not food adequacy<sup>5</sup>. Production of food grains in the country increased from 50 million tons in 1950-51 to 211 million tons in 2001-02, but this did not translate into improved access to food and household food security.

The Government of India in order to increase access to food has developed various schemes including the Targeted Public Distribution Scheme (TPDS), The Antyodaya Anna Yojana (AAY), the Integrated Child Development Scheme (ICDS) and Mid-Day Meals Schemes (MDMS)

Despite these schemes, and the recent Act for the assurance of work, statistics reveal the persistence of malnutrition and high mortality and morbidity rates<sup>6</sup>. Efforts of the State have been far from adequate and plagued by poor planning and rampant corruption. Starvation deaths continue to be reported in different parts of India including among: tea garden labour in West Bengal, weavers in Uttar Pradesh, the tribals of Gujarat<sup>7</sup> and drought prone districts in Andhra Pradesh<sup>8</sup>. The Mid Term Appraisal of the 10<sup>th</sup> Plan admits the failure of the Public Distribution System (PDS) to ensure food security<sup>9</sup>.

In 1997, India made a shift from PDS to Targeted PDS (TPDS). Under TPDS, Below Poverty Line (BPL) households can buy a fixed amount of food grains at a highly subsidised price, while others can buy fixed amounts of food grains closer to the market price. Instead of ensuring equality<sup>10</sup>, the TPDS, in fact, is a move to shrink the coverage of the PDS and gradually withdraw state benefits for a vast majority of the poor.

Even the BPL identification process is flawed and manipulated by groups with vested interests, resulting in the decreased purchasing power of the marginalised, who cannot afford basic foodgrains.

PDS entitlements only cover 10 - 30% of a person's food needs. Therefore, the PDS and TPDS are unable to address chronic malnourishment due to inadequate food distribution. Although entitlements were changed from 10 kilograms per household per month to 35 kilograms in 2002, these amounts are still inadequate and food grains fail to reach the poorest.

That there is chronic under-allocation<sup>11</sup>, lack of proper and timely distribution of food grains and

<sup>4</sup> Farrington, J., and N.C. Saxena, , *Food Insecurity in India*, Also See : [http://www.odi.org.uk/publications/working\\_papers/wp231/wp231\\_annex1\\_India.pdf](http://www.odi.org.uk/publications/working_papers/wp231/wp231_annex1_India.pdf).

<sup>5</sup> Ibid, Jean Zeigler, 2006.

<sup>6</sup> Citizens initiative for the right of children under 6 (CIRCUS), Right to Food Report India, FIAN, 2005, Page 105.

<sup>7</sup> Soma K Parthasarathy, Case study in a Report on Anandi /Devgarh Mahila Sangathan on gender mainstreaming compiled by Women Power Connect for the UNDP/ WCD, yet to be published.

<sup>8</sup> Ibid, FIAN Report 2005, See cases from UP, AP.

<sup>9</sup> Ibid, Mid Term Appraisal (MTA) Report of the Planning Commission to the 10<sup>th</sup> Five Year Plan, 2005.

<sup>10</sup> Ibid, MTA, Page 196.

<sup>11</sup> The money allocated for the mid day meal - less than 2 euro cent per meal - is not sufficient to provide a quality meal.

leakages in the system are common knowledge. The government also acknowledges that there are losses due to pervasive corruption to a level of 36%<sup>12</sup>. There are numerous instances of the weakening of the PDS<sup>13</sup>; along with overcharging by PDS shops, irregular timings, shortages and black-marketing of grain and requirements for the one-time monthly sale of commodities (despite the majority clientele being poor daily wage earners), and these reveal the drawbacks of the system.

To address the need of women and girls the government has introduced various programmes and schemes such as the **Integrated Child Development Services (ICDS) Scheme**, a national programme that addresses the needs of children under the age of six years, pregnant women, nursing mothers and adolescent girls. 'Anganwadis' (community centres) are meant to provide childcare services, and contribute to women's well being through the provision of rations for expectant mothers. But this is seldom consumed by the women they are meant for and comes to be consumed by the larger family<sup>14</sup>. Also, it only targets women's reproductive functions, whereas women may be nutritionally deprived throughout their lifecycle, given intra-household biases against women and girls who eat the last and the least. Shortages, therefore, affect women the most and are reflected in their malnutrition status. Despite its effort to address gender discrimination, the ICDS has not been able to adequately promote nutrition and food security for women and girls.

### **Exploitative Work Conditions of Anganwadi Workers**

The *anganwadi* workers are also discriminated against. To run the *anganwadis*, women are employed by the State on a part-time basis. They

are among the most overworked and underpaid workers and are often paid wages below the prescribed minimum<sup>15</sup> for tasks that often require more than a full day's work. The Minimum Wages Act is inapplicable to them as the State declares them as "part time".

The government has tried to look after children through the **Mid-Day Meals Scheme**, run by the education sector, which aims to provide food to school children to ensure nourishment and encourage attendance. But the food grains set aside for the scheme are known to disappear on the way to schools from godowns, or are replaced with inferior quality grain. Corruption, theft and manipulation of entitlement documents are some of the common problems plaguing this programme. There are also instances of caste-based discrimination against Dalit children in schools in practices such as cooking and eating together<sup>16</sup>.

### *Questions*

What steps has the Indian Government taken to implement the recommendations made by the UN Special Rapporteur on Right to Food in his report after his mission to India in 2005?

What monitoring plan has the State adopted to curb corruption and other implementation problems of various schemes?

### *Recommendations*

- Implement the UN Special Rapporteur's recommendations.
- As developed countries provide subsidies to keep international prices of basic staple food artificially low, India should stop liberalising basic staple food under trade to avoid the dumping of these products.

<sup>12</sup>Ibid, Jean Zeigler, 2006, Page 13 Para 32.

<sup>13</sup>Ibid, Jean Zeigler, 2006, also Right to Food Report India, FIAN, 2005, Page 19.

<sup>14</sup>"The Integrated Child Development Services (ICDS), launched in 1975, aims at the holistic development of children up to six years of age with a special focus on children up to two years, besides expectant and nursing mothers. This is done through a package of six services: health check-ups, immunisation, referral services, supplementary feeding, non-formal pre-school education and advice on health and nutrition. The Tenth Plan outlay for ICDS is Rs 10,391.75 crore". For details refer to the MTA Report to the 10<sup>th</sup> Plan, Chapter 4.

<sup>15</sup>The wages or "honorarium" of these *Anganwadi* workers has recently been raised in the budget of 2008 but remains below a minimum wage.

<sup>16</sup>Reference to these issues are made in the MTA report and the FIAN report.

# CRISIS IN AGRICULTURE

## Deceleration in agriculture sector impacts livelihood of over 60% of Indians

- In India there are 570 million people in agriculture<sup>1</sup>. This is the largest sector and the majority of the women workers are in this sector.
- Performance of this sector is key to livelihood and food security in India<sup>2</sup>.
- Today 53% of all male workers as compared to 75% of all female workers, and 85% of all rural female workers, are in agriculture. Women constitute 40% of the agricultural work force and this percentage is rising<sup>3</sup>.
- In India the majority of farmers are marginal and small farmers, of whom women dominate. Over 60% households own less than one hectare. Farmers owning over one hectare comprise only about 28% of rural families<sup>4</sup>.
- The share of agriculture sector in GDP declined from 24% in 2001-02 to 17.5% in 2007-08<sup>5</sup>, due to various reasons one of them being inadequate investments.

- The Tenth Plan had aimed to reverse the deceleration in agricultural growth and had targeted a rate of growth of agricultural GDP of 4% per year. Achievements fall far short of targets.

## Acts of Government that have impacted Livelihood in Agriculture Sector

There are several acts of the government that have impacted livelihood in the agriculture sector.

- Under International Trade
  - *Tariff reduction*, imports of food and other produce of farming as well as of inputs have risen in value terms, costly liberalizing imports of seeds and food.
- Changing national IPR (Intellectual Property Rights) laws to allow and promote the commercial seed industry.
  - India's 1970 Patent laws excluded seeds and plants from patentability, allowing farmers the freedom to develop new varieties, and keep seed costs low, resulting in lower food prices. The new

<sup>1</sup> Government of India report to CESCR states that agriculture provides livelihood to over 60% of India's population.

<sup>2</sup> Report of Sub-group on Gender and Agriculture, Submitted to: Working Group on Gender Issues, Panchayat Raj Institutions, Public Private Partnership, Innovative Finance and Micro Finance in Agriculture, For the Eleventh Five Year Plan (2007 – 2012), Planning Commission, Jan 2007.

<sup>3</sup> Ibid, Planning Commission, Jan 2007.

<sup>4</sup> Note sent by Soma Parthasarthy, Solution Exchange, for the Report of Sub-group on Gender and Agriculture, Submitted to: Working Group on Gender Issues, Panchayat Raj Institutions, Public Private Partnership, Innovative Finance and Micro Finance in Agriculture, For the Eleventh Five Year Plan (2007 – 2012), Planning Commission, Jan 2007.

<sup>5</sup> State of the Economy, Sectoral Contribution - Economic Survey, 2007 – 2008.

amendment [3rd Patent (Amendment) Act, 2005] allows the patenting of seeds, plants, micro-organisms, cells, Genetically Modified Organisms (GMOs) and even animals. Making them the subject of patents, thereby denying farmers the possibility of developing patented varieties further to suit their needs.

- The Seed Act 2004 has called for the need of compulsory licensing. It is shocking that the same properties that were originally taken from farmers' varieties today are available to farmers for large sums of money – as royalty or “technology fee” as it is euphemistically called.
- Deregulation of the seed industry, allow MNCs like Monsanto to create seed monopolies and sell unregulated and untested seeds to farmers. Deregulation has also resulted in drastic rise in the price of seed.
- No check on the rise in the costs of agricultural inputs
  - Seeds and pesticides, and the concurrent collapse of farm prices.
  - Cheap imports from heavily subsidised western nations have resulted in increased plant disease necessitating further use of pesticides, large-scale crop failure and have lowered the income of farmers. Coupled with the lack of any corrective action by the state, there has been a drastic increase in the indebtedness of farmers.
- Decline of farm prices for agricultural produce.
- Reforming land laws to allow the takeover of agricultural land for industrial and other purposes.
  - Has led to massive alienation of farmers from their land.
  - The farmer is also being alienated from his land through the creation of Special

Economic Zones (SEZs) to meet corporate demands as was seen in Singur and Nandigram. Hundreds of thousands of acres of mostly farm land, are being given to corporations leading to the destruction of farmers' livelihoods.

### The Indian Agricultural Crisis

Factors contributing to the agriculture crisis are several:

- Decline in public investment in agriculture.
- The move from traditional food crops to cash crops has proved ruinous.
- Farmers borrow heavily for high priced hybrid seeds, chemical fertilizers and expensive pesticides. Indebtedness, crop failure and the inability to pay back loans due to high rates of interest.
- Collapse of cheap and affordable government credit to farmers.
- Cheaper imports compared to domestic products. There is a push to cut production costs by lowering wages and increasing hours of work. The fall in demand results in loss of earnings/work.
- Introduction of new technology which has displaced labour in a big way.
- Inability to find alternative employment has been compounded by poverty and vulnerability.

### Farmer Suicides

- The National Crime Records Bureau data confirms that an appalling 1,50,000 farmers committed suicide between 1997 and 2005 due to debt, poverty, and despair. In the five years from 1997 to 2001, there were 78,737 farmer suicides, averaging around 15,747 each year. Unfortunately, the figures for 2002-05 registered an alarming increase in the deaths – this period saw 70,507 suicides with a yearly average of 17,627 suicides<sup>6</sup>.

<sup>6</sup> Nagaraj, *The Hindu*, Nov 12, 2007.

- While the number of farm suicides kept increasing, the number of farmers has fallen since 2001, with countless thousands abandoning agriculture as a vocation.

### Unemployment and underemployment

A steady decline of employment in agriculture from 63.9% in the 1983 to 59.8% in 1999-2000 has been registered<sup>7</sup>. In fact, a major problem confronting rural areas is the lack of employment opportunities. Unemployment has shown a rising trend and female unemployment has been consistently higher than male unemployment<sup>8</sup>.

### Growing Indebtness

- The NSSO data, 2005, reveals that rural households account for 63% of the country's overall aggregate outstanding debt of Rs 1,77,000 crores.
- In fact, Micro Financial Institutions (MFIs) were charged by the district authorities with exploiting the poor with usurious interest rates and intimidating the borrowers with forced loan recovery practices.

**In the last 5 years India has invested less than 1.5% of GDP annually in agriculture sector which provides livelihood to 60% Indians<sup>9</sup>.**

### Revenue Foregone in financial years 2006-07 and 2007-08 (in Rs. Crore)

	Revenue Foregone in 2006-07	Revenue Foregone as a per cent of Aggregate Tax Collection in 2006-07	Revenue Foregone in 2007-08	Revenue Foregone as a per cent of Aggregate Tax Collection in 2007-08
Corporate Income Tax	45034	9.56	58655	10.09
Personal Income-tax	32143	6.82	42161	7.25
Excise Duty	75475	16.02	87992	15.14
Customs Duty	137105	29.11	148252	22.51
Total	289757	61.51	337060	58.00
Less Export credit related (Sl. No. 14 of Table 10)	50045	10.62	58416	10.05
Grand Total	239712	50.89	278644	47.94

Notes: (1) Aggregate Tax Collection refers to aggregate of net direct and indirect tax collected by the Central Government

(2) The figure of Aggregate Tax Collection for 2006-07 is based on actuates while that for 2007-08 it based on revised estimated

To conclude the amount of revenue foregone continues to increase year after year. As a percentage of aggregate tax collection revenue foregoer remains high even though a dealing trend is noticeable. This trend reflects the success of the tax reforms undertaken by the Government during the last four years. Moderate tax rates and base expansion are the two essential elements of such tax reforms.

Source: Receipt Budget, Union Budget 2008-09 (from CBGA, Budget 2008 -09: Reaffirming Rhetoric? Response to the Union Budget 2008-09)

<sup>7</sup> *Economic Survey*, 2001-2002, Page 240.

<sup>8</sup> *Ibid*, Planning Commission, Jan 2007.

<sup>9</sup> Centre for Budget and Governance Analysis, *Budget 2008 – 09: Reaffirming Rhetoric?*, Annual Financial Statement, Union Budget for various years, page 56.

What millions of farmers get is simple gratitude (and credit), whereas a few hundred rich walk away with almost an equal amount as direct income (money saved by way of tax exemptions is like money earned)<sup>10</sup>.

- The overall trends in expenditures on agriculture and rural development are not only progressively meagre but are dismal. The share of agriculture and allied sectors was only 3.9% of total Tenth Plan outlay as against 4.9% in the Ninth Plan<sup>11</sup>. The share of agriculture in total gross capital formation (GCF) had progressively come down from 15.4% in 1980-81 to about 8% by the end of the Ninth Plan (2001-02), and that as a percentage of GDP it has declined from 3.5 in 1980-81 to 1.6 in 2001- 02<sup>12</sup>.
- Comparatively, loss of revenue from numerous tax concessions, exemptions and incentives, the total excise, customs and personal income tax and corporate income tax exemptions extended to the rich corporate in 2004-05 was Rs 2.06 lakh crores and Rs 2.35 lakh crores in 2005-06<sup>13</sup>. And almost 2.4 lakh crores in 2006 -07 (table in page 52).

### Question

- Considering the alarming situation, why does the Indian government invest so little in agriculture sector?
- What alternative to agriculture does India have to sustain livelihood of 1 billion people?
- Why can't the rich corporates be asked to avail more credit, and why can't there be the direct income support for the farmers?

- Why can't the Indian government provide farmers with steady and assured monthly incomes?

### Recommendations

- All outstanding debts of small and marginal farmers owning less than 5 acres of land in irrigated areas and 20 acres in un-irrigated regions should be written off.
- The interest rate for farm loans should be no more than 4% across the board.
- Similar to the tax subsidies provided to the corporate sector, equal and proportionate direct income support should be extended to farmers.
- The government should stop reimbursing industries for the production of fertilizers. These funds (approximately Rs 50,000) meant for fertilizer subsidy should be provided to the farmers as an encouragement to engage in organic farming, which will lead to a reduction in the cost of production and will rejuvenate the soil.
- Since women constitute the majority of farm workers, training programmes based on needs identified by women, should be organised.
- Correct the statistical invisibility of women's work through preparation of a satellite account that should include in detail the work that women undertake. Policies and funds allocation need to take cognisance of this, address women's needs and correct the deprivation and marginalisation suffered by women and especially those living below the poverty line<sup>14</sup>.

<sup>10</sup>Devinder Sharma, "A Budget for Farmers", Daily News Analysis, February 21, 2008, Also See, <http://www.dnaindia.com/report.asp?newsid=1152200>.

<sup>11</sup>"Agriculture and Food Security", Mid Term Appraisal of 10th Five Year Plan (2002-2007).

<sup>12</sup>Ibid.

<sup>13</sup>Ibid, Devinder Sharma February 21, 2008.

<sup>14</sup>Demanded by National Commission for Women, MWCD and women's groups in the, "Report of Sub Group on Gender and Agriculture", Submitted to: Working Group on Gender Issues, Panchayat Raj Institutions, Public Private Partnership, Innovative Finance and Micro Finance in Agriculture, for the Eleventh Five Year Plan (2007 – 2012) Planning Commission, January 2007.

## 13

# RIGHTS TO ADEQUATE HOUSING AND LAND

## Key issue

**Increasing numbers of people rendered homeless or forced to live in inadequate housing and/or high-risk habitats in both rural and urban areas.**

- Census 2001 shows almost one quarter (23 percent) of total urban population of 286 million living in slums. The actual figure is likely to be higher since only 607 cities were covered in this pilot effort.
- The majority of the population in the metros live in slums (60% in Delhi and 50% in Mumbai according to civil society estimates). This number will increase if those living in sub-standard housing are also taken into account. Official data for Delhi shows that only 27 percent of the population lives in planned and authorised housing<sup>1</sup>.
- According to official estimates, the urban housing shortage for the period 2007 and 2012 stands at 26.53 million dwelling units, the largest gap being in housing for families at the bottom of the economic ladder<sup>2</sup>. The bulk of this shortfall is in housing for those at the bottom of the economic ladder. The total rural housing shortage for 2007-2012 has been projected as 47.43 million, of which 90% is accounted for by families below the poverty line<sup>3</sup>.
- There has been no systematic census of slums and slum dwellers since 1991, despite the fact that such a census was recommended in the Draft National Slum Policy. As a consequence, millions of citizens are deprived of legal proof of identity and residence.
- The most acute housing distress is experienced by homeless people, whose numbers remain uncounted despite a clear increase. There are no government schemes for homeless people, who are routinely criminalised, dehumanised and deprived of their entitlements as citizens.

Reliable estimates from civil society puts the homeless population in the city of Delhi alone at 100,000, of which 10,000 are women<sup>4</sup>. Less than 10 percent of this population is accommodated in night shelters during the bitter Delhi winter, with night temperatures of 0-4 Celsius. The only night shelter for women was closed recently.

## Questions

In its report to the Committee, why has the Government quoted the 2002 estimate by the National Sample Survey of 8 million urban households (around 40 million population) living in slums, rather than the Census figure which is approximately five times higher? Which is the figure being used by the government in planning

<sup>1</sup> Government of Delhi. Delhi Economic Survey for 2002.

<sup>2</sup> Report of the Eleventh Five Year Plan Working Group on Urban Housing, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2007.

<sup>3</sup> Report of the Eleventh Five Year Plan Working Group on Rural Housing, Ministry of Rural Development, Government of India, 2007.

<sup>4</sup> Ashray Adhikar Abiyan <[www.indev.nic.in/delhishomeless](http://www.indev.nic.in/delhishomeless).

interventions for this population? If the lower figure is being used, what is the rationale and what impact has this had on budget allocations?

- What is the total amount allocated for housing-related schemes by the Ministry of Urban Development and by State Governments receiving assistance JNNURM? How many families are expected to benefit?
- What was the actual expenditure during the Tenth Plan on rural housing schemes for families below the poverty line? Has there been any analysis of the reasons for the gap between allocation and expenditure on rural housing? How have the recommendations of the mid-term review of the Tenth Plan been addressed in the Eleventh Plan period?

**Increase in forced evictions and development-induced displacement without adequate compensation or rehabilitation of affected families.**

- Displacement due to large development projects, awarding of leases to corporations for exploitation of natural resources and most recently, designation of large areas as Special Economic Zones (SEZs) has resulted in displacement for millions of families, most of who have not received either financial compensation or alternate land and housing sites. The two decade-long movement of the Narmada oustees is a global landmark of sustained struggle, but has failed to have an impact on the Government of India in terms of recognition of human rights principles as central to development, or even in terms of the establishment of principles for adequate and fair compensation and rehabilitation.
- SEZs are being set up in parts of the country which are already quite developed, on rich agricultural land and in areas around the metros and major ports. A skewed pattern of regional development can be expected to

result, which will be reinforced by the setting up of mineral industry-based SEZs on lands occupied by indigenous communities in Orissa and Chhattisgarh<sup>5</sup>. More than 2,500 square kilometres of land have been acquired and more than 35,000 families have been rendered homeless because of SEZs, many of which are violative of environment protection laws and have questionable developmental benefits.

The Government of Maharashtra is planning to acquire 5000 acres of land in Malad, Gorai and Uttan for an entertainment/tourism SEZ. The land will be handed over to Esselworld, a company that already runs an amusement park in Gorai, to expand their venture<sup>6</sup>. Women from the fisher communities and East Indian Christians who have lived here for generations have been protesting for some time against this proposal.

In Mundra, Gujarat, legislation on environmental protection and coastal zone regulation has been violated and large tracts of land handed over to the Reliance Group for an SEZ. No environmental or social cost-benefit analysis has been carried out here or in any other SEZ.

- Massive eviction drives have been mounted by state governments in the metro cities. More than 40,000 families having been evicted from informal settlements in Delhi in the lead-up to the Commonwealth Games. An estimated 90,000 homes were demolished in Mumbai between November 2004 and March 2005. Evictions have increased as a consequence of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), the externally-aided flagship programme that makes aid to State governments for urban development conditional on implementation of measures for opening up and privatising land and housing markets. The total number of families affected by evictions in the 64 cities where JNNURM is currently being implemented is estimated by activists as well over one million<sup>7</sup>.

<sup>5</sup> Analysis of SEZ policy and human rights impacts of SEZs in Seminar, February 2008 (special issue on SEZs available at <[www.seminar.org](http://www.seminar.org)>

<sup>6</sup> Women's Centre, Mumbai.

<sup>7</sup> Testimonies and evidence on JNNURM presented at the Independent People's Tribunal on the World Bank, September 2007, New Delhi. Documents and reports available at <[www.worldbanktribunal.org](http://www.worldbanktribunal.org)>.

In Mumbai, more than 200 houses were demolished at Sainath Nagar, Irla Nala, Juhu on 24 December 2007 under the Brihanmumbai storm water drains project, which is being implemented under funding from JNNURM

- Evictions are accompanied by violence, particularly against women and children, by police and state agencies. Instances of violence have been widely documented and reported by independent reporters and the mass media.

The demolition of a settlement of 30,000 families in Yamuna Pushta, Delhi in 2004 took place under the supervision of a huge police force. Several battalions of armed police from the Uttar Pradesh PAC – notorious for its brutality - cordoned off the area. Men who rushed back from work when they heard that the demolitions had started were not allowed inside the cordon. People had not even removed their belongings and possessions from their homes when the demolition started. In many cases, children and old people were still inside when the houses were demolished. Those who resisted were mercilessly beaten and chased away by the police. Women and children were not spared and many were seriously injured. The ruined colony was then set on fire as residents tried to save their belongings. The violence continued long after the demolitions, with police attacking people with bamboo batons as they tried to retrieve their belongings or scavenge for building materials in the ruins of their homes. There were at least five deaths, including two suicides<sup>8</sup>.

- Resettlement colonies are situated on the margins of the city and the quality of housing and amenities are well below minimum standards. The lives and livelihoods of entire communities have been destroyed, and the rights of children and women seriously undermined.

A recent study of economic and social conditions of the 3000 families forcibly evicted from Yamuna Pushta to Bawana, 50 km away on the margins of the city found that one in five men and one in three women in the age group of 18-60 are not working, despite the fact that they need to and want to work. Unemployment rates for women in Bawana are double the figures for Delhi. The study also exposes a high rate of under-employment or “hidden unemployment” – workers who are “working harder and getting less”, who are working much below their capacity and potential and who are not earning even the minimum wage. The majority of workers are engaged in the informal sector, and there is a clear stratification of occupations by religion and gender with Muslims and women being at the bottom of the scale. Women workers and women-headed households in Bawana are significantly worse off than men, with fewer opportunities and lower earnings in wage work, and poorer assets and narrower profit margins if self-employed. Women also work longer hours than men in similar occupations, since they continue to be responsible for care work in their own homes. The location of the resettlement colony on the outermost periphery of the city emerges as a major cause of the new poverty that has been created by the evictions. Significant numbers of workers continue to work in their previous occupations and travel to their old work sites, not from choice but because of the lack of work opportunities in the vicinity of the resettlement colony. Although they earn the same wage, their expenses have gone up by at least 50 percent since the move to Bawana<sup>9</sup>.

### *Questions*

- What measures is the government taking to minimise evictions across the country?
- What process does the government follow before carrying out an eviction? What safeguards are in place to ensure compliance

<sup>8</sup> Eyewitness reports by members of the Vistahapan Virodhi Abhiyan, an independent coalition of citizens against evictions.

<sup>9</sup> Menon-Sen, K and Gautam Bhan, “Swept Off The Map: Surviving Eviction and Resettlement”, Yoda Press and JAGORI, New Delhi, 2008.

with India's obligations under Article 11.1 of ICESCR, General Comments 4 and 7 of the Committee on Economic, Social and Cultural Rights, as well as other international human rights standards<sup>10</sup>?

- Are environmental impact assessments and/or social cost-benefit analyses carried out before sanctioning SEZs? Please provide some sample reports.
- How many families have been evicted from government-owned land in the four metros in the last five years? How many of these families have been provided with alternative housing? Can the government provide city-wise figures with sources of data?
- What are the standards for adequate housing, basic services and social security in resettlement colonies? Is the government complying with international human rights standards? How have these standards been benchmarked? What are the indicators for monitoring these standards?

#### Violations of land rights of women

- Time-use data and agricultural census figures indicate that well over 50 percent of all agricultural work in the country is performed by women. Nearly 20 percent of rural households are now women-headed<sup>11</sup>. However, less than 2 percent of women hold titles to land and have access to independent agricultural credit. The impoverishing impact of landlessness is exacerbated by social exclusion and discrimination for Dalit women.

Studies of the practice of witch-burning in Rajasthan and Bihar, where the practice is prevalent, have found that the victims are most often single Dalit or Adivasi women with independent landholdings.

- An existing Government of India directive (issued in 1992) on joint registration of land distributed under government schemes in the name of both husband and wife are neither enforced or monitored.
- Recent amendments to legislation on Hindu women's property rights (Hindu Succession Amendment Act, 2005) have mandated equal inheritance rights for men and women in agricultural land and family property including dwellings. However, these amendments do not apply to non-Hindu women. The extent to which Hindu women will be able to take advantage of these provisions in a milieu where dowry is still prevalent, remains to be seen.

#### Questions

- What percentage of housing units distributed under government schemes in the last ten years has been registered in the joint names of husband and wife and in the names of single women? What measures have been instituted to enforce directives in this regard?
- How many hectares of ceiling surplus lands have been vested and distributed to landless families in the last ten years? What percentage of this land has been registered in the names of women or men and women jointly? What measures have been instituted to enforce directives in this regard?

<sup>10</sup>These include the UN Basic Principles and Guidelines on Development-based Evictions and Displacement, Available online at: [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf).

<sup>11</sup>NAWO, CEDAW Shadow Report, 2006.

# LIVELIHOODS DEVELOPMENT AND DISPLACEMENT

## Key Issues

More people are increasingly driven to seek tertiary and casual work

- India accounts for more than 40% of the world's poor, with a significant majority being women<sup>1</sup>. Livelihood security, education and autonomy of these poor communities have occupied little of the policy makers' priorities and concerns<sup>2</sup>. There is a marked shift away from agriculture in the mindset of policy makers, reflected in the investment in agriculture, and the consequent low contribution of agriculture to GDP<sup>3</sup>. (also refer to the chapter on Crisis in Agriculture)
- The majority of India's workforce remains in the unorganised and informal sector, outside the purview of social security<sup>4</sup>, confined to low paying, marginal occupations in the informal sector as casual labour, piece rate workers, service providers, etc.
- Men have been moving out of the agriculture sector, as it becomes increasingly non-remunerative. Consequently, in Maharashtra for instance, the number of women in farming and related activities has increased.

- Despite women emerging as the visible mainstay of the rural economy, especially in small and marginal farming households, their names are not included in the *kisan* credit cards (farmer's credit card), since they do not own the land. Neither is their entitlement assured during times of crisis, like floods and droughts.

**There is Increasing dependence on wage work as sustainable resource based livelihood options are destroyed by State policies**

- The government is compelled to provide wage work in absence of livelihood options across sectors to enable poor people to sustain themselves. (also refer to chapter on Right to Work)
- In promoting multiple self-employment schemes<sup>5</sup> as a means of enabling the poor to address their impoverishment and lack of employment, the State is shying away from its responsibility of provision of employment to assure a minimum standard of living.
- The required minimum standards of education exclude the rural unskilled and

<sup>1</sup> Kelkar Govind and Dev Nathan, Gender, Livelihoods & Resources in South Asia, 2005.

<sup>2</sup> Government's claims that poverty has reduced in recent five-year plan period are in fact refuted by Jayati Ghosh and Utsa Patnaik through their research. The reality of the adverse impacts of development is shrouded under the veil of definitional alterations relating to the identification of the poor and the hungry to standards far below those adopted earlier.

<sup>3</sup> De Monte Daryl, (NCEUS), 2007. Farms or Factories? Agriculture is contributing a decreasing percentage of the country's GDP. It contributed 21% of GDP in 2001, but now has a share of only 17% but more than 60% of the employment is still in agriculture Sector. Infochange news and features service 2008 NCCL and Shramshakti (national Commission on Self Employed Women and women in the unorganised sector GOI 1988, National Commission for Enterprises in the Unorganised Sector (NCEUS) 2007 etc.

<sup>4</sup> NCCL and Shramshakti (National Commission on Self Employed Women and women in the unorganised sector GOI 1988, National Commission for Enterprises in the Unorganised Sector (NCEUS) 2007.

<sup>5</sup> Such as Swarnajayanti Gram Swarozgar Yojana (SGSY) in rural and Sampurna Gramin Rozgar Yojana (SGSRY) in urban areas.

illiterate especially women from vocational training programs, and they are compelled to seek options to cope with the agriculture distress and dispossession from land.

- There is also a delay in the adoption of a National Minimum Wage Policy despite recommendations of the committees appointed by the government (para 101)<sup>6</sup>.

### **Reduce access to land as a livelihoods resource for the marginalised**

- Despite proclamations by the state for Land reforms and land redistribution the skewed pattern of land distribution continues to persist in India, as majority of poor, rural households remain in the marginal and landless category.
- In several regions especially in areas of mineral resources the poor are being divested of access to their land. Numerous cases bear evidence to the increasing demand on land by multiple actors for commercial gain, at the cost of land rights to the poor.
- Provisions for distribution of land by the government in the joint names of women and men are followed in the breach due to deeply entrenched gender biases and cultural resistance within the administration as well as in families; despite the notifications for this announced almost a decade ago.
- The Hindu Succession (Amendment) Act, 2005 is a landmark step as it brings all agricultural land on par with other property and makes Hindu women's inheritance rights in land legally equal to men's across States, overriding any inconsistent State laws<sup>7</sup>. This can benefit millions of women dependent on agriculture for survival if it is effectively implemented and the cultural barriers to its acceptance addressed. There is however little

effort to create awareness about the content of this law and nor are there serious initiatives to strengthen the right of women to property as a means of economic empowerment for women. The linkages of gender equality with the overall objectives of economic development continue to elude policy makers.

- Systems of monitoring and maintenance of land records are inadequate and do not provide gender and class/caste disaggregated data for a realistic assessment of land ownership and entitlement.
- Land reforms has served as a pretext for the state to acquire land amounting to thousands of acres. While some of this has been reportedly handed over to Dalits and Tribals, there is little known of the utilisation of the balance land mentioned in the government report to CESC. On the contrary there is evidence of the state withdrawing such awards of land to the marginalised population and reallocating them to external private parties<sup>8</sup>.

### *Questions*

- In what ways has the Indian government sought to address the crisis of livelihoods that is impacting the small and marginal farmer in India and what measures are being adopted to enhance their viability?
- What measures has the Indian government adopted to recognise women as farmers and to enhance their entitlements to government support and services in this capacity?
- What measures is the government taking to ensure the protection and entitlement of the poor to land as an economic resource? Why has the land reform policy not been still implemented?
- Why does the land records not reflect gender and caste disaggregated ownership patterns?

<sup>6</sup> Most recently, the 2nd National Commission on Labour 2002. The prevailing norm is the floor level minimum is being accepted as the norm.

<sup>7</sup> Bina Aggarwal, 2005: While the Hindu Succession (Amendment) Act, 2005 is a milestone, will it give women the security they seek? Sunday, Sep 25, Online edition of India's National Newspaper (<http://www.hindu.com/mag/2005/09/25/stories/2005092500050100.htm>).

<sup>8</sup> Van Panchayat Sangharsh Morcha, Uttaranchal Van Panchayat Rules-A critique(translated) Uttarakhand, submission for the ESCR Alternate report, 2008.

### Gender inequalities reinforced by state's economic policies

- Women are the worst victims of this process of breakdown of livelihoods, which has resulted in increase in feminisation of poverty and violence against women and children. Little attention is paid to gender inequalities in economic opportunities and women's right to resources, voice and agency in development. Current employment policies fail to incorporate women's concerns or overlook gender relations of inequality.
- Government of India's report to CESCR acknowledges that women constitute the largest group of unskilled workers, concentrated in the informal economy as casual or piece rate workers with no redressal measures in sight.
- The absence of systematic and gender disaggregated data on resettlement and rehabilitation, distribution of resource rights, income and assets reflect the apathy of the state machinery to the needs of those who are worst impacted by the negative processes of development. Women are seldom consulted or involved in the development spaces of such communities, and the least likely to be considered in situations of displacement and eviction for allocation of land or compensations<sup>9</sup>.

### Question

- What measures is the Indian Government taking to ensure that the adverse impacts of development are not disproportionately borne by women?

### Inappropriate models and priorities of development are threatening the lives and livelihoods of tribals and other forest-based populations.

- There is a threat to the lives and livelihoods of tribals and other forest-based populations.

The majority of indigenous population looks toward the forests for its daily needs, shelter, implements, as well as produce to trade in. Forest-based livelihoods have often been usurped by better-off external parties, or the Forest Department, which promotes the commercial use of forests. Despite the passage of the Forest Rights Act<sup>10</sup> peoples rights to traditional resources are being denied and threatened. The new legislation is a weakened version of the demands of forest dwellers and does not incorporate the interests of women. Nor does it provide for their effective representation in decision-making. (also refer to chapter on Indigenous Peoples' Right)

### The issue of shifting cultivation in the five districts of Eastern ghats of Andhra Pradesh.

Millions of indigenous and tribal peoples are affected by logging, mining, oil, gas, hydropower, expansion of agriculture, as well as wildlife conservation project activities as policy makers and enterprises decide the fate of the forests. The Andhra Pradesh Forest Department's program through its Joint Forest Management program evicted the indigenous and tribal communities from approximately 36,000 hectares of podu land (community owned traditional land) which they were cultivating from three generations for livelihood<sup>11</sup>. The project was delayed by more than 18 months when the local organisation filed objections to the World Bank against AP Forest Department, only to be subsequently resumed with a focus on implementation of the controversial Resettlement Action Plan (RAP). Support NGOs and member organisations protested to highlight that the multiple violations in the RAP of World Bank safeguard policies, including the Bank's Resettlement Policy and its Policy on Indigenous Peoples and its RAP in contravention of State government commitments to protect interests of forest-dependent communities.

<sup>9</sup> National Commission for Women, New Delhi, 2004 'Development-Induced Displacement in India: Impact on Women' National Commission for Women, New Delhi.

<sup>10</sup>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, is a key piece of legislation passed in India in Dec 2006 and notified in Jan 2008. For more on the Act read Prasad, Archana (December 30, 2006). "Survival at Stake". Frontline 23 (26).

<sup>11</sup>After 1990 & 2002, the World Bank funded more than Rs. 700 crores under implementation of JFM (Joint Forest Management program) and CFM (Community Forest Management program).

### Question

- What measures has the government taken to ensure that the rights of tribal and indigenous people to forest resources are not violated? How effective have these mechanisms been in preventing the alienation of such communities from their traditional rights?

### **Development induced Displacement due to distorted and shortsighted policies is impacting the livelihoods of large populations in various parts of the country.**

- State controlled forest cover has increased, while forest dwellers are displaced for projects of development. More than 55% of the total numbers of the displaced are tribals<sup>12</sup>, which points to an unprecedented violation of their rights. This has been done largely for mega dams, mining activity and tourism<sup>13</sup>. Land have been declared barren and diverted for alternate uses with little concern for the various livelihood activities that it supports. Lands earmarked for communities to undertake collective action are diverted through Self-Help Groups (SHGs) and are enabled by State policies to fall under the control of corporate interests.
- Displacement has increased the vulnerability of households headed by women as livelihoods are destroyed. Women and young girls have become victims of large scale labour force at unorganised sector, forced trafficking, prostitutions.

The MoU signed by the Jharkand Government and Mittal, Tata, Jindal Steel, and Power Company Limited for the establishment of steel plants in mineral rich Kolhan Region would replace 10, 000 families and create deforestation of 57.15 percent kms Land<sup>14</sup>. Yet the state turns an oblivious eye to their rights and status and pursues policies that are likely only to deepen this crisis.

<sup>12</sup>Tribals constitute 8.3% of the population of India.

<sup>13</sup>SAARC Human Rights Report, Asian Centre for Human Rights, New Delhi, 2006. The Sardar Sarovar Project the largest dam being constructed on Narmada river would displace 40,00,000 persons, and 30,690 families and 117 villages would be affected in Madya Pradesh alone.

<sup>14</sup>ibid.

### Questions on Displacement and state violence

1. What measures has the state adopted to reflect its serious attention to the increasing spate of displacement of people in India especially of tribals due to development policies and conflict?
2. How effective are the measures contained in the Resettlement and Rehabilitation policy?
3. To what extent do the measures promoted by the government of India to address distress of migrant populations?

### **Right to Water of marginalised communities are compromised**

- The right to water is not recognised as a fundamental right by the Indian Constitution. Lack of a holistic approach to water resource planning is a significant factor for the current crisis. Water is a state subject and policies for its use are being determined by different sectorial interests. This fragmented view has resulted in the indiscriminate use of water resources for irrigation and the over-exploitation of ground water resources earlier for agriculture and now with primacy for industrial use. This is adversely affecting the use and availability of water for domestic and community use, especially for marginalised communities.
- This pattern threatens the sustainable and equitable use of water, as access to water resources for industry is now prioritised, and privatisation of water is slowly gaining ground in policy decisions. The onus of entitlement to water is thus being shifted from the domain of rights to the domain of the market, with the State gradually withdrawing from its responsibility to manage this resource for the interests of common people.
- Increasingly, the water sector is being opened up to private parties and water rights are likely to be traded at the cost of equity. As part of the new reform process in the domestic water

sector, capital cost recovery has been introduced, leading to privatisation of water resources where users are expected to bear 10% of the capital cost. The adverse impact of this is already being experienced by female-headed households and marginal communities in Uttar Pradesh as well as Uttarakhand, for instance, as a significant part of income now goes to procure water for basic use. Rights over groundwater, given to soft drink manufacturers like Pepsi and Cocacola, as well as to the chemical and other industries, have affected the availability of drinking water, both in terms of quality and quantity. Plachimada, in Kerala, is a classic example of this, and there are many other examples.

- The fragmentation of water management and the nature of policy making have restricted women's participation in decision making. Often women are not allowed to become members of water users associations, formed for irrigation water, since they do not own land. Access to water for production and livelihood is not equitable to all.
- Access to domestic water, although equal in principle, is still determined by caste and affordability. For instance, violence against Dalit women has been reported extensively during the drought years from the Marathawada region of Maharashtra.
- Despite some innovations, State programmes still tend to ghettoise women in the role of the beneficiary or end-user at the household level rather than as an actor in the water sector. Also, the trend of treating water as a market commodity has led to its management and distribution processes moving away from communities and from women.

**Tourism projects are promoted to enhance state and corporate revenues, with little concern for the livelihoods of the local people**

- Tourism development projects propagated as “clean and green” and employment generating,

have both direct and indirect adverse impact on peoples' rights, livelihood, access to resources and social fabric and also results in displacement<sup>15</sup>. Tourism has also played a role in the eviction of indigenous people, fishing communities from their ancestral lands only to then open them up to 'tourism', packaged in various names like “eco-tourism”, “beach-tourism”, “wildlife tourism” “adventure tourism”.

- Rehabilitation and resettlement measures do not take into account projects where the physical impact is not visible<sup>16</sup>. Although the physical displacement of people may not be very large in some instances, it has affected people's access to the coast and their ability to pursue their traditional livelihoods. The Taj Fort Aguda Resort in Goa has used about 73-acre land on Calangute beach, one of the major attractions for tourists. This has impacted upon the earnings of small shack owners and communities dependent on fishing. Gains of subsidised land, tax concessions, import advantages and leakages in tourist trade flow to the big business houses, often at the cost of the rights of workers in tourism and indigenous people, with the local communities gaining very little too.
- Tourism has not proven its claim of generating quality and secure employment for local communities; instead increasing cost of living for local communities. The impact of diversion of peoples essential needs like agricultural land and access to natural and common property resources like forests, beaches, ocean and lakes, as well as the diversion or privileging water and electricity supply to tourist enterprises like hotels, amusement parks is least acknowledged. The abuse of women and children is a social cost associated directly with the tourist trade. Many are forced into sex work and trafficking. The growing prevalence of HIV/AIDS in some pockets is linked directly to tourism.

<sup>15</sup>Enclavisation of Tourism: Special Tourism Zones in India, Vidya Rangan, EQUATIONS, presented at the 5th International Critical Geographies Conference December 2007, 3rd – 7th December 2007, Mumbai, India

<sup>16</sup>For instance in Goa, star category hotels and resorts have come on the beaches. On an average each of these star-category resorts have used about 20 acres of land on the beach.

- Besides the ecological damage and losses incurred through environmental destruction such as deforestation to make way for golf courses, amusement parks, wildlife safaris, theme parks, ecotourism projects, beach resorts, water sports, mountain tourism etc, there are strong links between tourism growth and water scarcity<sup>17</sup>.

A multi-million dollar project to build a huge statue of Buddha and develop Kasya (the site where Buddha spent his last days) in Kushinagar as a tourist site threatens to displace 700 families from 600 acres of cultivable land.

In Sindhudurg, a stretch of land of 84 kms in length and 1 km in width, situated on the south Konkan coast belt was identified by the central government to be an STA. Large acres of agricultural land were acquired by the government for the construction of 5 star hotels, resorts and the proposed Oros Airport. Tourism development model in the region was to cater specifically to the needs of foreign tourists with the sole intention of bringing in foreign exchange. The image of Sindhudurg as a 'foreign tourist destination' has not only made it completely inaccessible to domestic tourists due to its ultra – expensive nature but also has gradually adulterated its socio – cultural ethos.

Tourism activities have caused the displacement of locals from areas like Mithabao, Tarkali, Shiroda and Malwan giving rise to anti – tourism protests and demonstrations in many places. The project failed to understand the ethos and concerns of the

local community with respect to issues related to livelihood, the environmental degradation to the region and cultural erosion. The only motive behind the project was generating greater revenue and creating a tourist hub on the lines of Goa.

### *Questions*

How does the government ensure that tourism and other development initiatives do not cause displacement or loss of livelihoods for the resident communities in the regions?

**Migration has emerged as a livelihood option due to non-availability of employment in local areas or due to distress in the traditional occupations, as well as due to conflicts that may exist in the region.**

International migration has clearly emerged as a livelihood option for the poor as well and has a gender dimension. Women migrate for livelihood needs sometimes as domestic workers to support themselves and their families. This leads to a double, or even quadruple exploitation: paid poorly by the employers; their earnings taken by their families; sometimes sexually assaulted; and rejection by families. Internal migration offers an option to the lack of options in rural areas with the lack of investment in agriculture and appropriate infrastructure to generate employable skills and opportunities for those alienated from traditional occupations.

### *Questions*

What measures has the government instituted to protect those migrating?

<sup>17</sup>ibid.

# 15

## WOMEN AND MICRO CREDIT

### Key Issues

#### Prioritizing Financial Efficiency and Reduced Focus on Solidarity, Equity and Justice

- India's experience with thrift and credit as a means of creating resources in the hand of the poor and enabling women to address their practical and gender needs predates the current preoccupation with micro finance. Those models<sup>1</sup> in fact created a means for women to enter the development space and participate in the public sphere, and to define the processes of development from their perspectives. The strength of these initiatives lay in their focus on the holistic empowerment of women, and in enhancing the collective capacities of women to support each other and to challenge class and gender based oppressions at various levels, while incorporating thrift based credit as a key element to enhance their access to resources and services.
- Claims of weakening of seclusion and a greater sense of dignity due to access to credit

through their groups are offset by an increasing work burden, and have seldom led to a challenging of gender relations - especially in the majority of micro credit based SHGs (Self Help Groups) that are under the government sponsored programs.

- SHGs currently encourage short term lending cycles and almost immediate initiation of the recovery cycle, leaving little leeway for women to invest their loans in asset creation through acquisition of land etc<sup>2</sup>. Even where women have utilised loans from groups for release of land from mortgage, their names have seldom been included in the entitlements<sup>3</sup>.
- 64% of the groups formed under government programmes had not taken up any social issue for the last two years. Women in SHGs claim that the groups that they are a part of are savings-driven process, where little discussion actually happens around decisions or around working together on a collective agenda such as issues of violence against women or

<sup>1</sup> SEWA and Working Womens Forum were among the first initiatives to provide women with access to credit based on their own thrift and through structures of mutual support, embedded in the solidarity processes of Unions and group formation at the grassroots level. For more information please refer to publications on these experiences as well as the experiences of MYRADA which contributed significantly to the formulation of a group based micro credit and IGA program initiative for women by the government of India in the form of the DWCRA program in 1985 and later the NABARD scheme for Self Help Groups in the early 1990s.

<sup>2</sup> Some groups such as DDS have promoted loan utilisation for collective land lease etc, but have varied the terms of the lending to serve such processes, (See Govind Kelkar- The Feminisation of Agriculture in Asia: Implications for Women's Agency and Productivity UNIFEM South-Asia Regional Office, New Delhi UNIFEM IFAD), whereas the current model adopts a standardisation approach.

<sup>3</sup> There are groups that have proven how these elements can be successfully incorporated within the process of group formation even while thrift and credit are part of the model in organisations such as DDS in Andhra Pradesh and Anandi in Gujarat. Their focus has been on the creation of an alternative gendered view of sustainable livelihoods.

challenging customary exploitative practices such as dowry<sup>4</sup>.

### Question

- Various assessments of the micro credit programs undertaken by the government and private sector with respect to their impacts on the poor and on women have emerged. How is the government addressing these concerns and anomalies in the micro credit program to ensure that processes of inclusion and women's empowerment are effectively incorporated?
- What measures does the government propose to take to enhance investment and sponsorship of opportunities for women's learning to enable and enhance their engagement with the rights agenda.

**Micro credit is being used as means for promoting privatisation of goods and services and livelihoods resources while state withdraws from the social sector.**

- Studies have shown that the major portion of lending from micro credit groups goes towards health expenditures in the initial period as the state run services are either defunct or in a pathetic condition.
- Similarly in the context of livelihoods and natural resources, evidence shows that disparities between women and men in their access to and control over resources. A de-recognition and devaluation of traditional roles - in agriculture and natural resource activities - and primacy placed on the marketised economic function and creation of

the dichotomy of the economic over the social, rather than securing non-monetised resources in the interest of resource-dependent communities compel people to then rely increasingly on the market for goods and services<sup>5</sup>. With an increasing dependency on markets, the defenders and erstwhile sustainers of natural resources are occupied elsewhere, with natural resources - forests, water, commons and grazing lands – thus “freed up” for privatisation and State manipulation<sup>6</sup>.

### Does Micro Credit provide resources to the poor to alleviate poverty?

- The state as the largest promoter of micro credit groups through its various schemes is the promoter of various activities for income generation which have in fact led to little significant change in the lives of women or their families, or in alleviation of poverty, and has in fact only led to increasing incidence of loss of control over resources.
- Para 30 on page 17 of the Government of India report to CESCR states “*Article 21 of the Constitution of India says that no person can be deprived of his right to livelihood except according to procedure established by law*”. Yet through the denial of opportunities for a more comprehensive training package about their rights and for development of diverse skills related to their traditional livelihoods and stops in the form of micro credit are offered as ameliorative measures while the alienation from the livelihood resources is perpetuated though adoption of industrialisation, mining and SEZ policies that render these populations more vulnerable<sup>7</sup>.

<sup>4</sup> Jaya Sharma, Soma Kishore Parthasarathy and Archana Dwevedi (2007) – “Examining Empowerment, Poverty Alleviation, Education within Self Help Groups (SHGs): A Qualitative Study”, Nirantar, 2007. Data also shows that there was very limited opportunity to take up social issues within the groups.

<sup>5</sup> Govind Kelkar - The Feminisation of Agriculture in Asia: Implications for Women's Agency and Productivity, UNIFEM South-Asia Regional Office, New Delhi, UNIFEM, IFAD, points to women's struggles and aspirations to create and build productive assets, including assets in their names, as they would have the control rights on such resources (unmediated by the household and the head of household). There are numerous examples of communities which have hitherto been the defenders of the forests being drawn into the frame work of micro credit and micro finance, and increasingly drawn into the monetised economy to the detriment of their control over their natural resources from Jharkhand and Orissa in east India to Rajasthan in the West. This is also evident in their lack of engagement with movements for the restoration of rights over forest resources for instance.

<sup>6</sup> Research Foundation, Science & Technology, “Impact Of WTO On Women In Agriculture” National Commission For Women, New Delhi 2005.

<sup>7</sup> Soma Kishore Parthasarathy, Gender Micro credit and livelihoods – Dilemmas and Challenges, Paper presented at the conference on Economic Justice and Agricultural Sustainability, New Delhi, 2008.

- The impact of these measures is largely experienced by women who are on the one hand struggling to fulfill family needs for water, fodder and food from the natural resource base, and on the other hand are confronted by increasing restrictions to access; their burden of labour is substantially increased as they try to utilize the credit for alternate economic activity.

### Question

What linkages does the government plan to facilitate linkages between the micro credit sector and policies and programs towards enhancing entitlements and resource rights of the poor, as measures for effective gender based poverty reduction?

Micro credit groups are presently exclusionary in their operations and limited in their content to the detriment of the poor and the marginalised.

- Studies reveal that Scheduled Caste (SC) and Scheduled Tribe (ST) who are the largest population living under poverty line, had majority membership in only 27% and 16% groups respectively<sup>8</sup>. Thus the most poor are often not members of the SHGs. The same study points to the fact that while 61% of SHG members were non literate, the leadership was primarily literate and from the relatively better off quartiles and usurped more than 60% of the loans for themselves. The exclusion of the poorest is also perpetuated by the requirement of regular savings, which the poor can ill afford.
- A factor that further delimits the potential of the micro credit model is the lack of

investment in capacity building other than on financial management aspects<sup>9</sup>, due to which the overwhelming focus is on the group and finances related management. Only 6% groups formed under government programmes had received inputs on gender issues and only 19% had received inputs on income generation and livelihoods despite claims of a focus on income enhancement and economic empowerment<sup>10</sup>.

**The States attempts to regulate the micro finance sector is designed to dispossess the SHGs of control over their savings by taking away thrift from womens hands. This is detrimental to people's interests in the long run**

- The draft Bill on micro finance comes at a time when there are differing opinions on the cost efficacy of the model for reaching credit to the poor. The Bill itself contains some perplexing ideas - such as the choice of NABARD itself a financial institution, as a regulator of other such organisations<sup>11</sup>. The new Micro finance Regulatory Bill<sup>12</sup> proposes to regulate the sector and the actors therein but leaves out of its purview the Micro Finance Institutes (MFIs) and seeks to regulate only the MFOs (Micro Finance Organizations) by introducing provisions for their conversion into profiteering organisations.
- The financial institutions claim of social responsibility in lending to women SHGs is belied by the fact that women bear the burden of interest rates as high as 24% per annum from the banking sector. Evidences from Andhra Pradesh reveal interest rates are

<sup>8</sup> Malcolm Harper, "What's wrong with microfinance?" Also refers to some of the constraints and limitations of the recent trends in Micro finance, 2007.

<sup>9</sup> Nirantar study(op cit) shows 47% groups formed under government programmes had not received any kind of capacity building input for the last two years.

<sup>10</sup>These aspects are now acknowledged by government and non-government agencies and reflected in policy documents related to the formulation of the XI Five Year Plan, through Reports of Steering Committee on Women's Empowerment [http://planningcommission.nic.in/aboutus/committee/strgrp11/str11\\_wcd.pdf](http://planningcommission.nic.in/aboutus/committee/strgrp11/str11_wcd.pdf), and Working Group Report [http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11\\_rpwoman.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_rpwoman.pdf).

<sup>11</sup>Kaushiki Sanyal, PRS, New Delhi, 2007. (PRS Legislative Research is a unit of the Center for Policy Research in New Delhi. The author presents a legislative brief on the Bill and discusses the pros and cons of the provisions).

<sup>12</sup>The Micro Financial Sector (Development and Regulation) Bill, 2007 commonly known as the Microfinance Bill was introduced in the Lok Sabha on March 20, 2007.

as high as 40% and MFIs have been known to recover loans even in the midst of crisis and natural calamities, by adopting means sometimes worse than the traditional moneylender<sup>13</sup>.

- While regulation of the sector is required, this regulation has met with resistance, as it does not place at the center the interests of poor women and their autonomy and rights over their own resources. Instead it seeks to make SHG women the instruments for profiteering and deepening of credit markets.
- The Rashtriya Mahila Kosh has been reduced to a credit delivery mechanism, albeit with a more gender equity orientation than other players in the field. There is no watch guard mechanism to monitor the functioning of the sector, the maintenance of standards and the assessments of impacts from a gender and equity viewpoint.

### Questions

- What measures is the government undertaking to ensure that women's resources are not siphoned away by profiteering financial institutions and enhance women's own control over their resources?
- What regulatory framework is the government planning to adopt with respect to micro finance to enhance access and autonomy over resources and ensure that micro finance systems actually run in the interest of the poor and are addressing women's substantive rights and status issues?

**The increasing burden of debt borne mostly by women, reconstruction of the “good woman” in a neo liberal face – one who saves and repays regularly, pressurises others to repay, for the welfare of family and community**

- Arguments are offered that micro credit and micro finance increases women's economic and

other opportunities to participate in the market. The burden of the expanding market of micro credit on the other hand, falls squarely on the shoulders of these women, who must save and attend meetings regularly, must return borrowing regularly and adhere to the demanding discipline of the group. Studies reveal that women bear the sole responsibility of returning more than 80% of loans taken from SHGs even if these are utilized for family asset creation<sup>14</sup>. Families report that women raise these resources from their own labor, “since they have taken the loan they must repay”<sup>15</sup>.

- The image of the woman in the micro credit regime is subtly undergoing change to reinforce the traditional stereotype, measuring her status and honour at the alter of the family. The good woman contributes to the material wealth of the family with minimal disruption of power relationships and increasing burden of work. This image privileges the income provision tasks, as credit inflow is viewed as a tangible inflow over the reproductive and care economy that is the traditional domain of women. And women are now seen as “economically active” and contributing to the income for the family.
- Romanticising rather than problematising the burden on women in balancing of management skills, multitasking and making choices for family survival, this model has an overwhelming focus on the family and undermines the idea of a woman as an entity, with rights, interests and needs. Women's organisations have evolved a charter of demands on SHGs in view of the instrumentalisation of women to serve the interests of the family the financial agencies and the state, and demanded that women's rights be assured and opportunities for their capacity building and enhancement of status be an integral part of the SHG agenda<sup>16</sup>.

<sup>13</sup>Nirantar, National Consultation on SHGs Empowerment and development held in Hyderabad, May 2007.

<sup>14</sup>Archana Dwevedi, Jaya Sharma and Soma Kishore Parthasarathy, Nirantar, “Examining Literacy and Power within Self Help Groups (SHGs): A Quantitative Study” undertaken across 2750 SHGs in 16 states of India, Nirantar, New Delhi, 2007.

<sup>15</sup>Evidence collected by the author in the course of field work for the research for this document.

<sup>16</sup>Nirantar, Charter on SHGs, 2007.

- It is the cultural ceiling that effectively debars women from being recognised as an economic contributor, which needs to be overcome<sup>17</sup>. Processes that accord dignity and recognise women's worth and promote equality based on right to resources, including financial and natural resources rather than merely instrumentalising women's roles in alleviating poverty is the way forward, such an approach is a non negotiable in all interventions for economic development.

### *Questions*

How does the government plan to undertake a regular monitoring and review process to ensure that SHGs are in fact vehicles for substantive equality? What mechanisms are envisaged for civil society engagement?

### *Recommendations*

- Ensure that processes in SHGs incorporate adequate opportunities for capacity building and encourage deliberations around women's rights and equality. For this encourage promoters to incorporate a multi pronged approach rather than the single credit focused agenda.
- Enhance State investment and sponsorship of opportunities for women's learning and invest in the health sector and other essential services- water, child care etc- so that the poor are assured a minimum standard of well being and can utilise credit to address productive needs.
- Recognise and give primacy to women's right to have autonomy over their thrift and to access and manage the same to enhance their decisions over it. Recognise women's institutions- federations/cooperatives etc – as the significant partners in the process of

ensuring that micro credit programs are in fact multipronged and reach out to the poorest

- Develop products and strategies that ensure inclusion, and desist from practices that are exclusionary.
- Ensure that any regulatory framework introduced does not in any way jeopardise the interests of the poor and marginalised women whom it was meant to benefit in the first place.
- Provide for assistance for modes other than individual credit to allow communities and groups to invest in sustainable development alternatives.
- Ensure that the banking sector and NBFC interest rates are regulated and do not over-charge women in SHGs. Desist from over regulation that takes away resources from women's control.
- Ensure that any monitoring and decision making process being institutionalised also integrate women working with micro credit in adequate numbers to give them voice and that monitoring processes are focused as much on the rights agenda as much as the intricacies of financial processes.
- View SHGs in a holistic frame and provide opportunities for larger formations and discussion to occur to address poverty and empowerment issues. These will provide learning and leadership spaces for women and the processes herein may enable them to emerge as community leaders to challenge discriminations and demand inclusion at various levels.
- All micro credit programs must therefore encompass goals of gender equality and equity.

<sup>17</sup>Govind Kelkar, Ibid, page 17.

# RIGHT TO PHYSICAL AND MENTAL HEALTH

## Key Issues

India has not fulfilled its obligation and commitments<sup>1</sup> to ensure universal access to comprehensive, quality health care. Nor has it been able to achieve the Millennium Development Goals. It has, instead, sought to adopt short-term and ill-formulated policies that only touch the symptoms and not the roots of the malaise<sup>2</sup>.

- Women's right to health and health care are basic human rights. **Women's right to health cannot be achieved until their right to various social determinants is attained.** Women are not a homogenous group, and their health status is further compounded by their socially and economically disadvantaged positions. There is a great need to improve the quality of health services and access available to them by giving this issue priority in the allocation of resources.
- Health is not merely 'freedom from disease'; but an indicator of the quality of life. Initiatives such as access to employment; job security; safe and healthy work environment, especially in the unorganised sector; schooling; equal opportunities; benefits and wages; and access to resources within family and community are inadequately addressed.

## Critical issues related to women's health rights

Women's health, especially in the marginalised communities, is affected by the macro-economic policies that guide the State and the health sector reforms spearheaded by the World Bank, World Trade Organisation and the International Monetary Fund. These have impacted all aspects of women's lives, including employment, wages, increased housework, food availability and access to health care and housing. Their policies have increased the burden of work on women because migration of men due to desperate conditions has led to increase in female headed households.

Women's subjugation in their families and communities has increased. There has been an increase in violence against women and the poor and marginalised, although their experiences of violence differ, often in accordance with their various identities. Women face caste-based violence, communal violence, violence in conflict situations and violence of 'development' agendas. Violence against Dalit women has been increasing with greater resistance against subordination and untouchability by the Dalit community.

Women's bodies have been treated as battlegrounds in unethical clinical trials, hazardous contraceptive technologies and invasive procedures with complete disregard to the effect these may

<sup>1</sup> At the BPFA and other forums, India is a signatory to the Alma Ata Declaration of 1978 with the commitment to the goal of "Health for All" by 2000 A.D. The National Health Policy, 1983 was evolved in this background as a blue print for combined action by the government and voluntary agencies stressing preventive health care and the need to establish comprehensive primary health care services to reach the people in the remotest areas.

<sup>2</sup> General Comment 14 calls upon the State to take steps to ensure that the rights specified under this clause are actualised. India has been a signatory to UNGAS declaration to make sure that Article 12 rights are actualised.

have on women's own health<sup>3</sup>. Very little or no information is provided to them about the risks involved and they are dumped without any follow-up or monitoring. Many times, sterilisation is offered as a necessary condition to women asking for abortion and no attention is paid to post-operative complaints.

### Cost of health care

**India spends less than 1% of the GDP to provide health care for a country of over one billion people<sup>4</sup>.** Only 17% of all health expenditure in the country is borne by the State and 82% is 'out of pocket expenses'<sup>5</sup>. Recent studies of poverty in 12 villages of Rajasthan and 20 villages of Gujarat show health cost as the single-most important reason for households falling into poverty in the last 25 years. Non-utilisation of health care for reported health complaints is higher among women and is only increasing<sup>6</sup>. Only 5% of the households in India have at least one member covered by a health scheme/insurance<sup>7</sup>.

### Commodification of health care

The State's failure to provide universal health care has made 'health care' a commodity to be bought. Out-patient care is largely in the private sector (80%) where the patient has to pay for the doctor's fees, diagnostic fees and drugs. The introduction of user fees in government health facilities has ensured that the public health services are not free. These were introduced so that the money thus accumulated may be used to improve the facility, in almost all facilities the fees collected have remained unutilised and the services have only deteriorated. The consequence of this commodification is borne by women the most as their health problems are further neglected.

### Limited understanding of women's health

Women are seen only as 'mothers' and the fact that their health transcends reproduction and the

reproductive age is rarely understood. They have health concerns as young adolescent women, as well as beyond the reproductive age group. These are related to general health, reproductive, occupational and mental health. Understanding of and sensitivity towards women's health needs to be integrated within the comprehensive health programmes.

### Obsession with the Family Planning Programme

The resource allocation to the Family Planning Programme at the cost of serious neglect of other health service needs of the poor - a 10,000-fold jump in resource allocation from Rs 6.5 million in the First Plan to Rs 65,000 million in the Eighth plan - is evidence of the government's preoccupation with population control. While the international debates ensured a change in focus in population policy from women's fertility to their overall health and advocated for a target free approach, the Family Planning Programmes still attempted to stabilise the population by controlling women's fertility through incentives and disincentives and the coercive 'two child norm' that violates rights of women. Studies show that this shifted the burden on women and marginalized them further<sup>8</sup>. There has been a decline in the sex ratio and an increase in sex selective abortions, as well as an increase in girl children being given up for adoption and decreasing political participation of women.

### Availability of services

Several studies have noted the breakdown in the public health system. The National Health Policy (NHP) 2002 acknowledges that the public health care system is grossly short of defined requirements and its functioning is far from satisfactory; that morbidity and mortality due to easily curable diseases continue to be high; and that resource allocations, generally are insufficient. Availability of staff, equipment and supplies is very poor, with

<sup>3</sup> "Unveiled Realities: A Study on Women's Experiences with Depo-Provera and Injectable Contraceptives", Publication by Sama- A resource group on women and health, 2003.

<sup>4</sup> However, the present UPA government under its Common Minimum Programme in 2004 had committed to increase total public spending on health by 2-3% of GDP.

<sup>5</sup> Gangolly Leena (ed), et. al, "Review of Health Care in India", CEHAT, 2005.

<sup>6</sup> Madhiwalla Neha, et.al, Research Study, "Health Households and Women's Lives", CEHAT, 2000.

<sup>7</sup> National Family Health Survey (NFHS -3), 2005-2006.

<sup>8</sup> "Beyond Numbers: Implications of the Two Child Norm", Publication by, Sama- A Resource group on Women and Health, 2005.

only about 3% of Primary Health Centres (PHCs) having 80% of all essential inputs.

### **Mortality and morbidity**

Chronic anaemia together with poor health care for women underlies the high morbidity and mortality in women in India. About 55% of women have anaemia and less than half receive antenatal care. Dalit women are one-and-half times more likely to suffer the consequences of chronic malnutrition as compared to other women. The delivery of a mother from the poorest quintile of the population is over six times less likely to be attended by trained personnel than the delivery of one from the richest quintile.

Maternal deaths account for a tenth of all female deaths in the reproductive age group. For every maternal death, there are 30 other women who suffer from debilitating conditions. High levels of mortality during child birth indicate the inadequacy of facilities. The NHP 1983 target for 2000 was to reduce the rate to less than 200 per 100,000 live births. However, as per the National Household Health Survey (NHHS), the Maternal Mortality Ratio (MMR) stands at 540. A majority of women marry during their adolescence and begin child bearing then<sup>9</sup>. This has a debilitating effect on their health.

Despite the Medical Termination of Pregnancy Act being in place since 1971, an estimated four to six million illegal abortions occur every year. While 6% to 9% of these occur in adolescent girls, 16% are women between 20-34 years. Unsafe abortions account for 9-13% of maternal deaths.

Communicable diseases including malaria, encephalitis, Kala Azar, dengue and leptospirosis, contribute to the heavy burden of disease faced by women. While there is not a huge difference in the prevalence of TB among men and women, there is a difference in access to treatment. Women are less likely to seek treatment and are most often either isolated or sent back to their parental home for treatment. Prevalence of leprosy

and HIV/AIDS is also high among women and they are often thrown out of their houses and denied treatment. **While women are susceptible to disease due to their poor nutritional status and gendered roles that burden them with paid as well as unpaid work, women also suffer violations when certain health conditions like TB, leprosy, HIV and mental illness are disclosed to their families.**

### **Mental health**

Mental health care for women should take into account women's socially disadvantaged position and the role it plays in precipitating distress or even suicides or attempted suicides. Mental health services for women under the Mental Health Act, 1987 emphasise institutionalised care that violates basic human rights. For example, inmates are chained to the beds, kept locked in rooms and administered Electro Convulsive Therapy (ECT) without anaesthesia. There is a huge gap between the available mental facilities and the number of persons requiring treatment. The infrastructure of existing mental health institutions is inadequate in terms of availability of drugs and other facilities. Women suffering mental illness are often stigmatised and not cared for by their own families.

### **Women's work**

The triple burden of reproduction, production and housework has disastrous effect on women's health. Women are increasingly employed in low paying, repetitive jobs. Much of the work involves constant bending and stooping for long hours, resulting in joint pains and body aches. Women also work in hazardous industries and workplaces that flout safety guidelines. They are forced to take up such work for their survival. Work places do not have toilet facilities or space for eating meals. There is a lack of assured safe and healthy working environments in the unorganised sector.

### **Health consequences of violence**

Violence against women and girls affects their physical health in myriad ways. These include injuries like bruises, contusions, lacerations,

<sup>9</sup> NFHS 2, India: Main Report, Chapter 6, 1997-98, Also see: <http://www.nfhsindia.org/data/india/indch6.pdf>).

abrasions, fractures, unwanted pregnancy, forced abortions, pelvic inflammatory diseases, homicides and suicides. Domestic violence is one of the most common forms of violence and it is a significant cause of disability and death among women, especially those in the reproductive age group.

Being witness to or subjected to violence has a diverse range of impacts on a woman's mental health. Survivors of violence, especially sexual violence, commonly feel fear, guilt, shame and anger. They may adopt strong defence mechanisms that include forgetting and denial and deep repression of the events. The trauma can range from minor depression, grief, anxiety, phobia, and somatic problems to serious and chronic mental conditions.

#### Women living in traumatic situations

Several parts of the country are in situations of conflict, disaster, displacement and riots. There is growing evidence of the consequences of living in such situations on women's health. High incidents of sexual violence against girls and women and forced trafficking have also been noted. For these women the State needs to ensure that legal aid is provided and justice is assured in addition to providing compensation.

#### Recommendations

- Include the right to health in the fundamental rights of the Constitution and provide mechanisms for redressal in case of violation or non-fulfillment of this right.
- Provide the maximum available human and financial resources for the realisation of women's health rights.
- Adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards full realisation of health rights.
- Respect specific needs of different groups of women.
- Enable and ensure easy access for women to enjoy all their rights, including the right to health and remove all impediments.

- Refrain from interfering directly or indirectly with women's rights and prevent third parties from doing so.
- Ensure non-discrimination and achievement of substantive equality; prohibit violations in the name of religion or culture.
- Guarantee comprehensive, quality health services that are accessible, accountable and universally available, irrespective of people's capacity to pay.
- Exercise due diligence in prosecuting/punishing perpetrators of violence against women and in adequately compensating the survivors. It is the surety, not the severity of punishment that is important.
- Make non-state actors (family, community and employers) answerable to non-fulfillment and violation of rights.
- Ensure quality by regulating/monitoring the private and public health sectors.
- Increase budgetary allocation to health especially primary health care by 2-3% of GDP.
- Stop coercion in the use of contraception. Make user-controlled contraceptives available. Move beyond family planning, population control and stop viewing women as reproductive machines.
- Improve the social determinants of health by promoting access to employment, food, water, job security, education, and equal wages.
- Recognise violence as a public health issue and provide necessary services for survivors.
- Provide accessibility of health care to marginalised populations such as the poor, the tribal, the *dalit*, women, children and other minorities, and ensure that services are friendly and sensitive to their needs.
- For life saving public health causes like HIV/AIDS, TB, Malaria, and maternal and child health, the health ministry urgently needs to proactively access external grant money outside of the budgetary process to augment resources<sup>10</sup>.

<sup>10</sup>Recommendation contained in the Mid Term Appraisal of 10th Five Year Plan Report of the Government of India, but yet to be acted upon.

# DIVIDED DESTINIES

## 4 Section

# UNEQUAL LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

# ICESCR

## Articles 13 to 15

## International Covenant on Economic, Social and Cultural Rights

### ARTICLE 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - a) Primary education shall be compulsory and available free to all;
  - b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
  - d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### ARTICLE 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

### ARTICLE 15

1. The States Parties to the present Covenant recognize the right of everyone:
  - a) To take part in cultural life;
  - b) To enjoy the benefits of scientific progress and its applications;
  - c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

# RIGHT TO EDUCATION

## Key Issues

### Continuing Disparities In Educational Status of Dalit (Scheduled Castes or SCs), Tribal (Scheduled Tribes or STs) And Muslim Communities, In General, And Women And Girls, In Particular, At All Levels Of Education

In responding to the steps taken to improve the educational status of disadvantaged communities the Government of India (GOI) lists a number of programmes and schemes. It is not surprising for a country as vast as India to have several schemes. What is, however, distressing is that there is no data to show results or outcomes of these

programmes in the GOI Report. A picture of the 'de facto' situation, therefore, does not emerge<sup>1</sup>.

In the case of elementary education, for example, school drop-out rates of marginalised sections continue to be high and increase as one goes up the educational ladder<sup>2</sup>. The GOI report does not provide data disaggregated by gender and other social categories. Reasons for drop-out rate are usually pinned on the learner, parents or community (socio-economic or cultural factors) and not on systemic, equity and quality factors. The access to higher education of Dalits, Tribals and Muslim women is also very low<sup>3</sup>, which leads to low participation in the professional sector and

<sup>1</sup> Sarva Shiksha Abhiyan (SSA) or Education for All a large umbrella programme with very ambitious goals was launched in 2001. Many of these SSA goalposts are already being shifted. There has been no systematic review of the outcomes of programme, including learning outcomes or financial compliances are not publicly available.

<sup>2</sup> *Disparities in Enrolment and retention*

- The Gross Enrolment Ratio (GER) of girls dropped sharply from 93.07 at primary level to 56.22 at middle school (classes VI to VIII) in 2002-03. In rural areas is dropped even further to 47.35. (Select Education Statistics, GOI 2003).
- The situation of girls (and boys) of Schedule Castes (SC) and Schedule Tribes (ST) communities is far worse than the general category. GER for SC students is 95.61 (89..35 girls) at the primary level and 56.28 (48.64 girls) at the middle school level. GER for ST students is 98.67 (92.25 girls) at the primary level and 48.19 (40.78 girls) at the middle school level. (Select Education Statistics, GOI 2003).
- While the gender gap has narrowed dropout rates are unacceptably high, especially for girls of SC and ST communities. In 2003-04 the dropout rate at the elementary level for all girls was 52.9 while the corresponding rates for SC and ST girls were 36.2 and 48.7 respectively. At the secondary level the rates are as 64.92 (all girls), 75.5 (SC girls) and 81.2 (ST girls). (Select Educational Statistics 2003-04, Government of India 2006).  
There are sharp inter-state and regional differences as well. There were as many girls outside school as there are inside in the 6-14 age group and not even 4 out of 10 girls in Uttar Pradesh in the 6-14 age group are in primary schools. (R Govida, (ed) *India Education Report*, NIEPA, 2000).

<sup>3</sup> *Disparities in higher education* (Selected Educational Statistics 1999-2000, Ministry of Human Resources Development, GOI).

- BA courses - 3.39 % (Schedule caste), 1.38% (Schedule tribe), 40 % (non-dalit women).
- At the levels of Graduation levels and above Muslim women are 48 % worse-off compared to Muslim men and 33% worse-off than Non-Muslim Women.
- Science courses - 2.8 % (dalit women), 0.58% (Schedule tribe), 34 % (non-dalit women).
- Post-graduate and doctoral levels- 38% (MA) and 34% (MSc) for non-dalit women, the percentages for dalit women are 3.8% and 2.9%. For ST women the figure is even lower - 1.3% and 0.48% respectively.  
In professional fields like medicine 2.9% dalit women and 1.1% ST women compared to 34% non-dalit women. In BEd courses, the figure for dalit women is 4.4% and ST women 1.4% and non-dalit women is 40%.

formal workforce. There is concern that with rapidly increasing privatisation unless a strong affirmative action programme is in place the situation will worsen.

The GOI report does not carry any data on the educational status of religious minorities. The educational status of Muslims lags behind other communities<sup>4</sup>. ‘Cultural factors’ is frequently cited as a reason for the poor educational status of muslim girls. However, a recent report of a high-level committee constituted by the Prime Minister to examine Social, Economic and Educational Status of the Muslim Community - popularly known as the Sachar Report - unequivocally states that contrary to popular perception ‘religious conservatism’ is not the main reason behind the low participation and attainment levels of Muslims in education<sup>5</sup>. Instead, poverty, low perceived returns from education (Muslims have very low representation in government employment), poor access to schools and school-based factors such as the communal content of textbooks, are some of the reasons. There are no strategies in place to focus on Muslim women’s education.

### Questions

- Despite steps being taken to increase the access to education of marginalised communities –especially dalits, tribals - women and girls from these communities as compared with the general population, continue to lag behind with regard to literacy rates, enrolment and retention rates in schools and participation in higher education and professional courses. What measures has the government put in place to regularly monitor results or outcomes as well as systemic biases and discriminatory classroom and institutional

practices vis a vis these communities, which continue to operate at the de facto level?

- Given the fact that the status education of Muslims is lower than that of other communities what specific strategies and resources has the Government allocated for this? What within these programmes and resources are specifically allocated to **adult women**?

### The Non-Implementation of The 86th Constitutional Amendment That Made Education Free and Compulsory for Children Between 6 and 14 Years

The 86th Constitutional Amendment Act, 2002, makes free and compulsory education a justiciable fundamental right for all children in the age group of 6 to 14 years<sup>6</sup>. But, even five years later, the Amendment, which came into force after a long campaign by civil society organisations, is yet to be made operational. No resource allocations have been made. The Centre has largely absolved itself of responsibility and sent a draft Bill to the states, asking them to take action. No timeframe has been set and the present status is unclear and has not been mentioned in the Government report.

### Question

What concrete steps (timeframe and resources) is the Government taking to operationalise the Fundamental Right to Education?

### Lack of Political Will and Resources for Adult Literacy

The literacy rate for women shows significant improvement between 1991 and 2001<sup>7</sup>. But despite the gains, disparities in terms of gender,

<sup>4</sup> Data from the Sachar Committee Report (2007) points to the fact that when compared to the Scheduled Castes and Scheduled Tribes the growth in literacy for Muslims was lower than for the former. The female urban enrolment in literacy ratio for the SCs/STs was 40 % in 1965 that rose to 83 % in 2001. The equivalent rate for Muslims—that was considerably higher in 1965 (52 %) recorded a figure of 80 per cent, lower than the figure for the SCs / STs.

<sup>5</sup> According to the Sachar Committee’s findings, 25 % of Muslim children in the 6-14 age group either never went to school or else dropped out at some stage. Additionally, contrary to popular belief and stereotypes, only 3% of Muslim children ever attended the religious minority institutions ‘madararas’. Further, on an average, a Muslim child attends school for three years and four months, compared with a national average of four years.

<sup>6</sup> While it has generally been welcomed, the amendment has been critiqued for excluding the under six-age group. By this action the State has rolled back on the constitutional commitment as stated in Article 45 of the Directive Principle, which clearly states free and compulsory education *upto* the age of 14.

<sup>7</sup> The 2001 Census recorded a **significant increase in literacy rates** (from 52 % in 1991 to 65 % in 2001), particularly female literacy rates, which increased by 14.8 % in 2001 as compared to 11.7 % in 1991).

social categories (SCs/STs), rural/urban location, continue to be glaring<sup>8</sup>. The literacy and continuing education programmes that are described in the GOI report are largely on paper. Large-scale relapse into illiteracy is also reported. There is no data on literacy retention rates. It is very likely that India will not be able to meet the Education for All (EFA) and MDGs pertaining to literacy (as pointed out in the UNESCO Global Monitoring Report 2006). The allocation for adult literacy is a mere 0.02% of the education budget<sup>9</sup>. This is the only large-scale non-formal education programme for poor, rural and marginalised women but receives very little priority. The present lacklustre situation means that critical literacy inputs that are required to sustain processes empowerment of women's collectives, including self-help groups are not being provided thus denying women from marginalised communities access to leadership opportunities and credit<sup>10</sup>.

### Questions

- Government policy documents regularly reaffirm its commitment to adult women's education but the reality on the ground as well as the resource allocation belies this. What steps are the National Literacy Mission and the State Literacy Missions taking to systematically

track women's retention of literacy? What are the proposed budget allocations for adult literacy and continuing education? Moreover, what substantive plans (backed by programmes and resources) does the Government have for reviving the Continuing Education Programme, such that it takes into cognisance the needs and lived realities of women and in ensuring that it reaches committed Education For All Goals for adult literacy?

- While the need for convergence is regularly mentioned in government policy documents this does not get translated at the programme and implementation level. What concrete steps does the Government have to dovetail literacy and capacity building within micro-credit and empowerment programmes? Which Ministry will be responsible and accountable for implanting and monitoring this?

### Commitment of 6% of The GDP for Education Not Fulfilled

At the time of the Beijing Platform for Action a commitment to allocate 6% of GDP for education<sup>11</sup> was made. The current allocation of 3.97% still falls short. Budgetary allocation for education has hardly increased from 3.49% of GDP in 1997-98<sup>12</sup>. With the globalising Indian

<sup>8</sup> *Disparities in literacy*

- The gap between male (75.8%) and female (54.1%) literacy rates is 22%.(Census of India, 2001)
- In 2001, the number of illiterates in India were 304 million out of these approximately 192 million or 63.95% were women. (Source: Census of India 2001, Office of the Registrar General and Census Commissioner, India).
- **34.6% of the worlds non-literate population** resided in India in 2003-04. (Education For All, Global Monitoring Report 2006, UNESCO).
- In 2001, the gender gap in the literacy rate for Schedule Castes (SC) and Tribes (ST) was approximately 25%. The literacy rate for SC males and female were 66% and 41.90% respectively) and for ST males and females it was 59.2% and 34.8% respectively). (Census of India, 2001).

The 2001 Census for the first time gives detailed educational data across religious groups. And the picture reveals a huge gap between Muslims and non-Muslims across the board. The literacy rate for Muslims is 59%. (6% below the national average of 65%) and for Muslim women 50%.(Sachar Committee Report), 2007.

<sup>9</sup> Selected Educational Statistics, 2002-03.

<sup>10</sup> Two recent studies conducted by Nirantar, examining the linkages between literacy, leadership and capacity building within self-help groups found a high-correlation between literacy levels, leadership opportunities and access to credit. And since socio-economic status and education are correlated leadership tends to get concentrated in the hands of the better-off members, (*Examining Literacy and Power within Self Help Groups: A Quantitative Study and Examining Empowerment, Poverty Alleviation and Education within Self Help Groups; A qualitative Study*, Nirantar, New Delhi, 2007).

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<sup>12</sup> Platform for Action: 10 Years After. India Country Report, Department of Women and Child, Ministry of Human Resources Development, Government of India, Page 24.

State withdrawing from education, there is concern that private players will be allowed to flood the sector. Privatisation has negatively impacted women and disadvantaged groups. There is also need for greater transparency in fund utilisation. There have been media reports of the Sarva Shiksha Abhiyan (SSA) funds often used for purposes other than what they were allocated for. However, such data is not publicly available. The present UPA government has introduced an education cess but there is no information on how these funds are being utilised. The concept of gender budgeting has been introduced by the Ministry of Women and Child Development but it needs to be operationalised and systematic tracking of funds allocated to girls and women's education – both at the expenditure and programme level needs to be introduced.

### Question

- The allocation for education is still below the 6% (of GDP) as committed by the Government (as far back as the Beijing Platform for action). What are the Government's plans (steps and timeframe) to increase the budget allocation for education to 6%.

### Problems Related To Equity, Quality And Content

*Overall the Government report hardly reports on any of these issues. The overwhelming focus of the GOI report is on access issues and a listing of schemes.*

### Textbooks

Some efforts to make textbooks gender-sensitive have been made, mostly at the national level. However, it is acknowledged that biases and lack of representation in school textbooks and discriminatory classroom practices continue to alienate children from minority communities, Dalits and Tribals and other marginalised groups.

The limitation is that gender is not seen as a cross-cutting issue. In some states, textbooks are blatantly anti-minority and have contributed to a culture of divisiveness. The debates and counter-debates that have ensued since the introduction of National Curriculum Framework (2000) have led to curriculum development and textbook writing becoming highly politicised and contentious. It is important to ensure that adequate steps are taken to prevent education from becoming a battleground for scoring political points.

### Sexuality education

Sexuality education is either not provided to young people or else its nature is highly problematic. It is overwhelmingly related to population control or reproductive health issues. It is seen as a problem associated with promiscuity and shame, overly focused on HIV/AIDs and is fear based, moralistic and judgmental. At present over ten states in the country have banned sex education in schools, following a controversy regarding adolescent education material published by UNICEF and National Aids Control Organisation (NACO). Despite problems in the material, banning is clearly not the solution as it denies young people the right to information that enables them to make informed choices<sup>13</sup>, make them aware of the diversity of expressions of sexuality and gender and to equip them to deal with violations<sup>14</sup>. Sexuality education also becomes important in a context in which there is evidence, which demonstrates that young people are already sexually active in India. Of the 1.5 million girls in the country, who get married under the age of 15 years, nearly 20 percent become mothers by the time they reach 15. Such evidence is denied by those seeking to ban teaching sex education in schools<sup>15</sup>.

### Classroom practices

Discriminatory practices based on identity related prejudices are common and need to be monitored

<sup>13</sup>As noted by the Working Group Report on Empowerment of Women, Ministry of Women and Child Development, constituted as part of the 11<sup>th</sup> five year plan process, page 108).

<sup>14</sup>More than 53% children in India are subjected to sexual abuse (2001 Census) and over a third of all rape victims are below 16 years. (Press Release, "Ministry of Women and Child Development releases a Study on Child Abuse", April, 9 2007).

<sup>15</sup>The National Family Health Surveys II and III reveal that young people, who form 30% of the population, are sexually active at 12 and 13 years. 57% of girls are married before they are 18 and 52% have their first pregnancy between 15 and 19 years. Significantly, 35 per cent of all reported HIV infections are among those in the 15 to 24 age group.

and stopped<sup>16</sup>. Corporal punishment, which is wide spread, needs to be checked. Laws banning corporal need to be enacted and enforced in all states. Caste based discrimination are also reported in schemes like the Midday Meal Scheme<sup>17</sup>, which requires to be closely monitored.

### Gender and teacher training

The component of gender within teacher training continues to be short-term, ad-hoc and not part of the regular pre and in-service curriculum. These have proven to be largely ineffective.

### Quality and learning outcomes

The overwhelming focus of Government policy and programmes like SSA has been on increasing access. Equity and quality issues are rarely monitored or reported. However, several reports suggest that learning outcomes are very poor and

often accounts for children dropping out<sup>18</sup>. With rapid privatisation in the elementary education sector there is growing evidence that it is girls, and children from poor and socially disadvantaged communities who are accessing government schools (which are believed to be of poor quality) while boys, especially those belonging to richer and upper-caste sections are moving to private schools<sup>19</sup>. Moreover, in several states the policy thrust has been towards downgrading the formal stream through the introduction of various non-formal education schemes (like the Education Guarantee Scheme) that are implemented through para-teachers who are less qualified, less trained and hired on a temporary basis<sup>20</sup>. Initiated to provide access to those outside the ambit of education, such schemes are however institutionalising a hierarchical 'double track approach' within the education system.

<sup>16</sup>Inequity and Discrimination: Case Study from UP

In 2004 the total number of primary school teachers in the state of Uttar Pradesh was 2,20,155. (July 2004, SSA) Out of these 84 % were from General and OBC categories while the rest belonged to other categories. The caste profile of teachers is a critical issue as many teachers carry discriminatory attitudes and baggage that affects their interactions with children in classrooms expressed through verbal and behavioral signals. This impacts retention of children from SC and other backward communities, particularly girls. Parents do not hesitate to speak out that forward caste teachers discriminate against children from lower castes and misbehave with the parents. Parents from a Raidas Tola (SC locality) said that, "*Caste matters - teachers from lower caste would be more sensitive towards our children*". In another case a parent reported that the teacher's husband (self appointed head master of the school!) scolded an SC child, "*What are you studying for - are you going to be the DM*". At the same time teachers are not bothered about disciplining the children- "*Teachers don't bother even if children run away*". Only the children from the poorest families go to the government school - as soon as the families are able to afford they move to private schools, as teaching there is considered qualitatively better - the parents say, "*Children can read fr..fr in private schools*". Even the Government primary school teachers mentioned - "*there is a downslide in the quality of teaching since it is only the poor families who send their children to Government schools, children from "good families" (socio-economically better off) do not come to their schools anymore*". (Source : Snakes and Ladders, Factors Influencing Successful Primary School Completion for Children, ERU, 2004).

This corroborates emerging evidence that it is the very poor and those who belong to socially disadvantaged groups who access government schools and that children from relatively better off social groups invariably send their children to private schools. There is thus a mismatch between the social profile of government school teachers and the students. As a result, teachers do not identify or empathise with the problems faced by first generation school goers and children from extremely deprived communities – thereby increasing the social distance between the teacher and the students.

<sup>17</sup>The Midday Meal Programme- has been introduced after the Supreme Court in response to a public interest litigation filed in 2001 by the People's Union of Civil Liberties (Rajasthan) ordered all state governments to introduce cooked meals in schools. The scheme has been welcomed as it positively impacts nutritional levels and school participation of children belonging to poor and marginalised sections. There are reports of problems – **logistical problems of organising the cooking** (and allegations that it cuts into teaching time), **poor quality of food being served, corruption, and caste based discrimination**. The programme requires to be **closely monitored to ensure its success**.

<sup>18</sup>Findings of Rapid Assessment Survey conducted by Pratham in 27 districts all over India, (June - August 2004), indicate that in Uttar Pradesh (Allahabad and Lucknow district) about 79% Government School children between 7-10 years could not read, similarly a high percentage of children could not write. Among 7-10 years olds 86% could not write a complete sentence, while in the age group of 11-14 years 51% were unable to write at all. When it came to Maths, the scenario was dismal -95% children between 7-10 years could not do basic Maths and 65% were clueless in 11-14 age group. In this category even private schools did not fair well with 45% children unable to do subtraction problems in the age group of 11-14 years. (Pratham Survey 2004).

<sup>19</sup>Gender and Social Equity in Primary Education: Hierarchies of Access, coordinated by Vimala Ramchandran. European Commission, January 2002.

<sup>20</sup>While para-teachers are being hired in large numbers in some states there has been a moratorium on hiring primary school teachers in Government schools. (Source: Krishna Kumar, Manisha Priyam and Sadhna Saxena, Looking Beyond the smokescreen: DPEP and Primary Education in India, *Economic and Political Weekly*, February 17-23, 2001. Page 560, Volume 36, No. 7).

## Sexual Harassment in Educational Institutions

Sexual harassment and violence against girls and young women within educational institutions is widespread but under-reported. There is however no data (or systematic mechanisms to gather data) that indicate the extent of the problem. The Supreme Court Guidelines (*Vishakha vs. State of Rajasthan*) on Sexual Harassment in the Workplace makes it mandatory for universities and educational institutions to formulate guidelines and set up committees to deal with sexual harassment complaints. While many universities have formulated guidelines and established mechanisms to deal with sexual harassment many educational institutions still do not have policies. Though technically the guidelines should cover schools no efforts have been made to implement the guidelines in schools, where sexual harassment is fairly common but is rarely reported. One only has the media to rely on for such information.

## Education for persons with special needs

India is signatory to numerous International Conventions<sup>21</sup> and several national laws<sup>22</sup> pertaining to protecting and promoting the rights of disabled persons. While the laws are fairly comprehensive, implementation is weak. Moreover, knowledge of the law is still very rudimentary both among bureaucrats and people with disabilities. Not much thought has gone into the effective policy formulation for its implementation and nor has any monitoring system with time frames been put in place, thus children with disabilities continue to struggle to access even a basic education.

The problem is quite extensive in scope. At least 1 in 12 households in India has a person with disability. Large numbers of children with disabilities remain out of school. Conservatively,

there are about 10 million children with disabilities and about 90 percent of them are out of school<sup>23</sup>. They are 4 to 5 times less likely to be in school than SC/ST children. If they do stay in school, they rarely progress beyond primary levels<sup>24</sup>. While the Sarva Shiksha Abhiyan (SSA) has made a concerted effort to promote the inclusion of children with special needs, the system faces challenges in identifying these children and responding to their needs. Only around 1% of funds under SSA are spent on inclusive education<sup>25</sup>. The Ministry of Social Justice and Empowerment - the nodal agency for disability- is perennially short of resources. Teachers have been found to be extremely poor in pedagogical methodology as they have received very rudimentary training, if any, on disability.

## Questions

- Sex education has been banned in over ten states across the country and the existing curriculum and the existing materials are problematic. What steps is the Indian government taking to address the problems in the existing material, towards formulating a policy and approach to sexuality education which is non fear inducing, non moralistic and rights based? Given that sexuality education is a new area, what steps will the Indian Government take to ensure the participation of civil society organisations who have the required understanding and experience of working on issues of sexuality, in the formulation of this policy and approach?
- The Government has taken some steps to make textbooks gender sensitive. Evidence suggests that these do not go beyond role reversal or removal of stereotypes. Moreover the representation of marginalised communities and certain regions (like the North East) is inadequate and problematic.

<sup>21</sup> UN Declaration on the Rights of Disabled Persons 1975; The Salamanca Declaration 1994; The Biwako Millennium Framework for Action 2002; The UN Convention on the Rights of Persons with Disabilities 2006.

<sup>22</sup> Article 21A of the Indian Constitution - guarantees education as a fundamental right; The 86th Constitutional Amendment of India Act 2002 - makes it mandatory for the government to provide free and compulsory education to "all children of the age of 6-14 years", with its preamble clarifying that "all" includes children with disabilities as well; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Chapter 5, Section 26 - ensures the above and more.

<sup>23</sup> www.combatlaw.org

<sup>24</sup> www.worldbank.org.in

<sup>25</sup> People with Disabilities in India: From Commitments to Outcomes, <http://siteresources.worldbank.org/INDIAEXTN/Resources/295583-1171456325808/Chapter04.pdf>.

With regard to the content of education what steps is the Government taking to ensure that gender is not an 'add-on' but informs the entire curriculum and textbooks, promotes equity and social justice, makes visible the lived realities and discrimination faced by certain sections of society and remove blatant biases against the Muslim minority community in the textbooks of certain states, like Gujarat?

- Given the fact that sexual harassment is rampant and increasing within schools and negatively impacts both students and teachers, what plans does the government have to ensure that the guidelines are implemented in schools, build awareness on the guidelines within the school community including steps to include this issue in the school curriculum especially in middle and secondary schools? What steps is the Government taking to systematically gather data on sexual harassment within educational institutions?

#### *Recommendations*

- Educational data should be **gender** disaggregated but should be further disaggregated in terms of other social groupings. Such data should be collected at a decentralised level and should be regularly made public. Benchmarks and regular mechanisms to monitor the achievements of de facto equality should be put in place for all education programmes<sup>26</sup>.
- Improve the educational status of Muslim girls and women and bring them into the mainstream, by instituting policy measures and specific programmes backed by resource allocation. A sub-plan on Muslim girls' education within the SSA should be formulated and its outcomes be regularly monitored by a high-level expert committee<sup>27</sup>.
- Revitalise and adequately finance the National and State Literacy Missions. The Continuing

Education programme should be revamped and innovative programmes designed with the participation of women's groups and other civil society organisations and the Mahila Samakhya<sup>28</sup>. Literacy and capacity building programmes should become a mandatory part of self-help group/microcredit and other women's empowerment programmes

- Operation the 86th Constitutional Amendment making education a Fundamental Right<sup>29</sup>.
- The government should outline its approach to sexuality education and design the related process of teacher preparedness. The process of developing the approach and design of sexuality education must substantively involve individuals and civil society groups such as groups working for women's rights, child rights and sexual rights, who have an in depth understanding of issues of gender and sexuality.
- Continue textbook reform from the gender perspective, and at the state levels as well. Gender should become a subject within the regular pre- and in-service teacher and student teacher training programmes instead of the present ad-hoc approach<sup>30</sup>.
- Increase resource allocations to educating the differently abled; improve coordination between the Ministries of Human Resource Development and Social Justice and Empowerment and the Rehabilitation Council of India; improve teacher training; improve data collection and implement the existing legal provisions.
- Put in place guidelines to address sexual harassment in schools and other educational institutions.
- The commitment of 6 % of GDP for education must be fulfilled<sup>31</sup>.

<sup>26</sup>Refer points 32 and 33 of the Concluding Comments of CEDAW Committee (2007).

<sup>27</sup>Refer point 33, CEDAW Concluding Comments.

<sup>28</sup>Refer point 33, CEDAW Concluding Comments

<sup>29</sup>Refer point 30, 31, CEDAW Concluding Comments

<sup>30</sup>Point 34, 35 CEDAW Concluding Comments

<sup>31</sup>Refer point 33, CEDAW Concluding Comments



# DIVIDED DESTINIES

## Section 5

# UNEQUAL LIVES

Economic,  
Social and  
Cultural Rights and  
the Indian State

# ICESCR

## Other Critical Issues



## WOMEN AND CONFLICT

Armed conflict in the form of a low intensity silent war has gone on for decades in the North Eastern Region (NER). The situation of armed conflict in this region of India contributes to violations of Economic Social and Cultural rights both directly and indirectly; it impacts gender dimensions that adversely affect women. Jammu and Kashmir is another state ravaged by violent conflict.

### Key Issue

**The Armed Forces Special Powers Act, 1958 (AFSPA), operational in several states<sup>1</sup> in the North Eastern Region (NER) of India and in Jammu and Kashmir (J&K) undermines fundamental rights under the Indian Constitution**

- In 2004 Government of India set up the Justice Reddy Committee to review the AFSPA. The draconian Act is still operational despite recommendation from the “Committee to Review the Operation of Armed Forces (Special Powers) Act,” 1958 to repeal the same. In effect it is a negation of the State obligation to ensure conditions wherein the citizens can enjoy and avail fundamental and other rights.
- Various UN bodies have consistently asked for the repeal of AFSPA<sup>2</sup>.

### Question

- **What actions were taken to implement the recommendations of Committee to review the AFSPA 1958, Government of India?**

### Recommendation

- Repeal Armed Forces Special Powers Act, 1958
- Inadequate support services to victims of conflict.
- The State maintains a position that there is no armed conflict situation anywhere in India. This position has serious repercussions in terms of policy priorities and putting support services in place for those affected by conflict. It also comes in the way of the country’s compliance with UN Resolution 1325.
- There is no policy specifically designed to address the fall out of violent conflict on women anywhere in India. The Swadhar Scheme, as mentioned in the State report (paras 235, 336 and 338), is far from adequate to address the needs arising from a conflict situation in NER or J&K. This concern is also raised in the Report of the Steering Committee on Empowerment of Women and Children for the 11th Plan (2007) which states that:

<sup>1</sup> Manipur, Nagaland, Assam, and Tripura.

<sup>2</sup> Human Rights Committee, Concluding comments to India report on *ICCPR (1997)* CEDAW committee, Concluding comment to India’s Initial report to *CEDAW (2000)*, CEDAW Committee, Concluding Comments to India’s 2&3 report to *CEDAW (2007)*, *CERD concluding comments (2007)*.

*“In the North East there are only two Swadhar homes – one in Manipur and one in Meghalaya. There is clearly need for more Swadhar homes and the eleventh plan proposes a Swadhar home in every district. However, in addition to up-scaling, there is an urgent need for reformulation of the Swadhar so as to take into account conditions prevailing in the North East and Kashmir and other areas of social upheaval where women are likely to need holistic care and shelter....”*

- In its response to the list of issues and questions for the consideration of the combined second third periodic report of India to the CEDAW, the Government of India states that “[t]here are no situations of ‘armed conflict’ within the territory of India and hence the Security Council resolution relating to women conflict is not applicable to India”<sup>3</sup>.

#### *Questions / recommendations*

- What kind of services and provisions are available to women who are affected by conflict in the North East region and in Jammu and Kashmir, especially in areas like livelihood, education and health and to prevent forced migration and trafficking of women and girls from these areas?
- Develop and implement gender sensitive policies and schemes specific to the context of conflict areas.
- Implement UN resolution 1325 on Women peace and Security
- Women’s special needs must be prioritised while working out economic packages for the North East region. (CEDAW Committee concluding comment 2007 regarding ensuring proportional benefits to women from special budgets allocated to North-East region)

#### **Key Issue**

**A very critical concern arising out of conflict is displacement in several parts of North Eastern states and Jammu and Kashmir. Urgent action is required to address the plight of the displaced people in Bodo Territorial Autonomous District and Karbi Anglong (Assam), and in Manipur.**

- Internally Displaced Persons (IDPs) in NER live in dismal conditions. The long-term impact is far reaching, as these IDPs are deprived of nutrition, educational access and economic and livelihood opportunities and other rights enjoyed by citizens.
- Furthermore, the living conditions in the IDP camps and centres are extremely poor and far below standards recommended for the UN refugee camps. Women living in the camps become vulnerable to trafficking and related vulnerabilities.

#### **Assam and IDP**

- Over 2,00,000 people were displaced following the two waves of Bodo-Santhali ethnic violence between 1996 and 1998 - 80% of the displaced were Adivasis (mainly Santhalis) while the rest were Bodos along with a few Nepalis and Rabhas. The government put the displaced into make-shift relief camps in Kokrajhar and Dhubri districts in the state. A tiny fraction of the displaced went back to their homes and villages not long after the riots. But some were again displaced following violence in 1998. The IDPs have been living in sub-human conditions in the camps for over 10 years. After the initial period, the Assam government seems to have washed its hands off them.
- **They get just 10 days of rice as relief** (which they share with many who were never listed as inmates). The irony is that, in the past decade many members have been added to the families, but no new list has been made and relief is distributed along the same lines as in 1996. In Deosri Relief Camp, in Chirang District, 126 families who arrived later in the camp following the second wave of violence have never been listed. Some of them had been displaced in the 1996 violence, but following assurance of security and Rs10,000 compensation for each family, they went back to their villages. Most of them were once again displaced in the second phase of violence in 1998. Many of these re-affected families have not received relief or been provided the second

<sup>3</sup> UN CEDAW /C/INDIA/Q3/Add 1, 13 December 2006; reply to Q2.

phase rehabilitation amount of Rs10,000. Twenty-four such families of Korairbari village (of the then Kokrajhar district) now live in Deosri camp, affected twice over but uncertain about their status. **People starve for days as daily-wage labour is not regularly available and they get just half the rate as in other places.** Many able-bodied men are forced to neighbouring Bhutan to find work.

- In the same camp, hand pumps for drinking water have been provided by Medicin Sans Frontiere and so has medical care for the past six years. With this NGO having completed its mission and withdrawn services since August 2007, people in Deosri camp have been left with **no medical services** now. A board put up by the state in November 2007 announces that a doctor will visit twice a week but till date no doctor has visited. The teacher-student ratio in the Deosri camp is 1:500 in the camp with just two Employment Guarantee Scheme (EGS) teachers drawing monthly salaries of Rs 1,000 (approximately USD 40) for 1,000 families.
- The situation has got even more complicated since the state government started the second phase of the so-called “rehabilitation” in 2004. Families have been given Rs10,000 as housing grant and “released”. Release means stopping relief rations and now the family must fend for themselves, not that they were not doing so before that. In Deosri camp, 1,014 families have been released in three batches, once in August 2006 and twice in 2007. In the haste to “rehabilitate” the camp inmates, the government has conveniently forgotten to ask where the Santhals are supposed to go after being “released”? **No land compensation** has been given to families and people wonder how they are supposed to secure their livelihoods with a mere Rs 10,000. It is not enough to buy land. Are they to buy bullocks or build a house or return their debts?
- Moreover, with their homes, lands and villages having been appropriated by members

of the majority Bodo community - with whom they had clashed - they are fearful to return home. Forest officials want them to stop clearing forest land and go back to their original villages. **They have not been given job cards under the State’s NREGA (National Rural Employment Guarantee Act) programme as they are not from that area.**

- Many of the “released” families in Deosri (the story is the same elsewhere) have settled in and around the camp. They have cleared some land and started growing maize and other small cash crops. Deosri and most areas where the camps are located in Chirang district are reserved forest areas. People were living in forests even before they were displaced and came to the camps. Some were in recognised forest villages paying a tax while others have been forest encroachers from the days of their forefathers. They have become ‘encroachers’ again after getting “released” from the camp. They are ‘encroachers’ even if they go back to the land, which they fled during the violence. In their decade-long absence, some shrubs and small trees have grown and now that land has become forest land again. They are more vulnerable than ever, constantly living under the shadow of eviction and the terror of being displaced yet again.

#### Women IDPs

- Women and children are the worst sufferers. In hungry and poverty-struck families of the camps, early marriage and childbirth is the norm. Lack of health facilities, repeated pregnancies coupled with poor nourishment has meant plenty of cases of miscarriages. Many women-headed families can be found as the men are away for long periods in search of work. Left to fend for themselves and their children, many women have been forced into prostitution. NEDAN Foundation, an NGO based in Assam, carried out a survey and reported many cases of trafficking of women and girls from the camps<sup>4</sup>.

<sup>4</sup> Report on the Status of IDPs in Lower Assam by Jennifer Liang, January 2008, Also See, [www.theant.org](http://www.theant.org).

## IDP situation in Manipur

- In Manipur, large numbers of villagers in the Chandel district are displaced due to the protracted conflict situation. The villagers are forced to flee due to encounters between the armed forces and the militants in counter insurgency operations. One of the main reasons for the ongoing displacement is the threat of Improvised Explosive Devices (IEDs) that have been planted in these villages. According to a memorandum submitted by the Kuki Students organisation in March 2007, “thirty three Kuki villagers have been killed and several more maimed owing to landmine explosions”. Other such cases have been reported, for instance in Churachandpur district<sup>5</sup>.
- The State and the Human Rights Commissions, who are obliged to take action to protect and safeguard the rights of IDPs, have failed to do this. Considering the seriousness of the situation, the type of assistance that has been provided has been inadequate<sup>6</sup>.

### *Questions*

- How many displaced people are still living in camps in Assam and for how long?
- In what way have the government addressed the massive displacement that took place

BTAD areas in Assam in the 1990s and displacements in Manipur. What alternative arrangements for housing, livelihood, food, education and health for the still displaced are made available?

- What are the minimum standards for housing in these camps?

### *Recommendations*

- Sustained humanitarian assistance during the period of displacement and rehabilitation mechanisms at its end should be provided.
- Provision of Job Card to the displaced persons and their inclusion in National Rural Employment Guarantee Programme. NREGA being linked to residence is deterrent factor.
- India should enact a comprehensive domestic law on IDP
- Recognise through policy measures, the gender impact of internal displacement.
- Adhere to International standards as stipulated in Guiding Principles on Internal Displacement.
- India should become party to the 1951 Convention Relating to the Status of Refugees and the related 1967 Protocol (as recommended by CEDAW Committee concluding comment 2007)

<sup>5</sup> Homeless at home; David Buhril; North East Sun, May 31, 2007.

<sup>6</sup> Ibid

# RIGHTS OF MUSLIMS

## Key Issues

Muslims in India suffer widespread and systemic deprivations in the areas of education, health, employment, living standards and cultural life.

The Government of India has not “uph[e]ld the rights and provisions established under the text in question<sup>1</sup>” in relation to India’s Muslims, specifically:

### The Right to Just and Favourable Conditions of Work (Article 7)

Muslims in India face ongoing challenges in sustaining their livelihoods and securing employment<sup>2</sup>. Throughout India, Muslims have low participation rates in salaried jobs<sup>3</sup>, with Muslim men and women holding inferior or lower-salaried jobs compared to persons belonging to other societal groups<sup>4</sup>. Muslim workers’ participation in regular jobs, especially in the public or government sectors, is very limited<sup>5</sup>. Moreover, within the same employment, Muslims receive disproportionately lower wages. In

1999-2000, Muslim regular workers received lower daily salary earnings in both public and private sector jobs than most other societal groups<sup>6</sup>.

### The Right to an Adequate Standard of Living<sup>7</sup> (Article 11)

Muslim minorities face continued difficulties in securing an adequate standard of living, particularly access to adequate housing. The Muslim minority is the second-poorest population in India, with 31% of its total population and 38.4 % of its urban population living below the poverty line<sup>8</sup>. Muslim per capita expenditures in 2006 were half the amount of the general Hindu population, below those of all disadvantaged groups except the Scheduled Castes and Tribes. Housing conditions for India’s Muslims rank far below the general Hindu population in terms of availability of services, materials, facilities, infrastructure, and habitability<sup>9</sup>. Muslims are concentrated mostly in areas with poor infrastructure that lack water and electricity, and have limited access to basic services. One in three small villages in India with a substantial number

<sup>1</sup> See Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights.

<sup>2</sup> See Bureau of Democracy, Human Rights, and Labor, United States Department of State, India: Country Reports on Human Rights Practices - 2007 (March 2008), available at: <http://www.state.gov/g/drl/rls/hrrpt/2007/100614.htm>.

<sup>3</sup> See Government of India, prime minister’s high level committee, social economic and educational status of muslim community of india 92 (2006) [hereinafter SACHAR REPORT].

<sup>4</sup> See *id.* at 105.

<sup>5</sup> See *id.* at 95.

<sup>6</sup> See *id.* at 105.

<sup>7</sup> This guarantee includes adequate food and clothing (Art. 11(1)), and the right to be free from hunger (Art. 11(2)).

<sup>8</sup> See Sachar Report, *supra* note 3, at 157.

<sup>9</sup> See Committee on Economic, Social and Cultural Rights, “General Comment 4: The right to adequate housing,” (Sixth session, 1991), U.N. Doc. E/1992/23, at ¶ 8; Sachar Report, *supra* note 3, at 148. Muslims are on par with SCTs in quality of housing structure; below them in water availability, electricity, and cooking fuel facilities. See *id.* at 150.

of Muslims has no educational institution, and 40% of large villages with a sizeable Muslim population have no medical facility<sup>10</sup>. Service providers often purposely neglect Muslim communities<sup>11</sup>; property owners often refuse to rent or sell to Muslims; and housing societies in “non-Muslim” localities often “dissuade” Muslims from living there<sup>12</sup>.

### Right to Health (Article 12)

The Muslim community suffers from serious health deficiencies. Muslim children suffer from the highest rates of stunting and the second-highest rates of being underweight among all social groups in India<sup>13</sup>. In addition, the contraceptive prevalence rate for Muslims was reported as being around 10% below the average rate in the nation<sup>14</sup>.

### Right to Education (Article 13)

The overall educational situation of Muslim children throughout India is a serious concern<sup>15</sup>. Net attendance in the primary level is 66% of enrolment<sup>16</sup>. A striking 32.6% of lower caste Muslim children have never been enrolled in school<sup>17</sup>. Finally, only 59% of Muslims are literate, 6% below the national average of 65%. Although the Indian government has implemented national policies and plans to improve access to education throughout the country, Muslim communities have

not been able to reap the benefits of national educational planning and have gradually slipped behind traditionally underprivileged Scheduled Castes and Scheduled Tribes<sup>18</sup>.

### Right to take part in cultural life (Article 15)

The government of India has failed to counter the “societal attacks” made against Muslims and “attempts by state and local governments to limit [their] religious freedom”<sup>19</sup>. The most serious of such attempts include “forcible conversion” laws, which preserve hiring quotas for Dalits who converted to Buddhism or Sikhism but not for those who converted to Christianity or Islam<sup>20</sup>. Prohibitions on the Muslim call to prayer in Hindu-dominated areas also persist<sup>21</sup>.

### Question

- What steps are being taken to ensure the adequate protection and enforcement of core ESC rights for Muslims throughout India, including and especially in the areas of education, healthcare, livelihood, standard of living and participating in cultural life?

### Muslims in Gujarat suffer severe violations as a result of the 2002 state-sponsored communal riots<sup>22</sup>.

Between February 28 and March 2, 2002, communal violence in the State of Gujarat

<sup>10</sup> See Sachar Report, *supra* note 3, at 150.

<sup>11</sup> See Sachar Report, *supra* note 3, at 253-54.

<sup>12</sup> See, e.g., US Department of State Report 2007, *supra* note 2 (noting that the government’s failure to protect Muslims who do live in Hindu-dominated areas from intimidation has “result[ed] in their inability to work, reside, or send their children to school” in these areas).

<sup>13</sup> See Sachar Report, *supra* note 3, at 43.

<sup>14</sup> See *id.* at 40.

<sup>15</sup> See *id.*

<sup>16</sup> See US Department of State Report 2007, *supra* note 2.

<sup>17</sup> See National Alliance of Women, India, Second NGO Shadow Report on CEDAW 72 (2006) [hereinafter Second NGO Shadow Report on CEDAW].

<sup>18</sup> See Sachar Report, *supra* note 3, at 85.

<sup>19</sup> See Amnesty International, India – Five Years On, (March 2007), at 11, available at <http://www.amnesty.org/en/library/info/ASA20/007/2007/en>.

<sup>20</sup> See *id.*

<sup>21</sup> See *id.* The report gives as examples “the April 2006 communal clashes between Hindu and Muslim residents in Aligarh, the March 2006 Hindu attack on Muslim shops in Goa, or the May 2006 police killing of two Muslim protesters in Gujarat,” and notes that “[t]he government did not take action on the investigation of the September 2006 attacks against Muslim worshipers in Maharashtra.”

<sup>22</sup> Consider, for example, CEDAW Committee, Concluding Observations before Indian State Party (2007), where the CEDAW Committee recognized in 2007 that the Gujarat Massacre contributed to the legacy of denying Muslim women their human rights.

resulted in thousands of deaths, physical and sexual violence, as well as looting and destruction of homes and businesses<sup>23</sup>. The overwhelming majority of victims of the attacks were Muslims. According to the findings of numerous human rights and civil liberties groups, including Human Rights Watch, the attacks against Muslims in Gujarat were planned, directed and carried out by members of the *sangh parivar* (or “family”) of Hindu nationalist groups<sup>24</sup> in close cooperation with officials belonging to the Bharatiya Janata Party (BJP) – the ruling party of the State Government of Gujarat – and with extensive participation of the police<sup>25</sup>.

Since these events, the State Government of Gujarat has failed to hold perpetrators of the violence accountable<sup>26</sup>. As the CEDAW Committee reported in 2007, the government of India has failed to provide sufficient information about these events<sup>27</sup>. Indeed, victims and their families are yet to receive an effective remedy for such gross violations of fundamental rights as required under Indian and international law, including fair compensation, restitution, rehabilitation, satisfaction and guarantees of non-recurrence<sup>28</sup>.

The aftermath of the communal violence has left Muslims in Gujarat deprived of basic economic, social and cultural rights. Over 5,000 families that remained in the State of Gujarat following the riots are yet to achieve access to adequate housing, and instead live in displacement camps that lack “basic civic facilities” such as adequate access to food, potable water, sanitation facilities and health services<sup>29</sup>. The Indian government has adopted no official policy to reintegrate and rebuild the lives of an estimated 250,000<sup>30</sup> internally-displaced persons<sup>31</sup>, more than half of whom still fear to return to their homes<sup>32</sup>. Muslim children living in the State of Gujarat are forced to attend different schools from Hindu children<sup>33</sup>. In some cases, fear of the residual social instability in Gujarat has caused Muslim parents to keep children away from schools entirely<sup>34</sup>. Independent NGOs have estimated that the large-scale destruction of homes, businesses and properties in Gujarat has cost the Muslim community Rs. 3,800 crore, or US \$760 million<sup>35</sup>. The State of Gujarat has been complicit in the destruction of sacred landmarks and cultural spaces, which has exacerbated religious tensions<sup>36</sup>. The Gujarat Massacres have thus contributed to the increased “ghettoisation” and marginalisation of the Muslim community.

<sup>23</sup> See NHRC Report on Gujarat, Government of India, Ministry of Home Affairs, Lok Sabha Starred Question No. 23, To be Answered on 16.07.2002.

<sup>24</sup> The *sang parivar* includes the Visva Hindu Parisad (VHP), Bajrang Dal and the Rashtriya Swayamsevak Sangh (RSS). They collectively advocate for the establishment of India as a Hindu state.

<sup>25</sup> See Human Rights Watch, “We have no orders to save you”, 14 Human Rights Watch 1 (April 2002). The National Human Rights Commission later found that the “facts speak for themselves” and that “there was a comprehensive failure on the part of the State Government to protect the constitutional rights of the people of Gujarat.” NHRC Report on Gujarat, *supra* note 23.

<sup>26</sup> See NHRC Report on Gujarat, *supra* note 23.

<sup>27</sup> See *id.*

<sup>28</sup> See *e.g.* M.C. Mehta and Another v. Union of India, AIR 1987 SC 1086 (considering both compensatory and reparative remedies available under Article 32 of the Constitution of India). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law, U.N. Doc. A/RES/60/147 (Dec. 16, 2005).

<sup>29</sup> See Amnesty International, *supra* note 19, at 7-8; US Department of State Report 2007, *supra* note 2 (quoting National Commission of Minorities (NCM) October 2006 report on relief colonies); Asian Centre for Human Rights, “India: Human Rights Report 2007: Gujarat” available at <http://www.achrweb.org/reports/india/AR07/gujarat.htm>.

<sup>30</sup> See Concerned Citizens Tribunal, “Crime against Humanity, An Enquiry into the Carnage in Gujarat, Findings and Recommendations,” Vol. II, 122 (Oct. 2002).

<sup>31</sup> See PEOPLE’S FORUM FOR UP IN INDIA, STAKEHOLDERS’ REPORT UNDER THE UP 5 (2007).

<sup>32</sup> See generally Nyayagraha: Campaign for legal justice and reconciliation in Gujarat, “The Fight for Justice: the aftermath of the Gujarat carnage of 2002”; Samerth Charitable Trust, Annual Report 2005-2006, at 8.

<sup>33</sup> See UNESCO, New Delhi Second International Conference on Law, Session on Right to Education 15 (2004).

<sup>34</sup> See SECOND NGO SHADOW REPORT ON CEDAW, *supra* note 17, at 76.

<sup>35</sup> See Human Rights Watch, “Compounding Injustice: the government’s failures to address massacres in Gujarat”, 15 HUMAN RIGHTS WATCH 1 (July 2003) (citing Concerned Citizens Tribunal, *Crime Against Humanity*, vol. II, 27).

<sup>36</sup> See Amnesty International, *supra* note 19, at 2, (citing “Gujarat emerging as polarised state,” NDTV, June 4, 2006); ACHR, India: Human Rights Report 2007, *supra* note 29. See also R. Venkataraman, “Centre cites tension in Vadodara, SC stays HC order on demolition,” The Indian Express (May 5, 2006).

### *Questions*

- What steps are being taken by the government to remedy the widespread deprivations of economic, social and cultural rights of Muslims living in the State of Gujarat that followed the communalist pogroms of 2002?
- How has the government implemented the Concluding observations of the CEDAW Committee from 2007 and thereby demonstrated its respect for the United Nations treaty body reporting process?

**Muslim women, especially in Gujarat, are particularly vulnerable to economic, social and cultural deprivations.**

The deprivations of basic ESC rights for Muslims in India described herein are especially borne by

women, which contravenes Covenant Article 3. In particular, women suffer infringements of their right to just and favourable conditions of work (Article 7), the right to earn a living (Article 11), the right to health (Article 12), the right to education (Article 13), and the right to take part in cultural life (Article 15). Doubly marginalised on account of both their gender and their religion, specific attention must be paid to the plight of Muslim women living in Gujarat, as well as those throughout India.

### *Question*

- What measures are being undertaken to secure adequate housing, access to food, health care and livelihood for Muslim women and children, particularly widows, victims of rape and orphans?

# SEXUAL RIGHTS

## Key Issues

Violations of sexual rights have occurred, despite sexual rights being elaborated by international legal forums, because of:

Economic, social and cultural rights (ESCR) embody essential elements of a life of dignity and freedom<sup>1</sup>. However, some social taboos, cultural practices and laws in India deny people a life of dignity and freedom and/or access to economic resources and further puts them at the margins. This is especially true with issues that have to do with sexual rights.

Sexual rights are an integral part of human rights and the latter is already recognised in national laws, international human rights documents and other consensus documents<sup>2</sup>. These include the right of all persons to be free of coercion, discrimination and violence<sup>3</sup>. They also lay down that the highest attainable standard of health in relation to sexuality including access to sexual and reproductive health care services and the ability to seek, receive and impart information in relation to sexuality. They note that there must be sexuality education; respect for bodily integrity; respect for choice of partner; respect for the decision to be sexually active or not; respect for consensual sexual relations; respect for consensual marriage; respect for the right to decide whether

or not and when to have children; and the ability to pursue a satisfying, safe and pleasurable sexual life.

Despite sexual rights being thus elaborated, there have been many documentations of violation of rights. Violations have occurred because of:

- Laws that discriminate against sections of the population
- Laws meant to eliminate harmful traditional and cultural practices that have not been implemented properly
- Social taboos that exist on sexuality issues and sexual rights

### Laws that discriminate against sections of the population

India continues to have laws that discriminate. Section 377 of the Indian Penal Code (Unnatural Offences) states that “*Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine*”.

<sup>1</sup> <http://www.escr-net.org/resources>.

<sup>2</sup> Beijing Declaration and Platform For Action: Para 89-99, ICPD document: Chapter VII, UDHR, ICCPR, CEDAW: by guaranteeing rights to personal freedom, health, non discrimination, equal opportunity and protection from violence, Convention on the Rights of the Child, Indian Constitution: Provisions on equality and discrimination, Child Marriage Restraint Act, 1929 also refer to the web link: [www.madre.org/articles/int/b10/sexualrights.html](http://www.madre.org/articles/int/b10/sexualrights.html).

<sup>3</sup> M Berer, *Reproductive Health Matters*, 2004, 12 (23): 6–11.

Voices Against 377<sup>4</sup> in its report, *Rights for All: Ending Discrimination Against Queer Desire Under Section 377*, highlights how the law discriminates against a section of population, namely same-sex desiring people, including those who identify as lesbian, gay, bisexual and transgender (LGBT), *hijra*, *kothi* and other queer<sup>5</sup> people.

The law *appears* to be neutral in penalising all sexual acts “against the order of nature” or non-procreative sex (anal sex, masturbation, etc.) among both homosexuals and heterosexuals. However, in its interpretation and implementation, only the above populations get stigmatised and criminalised. Although there are not known to be many convictions based on Section 377, the police routinely use this law to intimidate, harass and extort (money and sexual favours) from same-sex desiring people.

The law has been also used to arrest outreach workers and NGO staff working on HIV/AIDS issues<sup>6</sup> on charges of indulging in “unnatural sex” in a picnic spot. The “charges” turned out to be false when investigated by the fact-finding team.

The Immoral Trafficking (Prevention) Act (ITPA) of 1986 is another example of a discriminatory law. While the stated purpose of the ITPA is to protect sex workers, it is more often than not used against them. The Act does not specifically prohibit prostitution, but law enforcement officials have continuously used it to harass sex workers. The prohibition against “public solicitation” is particularly ambiguous. Police officers have been known to accuse workers of solicitation, and then demand bribes or free sex<sup>7</sup>.

**Laws meant to eliminate harmful traditional and cultural practices, which have not been implemented properly**

Then there are laws that have not been implemented properly. The Child Marriage Restraint Act, 1929, is an example. This Act was enacted to deal with the social evil of child marriage. However, even after decades of the Act having been passed, this cultural practice remains unchecked. In fact, any attempt to curb this practice is met with severe consequences. In 2005, an anganwadi supervisor in Dhar district of Madhya Pradesh was attacked with a sword in her home by an unidentified man for trying to stop 15 child marriages on a particular day in a village. Her hands were nearly severed in the attack, and she spent many an agonising month in hospital. This was not an isolated attack. Another anganwadi worker was threatened near Indore city after she had thwarted a child marriage. Interestingly, instead of condemning the heinous crime, the then chief minister, Babu Lal Gaur, created a stir by stating that the government or the law-enforcing machinery could not prevent child marriages from taking place. He said the practice was a scourge, like liquor consumption and untouchability, which would only disappear after awareness increased among people<sup>8</sup>.

**Social taboos that exist on sexuality issues and sexual rights**

The realisation of sexual rights is also hindered by social taboos. These taboos are manifested in a number of ways. For instance, violence and torture inflicted upon *hijras* and *kothis* by the police. The report by People’s Union for Civil Liberties, Karnataka - ‘Human Rights Violations against the Transgender Community’ - documents the violence and torture inflicted by the police on *hijra* and *kothi* sex workers on a regular basis on the pretext of cleansing the streets of “such” people. The report shows that society’s deep-rooted fear of sexual and gender non-conformity

<sup>4</sup> ‘Voices Against 377’ is a coalition of Non Governmental Organisations (NGOs) and progressive groups based in Delhi. It is a point of intersection and dialogue between various social movements that these groups represent, where a united voice is being articulated against Section 377 of the Indian Penal Code which criminalises private consensual sexual acts deemed to be against the order of nature. Also See, [www.voicesagainst377.org](http://www.voicesagainst377.org).

<sup>5</sup> “Queer”: an inclusive umbrella term that designates all those who are willing to question the norms of gender and sexuality.

<sup>6</sup> Report of Fact Finding Team, National Campaign for Sexuality Rights.

<sup>7</sup> “Rights and Issues of People Involved in Prostitution and Sex Work in India”, Report submitted by SANGRAM and VAMP to the United Nations High Commissioner for Human Rights for the Universal Periodic Review.

<sup>8</sup> <http://thehindu.com/fline/fl2214/stories/20050715007800600.htm>.

manifests itself in the refusal of basic citizenship rights to these communities. This reality is also reflected in the Voices report.

Despite homosexuality being taken off the internationally recognised *Diagnostic and Statistical Manual of Mental Disorders* (DSM), which the Indian Psychiatric Society follows, mental health professionals have been known to engage in reparative therapy that seeks to convert or change people's sexual orientation, causing a lot of pain and distress to the persons concerned<sup>9</sup>.

There have been documented cases of lesbians committing suicide because of social stigma and discrimination<sup>10</sup>.

Ban on sexuality education is another concern: 2007 saw 12 Indian states banning sexuality education on the pretext that it was alien to "Indian culture" and that it would corrupt the minds of young people in India. The ban was in reaction to the "countrywide protest" threatened by right wing religious groups, scholars and intellectuals at a meeting in Delhi titled, *National Convention Against Sex Education*<sup>11</sup>.

### *Recommendations*

Sexual rights are human rights. Their violations push people further to the margins, forcing them to lead lives devoid of dignity and without adequate means to sustain themselves. This is in direct contradiction of the principles enshrined in the ESCR. We therefore urge the Government of India to:

- Fulfill its commitments to international documents that it has signed.
- Repeal national laws that discriminate against sections of populations.
- Strictly implement national laws that have been enacted to eliminate harmful cultural practices.
- Engage/dialogue with stakeholders that are at the receiving end of laws which discriminate.
- Constitute effective redressal mechanisms to address human rights violations.
- Provide for an enabling environment so that sexuality issues can be discussed openly as they have direct bearing on people's lives.

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<sup>9</sup> Voices report.

<sup>10</sup> Alternative Law Forum's compilation of lesbian suicides.

<sup>11</sup> Submission To Paul Hunt, UN Special Rapporteur on the Right To the Highest Attainable Standard Of Health on Sexuality Education in India by CREA during his visit to India (23 Nov – 3 Dec, 2007).

# MEMBERS OF THE COLLECTIVE AND ENDORISING ORGANISATIONS/INDIVIDUALS

- **3 D-Trade-Human Rights-Equitable Economy**
- **AALI - Association for Advocacy and Legal Initiatives**  
Luknow, Uttar Pradesh
- **Action India**  
New Delhi
- **ActionAid International**  
Ahmedabad, Gujarat
- **All India Dalit Mahila Adhikar Manch**  
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- **Equations**  
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- **EVIDENCE**  
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- **Focus on the Global South**
- **Forest Rights Network**  
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- **Forum for Biotechnology and Food Security**  
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- **Gender and Water Alliance Group**  
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- **Global Organisation for Life Development**  
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- **Gorakhpur Environmental Action Group**  
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- **Joint Women's Programme**  
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- **LAKSHYA**  
Patna, Bihar
- **Lawyer's Collective**  
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- **LAYA**  
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- **MASUM**  
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- **National Campaign on Dalit Human Rights**  
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- **National Alliance of Women**  
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- **People's Watch-NPPTI**  
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- **People's Watch**  
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- **PWESCR (Programme on Women's Economic, Social and Cultural Rights)**  
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- **Resource for Legal Action**
- **Saarthi Trust**  
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- **Sama Resource Group for Women and Health**  
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- **Social Development Foundation**  
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- **SOCIAL WATCH**  
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PWESCR is an international advocacy and educational initiative in the area of women and economic, social and cultural rights (ESCR). From its base in India, PWESCR works to promote the human rights of women addressing women's poverty, work and livelihood.

## **PWESCR programme work is organised around two broad Goals**

- Build leadership and capacity of groups, organisations, activists and other actors in the field of human rights and economic justice to promote women's ESCR;
- Establish links and foster collaborations in order to enhance learning, as well as develop shared strategies to advocate problem-solving alternatives at all levels in the context of gender.

## **PWESCR Believes in**

- All human rights are universal, indivisible, and interdependent. Civil and political rights are interdependent on economic, social and cultural rights and vice-a-versa;
- Women's economic and social empowerment are key to the full realisation of women's human rights;
- Gender analysis is crucial to advance all ESCR;
- Human rights mechanisms are an organising, mobilising and empowering tool in addition to an international legal framework;
- An intersectional analysis ensures that women from marginalised communities are not left behind.

## **PWESCR's Objectives**

- To promote women's human rights, especially in the context of economic, social and cultural rights by bringing a gender framework to policy, law and practice at local, national, regional and international levels; and
- to strengthen standards and full implementation of government's commitments within the international human rights framework.

## **PWESCR's Strategies to achieve its goals include**

- Action-oriented research to provide deeper analysis of women's economic, social and cultural issues and to facilitate new strategies for defending human rights;
- Collaboration between various networks and organisations to work at all levels for the actualisation of women's human rights;
- Provide technical assistance and impart human rights education to individuals and to women's groups on monitoring and self-representation skills through leadership development programs;
- Provide human rights education and training to enable participation of other social organisations in the monitoring of human rights including treaty bodies such as the ICESCR and CEDAW.

To learn more about PWESCR visit [www.pwescr.org](http://www.pwescr.org)

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