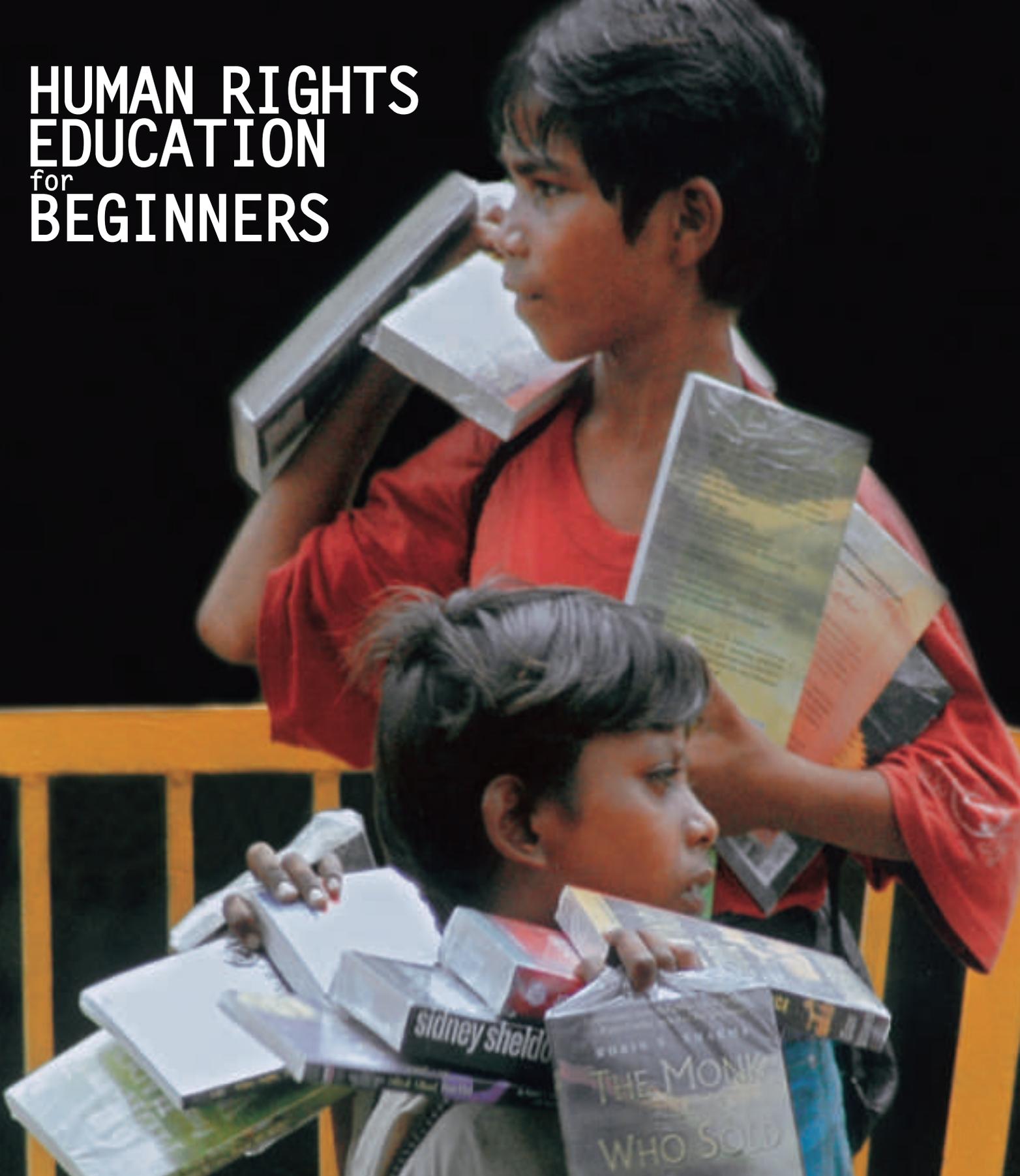


# HUMAN RIGHTS EDUCATION for BEGINNERS



Prepared by  
Karnataka Women's Information and Resource Centre

For  
**NATIONAL HUMAN RIGHTS COMMISSION**





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## NATIONAL HUMAN RIGHTS COMMISSION

Faridkot House, Copernicus Marg

New Delhi 110 001, India

Tel: 23385368 Fax: 23384863

E-mail: [covdnhrc@nic.in](mailto:covdnhrc@nic.in)

Website: [www.nhrc.nic.in](http://www.nhrc.nic.in)

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Edited by Mimmy Jain

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## Acknowledgements

The Karnataka Women's Information and Resource Centre (KWIRC), an activity of the Singamma Sreenivasan Foundation (SSF) in Bangalore, has been working since 1999 on developing source material on human rights education, based on the human rights movements in India. The rationale behind the effort is that Indian students should know about the form such struggles have taken in India. Our efforts were supported by a grant received from the Ford Foundation, which facilitated identification and preparation of ten dossiers on rights/movements within the broad spectrum of human rights. These dossiers could serve as reference material at the university level.

Each of the dossiers that are listed below was authored by an activist who is deeply involved in, or closely associated with, the relevant movement:

1. The Rights of the Child by Maharukh Adenwalla
2. The Rights of the Dalits by Martin McGowan
3. Human Rights and the Environment by Ashish Kothari and Anuprita Patel
4. Land and Housing Rights by Miloon Kothari and Sabrina Karmali
5. The Rights of Home-based Workers by Vibha Puri Das and Aditi Kapoor
6. The Right to Information by Aruna Roy et al.
7. The Rights of Fish Workers by Nalini Nayak

In order to deepen the awareness of human rights among grass-root organisations, the National Human Rights Commission (NHRC), New Delhi, provided us a grant that enabled us to revise and edit the dossiers for the university level and to prepare a composite manual for grass-root organisations. Three more dossiers were prepared for both levels. These are:

- The Rights of the Disabled by Meera Pillai
- Reproductive Rights by N B Sarojini
- Gandhian Struggles for Land Rights by D Jeevan Kumar

The suggestion that a manual be prepared for grass-root organisations was made at the Round Table on 'Human Rights Education', organised by the SSF on 10-11 October, 2002, at New Delhi, in collaboration with the NHRC, New Delhi.

This manual was prepared by the KWIRC, Bangalore, by distilling relevant material from a set of ten dossiers prepared earlier for university students.

We are grateful to Dr. Justice A.S. Anand, Justice J.S. Verma, Justice Sujata V. Manohar and Justice V.S. Malimath for their valuable advice and support for the project; to Aruna Sharma and Sudha Shrotria of NHRC for the interest and support; to Ms. Sarasu Thomas of NLSIU for preparing the first draft. We acknowledge the contribution and commitment of Nageena Nikhat Khaleel, Research Associate, SSF, who coordinated the project.

We are especially indebted to Dr. Devaki Jain, Trustee, SSF for initiative, support, guidance and encouragement that she provided throughout the project.

  
(V S Badari)  
Director, SSF



# Preface

**Justice A. S. Anand**  
Chairperson  
(Former Chief Justice of India)



28<sup>th</sup> November, 2005

**T**he National Human Rights Commission has expressly been mandated to promote Human Rights literacy and awareness vide section 12(h) of the Protection of Human Rights Act, 1993. The Commission has been serving this encompassing purpose within its best means.

The Commission, in collaboration with the NCERT had brought out a Source Book on Human Rights in 1996. The Source Book was prepared for the promotion of Human Rights Education in the country, particularly at the school level. Its purpose was to make available Human Rights information to teachers and students, policy makers, curriculum developers and other personnel involved in formulating and implementing educational programmes.

It persuaded the University Grants Commission to introduce human rights education at the university level. As a result, human rights education is now being imparted in over 35 Universities /Colleges across the country and also in the National Law Schools. However while reviewing the status of human rights education in India, one finds that due emphasis has not been given to include human rights as a subject or as part of the broad curriculum at the school level. Despite the Commission persuading both central and state governments not much seems to have been done by government to inculcate a culture of human rights in young minds. The importance of inculcating a culture of Human Rights in the impressionable minds of children is best reflected by the fact that the UN Commission on Human Rights in its resolution 2004/71 relating to regional review and follow-up to the UN Decade for Human Rights Education has put onus on the inclusion and improvement of Human Rights Education in schools.

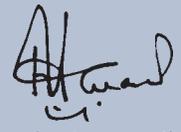
In 2004 the Commission, in collaboration with the National Council for Teacher Education brought out a Handbook for Sensitising Teachers and Teacher Educators on “ Discrimination Based on Sex, Caste, Religion and Disability”. The Handbook aims at creating awareness among teacher-educators to foster the need for inherent equality by consciously keeping away prejudices based on sex, caste, religion and disability while handling teaching-learning situations.

Of late, human rights are increasingly becoming the subject of concern for legal fraternity, academicians, researchers, policy makers and voluntary organisations. It is said that the awareness of

human rights is largely limited to the educated sections of society, while ideally it is necessary to create awareness about human rights at all levels. There has been a growing realization that human rights cannot be taught only from formal documents. Indigenisation of human rights education thus, can be one of the crucial components of human rights education in India. NHRC has been supporting such efforts initiated at the non-governmental level.

Taking note of the need to develop appropriate course material for human rights education largely drawn from the experiences gained out of the human rights movement in India, the Karnataka Women's Information and Resource Centre, Bangalore has drafted " Human Rights Education for Beginners". One of the topics covered in the book includes the Right to Information. We are aware that the Right to Information Act came into force on the 12<sup>th</sup> October 2005. This of course is not reflected in the text, which was written before the Act got Parliamentary clearance, nevertheless a chapter concerning Right to Information is worthy of inclusion in the book to enable the students to learn about the movement for the enactment of the legislation before it gained legal acceptance.

Education and awareness are key to creation of a human rights culture in the country. The present publication, I am sure, will prove to be a useful material for the students.



(A.S.Anand)

The materials used in this document are a set of ten dossiers prepared by experts in the following fields:

1. The Rights of the Child
2. The Rights of the Disabled
3. The Rights of the Dalits
4. Reproductive Rights
5. Human Rights and the Environment
6. Land and Housing Rights
7. The Rights of Home-based Workers
8. Gandhian Struggles for Land Rights
9. The Rights of Fish Workers
10. The Right to Information

All the dossiers were originally written for students at the university level. Adapting them for grass-root organisations was indeed a daunting task. At the university level, the dossiers were meant to be narratives of struggles. The details of the struggle were perhaps best encapsulated in the dossiers on fish workers' rights, Gandhian rights and the right to information. Other dossiers such as those on land and housing rights, reproductive rights, disability rights, home-based workers' rights and environmental rights were a combination of a detailed enumeration of national and international standards as well as a short description of the study. Still others, particularly the dossiers on child rights and Dalit rights, were collections of information or data.

Initially, it was thought of to try a uniform way of writing each chapter, but it became difficult to do so because of the differences in focus as well as the materials available in the dossiers. Thus, there is a slight variation in the approaches followed. In the chapters on child rights and Dalit rights, the approach is more to understand the position of these vulnerable groups as well as the protection that is available to them. Additional material was required to be added to the chapter on child rights because it had to be kept in mind that the document was meant to be read by children. The chapters on land and housing rights, reproductive rights, disability rights, home-based workers' rights and environmental rights carry a detailed description of the problems, solutions and laws available as well as an encapsulated version of the struggle to achieve that particular human right in India. The original narrative form, describing the growth of the movement, has been retained in only two chapters – fish workers' rights and the right to information – as these dossiers contain detailed narratives of the struggles that have gone on despite the lack of supporting human rights instruments to back them. In the last two chapters, therefore, the original language of the dossier has been retained as far as possible, though the reader must keep in mind that the present chapters are only about one-sixth the size of the original dossier.

In all the chapters, the following tools have been used to hold the attention of the reader:

- Navigational tools at the beginning and at regular intervals of the chapters in order to give a broad outline of what is to come. This also makes the location of sub-chapters easier;
- Charts to organise what would otherwise have been several paragraphs of bulky material, and
- Exercises in order to get the reader to apply what he/she has been reading. Some of these exercises have answers, others are self-exercises.

An Introduction has also been written to the document. This must be read by the reader in order to understand what is meant by human rights, where do you 'find' human rights, how international treaties work, and so on. This background is essential in order to understand the subsequent chapters.

The arrangement of the chapters is not random. The document moves from simple to more complex, both in terms of concepts to which a grass-root activist can relate as well as language. There is a lot of 'spoon-feeding' in the first few chapters, while the reader has to put in more effort in the later chapters. The last two chapters are narratives, a style that the reader may, perhaps, be encountering for the first time.

Although time was short and a lot more could have been done, it is hoped that this rewriting of a 1,000-odd pages of material from the dossiers will be a useful document for grass-root organisations in India.

# Introduction

**W**hat does it mean to be a human being? For those of you who like biology, it means that we are animals who belong to the genus, *homo*, and the species, *sapiens*. In history, human beings are a species that evolved into 'civilised' creatures with language to communicate and to live in an organised society. In political science, we get an idea of how people live in an organised society and why we need rules to organise this society and make sure it functions well.

Often, it is said that man is a social being. What does this mean? Is a tiger a social being? A tiger lives alone and fends for itself, coming together only to mate. The female rears the children. This is not so in the case of human beings. Individuals live in a family, which is often considered the unit of society. Families constitute the society or the community.

However, though we may be part of a family, you are important as an individual. You have certain rights that even your family cannot take away from you. You are at the centre of human rights.

## What are Human Rights?

This is a question that all readers who are studying human rights for the first time will ask. Here are some frequently asked questions (FAQs) on the subject of human rights:

**Q. What are human rights?**

A. Human rights are certain rights that are vested in every person by virtue of his/her being a human being.

**Q. Do all people have human rights?**

A. Yes. The only condition to be fulfilled is that one must be a human being.

**Q. What about animal rights? They, too, have rights, don't they?**

A. Yes, of course, they do. It is, therefore, not true to say that only human beings have rights. Animals also have rights, but since animals are not human, their rights would not obviously come within the meaning of the term, 'human rights'!

**Q. Thus, human rights are the rights of people. But do all people have the same rights?**

A. This depends on how you look at it. There are three points to keep in mind:

- Some rights are so basic that they cannot be dispensed with. A typical example is slavery. No nation anywhere in the world today can say, 'All right, let us have slavery';
- Countries may be bound to recognise some rights if they have agreed to do so by signing an international agreement called a treaty or a convention. If they have not done so, they may not be bound, and
- Human rights is not a static or fixed concept, it is constantly evolving or changing. It is like a seed, which, once planted, grows slowly and steadily, putting out roots, shoots, branches, leaves and fruits.

**Q. Who gives us human rights?**

A. No one 'gives' us human rights, but other people can take away our rights by violating them or by not implementing them.

**Q. Where do we find human rights?**

A. In the values of freedom and equality that we hold dear. But we also find human rights evidenced in certain important documents.

**Q. Why have human rights become so fashionable suddenly?**

A. This is because of the growing awareness all over the world, including in India, and movements towards recognising new rights. We will examine some of these struggles in this book. As I said earlier, human rights are like a seed. Nowhere is this as evident as it is in India, where human rights are growing rapidly.

**Q. How did it all begin and where are we going?**

A. The development of the concept of human rights, which happened over a long period of time, is probably one of the most fascinating parts of history. Here's a bird's eye view of the main events in the history of human rights:

The **Magna Carta** was the first step. It put forward the idea that no one was above the law. But by no means were all people considered equal.

The **American Declaration of Independence** was important as a group of people decided to take their destiny into their own hands. Yet, there was slavery and women held an inferior position.

The **World Wars** saw human rights violations on an unprecedented scale. Hard lessons were learnt, including the basic worth of human life and the dignity of every human being.

The **United Nations** (UN) was formed in the aftermath of the World Wars when world governance and ordering were seen as desirable. One of the first tasks of the UN was to prepare the groundwork for human rights.

The **Universal Declaration on Human Rights** (UDHR) was drafted soon after the UN came into being. It is a broad declaration of the ideals to which the world aspires. The Declaration was not binding in nature as it was not a treaty, just a statement. However, it carries great moral and political force even today. Besides the UDHR, the **International Convention on Civil and Political Rights**, 1966, and the **International Covenant on Economic, Social and Cultural Rights** (ICESCR), 1966, are also significant in the history of international human rights.

The rights enumerated in the UDHR were written in the form of two documents, which were in the nature of treaties. We will be referring to these two treaties and the UDHR often in this book.

In India, two important developments were Indian Independence and the drafting of the Constitution of India. Since the Constitution was drafted at the time that all this excitement was taking place in the international arena, the drafting process was heavily influenced by human rights. This is evidenced in our Constitution, especially in the chapters dealing with Fundamental Rights and the Directive Principles of State Policy.

A free India did not mean that the struggle was over. There were many groups that did not receive the benefits of freedom. Many of these groups have struggled in loneliness and in solidarity till they realised new rights and the fulfilment of human dignity.

This book is a narration of some of these struggles and of what has been achieved.



# THE RIGHTS OF THE CHILD

*By Maharukh Adenwalla*



Photo credit: Vipin Kumar

# 1. THE RIGHTS OF THE CHILD

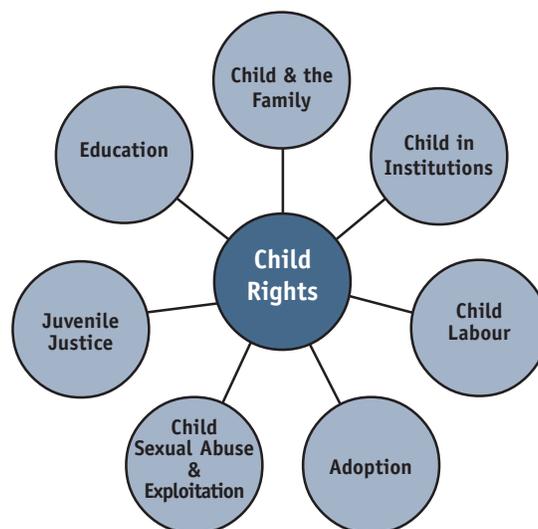
## Why do We Need to Look at the Rights of the Child Separately?

No children's rights existed within the larger context of adults' rights. It was felt that children did not have any rights as they were not in a position to claim them. Children's issues were looked on as welfare issues. Now, of course, things have changed. It is universally accepted that children are one of the most vulnerable groups of humanity and, therefore, need extra protection. This extra protection has emerged in the form of a well-developed system of rights. Even if the children are not in a position to claim any rights for themselves, their parents or guardians or concerned adults or the State can exercise these rights on their behalf.

Another big development has been the shift from looking at a child as a part of or attached to an adult to looking at a child as an independent human being. In fact, the UN Convention on the Rights of the Child, which we will be referring to time and again, recognises two main rights of children – autonomy and freedom. The Convention stresses that a child's wishes, feelings and choices must be respected. Unfortunately, very rarely does this happen.

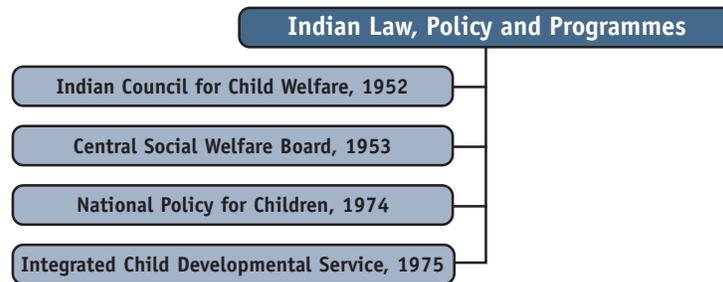
Of late, the importance of listening to a child is being felt. This is especially so in the case of child abuse. In many cases of child abuse, either sexual or relating to violence against the child, the child does attempt to communicate with an adult. The adult does not listen to the child and comes to understand the problem often when it is too late. We must remember that children, especially small children, may not possess adequate vocabulary and may not know the words to adequately describe what happened to them. There is also the possibility of fear of punishment for doing something wrong. In cases where the offenders are adults, it is worse because it is usually a person who is in a position of authority with regard to the child and the child feels helpless to do anything. Worst of all, the abuser could be a family member or a friend of a parent.

Therefore, listening to what a child has to say is of paramount importance.



The single most important principle on which the rights of the child are based is the **best interest principle**. In simple terms, this means that any action taken with regard to a child must be in his/her best interest. It is hoped that one cannot go wrong if this standard is followed.

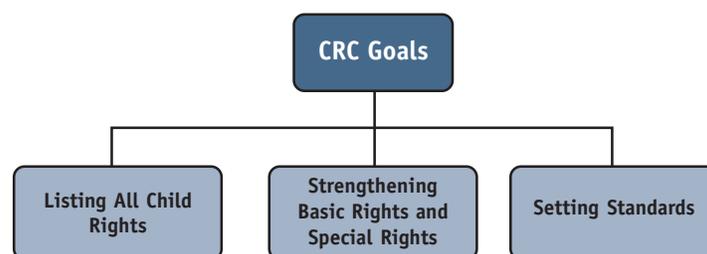
In this chapter, we will look at a selection of children’s rights. Many of these are especially important from the Indian point of view.



India has followed the UN Convention on the Rights of the Child (CRC) since 1992. If you remember, in the Introduction, we dealt with treaties and conventions as important sources of human rights. The CRC is probably the best example of this. Almost *all* the countries of the world have accepted the CRC. The CRC is, therefore, the basic foundation for child rights in the world today and sets standards for all countries to follow.

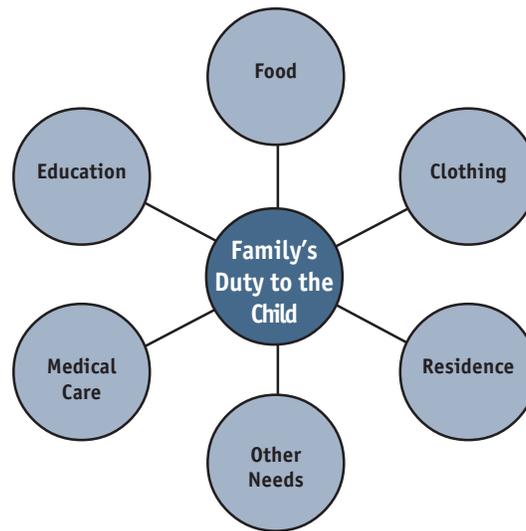
## The UN Convention on the Rights of the Child

While dealing with the history of human rights, we discussed the World Wars and the impact they had on human rights. During this period, very many children were orphaned or disabled due to the Wars and in need of special protection. Those working with children felt that the existing system of human rights was not sufficient to deal comprehensively with the needs of the children. Thus, the UN Convention on the Rights of the Child brought *all* the rights of the child within one document for the very first time in history.



## The Child and the Family

We discussed in the Introduction that the family was the basic unit of society. Most children are part of a family. As individuals in the family, children have a right to be taken care of, i.e. to be maintained by their parents until they grow up and are capable of taking care of themselves. This is true irrespective of the fact whether their parents are married or not. In other words, the legitimacy of a child does not matter in his/her maintenance, though it may matter in inheritance and other matters.



A happy home is the greatest gift the world can give a child. Earlier, no one could imagine a situation in which the home was not a safe place for a child, but now, it is a well-known fact that violence takes place against children within their home. And takes place often.

Children subject to violence are children in need of care and protection. They can be removed from such abusive families and situations and moved to an institution or safe place under the Juvenile Justice System, which we will discuss later. Abusive people or parents can be punished as well because violence is a crime.

### EXERCISE

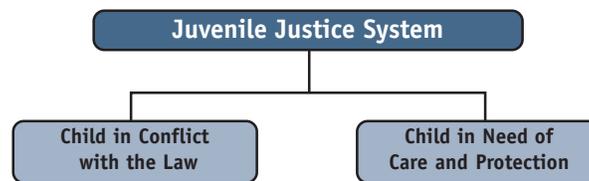
List the following instances of violence as 'okay' or 'not okay':

1. Locking up a child in a bathroom for a long period of time, perhaps for a few hours.
2. Not giving a child food all day as a punishment.
3. Using a child for illegal activity.
4. Beating a child severely, causing him/her an injury.

### ANSWERS

All the instances of violence cited in the exercise are 'not okay'. Children subjected to violence are 'children in need of care and protection'. They can be moved from such abusive families and situations to an institution or safe place under the Juvenile Justice System, which will be discussed next. Such parents or other persons can be punished as violence is a crime as well.

## Children in Institutions: The Juvenile Justice System



### Child in Conflict with the Law

When an adult person commits an offence, he is brought before the court and sentenced, perhaps, to prison. However, if the offender is a child, he/she needs to be treated differently. So, the child is not brought before a court, but before the Juvenile Welfare Board, and he/she is not sent to prison, but to a special home run by the government for juvenile offenders.

### Child in Need of Care and Protection

If a child is abandoned or has no one to take care of him/her, he/she is said to be a child in need of care and protection. Also, as we saw earlier, even if the child has a family or a guardian, but is being abused or subjected to violence, he/she is also a child in need of care and protection. Such children are brought before the Child Welfare Committee and sent to an institution to be taken care of.

Although many of these institutions are called 'homes', they are most often far from the loving homes that children deserve. Workers in the field of juvenile justice have been campaigning for better homes. They have pointed out a number of cases where there has been physical as well as sexual abuse of children by the very people who were supposed to take care of them.

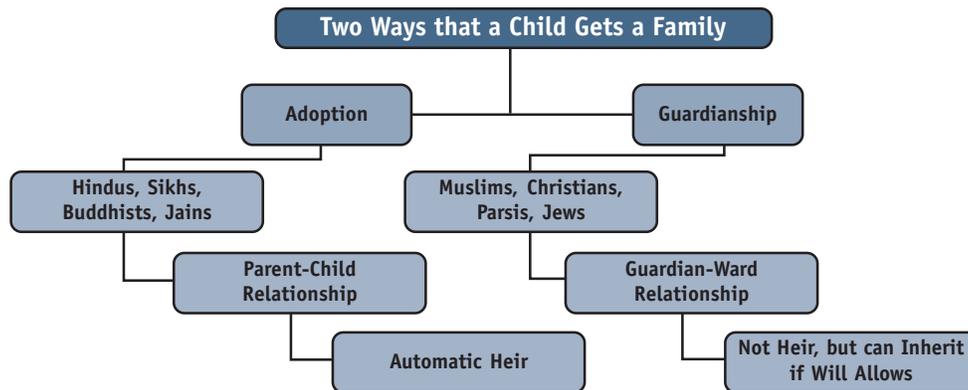
There is a real need to improve these institutions and also to consider other ideas to enable these children to grow up in a caring environment.

## Adoption

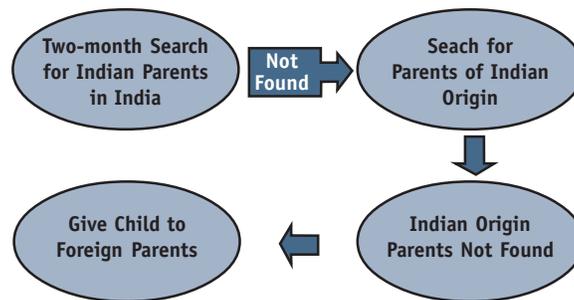
Adoption is one of the best ways to rehabilitate an orphan or an abandoned child or a child in need of care and protection. Adoption is fairly common in Indian society. Are any of you or your friends or cousins adopted children? How does adoption work?



When a child is born, the woman who gives birth to the child is called the natural or biological mother and the father is called the natural or biological father. When a child is adopted, the child's new parents are called the adoptive mother and father. Once an adoption takes place, a child cuts off all ties with his/her birth family and becomes part of the adoptive family. Adoption is the best way of giving a child a family. And as we have seen earlier, a happy home is the best gift the world can give to a child.



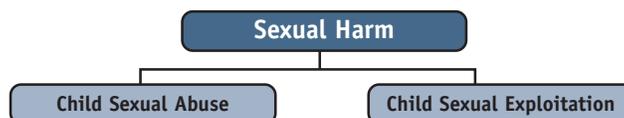
It is hoped that sometime in the future, all children now taken under guardianship will also be adopted as that makes their position much safer. Sometimes, it is not possible to find parents for a child within India. Then, inter-country adoption is resorted to in order to find a home for the child.



Either way, what is important is maintaining the best interests of the child and the need to guarantee to every child the right to a happy home.

## Sexual Abuse of Children

In Indian society, neither parents nor teachers think it necessary or appropriate to provide sexual education to children. Sex education is especially important today in the context of child sexual abuse. The feeling that child sexual abuse does not happen in Indian society or that it happens rarely is false. It happens and more often than we would like to believe. Worst of all, sexual abuse warps children's lives and shatters their innocence.



Sexual abuse of children could take place in many ways. Here are some of the common terms used with regard to such abuse:

**Incest:** Sexual relationship with a close family member

**Paedophilia:** Habitually seeking of the company of a child by an adult to satisfy sexual needs

**Rape:** When a man has forced sexual intercourse with a girl/woman. If a man has forced sexual intercourse with a boy, it is referred to as sexual sadism

**Molestation:** Eve teasing, touching, looking, showing pornography to a child, talking in a sexual manner, forcing a child to strip or expose himself

**Fondling:** Touching body parts, which could include genitals, breasts, lips, face, etc.

**Forced masturbation:** Masturbation is the stimulation of the genitals to bring about sexual arousal, forcing a child to do so

**Exhibitionism:** Exposing the genitals of an adult to a child

**Sexual sadism:** Doing any acts of a sexual nature that are extremely perverse or violent or degrading in nature.

## EXERCISE

In your mind, quietly think of newspaper or magazine articles or any instances you know of child sexual abuse.

## Sexual Exploitation of Children

Sexual exploitation of children is closely linked with the sexual abuse of children. In fact, it is child sexual abuse with a commercial angle. Sexual exploitation of children could include the following categories:

**Trafficking:** Selling or buying children for sexual work, including prostitution

**Prostitution:** Forcing children to have sexual intercourse with adults in exchange for money

**Pornography:** Showing or photographing or filming children in sexual activities or displaying the sexual parts of a child

**Sex tourism:** Offering children to paedophiles or using children for different kinds of sexual activity.

*See sections on Sexual Abuse of Children under the chapter Reproductive Rights for more details.*

Several child rights instruments exist to combat these evils:

- **The UN Convention on the Rights of the Child:** Articles 34, 35 and 36 deal with sexual abuse and sexual exploitation of children. Countries have the duty to take measures to prevent forcing or persuading children into unlawful sexual activity or exploiting them for prostitution or pornography and trafficking, i.e. buying or selling them;
- **Indian Penal Code:** Section 376 deals with rape, which has been discussed in the section on Sexual Abuse of Children. Rape happens between a male offender and a female victim. Sexual abuse of a boy child is not rape; it falls under Section 377, dealing with unnatural sexual offences. Many terms that we have already discussed under sexual abuse of children would be covered here and punishable under the law;
- **The Constitution of India:** Article 23 prohibits trafficking in human beings;
- **The UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others:** This asks countries to prevent buying and selling or dealing in children for commercial sexual exploitation;

- **The Immoral Traffic Prevention Act:** This Act was enacted in pursuance of India's obligations under the UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others. The Immoral Traffic Prevention Act punishes trafficking and is supposed to protect trafficked children. A child prostitute rescued under this Act must be treated as a child in need of care and protection and brought under the protection of the Child Welfare Committee, and
- **The Optional Protocol to the UN Convention on the Rights of the Child:** This deals with the sale of children, child porn and child prostitution. States are required to take measures to protect the rights and interests of child victims.

Why is there a need for so many instruments – national and international – in this area? This is because cases of sexual abuse and exploitation of children are increasing. Due to the scare of HIV/AIDS and the feeling that child prostitutes are less likely to be infected with such deadly viruses, younger and younger children are being exploited. Trafficking is now the third largest organised crime after arms and drug dealing. Sexual abuse of children within homes is also on the rise, but as this usually happens behind locked doors, such cases hardly ever come out in the open.

Sexual abuse and exploitation of children *are* crimes that are punishable under the law. All steps should be taken to punish offenders and to rescue children in abusive situations.

## Right to Education

This is a right you are exercising even as you read this document! You probably know all about this anyway.

### EXERCISE

Answer the following in a simple 'Yes' or 'No':

1. Is there a right to education?
2. Does this mean free education?
3. Do you have to pay for higher education?
4. Is all primary education covered?
5. Is there a law giving this right?

### ANSWERS

1. Yes. There is a Right to Education.
2. Yes. This means that the state is under an obligation to provide free education. What this free education should amount to we will see in the next few questions.
3. Yes. Higher education has to be paid for and is not available as a right. Only primary education is covered under this right.
4. No. All primary education is not covered. Only education between the ages of 6 to 14 years is covered by this right.

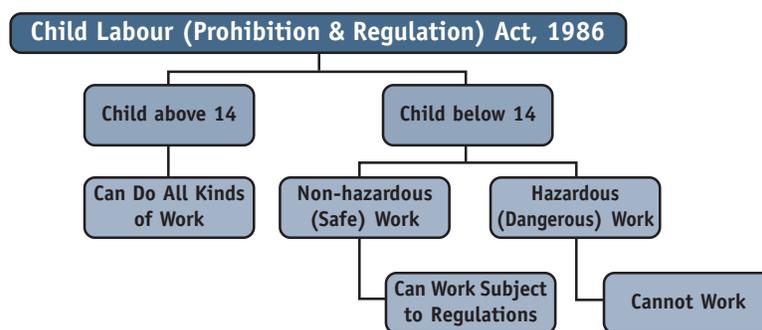
5. Yes. The right existed in Article 45 of the Constitution of India, which was a Directive Principle of State Policy and, therefore, not 'justiciable', i.e. not enforceable in a court of law. But in 1993, in the famous case of *Unni Krishnan vs the State of Andhra Pradesh*, the Supreme Court emphasised the importance of education and included this as a fundamental right under Article 21 of the Constitution. The Constitution 93<sup>rd</sup> Amendment Bill, 2001, formally introduced this in the Constitution. This right is now a fundamental right in the Constitution of India in Article 21A.

Free and compulsory primary education between the ages of 6 and 14 years is thus a fundamental right of every child in India.

## Child Labour

You have often come across children doing adult jobs, working hard without a break in small hotels or other establishments. You have probably read in the newspapers about children being used in making dangerous products like fireworks, explosives and matches. Is this okay? No, of course not. This is child labour.

When we say 'child labour', we mean children who are below the age of 14 years and working. This is in the Indian context. Thus, in India, a child aged between 14 and 18 years can be employed. Of late, there have been a number of instances of extreme violence against child domestic servants and there is a strong move to protect this vulnerable group of children.



In the international sphere, child labour is an issue that has received a lot of attention. Some of the instruments that have been codified to eliminate the practice are:

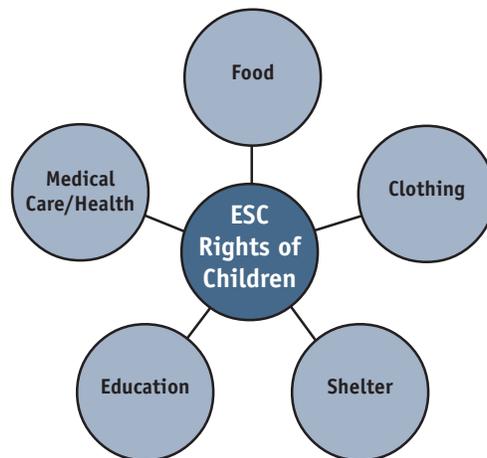
- The **UN Convention on the Rights of the Child**, Article 32, deals with child labour by recognising the right of a child to be protected from economic exploitation and from doing hazardous or harmful work. This deals not only with physical harm, but also harm to the mental, spiritual, moral or social development of the child, and
- The **International Labour Organization Convention No. 182 on the Worst Forms of Child Labour**.

India has agreed to 'progressively implement' Article 32. This means that we will not implement it immediately, but will do so as and when our social conditions permit. Nothing has moved in this direction so far, although the Committee on the Rights of the Child has recommended that the Government of India give full scope to the rights of the child.

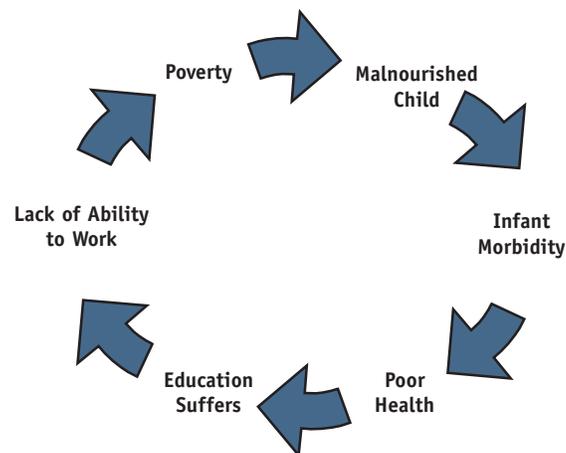
## Economic, Social and Cultural Rights

Economic, social and cultural (ESC) rights in the context of children are best illustrated by examples. All these rights are required in order to:

- Ensure the survival and life of the child, and
- Ensure a bare minimum quality of life for the child.



ESC rights are important as there is a close link between children's health and poverty. Poverty results in children being inadequately nourished, which, in turn, leads to infant mortality and poor health. This is what is called a vicious cycle, and it is very difficult to break.



Over the years, several schemes have been introduced by the government, but these have either not been implemented or are not working, and children do not get a chance at life. In 1974, the Government of India published a National Policy for Children. Despite all these well-meaning efforts, however, the situation of children in India continues to be grim.





# THE RIGHTS OF THE DISABLED

*By Meera Pillai*

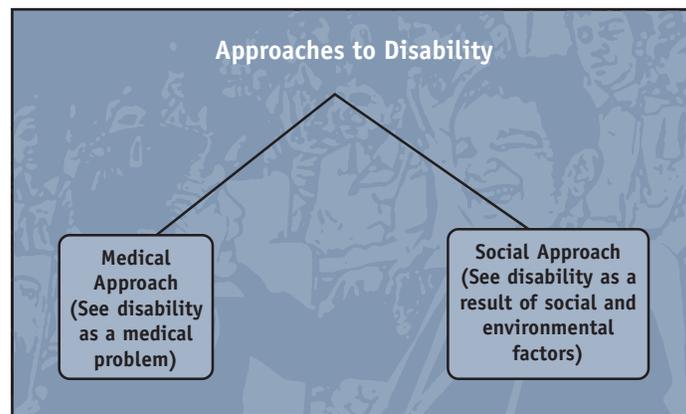


Photo credit: Manvender Vashist

## 2. THE RIGHTS OF THE DISABLED

A disability is often described in terms of lack of normal functioning of physical, mental or psychological processes. It is also defined as learning difficulties or difficulties in adjusting socially, which interferes with a person's normal growth and development. Often, the term 'handicapped' is used, but this is termed politically incorrect now.

There are two approaches to viewing disability:



### The Medical Approach to Disability

The medical approach looks at disability as a medical problem. A person is disabled because of a medical condition that makes him/her mentally, physically or emotionally less perfect. Such a person has limitations in functioning, which it may be possible to cure or control through medication, rehabilitation therapies and so on. Disability is seen as an individual's concern and all the problems relating to disability happen because of the limitations of the individual. For example, if a person cannot move to the top floor because he/she is unable to use the stairs, the person is disabled.

### The Social Approach to Disability

The social approach recognises that people are different in terms of learning styles, kinds of intelligence, etc. In this approach, disability is not looked at in isolation, but considered the result of social and environmental factors that vary from one culture to another. Each culture has its own ideas of what is normal and each culture puts pressure on people to conform with that norm. Thus, the social approach takes a 'human rights approach', unlike the medical approach, and it emphasises the fact that disabled people become marginalised and treated unfairly because society does not make adequate provisions for their differences.

Following the social approach model will ensure that people with disabilities are treated like other citizens by enabling them to realise their full potential. This is possible only when we recognise the rights of the disabled.

## EXERCISE

Work out these examples and indicate which approach is followed:

1. Arun is unable to study because he is blind.
2. Bilqis, who has no hands, is able to write an examination because she is provided with a scribe.
3. Mary, a child with a learning disability, keeps failing in class because she cannot compete with the other students.
4. Dev, a child with a learning disability, becomes a good artist with training.
5. Esha, who lives in North India, visits the South. She knows only Hindi and is unable to communicate with the people around her.
6. Farid is speech and hearing impaired (deaf and dumb), but is able to communicate with his colleagues at office through sign language and writing.

## ANSWERS

1. Arun is visually disabled and also handicapped because his environment is not conducive to study.
2. Bilqis is disabled because she has no hands, but she is not handicapped. She is able to function and write her examinations because of the supporting environment she is in, which provides her with a scribe to write the examination on her behalf.
3. Mary is disabled because of her learning disability, but also handicapped because she is unable to achieve her potential, as she would have done had things been different.
4. Dev obviously has a disability. A learning disability as we have seen earlier is a disability. Luckily for him, he has been able to develop his potential and become an artist. As we have seen earlier, different people may have different potentials.
5. Esha is able bodied and definitely not speech impaired, but she is handicapped in a sense because she is unable to communicate with the people around her. The strange environment in which she finds herself is what has caused the difficulty, not a disability within her.
6. Farid is disabled, but he is able to communicate, whether it be by sign language or by writing notes or instructions to his colleagues. His environment is such that he is able to act despite his disability. Therefore, he is not handicapped.

## What are the Rights of the Disabled?

People who have been perceived as being different from what is considered normal, whether in the physical, mental or emotional sense, have suffered discrimination in many ways. This discrimination takes various forms. It could range from less respect and dignity to harsher forms of abuse. Disabled people have often been subjected to physical and sexual abuse or forced to live in institutions that isolated them from society. Stories of abuse were also not uncommon. Disabled people have often been restrained from getting married or from having children. Often, extreme forms of abuse have extended to them being abandoned or even murdered.

Unfortunately, for a long time, society did not even view its treatment of disabled people as being wrong. Disabled people were just perceived as 'less than' or 'not quite' human. However, with the growth of human rights and the recognition of several marginalised groups, people with disabilities have also been recognised as a marginalised group. They began to be viewed not as less human, but as humans who could attain their full potential if they received the opportunities to do so.

Over time, a number of international standards and steps were established internationally in order to protect the rights of the disabled. Here's a quick list of some of these:

- The Universal Declaration on Human Rights, (1948);
- The International Convention on Civil and Political Rights, 1966;
- The International Covenant on Economic, Social and Cultural Rights, 1966;
- The UN Declaration on the Rights of Mentally Retarded Persons;
- The UN Declaration on the Rights of Disabled Persons;
- General Comment No. 5 to the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1994;
- Decade of Disabled Persons, 1983-92;
- Asia Pacific Decade of Disabled Persons, 1993-2002, and
- Asia Pacific Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, 1992.

Although the Universal Declaration on Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) spoke about frameworks to prevent discrimination against human beings on a number of grounds, disability was not one of them. Thus, there was a need for specific instruments dealing with disability. However, we must note that specific instruments have also been criticised as increasing the sense of exclusion that disabled people feel when compared with the mainstream.

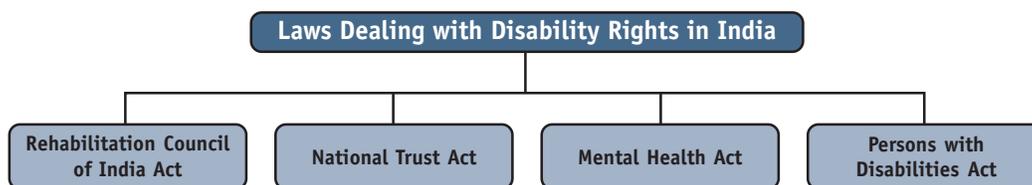
Deeply concerned about the situation faced by the 600 million persons with disabilities around the world and conscious of the need for an international instrument, the UN General Assembly decided to establish a committee to consider proposals for an international convention to protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination. Thus, the shift towards a particular stress on disabilities was well grounded in the human rights approach.

As mentioned earlier, the ICESCR did not deal specifically with discrimination on the grounds of disability. However, in 1994, a General Comment No. 5 was adopted to help interpret the ICESCR to prevent discrimination against people with disabilities. According to the Comment, people with disabilities have suffered discrimination throughout history in many ways, both through unjust laws as well as actual practices. The Comment defined disability based discrimination as 'including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability, which has the effect of nullifying or impairing the recognition,

enjoyment or exercise of economic, social or cultural rights'. The Comment also recommended that countries frame laws to remedy past discrimination and take steps to prevent it from happening in the future.

The UN declared 1983-92 as the Decade of Disabled Persons. Immediately after this, 1993-2002 was declared the Asian and Pacific Decade of Disabled Persons. During this period, a great deal of awareness was created about the issues faced by people with disabilities. In 1992, a Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region was adopted. India was one of the countries that signed the Proclamation.

As we have seen in the Introduction, when a country signs an international treaty, it becomes a law as far as it is concerned and the country must give effect to the human rights protected in that international treaty or instrument. In order to give effect to its commitments under the international treaties relating to disability rights, the Parliament of India brought into force the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. A number of other steps followed, which, coupled with earlier legislation, have created a firm basis for disability rights in India.



Here's a brief note on the laws relating to the rights of disabled people in India:

#### **The Rehabilitation Council of India Act, 1992**

This established the Rehabilitation Council of India, a body that standardises and improves the quality of rehabilitation services available to people with disabilities.

#### **The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999**

As the name suggests, this Act requires the setting up of a body to promote the welfare of the categories of people mentioned in its name. This is important more so because as we will see later, some of these categories are outside the scope of the Persons with Disabilities Act. Importantly, the Act not only talks about institutional machinery for the care of such disabled people, it also focuses on ways to empower disabled persons to live independently or as fully as possible within the community.

#### **The Mental Health Act, 1987**

This Act amended and improved old laws relating to the care and treatment of people who suffered from a mental illness. From the human rights perspective, this Act clearly provides that people with a mental illness should not be subjected to physical or mental indignity or cruelty and that they should not be used for research without informed consent from competent persons.

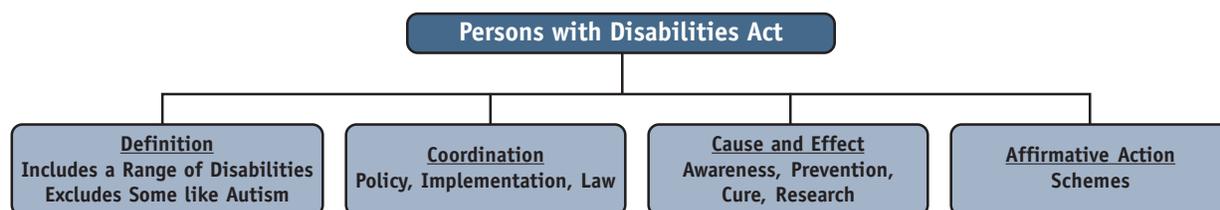
#### **The Juvenile Justice Act, 2000**

Though this Act deals mainly with the treatment of 'children in conflict with the law' and 'children in need

of care and protection’, it also considers in its ambit children with disabilities. It defines children who are mentally or physically challenged, with no one to support them, as being ‘children in need of care and protection’. It is mandatory for the State to provide adequate services for such children.

### **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

This is perhaps the most important legislation in this field. It was a landmark legislation because, for the first time, it was clearly stated that people with disabilities had the right to equal opportunities and to fully participate as citizens of the country and that these rights would be protected by the law.



## **The Importance of Legal Cases in Furthering Rights**

While laws are an important means of providing rights to groups who have been oppressed, action must be taken in accordance with the laws in order to translate these rights into reality. Societies change slowly, but legal action often speeds up this change and offers a quick remedy to those who are deprived of their rights. We have seen in the Introduction that judicial decisions have been an important source of laws. This is especially true in the case of disability rights in India.

### **EXERCISE**

A few examples are given below. They are taken from actual cases. Now you be the judge and decide the case!

#### **Case 1**

An association working for the blind wanted to get preferential allotment of housing sites at concessional rates for people who were visually impaired. The state, which was responsible for allotting the sites, said that there were schemes to allot sites for different kinds of people, but there was no scheme to allot sites to people who were blind.

#### **Case 2**

The Central and State Coordinating Committees are responsible for making policy decisions and setting up schemes related to the implementation of the People with Disabilities Act. In one state, such schemes had not been set up. A doctor who was disabled approached the court for admission to a postgraduate course in medicine based on educational concessions allotted by the law to people with disabilities under the Persons with Disabilities Act.

#### **Case 3**

A police constable suffered an injury while on duty. Gangrene set in and, due to the infection, the leg had to be amputated. The constable was invalidated from service, that is, he was sent away.

#### Case 4

A government-owned airline provided concessions for blind people. A disabilities activist argued that it should be extended to persons with locomotor disabilities as well because having concessions only for the visually impaired was unfair.

#### ANSWERS

##### Case 1 (*National Federation of Blind, UP Branch, vs State of UP, 2000*)

The court said that the petition was in accordance with the People with Disabilities Act and since what was being claimed was not against any other existing laws, it must be granted. It also held that the state's argument that no schemes had yet been formed was not a valid excuse.

##### Case 2 (*Dr Vijay K Agarwal vs State of Rajasthan, 2001*)

The court decided that this was a valid request and said that it was not a valid excuse to say that the coordinating committees had not been set up and that the schemes had not yet been formulated. The emphasis was on complying with the Act.

##### Case 3 (*Kunal Singh vs Union of India, 2003*)

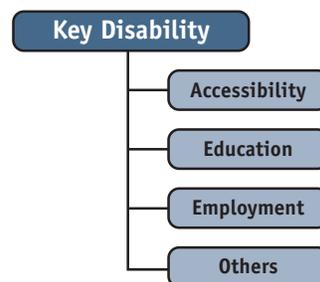
The court gave a decision in favour of the constable. The court pointed out the clear provisions of the People with Disabilities Act, according to which the employer cannot dispense with or reduce in rank an employee who acquires a disability during the course of his service.

##### Case 4 (*Javed Abidi vs Union of India*)

Although the airlines said that the costs would go up, the court ordered concessions for people with 80 per cent locomotor disabilities. After the petition, the airline went further and announced several facilities to be made available for people with disabilities. This case was special as the judges actually thanked the person who raised this question in court and thus speeded up the process of implementing the provisions of the Persons with Disabilities Act.

## A Look at Some of the Special Issues Facing People Living with Disabilities

In this sub-section, we will be looking at some of the core issues that affect people living with disabilities. Some of these issues are:



## Accessibility

Given their history of segregation and isolation, the right to full participation in the community is one that people with disabilities value very highly. However, in order to participate in the life of the community, a person needs to get around. Whether he/she is going to school, to work or to use recreational facilities, the ability of a disabled person to move around in the immediate vicinity of his/her living space or travel further afield is critical to making him/her feel like a valued and effective member of the community. However, most community facilities in the world have been designed for and cater to only able-bodied individuals.

Using the facilities of a community service, keeping in mind the perspective of a disabled person, is likely to show quite quickly how equipped the community is to provide opportunities to its disabled people.

While public facilities are modified to meet the needs of people with disabilities, it is simultaneously necessary to educate able-bodied members of the general public on the importance of these measures so that there is support and sensitivity on their part as well. Many states in India have reserved seats on buses for people with disabilities, but it is not unusual to find able-bodied people using these seats and refusing to give them up even when a disabled person enters the bus. Likewise, even in the rare city in India that reserves parking spaces for people with disabilities, it is not unusual to find non-disabled persons parking their cars there. Hence, awareness raising and advocacy among the general public is absolutely necessary to improve access to public services and facilities for people with disabilities.

### EXERCISE

The next time you travel by bus, see if the bus service in your town/village is discriminatory towards people with disabilities. Observe what's happening around and answer 'Yes' or 'No' to the following questions:

1. Do buses for different routes stop at different fixed spots?
2. Are commuters expected to run up to the bus and rely on sight to find out where it is going?
3. Are there cut-outs in the platforms and pavements to allow wheelchair users on them?
4. In addition to stairs, are there ramps wherever necessary to facilitate wheelchair users?
5. Are stairs marked by broad yellow lines to help people with visual impairments to recognise the difference in gradient?
6. Are signs marked in Braille as well as in the local languages?
7. Are announcements made over a public address system?
8. Do buses have low entry ways?
9. Do buses have wide doorways?
10. Do buses have a place to park a wheelchair?

## **ANSWERS**

If the bus service is disabled friendly, you will have answered 'Yes' to Questions 1, 3, 4, 5, 6, 7, 8, 9 and 10, and 'No' to Question 2.

## **Education**

Rather than being perceived as a right, education has been seen as something extra for people with disabilities. Almost 90 per cent of educational opportunities for people with disabilities come from the non-governmental, private or voluntary sectors. In 1971, UNESCO noted that in India, the general principle of compulsory education was stated, but it was up to each state to decide how long such education would be provided and to whom. Given here are some of the landmarks in education for children with disabilities in India:

### **National Policy on Education, 1986**

The National Policy on Education was formulated in 1986 under the direction of former prime minister Rajiv Gandhi. In its initial forms, the policy did not mention education for children with disabilities at all. It was only after a series of protests and intense lobbying by parents of children with disabilities and organisations working in the field of disability that the policy was modified.

### **Inclusive Education, 1970s**

Typically, in India, education for children with disabilities has been provided in special schools, facilities in which they have been separated from their comparatively able-bodied peers. Since the 1970s, the government has been making efforts to promote inclusive education and provide facilities that will enable all children, including children with disabilities, to be educated together.

### **Integrated Education for Disabled Children, 1974**

The government launched the first major scheme to promote integrated education, called Integrated Education for Disabled Children, in 1974, primarily directed at children with visual and hearing impairments.

### **Project Integrated Education for the Disabled**

Project Integrated Education for the Disabled was the second government scheme in 1987. It was a more broad-based version, including children with learning disabilities and severe disabilities. The programmes under the Project have met with mixed success. There are many reasons for this, not the least of which is that there is a widespread perception that the educational services provided at many government schools (apart from the Kendriya Vidyalayas and Navodaya Schools) is of indifferent quality. Also, private schools were not conducive to children with disabilities.

### **National Open Schools**

The establishment of the National Open School system, which allows for greater flexibility to accommodate the learning needs of non-conventional learners, has been beneficial for many students with disabilities. Greater awareness about and recognition for the system needs to be generated, both among the academic community as well as the general public, so that graduates from the Open School system do not face discrimination in the fields of higher education and employment.

### **Persons with Disabilities Act, 1995**

The provisions of the Persons with Disabilities Act, 1995, are far-reaching in the matter of education and they do not allow governments the loophole of the clause about the 'limits of their economic capacity'.

Here are some of the important thrust areas of the Act on education for people with disabilities:

- Governments and local authorities are required to ensure that every child with a disability has access to free education in an appropriate environment until the age of 18;
- Support for integrating children with disabilities in regular school must be promoted;
- Special schools are to be set up in both the government and non-governmental sectors so that children with disabilities living in every part of the country have access to special education as needed;
- Efforts are to be made to attach vocational training centres to special schools;
- Governments must look into alternative education options for children with disabilities, who have dropped out of the school system, providing part-time classes or functional literacy classes based on the age of these children;
- Capacity building measures must be undertaken for existing human resources to undertake non-formal education programmes for people with disabilities in rural areas;
- Open schools and universities and interactive electronic and other media must be used to promote the education of people with disabilities;
- The government is required to provide every child with a disability with the special books and equipment necessary for his education, free of cost;
- It is the government's responsibility to initiate or assist research into the design and development of assistive devices and teaching aids and materials that promote equal opportunities in education for children with disabilities;
- Sufficient trained manpower must be developed for special schools and integrated schools through the setting up of appropriate teachers' training institutes and programmes;
- Transport facilities must be provided;
- Financial incentives must be provided to parents to encourage them to send disabled children to school;
- Architectural barriers to accessibility in schools, colleges and vocational training institutes must be removed;
- Scholarships must be set up for disabled children;
- Forums must be set up for parents of children with disabilities to settle problems and complaints related to the placement of their children;
- The examination system must be modified to a limited extent, and
- The curriculum should be restructured, especially with regard to language requirements.

## EXERCISE

How sensitive is your school to the disabled? Answer 'Yes' or 'No' to the following questions:

1. Are there children with disabilities in your school?
2. Does your school have a vocational training centre?
3. Do all children have access to the school building?
4. Is it easy to find and access toilets and other facilities?
5. Do disabled children receive the support they require?
6. Is there a transport facility that helps disabled children come to school?
7. Are there scholarships available for disabled children?
8. Are the children given a scribe or other facilities to write examinations?
9. Do the children suffer any form of discrimination at school?
10. Are the staff and other students sensitive to disability issues?

## ANSWERS

Every 'Yes' means that your school is that much closer to recognising, protecting and giving full support to disability rights.

## Employment

An important part of being human and living with dignity relates to the ability to find work that is dignified, meaningful and, usually, associated with remuneration of some kind. However, this is not an option for many people with disabilities in many countries. Often, the only employment that people with disabilities are able to find are in 'sheltered workshops', not all of them in conducive working conditions. At the other end of the spectrum, there have also been times in society and individuals who have used the services of disabled people in conditions equivalent to slave labour, without any or adequate remuneration and in undignified conditions.

India, which used to be almost entirely agrarian and local cottage industry based, had a number of opportunities for people with a range of disabilities to find work that was substantive and meaningful. As our society grows more and more verbal, however, and reading and writing assumes immense significance in the way society conducts its business, the work situation for people with such disabilities changes and becomes more complex.

The international community has shown itself to be concerned about this situation, as the developments listed below show:

- The Universal Declaration of Human Rights provides for the right to work;

- Recommendation 99 of the International Labour Organization on Vocational Rehabilitation (Disabled), 1955, advocates that people with disabilities be rehabilitated so that they can regain their vocational and economic utility, in addition to improving their physical, mental and social status, and
- The General Comment on People with Disabilities to the International Covenant on Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights in 1994, asks governments to work to reduce the barriers against the employment of people with disabilities and make reasonable accommodations to enable them to work.

In India, the Persons with Disabilities Act, 1995, contains many provisions relating to employment. Some of the major provisions are listed here:

- Governments will identify positions in establishments that can be reserved for people with disabilities and update the list at least every three years, keeping in mind increased opportunities as technology allows greater access to people with disabilities into more areas of work;
- A quota of 3 per cent of the positions in government establishments will be reserved for people with disabilities, and 1 per cent each for people with hearing impairments, blindness or low vision, and orthopaedic disabilities. Only if suitable candidates are not available for two consecutive years from any category may persons without disabilities be considered for the position;
- Job vacancies suitable for people with disabilities must be notified through Special Employment Exchanges;
- Government and government-aided educational institutions will reserve at least 3 per cent seats for people with disabilities;
- At least 3 per cent of the beneficiaries in poverty alleviation schemes will be people with disabilities;
- Providing for training;
- Relaxing the age limit;
- Promoting accessible environments;
- Undertaking health and safety measures, and
- Providing incentives to private and government employees to raise their induction of employees with disabilities in the workforce to 5 per cent.

### **Other Issues**

The treatment of people with disabilities has varied through the centuries, and it has been oppressive more commonly than otherwise. The struggle of people concerned with the welfare of people with disabilities since the late 18th century and of disability rights activists in the 20th century has resulted in many formal statements about the rights due to people with disabilities and the policies and programmes designed to secure these rights.

One of the most significant statements relates to the right of people with disabilities to live and participate in their communities and to secure the maximum possible support so that services related to rehabilitation,

education and employment are all provided, not in segregated settings, but as far as possible within the community. In this context, it is also important to realise that disability rights cannot be fought for and secured in a vacuum. Inevitably, the issue of disability is related to many other social, economic and political issues. A few of these are mentioned here in brief:

- **Poverty and Disability:** On the one hand, poverty causes disability; on the other, disability and its consequences are increased by poverty. Vitamin deficiencies, lack of calcium and iodine in the diet, anaemia and malnutrition of both children and pregnant and nursing mothers, often the result of poverty, can be causally related to disability. Unsanitary living conditions and lack of basic amenities can cause diseases such as typhoid, tuberculosis, polio and meningitis, which can also lead to disabilities. Lack of appropriate information, access to primary healthcare and immunisation services also plays a role in causing disability. Up to 50 per cent of common disabilities are preventable.
- **Disability and Gender Equity:** An overwhelming number of societies in the world are patriarchal, i.e. the balance of power between the sexes is tilted in favour of men. In these societies, women are routinely discriminated against in multiple ways. When women are also disabled, they suffer a double handicap of gender discrimination as well as disability related discrimination.
- **Disability and Ecological Hazards:** As we live carelessly in the world and damage the environment and the quality of the air and water that we use, the effects of this abuse show up in our bodies in the form of disabilities caused by disease, pollution or genetic mutations. Thousands of people suffered disabilities as a consequence of the Bhopal Gas Tragedy. There is a continuing struggle in Kerala today between the Plantation Corporation, which sprays the chemical pesticide, Endosulfan, in cashew plantations, and the local people, who are suffering as a result from loss of vision, mental retardation and the Staghorn Syndrome, a condition in which the hands are deformed. Malathion and Endrin sprayed in the fields enter the bodies of fish and crabs in local water bodies. When people eat these polluted foods, they contract a bone disease called the Handigodu Syndrome, named after the place in Chikmagalur district of Karnataka where the syndrome was first observed. People living near nuclear plants have shown higher rates of birth defects and cognitive disabilities. Cleaning up of our water bodies and the air, banning harmful chemicals and finding safe ways of disposing of industrial wastes are imperative if the causes of disability are to be reduced.

While it may be possible to discuss the issue of disability rights in much greater length and depth, the issue is ultimately a simple one. As human beings, in addition to access, education, healthcare, rehabilitation services and employment, all people need love, respect, dignity and opportunities to be self-reliant, productive and fulfilled. We need to learn to care for all human beings as human beings, with due respect for all their differences.



# THE RIGHTS OF THE DALITS

*By Martin McGowan*



Photo credit: Manvender Vashist

### 3. THE RIGHTS OF THE DALITS

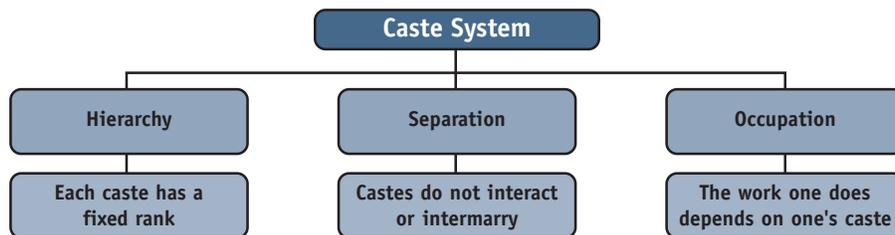
Dalit means 'oppressed'. We are all aware of Mahatma Gandhi's campaign against untouchability. Do you know that Dr B R Ambedkar, who headed the Drafting Committee for the Indian Constitution, was himself a Dalit? The influence of these two great people is evident in the Constitution of India and in a number of laws that have followed over the years. The main ones of these are listed here:

- The Constitution of India forbids untouchability in Article 17, 1950;
- The Untouchability Offences Act, 1955;
- The Protection of Civil Rights Act, 1976, and
- The SC & ST (Prevention of Atrocities) Act, 1989.

Other than these major legislations by Parliament, several state or local laws have been framed to combat the evils of the caste system; these include the tenancy laws to protect land rights and the temple entry laws, which opened temples to Dalits, who were earlier forbidden to enter these.

Imagine your teacher telling you that you have to sit alone in a corner of the class every day and that however hard you study and however well you may score in the examinations, you will always fail. What kind of a system is that, you might ask. The caste system works somewhat like that.

#### What is the Caste System?



A caste may be defined as a collection of families or groups of families bearing a common name, claiming a common descent from a mythical ancestor, human or divine, professing to follow the same hereditary calling and regarded by those who are competent to give an opinion as forming a single homogenous community. The name generally denotes or is associated with a specific occupation. A caste is almost invariably endogamous in the sense that a member of the large circle denoted by the common name may not marry outside the circle.<sup>1</sup>

In Hindu society, the 'caste' is still the most powerful factor in determining a man's dignity, calling or profession. You will not find such a rigid caste system anywhere else outside India. The problem of night soil disposal exists in every country, but it is only in India that scavenging and sweeping are considered to be the exclusive occupations of particular castes. In India, all kinds of work that involve some handling of dirt are allotted to some caste or the other among the Dalits; these include:

- Removal of carcasses and skinning them;

<sup>1</sup> POI, page 68

- Tanning hides;
- Manufacture of leather goods;
- Sweeping streets, and
- Scavenging.

These are all occupations that are quite essential to the well-being of a society, but as they involve the physical handling of dirty or quickly putrefying matter, no non-Dalit will perform any of these jobs as a profession. That would be below his dignity.<sup>2</sup>

## The Problems Faced by Dalits

According to the 1991 Census figures, India has 140 million Dalits. As a group, they are more discriminated against than any other group in the country. In this section, we will examine some of the ways in which this happens.

### Bonded Labour

You may perhaps have heard about the bonded labour system, which is practised in many parts of India. A poor labourer borrows money at huge rates of interest from the landlord. He has to then work for the landlord in order to pay back the money. So, he becomes a bonded labourer until he pays back the money with the interest. Most bonded labourers are Dalits. The wages given to them for such work is very low, below the minimum wages set by the government. This makes it difficult for the labourer to pay back the initial amount. All he can do is keep paying the interest. Another problem is that because he is illiterate, he cannot calculate how much is yet to be paid. The landlord keeps telling him that the money is not yet paid up. The labourer's family also joins in to help him pay back the money. Even if the labourer dies, his children have to become bonded labour in order to pay back the debt of their father.

Bonded labour has been abolished in India. It is now punishable by law. But it still happens quite often. Bonded labour often has little access to support services that would help them fight against their circumstances. Every district has a labour officer who is supposed to follow up on such cases and ensure that bonded labour does not take place. However, the follow-up action taken by the labour officers has not been found to be satisfactory.

### Migration

Employment has become a major concern, especially for the poor and the landless. Without employment, a family could starve to death. Deprived of both land and employment, Dalits are forced to move to other places to look for work. This is called migration in search of labour. They move largely from the rural areas to semi-urban or urban centres. Migration creates a large number of problems for the Dalits.

The Dalits are thus in a 'lose-lose' situation. If a Dalit does not migrate, he cannot sustain himself or his family. If he does, he faces the problems of migration. Either way, it is the Dalit who loses.

<sup>2</sup> Report of the Scavenger's Living Conditions Enquiry Committee, State of Bombay, 1958, page 2

## EXERCISE

Let us do the following simple exercise to see how migration affects Dalits.

1. Would you be able to go to school regularly and study if you had to move house to a new place every few months?
2. Do you think old or sick people could cope with migrating over long distances, often on foot? What is the alternative?
3. If you did not have a house and had to live in poor shelters, how would you feel?
4. If you had to leave your belongings outside the house, what would happen?

## ANSWERS

1. No. Dalit children's primary education gets disrupted because of migration.
2. No. So, Dalits are forced to leave the old and sick behind with no one to care for them.
3. The sun and rain would come in and you and your belongings would not be safe. Dalit women give birth in such places and children are exposed to harsh living conditions. The rate of mortality or deaths among Dalit children is thus very high.
4. Someone would take your things away. This is what happens to property left behind in the village by Dalits.

Some other problems connected with migration faced by Dalits are:

- The numbers that migrate are not small, they are large;
- Non-availability of opportunities for labour in rural areas is also true of urban areas;
- The Minimum Wages Act is not implemented and, therefore, they are paid a pittance;
- Labour becomes hereditary as children migrate with their parents and are deprived of an education;
- Awareness of rights leads to rejection by the landlords;
- Dalits are denied skill training and opportunities;
- Entrepreneurship is not encouraged among Dalits, and
- Harassment by employers, especially of women.

## Low Social Position

In Indian languages, the caste system is known as the *Varna Vyavastha*. *Varna* means colour and *Vyavastha* means an organised system. It is, therefore, likely that the origin of the system was based on the colour of the skin. With several intermarriages over the years, the criterion of colour as an indicator of difference changed to 'breed' and 'blood'. Gandhi preferred to call this system the *Varnashram Dharma*. He, therefore, took two stands:

- One, upholding its position as a religious ordering, and
- Two, politically condemning it as the 'sin' of the Hindus.

Dr Ambedkar wanted to call the caste system an 'offence', rather than a 'sin'. Both Ambedkar and Gandhi condemned the caste system, whatever the religious or other justifications that were put forward.

The caste system is peculiar to India, but this does not mean that similar systems do not exist elsewhere in the world. In Japan (1603-1867), the structure of society was based on four 'castes'. The *Burakumin*, or people from the village, remained outcastes. Though identified with the other Japanese, they were reduced to traditionally polluting occupations. Polluting occupations, as we have seen earlier, are those considered unclean and which lessen a person's worth – occupations like animal slaughter, tanning, disposal of dead bodies of people and animals, etc. The *Burakumin* were forced to live in isolation in separate settlements and could not mix with the others. They were not permitted to adopt a lifestyle in terms of clothes, behaviour, etc., which could put them on par with the non-*Burakumin*. They were segregated on the basis of government records (*Koseki*) and officially blacklisted. After World War II, they were ensured Constitutional provisions guaranteeing equality, but till date, de facto, they are legally discriminated against without any specific legal provision under which they can seek legal redress.<sup>3</sup>

### **Atrocities on Scavengers**

This is probably best explained by a series of stories and incidents.

In February 1999, two scavenger women were trying to fill water from a well, when they were abused by two Darbar women and told, "You *Bhangis* cannot fill water here – you will contaminate the well." The scavenger women complained to the District Superintendent of Police on February 23, but no action was taken. The Darbars attacked the two women in retaliation and looted their property. The village people, instead of helping them, declared that they stood socially boycotted. On February 28, once again, the scavengers brought their harassment to the notice of the police authorities. Only then was police protection finally provided to them and they could once again go to the well to fetch drinking water.

Meeting a scavenger first thing in the morning is considered a bad omen. In one case, the first person a shopkeeper saw regularly was a scavenger. The shopkeeper was furious. "How dare you be the first person I see in the morning!" he yelled and threw boiling oil on the scavenger. A complaint was filed against the shopkeeper under the Prevention of Atrocities on SCs & STs Act.

There are many municipalities that do not pay salaries to *Bhangi* sanitary workers for months on end. The explanation offered by them is, "We do not have money." There is seldom any immediate redressal for the *Bhangis*.

Dalits also face a number of restrictions. Here are some examples:

### **Marriages**

A marriage procession of a Dalit cannot enter the village from the main gate. Similarly, Dalits cannot wear jewellery or expensive and good clothes. They cannot organise musicians or a music band better than or even equal to those hired by their high-caste counterparts. Thus, they must look and behave as though they are much lower in economic status. Even their marriage ceremonies must be much simpler than those of their high-caste counterparts. There have been incidents of mass attacks when a Dalit groom has attempted to sit on the traditional horse on his way to the marriage ceremony.

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<sup>3</sup> Based on the notes of Jacob Meeran

## Funerals

A Dalit is not free of his caste even in death. When a Dalit dies, his dead body cannot be carried to the burning ghat via the main village gate. It is thought that this will defile the village. Instead, his body must be taken to the ghat via a long detour.

A number of jobs that no one else wants to do is forced upon the scavengers even today. Here is a list of some of these jobs:

- Cleaning waste;
- Dragging away dead animals;
- Cleaning excreta from railway tracks;
- Cleaning manholes;
- Sewing up dead bodies after post-mortems;
- Cleaning wastes at hospitals and maternity rooms, and
- Announcing bad news.

Self-perception, i.e. how you would look at yourself, as well as the perception of others about you are good indicators of the social standing of a community. In the case of the scavengers, there are innumerable instances that point to their low standing in society. Here are some:

- Boys have names with meanings such as 'waste', 'unclean', 'dusty', 'idiot', etc.;
- When a scavenger is doing well, others say, 'This *Bhangi* has crossed his limit';
- A government scheme offers scholarships to 'children of persons engaged in filthy and unhygienic occupations';
- *Bhangi* children are insulted in school and, sooner or later, drop out, and
- *Bhangis* or other Dalits, even when elected Panchayat members, are not allowed to sit on chairs with the rest. They have to sit on the floor.

## Deprivation of Land Rights

Ambedkar recognised that there were two important parts of the freedom struggle:

- Political freedom, or the freedom to govern ourselves and elect our own representatives, and
- Socioeconomic reforms, or ensuring less disparity between the rich and the poor and justice for the many people who have been oppressed for generations.

However, he was distressed to find that with the passage of time, the efforts at socioeconomic reforms had got diluted and became less and less important. He was of the opinion that political freedom was meaningless if economic and social inequalities were to continue.

Throughout India, the Dalits were looked upon as slaves by the other castes and treated very badly. In most places, they were not allowed access to land for their own benefit. They had to work for the other castes for a meagre wage. They were also subject to all kinds of abuse. Even if they took up other employment, which brought them better wages, they were often forced to leave the employment in order to work in the fields of the non-Dalits. Their working conditions were often pathetic and, sometimes, they would work all day in the fields with no food or water to sustain them. In a recent case, where some Dalits of a village protested against treatment of this nature and filed a police complaint, their locality was set on fire by angry non-Dalits, out to teach them a lesson.

Land rights was one area which sought to do away with injustices of this nature. Land reforms were taken up with great fanfare at first, but gradually died down. Let us look at some of the important measures in ensuring land rights to Dalits and see if they have helped them at all. Given here are some of the important legislative measures:

### **The Tenancy Act**

The objective of the Tenancy Act was to improve the status of tenants. A tenant was a person who worked on land without owning it. He had to pay huge sums or a large share of his produce to the landlord. The purpose of the Tenancy Act was to confer land ownership rights on 2.5 million tenants. In the original Act, the protected tenants were given the right to voluntarily purchase the land. The payment of the purchase price was regulated by law and the amount was payable in instalments spread over a period of time. However, until 1955, the Act had benefited only 2 per cent of the tenants.

However, positive trends were noticed in some states. An important example is the state of Kerala. The Kerala Government first of all acquired the land by paying the purchase price to the landowners. The State thus became the owner of the land and it then distributed it to the tenants at the purchase price. The tenants could pay the price in instalments spread over a period of time. As result of this measure, the tenants did not have to lose their land.

### **Land Ceiling Act**

The Land Ceiling Act had a twofold objective:

- To take away surplus land that was concentrated in the hands of wealthy landlords, and
- To distribute such surplus land to landless Dalits, tribals or their cooperative societies.

Although the objectives were good, statistics have shown that state governments have not been able to declare much land as surplus. Even in cases where there have been declarations of surplus land, the governments have not been able to take possession of the land satisfactorily. And even where the land has been possessed by the governments, not too much of it has been redistributed. Studies have been done on the difference between the paper ideal of redistribution and the actual ground realities.

Other land issues faced by the Dalits include:

- Land surveys and measurements have still not been completed;

- Land records have not been satisfactorily maintained and updated. Contradictory entries have been found in certain records;
- Refusal of authorities to make available copies of ledgers or the Record of Rights that aim at reducing social and economic disparity;
- Lack of enthusiasm in implementation of land reforms;
- Loopholes in the law;
- Slow and mechanical attitude towards the publicising of the law;
- Very slow pace, and
- Although there were provisions to prevent land transactions after a particular date in order to prevent people from getting around the problem of land reforms, this position was ineffective and no land was finally left for redistribution.

Thus, it can be broadly said that land rights have not been achieved for Dalits and we have a long way to go.

## Problems Faced by Dalit Children

What kinds of problems are faced by Dalit children? How are they different from the problems faced by other children? Here is a summation of all the different aspects of education, where Dalit children face discrimination:

**Low-caste by Birth:** Since caste is imposed on a person by birth, a Dalit child is condemned to follow certain behavioural patterns imposed upon his group by others even if he/she personally wants to move away from that.

**Socialisation:** Socialisation is a process that identifies roles. Both Dalit and non-Dalit children are taught how to behave towards each other. Non-Dalit children are taught to treat Dalit children with contempt, Dalit children are taught to treat non-Dalits with respect. Similarly, a Dalit elder has to address a non-Dalit child with respect, while a non-Dalit child may address a Dalit elder with scorn and contempt.

**Access and Play:** Dalit children cannot go to school or play in non-Dalit localities.

**Mid-day Meals:** During the mid-day meal in school, Dalit children are often asked to sit separately. After the meal is over, non-Dalit children play while the Dalit children may be made to wash the plates.

**Drinking Water:** In some places, there are separate pots and glasses for drinking water for Dalits and non-Dalits. If a Dalit drinks from the wrong glass, he/she may be punished violently.

**Dalit Teachers:** In some cases where Dalit teachers have scolded non-Dalit children for not doing their homework, the parents of the non-Dalit students have beaten up the teachers for daring to scold their children.

**Dropping out of School:** A high percentage of Dalit children drop out of school for many reasons such as discrimination at school and being forced to join their parents and help their family at an early age due to economic compulsions.

## Denial of Political Power

Dalits are equal citizens of India. What they want is their social, economic and political rights as equal citizens of India. However, the beneficiaries of the caste system, who are both economically and politically powerful, have ensured that Dalit rights are not recognised. They have a vested interest in doing so, in hanging on to the privileges to which they are accustomed.

Many Dalits have, therefore, become quite disillusioned with most political parties, irrespective of the ideology they follow, because none of them have given the Dalits either satisfactory political recognition or a voice in the democratic process.

This is not a recent phenomenon, but one which can be seen over the history of the national freedom struggle. Here is a short history of changes in representative bodies such as the legislative councils and assemblies. These were law-making bodies through which Indians could participate in the political process.

- Out of a total 36 Indian members of the Legislative Council during the years 1862-1888, 23 were landholders, six were ruling princes, three were lawyers, one was the editor of the Hindu *Patriot*, one was an officiating magistrate, one was a Parsi merchant and one was Burmese;
- In the regulations for the nomination and election of additional members of the Legislative Council, which had 66 members, special representation was given to Muslims and landholders;
- In the distribution of constituencies, special consideration was shown to Muslims, Sikhs, Europeans, landholders and Indian commerce for representation;
- In 1921, out of the 145 members of the Legislative Assemblies, only one representative of the depressed class was nominated, and
- On August 28, 1928, there was an all-party report called the Nehru Report, which recommended reservations for Muslims in the Central and Provincial Legislatures and for Hindus in the North West Frontier Province.

Now try to answer the questions given below:

1. The official Census of that time placed the population of Dalits at around 20 per cent. Do you think the Dalits were adequately represented?
2. What was the reason for bringing about changes in reserving seats for different groups of people?
3. Are the Dalits a distinct group of people?
4. Was it fair to not have adequate representation for the Dalits?
5. Do you think lack of adequate representation would have affected the Dalits? In what way?
6. Do you think that the political leaders of that time were serious about giving political power to the Dalits?

7. Why then was there a lot of talk about untouchability? Was it because they wanted to placate the depressed classes and gain their support?
8. Do you think the situation is very different now?

One may see from all this that there was no real commitment by either the political leaders or the social reformists to secure political power for the Dalits. That would have truly helped the national building process in a democratic way. Their response was just the opposite. Although there were resolutions to remove untouchability, they did not really take effect. The next section will throw more light on this.

## The Dalits' Struggle for Temple Entry

Several prominent Hindu leaders did speak out against untouchability. In 1921, the Indian National Congress moved a resolution, appealing to Hindus to bring about the removal of untouchability and to help improve the condition of the underprivileged classes. The next year, the Congress appointed a committee to formulate a scheme embodying practical measures to be adopted to better the conditions of the untouchables. The committee, in turn, passed a resolution, requesting the Hindu Mahasabha (the political front of the Hindus) to take up the matter. In 1923, Madan Mohan Malaviya made a powerful appeal from the platform of the Hindu Mahasabha for the removal of untouchability, but the resolution was heavily opposed by the orthodox section of the Mahasabha and finally dropped.

The unsuccessful resolution read: "This conference resolves that henceforth, amongst Hindus, no one shall be regarded as an untouchable by reason of his birth and those who have been so regarded hitherto will have the same right as other Hindus in regard to use of public wells, public schools, public roads and all other public institutions. This right shall have statutory recognition at the first opportunity and shall be one of the earliest Acts of the Swaraj Parliament, if it shall not have received recognition before that time" ... "It is further agreed that it shall be the duty of all Hindu leaders to secure, by every legitimate and peaceful means, an early removal of all disabilities now imposed by custom upon the so-called untouchable classes, including the bar in respect of admission to temples."

Although there were five attempts to frame laws on temple entry, not one was successful, though there were a few small-scale successes at the regional level.

Dr Ambedkar was highly critical of this lack of success. He said that though there were several news reports of temples being opened to Dalits, these reports were fake. He termed the reports 'lying propaganda'. He insisted that few temples had really been opened to the Dalits and those that had been opened were mostly dilapidated and deserted structures used by none but dogs and donkeys.

Ambedkar was disillusioned by these efforts and converted to Buddhism. Many Dalits followed him then and they continue doing so even now.

Ambedkar's final question was: Is temple entry to be the final goal of the advancement in the social status of the depressed classes in the Hindu fold? Or is it only the first step, and if it is the first step, what is the ultimate goal?

## The Role of the State

Following the high ideals of Mahatma Gandhi, our nation achieved freedom from British rule and we adopted our Constitution. Although the Constitution and a plethora of subsequent laws have tried to address the problem of untouchability, the Dalits continue to be marginalised.

There have undoubtedly been certain positive steps. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is one of them. It has certain excellent provisions:

- It includes Scheduled Tribes in the jurisdiction of the Act;
- It terms economic, political and property related offences committed against the Scheduled Castes as 'atrocities';
- It provides for the appointment of special courts and special government prosecutors to expedite proceedings under the Act;
- It states that public servants showing negligence towards the Act will be considered offenders, and
- It states that only Special Courts are authorised to enforce all matters under the Act.

However, despite the necessary legislation being there on paper, the role of the state has been far from supportive, from the point of view of the Dalits. There are many examples of this. For the purposes of our study, we have listed a few of these here:

- Often, there is administrative bias against the Dalits and nothing is done to help them;
- Often, in cases of atrocities, where relief material and compensation are provided, the funds and material are siphoned off and the affected Dalits get nothing;
- Dalits find it difficult to file cases in a court of law and receive justice, and
- Dalits and the children of Dalits are described in degrading language, for e.g., Scholarships may be given to children of parents following 'filthy and unhygienic professions' or words to that effect.

Although the Dalit movement is strong, the State cannot forget its duty and must pay attention to this section of its people whom it has ignored for far too long.



# REPRODUCTIVE RIGHTS

*By N B Sarojini*



Photo credit: Vijay Kumar

## 4. REPRODUCTIVE RIGHTS

Health is defined as ‘a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity’.<sup>4</sup> According to HERA (Health, Action, Empowerment, Rights and Accountability), reproductive health “requires good, basic health and nutrition, protection from violence and reduction of occupational and environmental health hazards throughout the life span. While the concept of reproductive health applies to both women and men, it has far greater impact on women and, as such, requires preferential allocation of resources to women’s health in particular, to reduce health risks that only women face.”

Here are some examples of reproductive rights:

- Access to healthcare facilities, particularly for women, in order to:
  1. Ensure that they get appropriate care before, during and after pregnancy;
  2. Prevent and treat RTIs (reproductive tract infections) and other diseases affecting their reproductive system;
  3. Tackle issues relating to HIV/AIDS;
  4. Address problems of infertility or the inability to have children;
  5. Take care of the problems a woman encounters at the time of reaching the reproductive age (menarche) and when she passes it (menopause), and
  6. Researching and preventing gynaecological cancers;
- Give women a choice regarding:
  1. Whether to have children;
  2. Deciding how many children to have, and
  3. Spacing children, i.e. deciding when children should be born;
- Making available safe contraceptives. A contraceptive is a medicine or device that prevents a woman from becoming pregnant and thus allows a couple to decide when to have children and how many to have and also the time period between one childbirth and another;
- Protection against sexual violence;
- Preventing harmful traditional practices, and
- Emphasising full information and respect for women’s decision-making capacities.

### Emergence of the Concept of Reproductive Rights

In recent years, issues of sexuality, sexual health and rights and reproductive health and rights have gained a fragile foothold in the global policy agenda. In the Indian context, most health activists are uncomfortable using the term ‘reproductive health’ while addressing women’s health. They argue that ‘reproductive health’ has been narrowly defined and is confined to the reproductive capacity of women. It leaves out pre-adolescent women and women who are under or above the reproductive age. They argue

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<sup>4</sup> World Health Organization

that reproductive health includes only problems related to reproductive health and rarely considers other health problems, such as reproductive tract infections, infertility or a prolapsed uterus, which may be of greater concern to women and for which they can rarely access treatment. Health activists also argue that there is no space or vision in the public health set-up to deal with the issues of gender discrimination, sexuality, domestic violence and mental health – all issues that are central to women’s well-being.

The question of reproductive rights is integrally linked with women’s access to available resources and with women’s productive and reproductive roles. While, on the one hand, resources are increasingly slipping out of people’s, particularly women’s, control, on the other, women are further subjected to the gender inequities existing within the family and in society. Due to their marginal status in the family and the stigma attached to reproductive and sexual health in society, women prefer to suffer silently. What is more important, much of the public health focus is on birth control and the primary targets of the family planning programme are women. This double burden on women explains their chronic state of malnutrition, anaemia, stress and fatigue and their increasing mortality due to communicable diseases.

The sufferings and indignities of being an Indian woman today begin from the time she is in the womb, as is illustrated by the wide prevalence of sex-determination tests and sex-selective abortions, which further add to the odds that she has to struggle against merely in order to survive. Reproductive and sexual health and economic development are rarely conceptualised in an integrated manner. Historically, the two discourses have remained separate. It is important to acknowledge both the discourses and develop a framework of reproductive rights for women, which include the larger issues that are integral to their lives.

## Reproductive Rights in the Indian Context

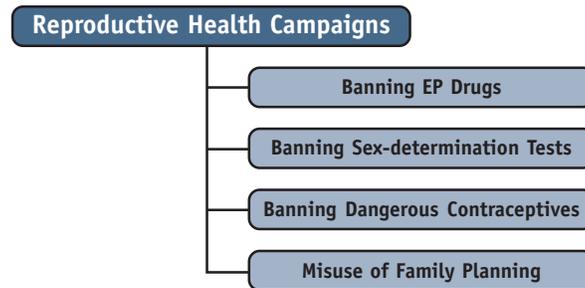
Health has thus been an early focus of debate in the women’s movement in the West. In India, in contrast, health was not a priority for the women’s movement. After the Emergency, in 1975, new types of women’s organisations emerged. The main emphasis was on women’s deteriorating economic situation, declining work opportunities, victimisation due to technological modernisation, self-help through self-employment schemes and sexual and other violence against women such as rape, wife beating, dowry deaths, etc. Gradually, attention was paid also to women’s health, family planning schemes and the effects of certain hormonal contraceptives. The women’s movement took up the case of sexual assault on women as its first major issue. It questioned the attitude of the medical establishment towards rape victims and achieved significant changes in legislation.

## Some Major Campaigns for Health and Reproductive Rights in India

Some of the major campaigns for health and reproductive rights in India are:

### **1. Campaign for the Ban on Oestrogen-Progesterone Combination Drugs**

High Dose Oestrogen-Progesterone drugs were brought into the market in the 1950s to treat missed periods. By the 1970s, the use of the drugs became popular, not only in a variety of gynaecological problems such as menstrual irregularities, dysfunctional uterine bleeding, etc., but also for pregnancy testing. Evidence garnered since 1967 proved that the drugs had harmful side-effects, such as an increase in abnormalities, delayed side-effects, miscarriages, stillbirths, etc.

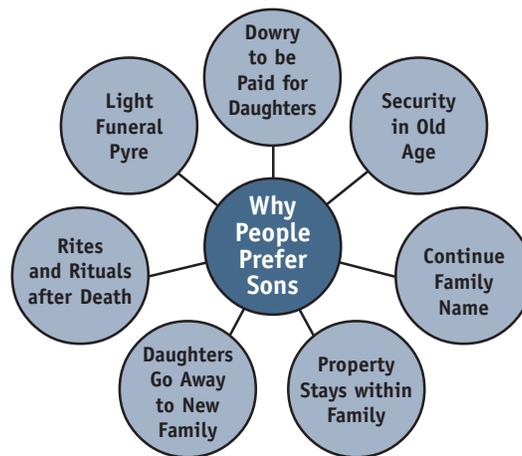


This was followed by several individual campaigns on health. Women activists, among others, campaigned for a ban on the oestrogen-progesterone combination drugs (EP Forte was the most famous of these). The campaign was the first national level campaign. It was initiated by drug consumer groups and supported by health activists and women’s groups. The government issued a notification banning the drug in 1986.

## 2. Campaign against Sex-selective Abortions and Amniocentesis

### Background of Sex-determination Techniques

Antipathy for the girl child is not new in our society. Since time immemorial, we have had ingenious and inhuman methods to get rid of the newborn girl child – methods that are still in practice despite our leap into the 21st century.

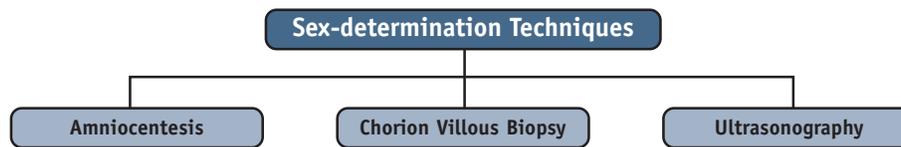


### EXERCISE

Can you think of any other reasons why our society prefers sons? Don’t you think that many of these reasons are unjustified?

Now, the techniques have become more ‘scientific’, thanks to the rapid advancement, spread and easier access to non-invasive and cheaper scanning techniques. Clinics carrying out sex-determination tests and sex-selective abortions have sprung up, not in the metros alone, but all over the country, with a clientele that ranges from the super-rich to the substantially marginalised. The poor are also catching up fast with the trend. What is of serious concern is that almost 50 lakh female foeticide operations are reported in the country despite the existence of laws prohibiting them. Some other figures suggest that over 90 per cent of all female foetuses are aborted annually.

Studies indicate that our eternal gender bias is the central reason why we turn vicious towards the harmless girl child. As victims of a dominant family ideology based on the preference for male children, women are constantly under pressure to give birth to sons. As a result, apart from repeated pregnancies, which are disastrous for their health, they are forced to undergo sex-selective abortions, often repeatedly, till a son is born. This horrifying cycle continues if it is necessary to have another son.



Let us see how these techniques are used:

**Amniocentesis:** Amniocentesis consists of the removal of about 15 cc of amniotic fluid from inside the amniotic sac, which covers the foetus, for testing. It is generally performed during the 14th or 15th week of pregnancy and studied directly under a fluorescent microscope or allowed to multiply in a tissue culture for four to five weeks for chromosomal analysis (Gandhi and Shah, 1991, 129).

In 1974, amniocentesis was being clinically tested in India as a technique for detecting genetic abnormalities (birth defects) in government-run hospitals. The survey outcome of 11,000 couples who had volunteered for the test at AIIMS Delhi revealed that the basic motivation for this enthusiastic response had been the possibility of getting to know the sex of the child during pregnancy. Following protests by women's groups, in 1978, the Janata Government banned these techniques for sex determination in government-run hospitals.

**Chorion Villous Biopsy:** Chorion villous biopsy is performed in the first seven-11 weeks of pregnancy to detect hereditary and congenital defects. But 90 per cent of the procedures are carried out for sex determination.

**Ultrasonography:** This is the most common method of sex determination and done during 14-16 weeks of pregnancy with a success rate of 96 per cent. It consists of scanning the foetus. The 'picture' of the foetus appears on the screen and its sex can be easily detected.

### The Campaign

The campaign was initiated by concerned individuals from women's groups, civil liberty groups and people's science movements. As it gained momentum, the issue received wide media publicity and support from a wide section of people. The campaign worked on many levels – conducting research studies and surveys, disseminating information through seminars, workshops and articles in the popular press and working towards a new legislation. Innovative ways of creating public opinion were used. The campaign against amniocentesis and sex-determination techniques became really active in 1982 with the visible proliferation of advertisements for sex determination.

Here are some milestones in the campaign:

- In **1980-82**, clinics started advertising sex-determination facilities. The most infamous of the hoardings read, 'Better 500 now than 5,00,000 later on', meaning it is better to spend Rs 500 today on a sex-determination test than the Rs 5,00,000 you would have to pay tomorrow as dowry for a daughter;

- Activities were carried out to generate public awareness about this problem. Processions or *morchas* were taken out, in which prominent personalities marched with their daughters; Children's Day programmes focused on the girl child and a month-long 'Nari Jeevan Sangharsh Yatra' was taken out to create public awareness, etc.;
- A petition was filed in the Bombay High Court by the Mahila Dakshata Samiti (MDS), a women's group from Mumbai, after a woman died undergoing sex-determination tests in September **1986**. The news received a mixed response from the campaign group as it was based on the dangerous ground that sex-determination tests are violative of Article 21 of the Constitution, which protects the right to life, the same argument used by pro-life groups to get a ban on abortion;
- The Forum against Sex Determination and Sex Pre-Selection brought together a number of women's health groups and social action groups to create public awareness on the issue. They also highlighted the ever-growing violence against women;
- The Maharashtra Government finally banned the use of amniocentesis and regulated other pre-natal diagnostic techniques in **1993**;
- The campaign lobbied for a national legislation because a state legislation meant a ban in only one state and sex-determination techniques were proliferating in the other states;
- **1994** saw a milestone in the form of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT Act). Enforced from January 1, 1996, the Act aimed to check female foeticide and maintain the balance in the male-female ratio. The Act prohibits ultrasound tests on pregnant women without valid reasons. Doctors running ultrasound clinics must obtain the written consent of the concerned women as well as permission from a competent authority before performing ultrasonography. Tests are permitted only to detect genetic, sex-linked or metabolic disorders, chromosomal abnormalities or certain congenital malformations and only by registered genetic clinics or laboratories. Under the PNDT Act, determining the sex of a foetus is a punishable crime and doctors/relatives who encourage such a test – or even the woman herself – can be fined up to Rs 50,000 along with serving jail terms of three to five years;
- A draft all-India legislation was created at the national level in **1995**, and
- **2002** saw an amendment to the PNDT Act. Now called the PCPNDT Act, its main feature was that it covered not just sex selection during pregnancy, but also before pregnancy or conception. This was necessitated by medical technology advances. Advertisements, etc., on any aspect of sex determination are also prohibited under the Act.

However, due to the lack of effective implementation and monitoring of the Act, unscrupulous operators find it easy to exploit the sentiments of people and use technologies like ultrasonography as a money-making device for sex determination. A public interest litigation was, therefore, launched to make the Act more effective.

### Public Interest Litigation

CEHAT in Mumbai and Pune, MASUM in Pune and Dr Sabu George filed a Public Interest Litigation (PIL) in February 2000 against the gross misuse of reproductive technology in society, characterised by a strong bias against the female child. The outcome was that the Supreme Court directed the Government of India

and the states to ensure strict enforcement of the Pre-Natal Diagnostic Techniques (PNDT) Act. It also directed the government to amend the Act to strengthen implementation and enlarge its scope to cover emerging sex-selection technologies.

On September 10, the Supreme Court ordered the Centre and the state governments to swing into action and seize unlicensed ultrasound machines being used for sex-determination tests. It asked the authorities to strictly monitor the activities of ultrasound diagnostic clinics to prevent illegal female foeticide.

## Sex Ratio

The sex ratio usually shows the number of males to females in any given population. Almost everywhere else in the world, the ratio is in favour of females for biological reasons – this means there are more females than males. India, with the sole exception of Kerala, shows the opposite trend, which means that a number of female children are ‘disappearing’ in India.

Every ten years, there is a National Census of the population of India. The 2001 Census indicated a considerable decline in the female-male ratio among children in India. The box below shows the sex ratios in the different states and union territories of India. The sex ratio is lowest in the northern states of India. It is worst in the economically developed states of Haryana and Punjab. In 1991, in the age group of 0-6 years, the female-male ratio was 945 girls for 1,000 boys; this was reduced to 927 girls in 2001 and in Punjab, it is only 793.

State	Sex Ratio (Females per 1,000 Males)
Chandigarh	773
Delhi	821
Haryana	861
Punjab	874
Uttar Pradesh	898
Madhya Pradesh	920
Gujarat	921
Rajasthan	922
Maharashtra	922
Karnataka	964
Andhra Pradesh	978
Kerala	1058

Year	Sex Ratio (Females per 1,000 Males)
1901	972
1911	964
1921	955
1931	950
1941	945
1951	946
1961	941
1971	930
1981	933
1991	929
2001	933

Source: Census of India, 2001, Series-1, Registrar General & Census Commissioner, India, page 141, and Action India

This is a scary picture as it shows that girls are vanishing in India and that represents the worst kind of violation of human rights against women as a whole.

### 3. Campaign against Population Control Policies

Another campaign that women have been actively involved in is the one against population control policies.

#### Background

India is a vast country with an overwhelming number of people. Very recently, we crossed the one billion mark. So, birth control has become very important in our country. Now, whether the population is really a matter for concern or not, or whose concern it is, are all matters for debate. But birth control has become a key agenda for our government and it is willing to go to any lengths to achieve its targets.

Interestingly, all research on contraception has been targeted at women as if women are the only ones responsible for birth. Vasectomy and condoms are the options offered to men, but both have few takers, and no one questions this, perhaps because it is a man's world. This presumption that women are safer targets has irked women's groups considerably. So, there has been constant resistance from women's groups in India against new technologies for contraception and sterilisation. The resistance has taken on various forms over the years, from protests, demonstrations, legal action and awareness campaigns to education and training on reproductive rights and research for alternatives. The main concern is that women's bodies are being used as testing grounds for unknown, untested and potentially hazardous technologies. Vital questions have also been raised about the priorities of large sections of women, whose need for such basic amenities as food, healthcare, education, water and employment (among many others) is far greater than that for contraceptives.

The milestones in this struggle have been summarised here:

- The Family Planning Programme was initiated in 1951 to enable couples to space the births of their children. The 1960s saw a shift to intra-uterine devices (IUDs) and the introduction of cash incentives for doctors, motivators and the targets. In the 1970s, the stress shifted to sterilisations, where men, too, were targeted for vasectomies;
- The draft outlined for the First Five-year Plan recognised a 'population policy' as 'essential to planning' and 'family planning' as a step towards improving the health of mothers and children. With this came in the expansion of family planning clinics in both rural and urban areas and sterilisation facilities in district hospitals, sub-divisional hospitals and primary health centres;
- With the declaration of the Emergency in 1975, the government declared a virtual war against the poor by way of cruel and coercive mass sterilisations;
- In 1966, the Department of Family Planning was established in the Ministry of Health. In 1993, the Committee on Population, set up by the National Development Council in 1991, proposed the formulation of a National Population Policy (NPP). Another draft of the NPP was made in 1999. The NPP was adopted by the Union cabinet in February 2000;<sup>5</sup>
- After this, many states such as Madhya Pradesh, Rajasthan, Uttar Pradesh, Haryana and Andhra

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<sup>5</sup> Seminar 511, March 2002, page 25

Pradesh came up with state population policies. These policies comprised features such as not allowing the benefits of the Public Distribution System (PDS) to a third child, penalising parents in their jobs if they held a government job, withdrawal of a range of welfare programmes, barring people with three children from contesting Panchayat elections, etc., and

- Many health groups and women's groups took up the issue and submitted a memorandum to the National Human Rights Commission (NHRC). The campaign group felt that the measures violated human rights and they should not be included in the population policy. Signatures were collected for the memorandum from various organisations across the country to build a strong pressure group, not only in Delhi, but also in fairly remote corners of the country. The memorandum requested the NHRC to direct the states to not use population policies to deny basic rights. In response to the memorandum, the NHRC issued notices to the state governments, asking them to explain the questionable provisions in their population control policies.

#### 4. Campaign against Long-acting, Hormonal Contraceptives

In their bid to meet population targets under the influence of the World Bank, in the last few years, the Indian Government has relaxed its regulations to quicken the entry of new, long-acting, hazardous contraceptives.



A contraceptive is a drug or device that can prevent pregnancy. Depo-Provera and NET-EN are contraceptives that can be injected into a woman. These are delivered by medical personnel. Once the drug is inside the body, the woman has no control over it. Also, injections can be administered without a woman's knowledge and consent.

Similarly, Norplant is implanted under a woman's skin on her forearm. It releases the drug slowly over a period of five years. It is also administered by medical personnel and can only be removed medically.

In the Indian context, it is impossible to screen women for contra-indicators or reactions to the injections, which involve screening them for early pregnancy, hypertension, cancer, diabetes and liver disorders along with a pelvic examination. Therefore, there is every chance that the contraceptive drugs may be administered to a woman, for instance, in early pregnancy, resulting in congenital malformation in the baby.

There are no studies to establish that any of these drugs are safe in the long run.

Women's organisations and health groups throughout the country opposed the introduction of injectable contraceptives and implants, given the potential for abuse, inadequacy of research and lack of accountability of the multinational agencies.

#### The NET-EN Campaign

The campaign against NET-EN was launched by women's groups in the 1980s. In April 1985, some members of the Stree Shakti Sangathana (SSS), a women's group in Hyderabad, learnt of NET-EN trials taking place

in a rural health centre in Pattancheru, a village close to Hyderabad. Women were being used for the trials without being informed of either its side-effects or contraindications. When the SSS intervened and explained the side-effects and long-term implications of the drug to the women, only five out of 50 women said they would continue with the drug. In 1986, the SSS, along with Saheli and Chingari, two women's groups from Delhi and Ahmedabad, respectively, filed a writ petition in the Supreme Court, seeking a stay order on all NET-EN trials in India. (N B Sarojini, 'Campaign Against Hormonal Contraceptives', Workshop on Reproductive Health, Rights and Women's Empowerment, September 4-14, 1996, Background Papers: 'Advocacy and Communication', page 3). NET-EN has been released in the social market despite the Supreme Court case. However, the court closed the case in August 2000.

### **Campaign against Depo-Provera**

Though clinical trials of Depo-Provera commenced in the mid-1970s, they were not completed as the drug was banned in India, following its ban in the US by the US Food and Drug Agency (USFDA). Subsequently, in 1992, the USFDA approved the use of Depo-Provera as a contraceptive method in the US.

In September 1992, a newspaper report said that the Indian Government was planning to approve the entry of Depo-Provera without conducting complete trials. Saheli and other women's groups wrote to the National Commission for Women, requesting it to enquire into the case and also obtain a statement from the Indian Council of Medical Research (ICMR) on the matter. This letter had the impact of delaying the approval of Depo-Provera by nearly a year because the manufacturer, Upjohn Ltd, was asked to submit data based on Indian research.

After a long silence, the government organised a meeting with women's groups in June 1993 and, in that meeting, distributed some papers. One of these included a brochure referring to Depo-Provera, NET-EN, Cyclofem and Norplant as methods of contraception available in the country. The women's groups expressed their doubts and asked for more information about the contraceptives.

In November 1993, the core group working against the introduction of the contraceptives organised meetings with the ICMR. During earlier meetings, the ICMR had stated that Indian trials were a must before the introduction of any new contraceptive method in the country. However, now they were going ahead with the introduction of Depo-Provera without completing the trials.

In April 1994, women's groups in Mumbai got to know that Depo-Provera was being launched in their city and registered strong protests. A delegation of women's group representatives in Delhi met the Health Minister and the Drugs Controller of India for more information. After a lengthy debate, the Drugs Controller agreed to provide the data on the basis of which he had approved the drug.

On May 11, members of the campaign core team came to know about a closed door press conference organised by Max Pharma Ltd to dispel doubts about Depo-Provera and to release the product in the market. Max Pharma Ltd, an Indian company, was to market Depo-Provera in India.

The women's groups decided to use the press conference as an opportunity for a dialogue with Max Pharma and inform the Press of their reasons for opposing the introduction of Depo-Provera. The women were refused entry. After waiting outside for a while, the campaigners decided to force their way inside and

scaled the walls to enter. This intervention, though strongly criticised by sections of the Press, proved to be effective. Soon the core team received the Depo-Provera package insert and the publicity material of Upjohn, which was being used in the US, as well as the Indian package insert of Max Pharma. While the Upjohn package insert had 78 side-effects listed, Max Pharma had only seven.

Meanwhile, the core group decided to check if Depo-Provera was already available in the market. Some of the members decided to go around to a few local chemists and ask. Much to their horror, at the very first medical shop, they were told that they did not have Depo-Provera, but were selling a similar drug, NET-EN. They purchased it without a prescription. At another shop, they bought Depo-Provera, again without a prescription. The team realised that while their campaign had focused mainly on Depo-Provera, NET-EN had been quietly released in the market despite a Supreme Court case going on against it. It was, therefore, decided that the core group would meet the Drugs Controller and demand an explanation about the sale of both drugs.

After days of waiting to meet the Drugs Controller, he agreed to invite five members of the core group to a meeting. In a lengthy discussion, the Drugs Controller stated that the new import-export laws had reduced his role in the approval of drugs coming into the country, and that any doctor, NGO or health agency could directly import most drugs now.

Meanwhile, the media had started to cover the Depo-Provera campaign extensively. There were regular articles and interviews with the campaign group and doctors in newspapers and television, all of which helped to raise a wider debate on the issue.

In January 1995, some women's groups filed a case in the Supreme Court against Depo-Provera. In the course of preparing the petition, a lot of data and medical research was studied with help from doctors who supported the campaign. In the same year, the Drug Technical Advisory Board (DTAB), on the direction of the Supreme Court, passed a recommendation stating that Depo-Provera was not recommended for inclusion in the Family Planning Programme.

After much lobbying and pressure from Sama, Saheli, AIDWA, Jagori and many other women's and health groups, in early January 2002, the government finally dropped its plan to introduce injectable drugs for women in the Family Planning Programme.

### **The Norplant Campaign**

The campaign against the introduction of Norplant in the Family Planning Programme has been going on since 1991.

At the time, only the Phase II trials of Norplant were over; Phase III and Phase IV trials are mandatory before any contraceptive can be introduced in the Family Planning Programme.

Saheli, a women's group in Delhi, took the initiative to involve other women's groups in a long-term campaign. A play was prepared on Norplant and staged extensively in the slums and suburbs of Delhi. Women's groups submitted a memorandum to the Health Minister, urging the exclusion of Norplant from the Family Planning Programme.

In 1994, Norplant was in Phase IV of its trials. Even though the trials are not complete yet, the government is offering Norplant as one of the 'choices' in its 'cafeteria approach'.

### **Campaign against Quinacrine Sterilisation in India**

Quinacrine is basically an anti-malarial drug, available in the form of oral tablets and, occasionally, as an injection to treat malarial fevers.

It was Jaime Zipper, a Chilean scientist, who first published reports in the late 1960s and early 1970s about the potential use of quinacrine for tubal blockages by inserting the pellets into the uterus. It was used forcibly even earlier, in Nazi concentration camps, on Jews, gypsies, communists and other 'undesirable' sections.

In India, quinacrine sterilisations have never received any official approval. In fact, ICMR had initiated and then abandoned the trials. Most of the quinacrine sterilisations are being carried out by the NGO sector and private practitioners all over the country. Here's a list of some of the practitioners who are associated with quinacrine sterilisations in India:

- Dr Biral Mullick of Kolkata was one of the pioneers of quinacrine use for sterilisation in India. Mullick claims to have used the Q-method on more than 10,000 women in the last 20 years or so;
- The CHIP Trust in Bangalore has recruited 300-400 doctors from different parts of Karnataka who were actively sterilising women all over the state with quinacrine;
- Dr J K Jain, a general surgeon and owner of the Jain Medical Centre and Dr Jain Clinic Pvt. Ltd, New Delhi, gained a name for the distribution and promotion of the quinacrine method of chemical sterilisation of women in India, and
- Dr Anita Sabarwal, an MD student of the Gynaecology and Obstetrics Department of Lady Hardinge Medical College (LHMC), New Delhi, conducted clinical trials of quinacrine for her thesis.

But even after all these decades of quinacrine use as a sterilising agent, information on its long-term effects is grossly insufficient, and what does exist poses enough cause for concern.

The Ganatantrik Mahila Samiti, a women's organisation in Kolkata, protested against the use of quinacrine and was supported by a large number of women's groups. There were protests in Delhi by women's groups and health groups. In July 1997, a PIL to ban quinacrine was filed by the All-India Democratic Women's Association (AIDWA) and the Centre for Social Medicine and Community Health, Jawaharlal Nehru University, Delhi, to stop the unethical use of quinacrine. In March 1998, the Supreme Court of India delivered a judgement, banning the use of quinacrine pellets for female sterilisation.<sup>6</sup>

## **Conclusion**

There are strong and powerful lobbies today, both nationally and globally, to promote population control and to advocate invasive, provider-dependent contraceptives on women – all in the name of reproductive rights and empowering women. Unfortunately, the Government of India seems to have capitulated before these lobbies, which often seem to come as a package with liberalisation and structural adjustment and

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<sup>6</sup> Reference: 'Quinacrine: Sordid Story of Chemical Sterilisation of Women', A Saheli Report, July 11, 1997

liberal funding for HIV/AIDS control. Notwithstanding the government's response, women's groups in India continue to lobby on these issues by creating public opinion internationally and nationally and among women's groups in the states.

Various international and national conferences on women's concerns have helped bring together women from different spheres and created a space to deliberate upon and highlight issues related to women's health at the level of policy and at more immediate levels, for instance, the 1994 Cairo Conference on Population and Development, the 1995 once-in-ten-years UN Conference on Women at Beijing, the biannual conferences of the Indian Association of Women's Studies, etc. However, these conferences are also the theatre for several interest groups to promote their own causes. Women's groups have been forced to develop the ability to discern the various dynamics of these international gatherings and take appropriate positions.

## Sex and Sexuality

*"When I was younger, I used to mistake sex for sexuality and I never dared to ask about it because you don't talk about those things... It is bad, dirty, ugly."*

We have a lot to ask:

- What is happening to my body?
- What is sex all about?
- How do babies come into being?
- Why don't people have babies every time they have sex?
- Is having sex dirty and wicked?
- Why do only women become pregnant?
- Do boys also menstruate?
- Can a 13-year-old girl get pregnant?
- What is masturbation? Is it good or bad?
- What is a condom?
- What is sexuality?
- What is the right to sexuality?

These questions arise quite frequently as children grow up and experience both physical and mental changes. But parents, relatives and teachers often get embarrassed and avoid answering such questions, because of which children do not get adequate information to satisfy their curiosity. Due to the dearth of information and lack of awareness, they often pick up ideas that are far from the truth and confuse sex with sexuality. Shrouded in silence and secrecy on the one hand, and sensationalised in the media on the other, the topic of sexuality often elicits feelings of shame and embarrassment rather than joy.

The Indian media, especially films, often take on the authority to write reproductive and sexual scripts for millions of young people. In the absence of free sharing of information, children are left to take their cues, usually faulty, for sexual behaviour from popular culture and friends.

## Expanding Horizons

Thus, there is a need to understand at the outset what we mean by these concepts as people often confuse sex with sexuality:

Sex refers to the anatomical sex (male or female) or to sexual intercourse.

Sexuality, on the other hand, is a much broader concept, which includes sexual behaviour, sexual desires, sexual relationships, pleasure, emotion and communication between people. Because sexuality is so multifaceted and sensitive an issue, there is often confusion about how to best address it. The key elements of sexuality are listed here:

- All people have a sexual affiliation, whether or not they engage in sexual acts or behaviour;
- People express their sexuality through both positive and negative attitudes and behaviour;
- Sexuality expressed positively, through consensual, mutually respectful and protected relationships, enhances well-being, health and the quality of life;
- Sexuality expressed negatively, through violence, exploitation or abuse, diminishes people's dignity and self-worth and may cause long-term harm;
- Being sexual is not only about sexual acts and behaviour, it also includes thoughts, attitudes and feelings;
- Many people are initiated into sexual activity in negative ways through experiences of abuse, coercion or violence, and
- Sexual pleasure is expressed in a variety of ways that include emotional and biological responses.

Seen in this light, sexuality is something we feel and we do and there is nothing wrong in it as long as it respects others' values and desires. Because sexuality is a basic part of being human, the notion of sexual rights is part of the larger body of human rights.

"Sexual rights are a fundamental element of human rights. They encompass the right to experience a pleasurable sexuality, which is essential in and of itself, and at the same time, is a fundamental vehicle of communication and love between people. Sexual rights include the right to liberty and autonomy in the responsible exercise of sexuality."

— HERA Statement

Human rights affirm the dignity, worth, respect, equality and autonomy of all people in all aspects of their lives. Sexual rights are necessary in order for women and men to express and enjoy their sexuality and promote overall health through access to information, education and services regarding sexuality and sexual health.

Therefore:

- Sexual rights are not privileges or favours, but are entitlements of all women and men;
- Sexual rights protect the individual as well as the collective;
- The concept of sexual rights, like that of human rights, provides a framework to ensure non-discrimination and, therefore, cannot be used to privilege any one individual or group over another;
- Sexual rights are as valid as other rights such as the right to food, health and housing, and
- Sexual rights affirm entitlements, such as the right to bodily integrity, as well as rights that protect against violations, such as the right to not be coerced into sexual activity.

## What are Sexual Rights?

Sexual rights include the following:

- The right to sexual pleasure without fear of infection, disease, unwanted pregnancy or harm;
- The right to sexual and reproductive healthcare information, education and services;
- The right to sexual expression and to make sexual decisions that are consistent with one's personal and ethical values;
- The right to bodily integrity and the right to choose if, when, how and with whom to be sexually active and to engage in sexual relations with full consent;
- The right to privacy and confidentiality in seeking sexual and reproductive healthcare, and
- The right to express one's sexuality without discrimination and independent of reproduction.<sup>7</sup>

Sexual rights are based on certain ethical principles. These are the principles of bodily integrity, personhood, equality and diversity. However, to make these principles available to the younger generation, there must be an enabling and supportive environment provided through education and services. Given that sexuality is a broad concept, sexual education is both a formal and informal process. Sexual education helps children aged 10-14 years<sup>8</sup> and above<sup>9</sup> to cope with the physical and mental changes that they go through and also to be in charge of their sexuality and life.

## It's Better to Ask Than to Hide

Sexual education is important for all the reasons listed here:

- It enhances well-being and quality of life;
- It affirms sexuality in a positive way;
- It acknowledges, accepts and respects diversity of orientation, needs, views, practices, attitudes and preferences;

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<sup>7</sup> *Common Ground Sexuality*

<sup>8</sup> See *The Red Book*, 10-14 years, TARSHI, 1999

<sup>9</sup> See *The Blue Book*, 15+ years, TARSHI, 1999

- It prevents violence, exploitation and abuse;
- It includes scientifically and medically accurate information about biology, anatomy, reproductive health, physiology and sexual behaviour;
- It empowers individuals to make their own choice through understanding and in accordance with their own values while respecting the values of others, and
- It helps individuals to use safe and effective ways to protect themselves from physical and emotional harm, unwanted pregnancies and sexually transmitted infections.

## Answering Difficult Questions

Thus, an adequate sexual education will help you understand the questions that often come to your mind while you are growing up. We will try to answer some of these questions for you here.

### Q. What is happening to my body?

- A. As you grow up, your body begins to change in size and shape. These changes start happening from around the age of 10 years. As a girl grows older, her breasts begin to develop. Sometimes, there is soreness or pain in the breasts, which soon passes. In the case of boys, there is also a temporary growth of breasts in the early stages of puberty, which stops after a year or two.<sup>10</sup> Both boys and girls develop pubic hair. About one or two years after the pubic hair begins to grow, underarm hair and facial hair begins to appear in boys. A significant and often embarrassing change that boys experience during puberty is the cracking of the voice.<sup>11</sup>

*Today, something strange happened in school. While Mrs Verma, the science teacher, was taking her class, we heard someone sobbing. I looked around and saw Sunita had covered her face in her hands and was crying, while Radha was trying to console her. Mrs Verma went to Sunita's desk and said, "Don't cry, you'll be okay." When Sunita got up, I noticed that her skirt had a reddish stain on it, which she was trying to hide. One boy asked, "Ma'am, has Sunita got hurt?"<sup>12</sup>*

This is the general experience that girls go through when they have their first period and they are not told what's happening to them. Boys also try to figure out what's happening. This is quite natural and both girls and boys should be told in advance that menstruation is quite natural and nothing to feel guilty about. This major change happens in girls because the ovaries start releasing an egg every month. Just before the ovary releases the egg, the uterus begins to thicken its lining and collect blood in case a baby is to be made. If the female egg does not meet the male sperm, then a baby cannot be made. Then this unwanted blood gets discharged through the vagina (this lies just below the urinary opening). This discharge is called a period and it takes 2-8 days. A period, which is also called menstruation or menses, happens every month. Menstruation is painful for some girls. Walking and light exercise may help. If the pain is really bad, you can use a hot water bottle or ask an older person for medicine.

While boys do not menstruate, semen comes out of their body at night while they sleep. This is called wet dreams, nightfall or nocturnal emissions. Wet dreams are natural and it indicates that the

<sup>10</sup> Tolakari-A Beginning: A Training Manual, unpublished document by the Sewa Resource Group for Women and Health

<sup>11</sup> Understanding Adolescence, Neerja Sharma, National Book Trust, India, 1999

<sup>12</sup> Understanding Adolescence, Neerja Sharma, National Book Trust, India, 1999

body is producing sperm. There is nothing to feel guilty or embarrassed about it. The problem that you face with wet dreams is not so much because it happens, but that no one prepares boys for its happening. Unlike menstruation, however, this is not accompanied by pain or heaviness of the lower abdomen.

**Q. What is sex all about?**

- A. At this age, sex may seem quite confusing. However, to put it simply, sex is a form of expression that you are attracted to someone of the same or a different sex. Sex is neither bad nor wicked, but it is better to indulge in it when you are responsible enough to handle the consequences.

**Q. What is masturbation? Is it good or bad?**

- A. Masturbation involves rubbing, stroking and caressing one's genitals in order to derive pleasure from it. It is a normal and natural activity, done by girls and boys, men and women. As long as people take care not to hurt themselves, there is no harm in masturbating.

**Q. How do babies come into being?**

- A. Babies come into being when the sperm meets the ovum, or egg. Only one sperm manages to meet the egg. The mixing of the sperm and the egg is called fertilisation. The fertilised egg grows in the uterus, which nourishes it for nine months. The uterus nourishes the growing baby through the blood that passes through the mother's placenta.

**Q. Why do only women become pregnant? Why don't people have a baby every time they have sex? What is a condom?**

- A. Men do not become pregnant because they do not have a uterus. People do not have a baby every time they have sex because the egg and the sperm do not always meet and sexual partners also use methods that obstruct fertilisation. These are called contraceptives. The male contraceptive is called a condom. Condoms also protect against infections like STIs (sexually transmitted infections) and HIV/AIDS (human immuno-deficiency virus/acquired immuno-deficiency syndrome). In HIV/AIDS, the whole body's immunity gets weakened till one can no longer fight infections. HIV/AIDS is almost always fatal.

The aim of sexual education is also to make children and adolescents understand and sensitise them to sexual abuse. Children often face sexual abuse, but are unable to voice their trauma because of family and social pressures. When you are young, no matter how much or how little you know about sex, it is not right for an adult to be sexual with you. If an adult does indulge in sexual behaviour with a child, it is called sexual abuse. It is important that adolescents and children understand and identify that a particular action is violative of their rights and have the proper mechanism at hand to channel their grievances.

Child sexual abuse includes:

- An adult exposing his/her genitals to a child or persuading the child to do so;
- An adult touching a child's genitals or making the child touch his/her genitals;

- An adult involving a child in pornography, which includes showing a child pornographic material;
- Any verbal or other sexual suggestion made to a child by an adult;
- An adult inserting foreign objects into a child's body for his/her own sexual gratification, and
- An adult having oral, vaginal or anal intercourse with a child.<sup>13</sup>

Perhaps, some of you have had the experience of walking down a road and having a man show you his penis. Or someone has insisted you sit on his/her lap and fondled you, making you feel uncomfortable. Sexual abuse can happen to anyone. Both girls and boys are at risk. Most young people have been abused by someone they know, such as a family member, a relative, a neighbour or even a domestic help. If it has happened to you, remember that it is not your fault, it is the abuser who is at fault.

## Abusing Children is a Crime

Read this aloud...

Jagdish Pandey and his wife, Ila, have two daughters. Jagdish has been sexually abusing his elder daughter, who is 10 years old. His wife was unaware of what was happening and the child was too inhibited to tell her mother.

When Ila finally found out and confronted Jagdish, he beat her up brutally before saying, yes, he had been abusing their daughter sexually and would continue to do so. Ila turned to her parents and parents-in-law, but received no support from either quarter. Left with no other option, she moved elsewhere with her daughters.<sup>14</sup>

### What to Do if You are Being Sexually Abused

- Tell the abuser firmly that you do not like what he/she is doing and that you will inform your parents or someone sympathetic to you if he/she continues;
- Don't be alone with that person;
- Even if you are scared, don't believe in the abuser's threats;
- Trust in yourself;
- Look for help when you are feeling confused or bad;
- If your friend or sibling or cousin confides in you that he/she has been sexually abused, give him/her your full support;
- Respect the privacy and trauma of the person who has confided in you, don't gossip about it;
- If you know someone who abuses children, do not protect him/her, and
- Make children aware of the difference between a 'good' touch and a 'bad' touch.

You can also refer to the earlier chapter in this book on children's rights, where a whole sub-chapter has been devoted to the topic of child sexual abuse.

<sup>13</sup> *Bitter Chocolate*, Pinki Virani, Penguin, 2000

<sup>14</sup> *Jampai*, Prepared by Sama, North East Network





# HUMAN RIGHTS AND THE ENVIRONMENT

*By Ashish Kothari & Anuprita Patel*



Photo credit: Piyush Patel

## 5. HUMAN RIGHTS AND THE ENVIRONMENT

In the long evolution of the human race on this planet, a stage has been reached when, through the rapid acceleration of science and technology, we have acquired the power to transform our environment in countless ways and on an unprecedented scale.

Humanity's capacity to transform its surroundings, if used wisely and with respect for the ways of nature, can bring to all communities the opportunity to enhance their quality of life. Wrongly or heedlessly applied, or applied in inequitable ways, the same power can do incalculable harm to human beings and their environment.

### EXERCISE

Can you think of ways in which this is done?

The main effects that are seen are:

- Pollution-caused destruction and depletion of irreplaceable life forms and natural resources;
- Extinction;
- Climatic change, and
- Health hazards.

Natural resources such as air, water and land are fundamental to all life forms: They are, much more than money and economic infrastructure, the base of our survival.

Life, livelihoods, culture and society are fundamental aspects of human existence – hence, their maintenance and enhancement is a fundamental human right. Destruction of the environment and, thereby, of natural resources is, therefore, a violation or leads to the violation of human rights, as we will see later. But for now, we must keep in mind that human rights violations can lead to environmental destruction or breakdown in sustainable common property management. This could lead to loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalisation, and physical displacement.

Special mention must be made here of the indigenous<sup>15</sup> and tribal people of the world, virtually all of whom are faced with a serious crisis of survival. Their identity as independent communities and peoples is threatened because the economic, social, cultural and natural resource base, which enabled them to thrive as distinct peoples, is being trampled upon. The traditional economy of the indigenous peoples rested on their concept of and relationship with nature. For most such communities, land, water and forest belong to Mother Earth; human beings enjoy only the right to *use* them, nobody can own them; they ought not to be bought and sold, appropriated or otherwise privatised. It belongs to the community. Land, therefore, is an important ingredient of the indigenous peoples' identity. It is not only humans that are affected, but all other life forms, too. The concept of environment as a basic human right must also encompass a respect for the right of other species to survive on this planet.

It is keeping all this in mind that environment is fast being recognised as a human right.

<sup>15</sup> Though recognised by the UN, India has consistently opposed the use of the term 'indigenous' to describe its original residents, preferring the word 'tribal' or 'Adivasi'. Tribal/Adivasi people in India, however, often use the word indigenous to describe themselves. In this document, wherever applicable to India, the term 'indigenous' includes people who are classified as Scheduled Tribes under the Constitution of India

## Development of the Environment as a Human Right

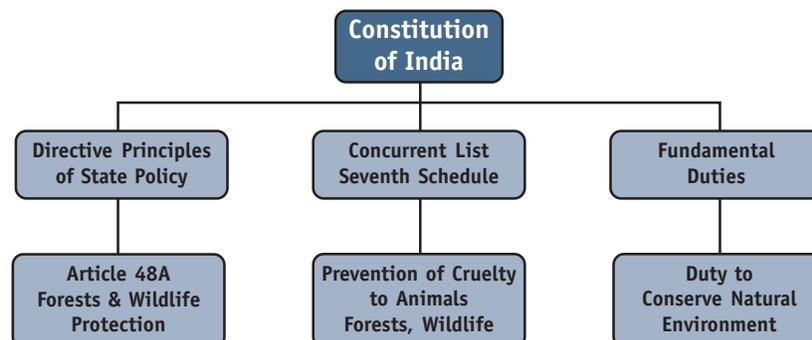
### The International Sphere

#### The UN Conference on the Human Environment, Stockholm, 1972

While communities everywhere have been ecologists (without calling themselves that) in their day-to-day existence, and while traditions in many countries explicitly incorporated ecological principles for centuries, possibly the first time that governments recognised such principles at an international level was at the United Nations Conference on the Human Environment, Stockholm, in 1972. This Conference considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. It called upon governments and peoples to exert common efforts towards this end, for the benefit and posterity of all people. It stated the common conviction that: “Humans have the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and a solemn responsibility to protect and improve the environment for present and future generations.”

### The National Sphere

The Constitution of India, 1950, did not include any specific provision relating to environment protection or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualised by the framers of the Constitution.



The Constitution (42nd Amendment) Act, 1976, was adopted in the mid-1970s. Specific provisions relating to certain aspects of the environment, especially for the protection of the forests and wildlife in the country, were incorporated in Part IV of the Directive Principles of State Policy and List III – The Concurrent List – of the Seventh Schedule of the Constitution. As a result, the Constitution now has the following provisions specifically relating to environment protection and nature conservation:

- **Part IV: Directive Principles of State Policy (Article 48A):** Protection and improvement and safeguarding of forests and wildlife: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country;
- **Part IV-A: Fundamental Duties (Article 51-A):** It shall be the duty of every citizen of India: (g) to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures, and

- **Seventh Schedule (Article 246):**

List III – Concurrent List

Item No. 17 Prevention of cruelty to animals;

Item No. 17A Forests, and

Item No. 17B Protection of wild animals and birds.

There have been several remarkable judicial pronouncements in recent years, especially relating to Article 21 of the Constitution, dealing with 'the right to life'. The right to environment has been closely linked with the right to life.

### EXERCISE

Look at the following examples. Does the right to life include the following:

1. Bare necessities?
2. Public health and ecology?
3. Decent environment?
4. Pollution-free air and water?

### ANSWERS

1. In *Francis Coralie Mullin vs Union Territory (1981 2 SCR 516)*, the Supreme Court held that "the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter...."
2. In *M C Mehta vs UOI (1987 Supp. SCC 131)*, the Supreme Court held that life, public health and ecology have priority over unemployment and loss of revenue.
3. In *Shanti Star Builders vs Narayan Totame (1990 1 SCC 520)*, the Supreme Court held that right to life is guaranteed in a civilised society and would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in.
4. In *Subhash Kumar vs the State of Bihar (1991 1 SCC 598)*, the Supreme Court held that the right to life is a fundamental right under Article 21 of the Constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has recourse to Article 32 of the Constitution for removing the pollution of water or air that may be detrimental to life.

Several new standards have also been developed over time. Some of these are:

- The standard of absolute and non-delegable liability for disasters arising from the storage of or use of hazardous materials;
- The standard of sustainable development;

- The Precautionary principle, and
- The Polluter Pays principle.
- In *M C Mehta vs Union of India & Ors (1987 SCR (I) 819)* (the oleum gas leak case), the Supreme Court established a new concept of managerial liability – ‘absolute and non-delegable’ – for disasters arising from the storage of or use of hazardous materials in their factories. The enterprise must ensure that no harm results to anyone, irrespective of whether the disaster was caused by a negligent act or not;
- In *Vellore Citizens Welfare Forum vs Union of India (AIR 1996 SC 2715)*, the Supreme Court held that industries are vital for the country’s development, but with regard to the pollution caused by them, the principle of sustainable development has to be adopted as the balancing concept. The Precautionary principle and the Polluter Pays principle have both been accepted as a part of the law of the country.<sup>16</sup>
- In *Indian Council of Enviro-Legal Action vs Union of India (1996 3 SCC 212)* (the Bichhri pollution case), following the decision in the oleum gas leak case and based on the Polluter Pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, especially to the soil and to the underground water.
- Enunciating the doctrine of ‘public trust’ in *M C Mehta vs Kamal Nath (1997 1 SCC 388)*, the Supreme Court held that resources such as air, sea, water and the forests hold such great importance for the people as a whole that by leasing ecologically fragile land to the motel management, the state government had committed a serious breach of public trust.

Such wide interpretations of Article 21 by the Supreme Court have, over the years, become the bedrock of environmental jurisprudence and have served the cause of protecting India’s environment (and to a lesser extent, of livelihoods based on the natural environment).

## India and its Environment

Features of land use in India:

- Collective use and control – the community property resource (CPR) system;
- Sustainable use, and
- Minimum ecological destruction.

**What do these terms mean?**

### **Collective Use and Control – the Community Property Resource System**

This refers to a system of ownership in which the community owned the resources. Almost 80 per cent of natural forests, for instance, were under the common property system. How it was to be used did not depend on the whims and fancies of a single individual, but of the community as a whole.

<sup>16</sup> The Precautionary principle, as interpreted by the Supreme Court, means that the required environmental measures should be taken by the state and statutory authorities and that lack of scientific certainty cannot be a ground for postponing such measures where there are serious threats to ecology, that the state and statutory authorities must anticipate, prevent and address the causes of environmental degradation and that the ‘onus of proof’ is on the industry to show that its actions are environmentally benign.

The Polluter Pays principle, as interpreted by the Supreme Court, means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution, but also the cost of remedying the environmental degradation. Remediation of the environment is part of the process of sustainable development and, as such, the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damage to the environment.

### **Sustainable Use**

Natural resources such as forests are renewable resources. This means that the resources keep replenishing themselves. However, if too much of a resource is used, it will become difficult for the resource to replenish itself. This is the reason why forests are disappearing.

### **Minimum Ecological Destruction**

Does this mean that, earlier, no ecological destruction took place? No, ecological destruction did take place. The only question was how much. Today, the burden on the environment is much more than it was earlier. Earlier, people were more conscious of the damage they were doing and, therefore, kept it to a minimum. Their needs were also simple as compared with the consumerism we see today.

Over time, these features have given way to newer, though not always better, features, some of which are listed here:

- Individual use and control;
- Exploitative use, and
- Major ecological destruction. Non-renewable resources are being exhausted and many species have been driven to extinction.

### **EXERCISE**

Compare the features over the two time periods. Which approach is more beneficial for the environment?

Even as you do this exercise, it will be evident to you that the features of natural resource use in India have changed and definitely not for the better. This has created the environmental crisis.

### **EXERCISE**

Tick the right answers to these questions:

1. Which of the following examples would be collective use and control of resources?
  - a. Each class is given one free hour a week. The class monitor decides how the students should spend their time.
  - b. The father and mother are earning. They have grown up children. The father decides how the household money will be spent.
  - c. The eldest child in a family is given some money by the parents to be spent on sweets for all the children. All the children together decide which sweets to buy.
2. Which of the following are renewable resources?
  - a. Petroleum
  - b. Groundwater
  - c. Wood from trees

d. Fruits

e. Fish

#### ANSWERS

1. Only 'c' is an example of collective use and control of resources.
2. Only 'a' is a non-renewable resource. However, if the others are over-used, they will decrease severely and not be able to return to the original state in which they were available.

Thus, we have seen that we are in the midst of an environmental crisis. Let us look at this crisis a little more closely.

## The Roots of the Crisis

The environmental crisis we face today is rooted deep in social, economic and political structures, which have all contributed to this crisis. This has resulted from inequities of three kinds:<sup>17</sup>

**Intra-generational Inequity:** This refers to the inequalities that exist within each generation. These inequities are caused because of differences in status and opportunities according to caste, race, class, community, country and sex. Those in power are able to dictate the use of the majority of resources regardless of the consequences on others, while forcing the powerless to depend on and further reduce already meagre resources. This has been the case with land, where the land is not owned by the community or shared in some other equitable manner as we observed earlier.

**Inter-generational Inequity:** These refer to inequities between one generation and another. Entire generations of human beings, as yet unborn, who will depend on the same resources that we do, have no voice in decisions regarding these resources. This generation's over-exploitation of water, land, soil and biodiversity will leave little for future generations, except abundant toxic wastes, barren wastelands, polluted water bodies and a handful of pest species that have thrived on human wastes.

**Inter-species Inequity:** This refers to inequities between human beings and other species of living beings. Humanity shares the earth with a mindboggling diversity of life forms, perhaps up to 50 million species of plants, animals and microorganisms. This explosion of biodiversity is not only a source of wonder, but the very bedrock of human existence. Yet, simply because we have the might, we have considered it our right to colonise ever-increasing spaces on earth, driving out thousands of species. Over one-fourth of all biodiversity is threatened with extinction in the next few decades unless we can drastically change the way we deal with the earth.

Inequities in the relations between people and countries have also allowed the imposition of unsustainable and destructive models of 'development'. The process of 'development' has been characterised by the massive expansion of energy and resource-intensive industrial and urban activity and major projects like large dams, commercial forestry, mining and chemical-intensive agriculture.<sup>18</sup> The resource demand for the economic progress of a minority of people has led to the narrowing of the natural resource base for

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<sup>17</sup> Kothari, 1995

<sup>18</sup> CSE, 1999

the survival of the economically poor and powerless. This has happened either by direct transfer of resources into cities and industrial complexes, or by the destruction of life-support systems for rural communities everywhere.

Let us now take a quick look to see the root causes of biodiversity loss in India and consequently also the loss of related livelihoods and cultures.<sup>19</sup> Biodiversity refers to the rich variety of species of plant and animal life.

### **1. Model of Development in India Today**

The model of development that India has followed post-Independence is characterised by the following features:

- Large-scale industrial expansion, leading to pollution of the air, water and soil; dumping effluents, exhausts and wastes, and use of resources, both renewable and non-renewable, without considering the sustainability of the expansion;
- Commercial agricultural production, characterised by the Green Revolution, which increased production, especially of food grains like wheat. However, the agricultural practices included the use of high-yielding varieties of seeds, intensive fertilisers, pesticides, etc., which have affected the soil adversely. Similarly, many of the indigenous (local) varieties of grains, which were adapted to local conditions like drought or pests, have vanished. Monoculture has become the rule. Monoculture refers to the cultivation of one variety of crop. For example, one variety of wheat, where earlier many varieties used to be grown simultaneously. The problem with monoculture is that if the crop fails due to disease, etc., it would be a disaster as there is no back-up in terms of other kinds of crops. The ill effects of monoculture are now well recognised, but we still continue to follow it.
- Increased consumption is the norm today. If you compare your grandparents' lifestyle and yours, you will find that you have more clothes, use more energy and eat more processed foods. Consumption of goods and services has increased. This has led to exploiting of natural resources to the maximum extent to meet the demands of consumerism.

### **2. Erosion of Customary Rights and Customary Management Systems**

We have discussed earlier the importance of community property resources. The community managed natural resources and conserved them for use by future generations. These resources included forests, pastures, common grazing lands, water bodies, etc. However, from the days of colonial India and continuing into independent India, the customary resource management has been replaced by state-owned rights and individual or private rights. The focus has shifted from intelligent use and conservation to exploitation, overuse and immediate profits with no regard for the future.

### **3. Increasing Social, Political and Economic Inequities**

There are inequities between urban and rural India, traditional and modern India. The focus seems to be on developing urban centres and here is where most resources are used. For instance, power is needed for industry, offices and residential purposes. This is not a modern trend. Even earlier, inequities between land-owning peasants and forest dwellers have led to severe deforestation. Land-owning peasants have often ruined large forest areas in order to put more land under cultivation. This obviously affected the lives of the forest dwellers, who, however, were not seen as having any rights.

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<sup>19</sup> Source: National Biodiversity Strategy and Action Plan, Draft, Ministry of Environment and Forests, Government of India

#### **4. Changes in Cultural, Ethical and Moral Values**

- Local communities have been alienated from natural resources that they had access to traditionally;
- Spread of homogenous attitudes such as the notion that wheat and rice are the only grains worth eating have led to other grains disappearing from the fields;
- Devaluation of traditional/indigenous (local) knowledge has led to much of this knowledge disappearing as there are no written records maintained. For example, the medicinal value of plants, which was common knowledge in tribes, is fast vanishing, and
- Displacement of local communities due to large-scale development projects and inadequate or non-existent rehabilitation measures.

#### **5. Lack of Recognition of the Full Values of Biodiversity**

- There is an undervaluation of traditionally protected sacred groves, landscapes and species, which are now fast disappearing;
- Productivity has been undervalued with the notion that traditional crop varieties have low yields;
- Water resources and how the ecosystem works is not properly appreciated by modern planners;
- Health policies and programmes today have ignored the health value of medicinal plants and traditional crop varieties;
- Agricultural policies do not acknowledge the role of biodiversity in agriculture for good nutrition and health, and
- Economic planning and budgeting has not taken into adequate account the enormous value of biodiversity, soil productivity and water security.

#### **6. Inappropriate Laws and Policies**

There are a number of contradictions between policies and laws dealing with the environment and those relating to industrial development, commerce and welfare. Some of them, like intellectual property laws, are not in the interests of the environment and protection of biodiversity. Useful laws, for example, on pollution are not implemented properly. There is no proper land use plan or policy which protects fragile areas from improper development and practices like mining, which ruin the land.

#### **7. Demographic Changes**

The growth in population since Independence has impacted the environment by creating pressures on the land.

#### **8. Inappropriate Trade Regimes**

Our trade regimes and policies focus on immediate foreign exchange earnings, instead of long-term benefits. The export of natural resource based products without caring about the sustainability of the resource or the livelihoods of those already dependent on this resource is quite common. Long-term adverse impacts are seldom looked into. Impacts on biodiversity from trade are likely to increase

significantly in the next few years, with India acceding to the World Trade Organization's treaties. Export policies that spread monoculture and export-oriented cash crops are being encouraged at the cost of biodiversity farming systems.

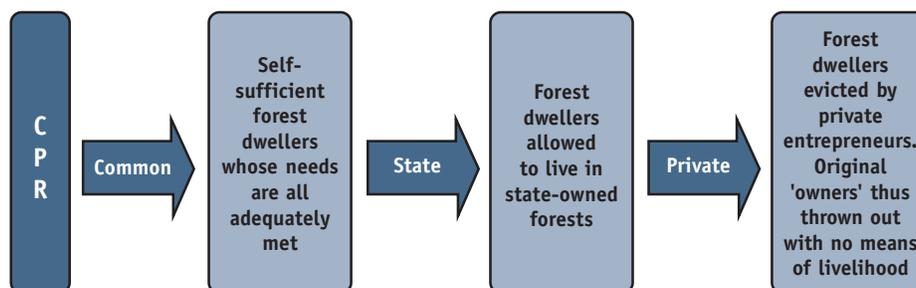
## The International Position

This affects Indian environment in several ways. As we have seen earlier, developments in the international sphere have had an impact on India. The Constitution and several of our pro-human rights laws are evidence of this influence. However, this absorbing of international trends applies to other trends as well.

Here are some ways in which international trends affect environmental rights and the Indian environment:

- Western ideology of development, especially industrialisation;
- Influence of major international donors such as the International Monetary Fund and the World Bank, which have prevailed upon developing countries to adopt harmful models of development;
- Globalisation has impacted us. While globalisation would have been useful if we were able to get some useful technologies, this has not happened. So, instead of the benefits of globalisation, we have only suffered the losses like ecological destruction and social disruption;
- Intellectual property regimes promoted under the Trade-related Aspects of Intellectual Property Rights (TRIPS) are already forcing countries like India to accept patents and other IPRs, which are inimical to their interests;
- Environmental treaties have impacted us positively by forcing us to slowly accept standards that will protect our environment, and
- The growing global movement against the negative forces of globalisation has brought together activists from different spheres, including environment.

## Forests and Forest Dwellers



With the takeover of forests by the state, the traditional or customary rights of forest dwellers were gradually converted into privileges and, even further, into concessions. In other words, over the process of a few decades, tens of thousands of families were reduced from relative self-sufficiency to dependence on the 'charity' of the state. The state 'conceded' to allow people to use forests, as if these forests always

belonged to it! Simultaneously, commercial forestry was contributing significantly to the decimation of forests and their biological diversity.

Of all the environmental problems facing the country, the problem of deforestation has received the maximum public attention. Ironically, public criticism has also focused heavily on policies of afforestation. For a considerable part of the Forest Department's history, afforestation programmes were undertaken with the primary aim of meeting the needs of urban and industrial markets, while the glaring fuel and fodder crises facing the common people continued to grow. Species such as eucalyptus, teak and pine, which were chosen, did little for ecological restoration, for enhancing soil fertility or for soil and water conservation. Nor did they meet local peoples' livelihood needs.<sup>20</sup>

These afforestation programmes, thus, were often as anti-people as was outright deforestation. For instance, rural women, whose lives revolve around collection of fuel and fodder, have almost nowhere been involved in these programmes.

In a radical departure from the policies of the past, the National Forest Policy of 1988 acknowledged that the biomass needs of ecosystem people must have primacy over the commercial demands of industry. Some attempts have also been made to set up management systems involving local communities. For instance, taking its cue from some successful initiatives in participatory forestry in West Bengal and elsewhere, the Government of India issued a circular in 1990, urging all states to adopt a programme of Joint Forest Management (JFM). Over the last decade or so, JFM has spread like wildfire into more than 11 million hectares over 25 states in India. This has undoubtedly been a step forward, but it has also been heavily criticised for not going anywhere near far enough in giving control and decision-making powers to communities.

One radically different strand within official forestry programmes has been the attempt to conserve habitats and their wildlife. Against great odds, officials and NGOs managed in the 1970s to push wildlife conservation as a political agenda and secured a portion of India's territory as protected. However, the most serious problem with these conservation efforts has been their socioeconomic impact. In the last few years, wildlife conservation measures have come under heavy attack for being socially unjust and, therefore, short-sighted. Specially targeted has been the country's most ambitious conservation effort, the creation of a Protected Area (PA) network.<sup>21</sup>

## Protected Areas (PAs)

By late 2002, India had an extensive network of 582 national parks and sanctuaries, covering some 4.7 per cent of its territory.<sup>22</sup> This network has helped to conserve a significant part of India's biodiversity, including a wide diversity of habitats and species. The factors causing biodiversity loss would have gobbled up these areas, too, if it had not been for the protection given. This is illustrated by several examples, such as the Marine National Park in the Gulf of Kutch fighting what is so far a successful battle against a proposed Reliance Industries oil refinery there. NGOs and politicians have successfully stalled attempts to use the Bhitarkanika Sanctuary in Orissa (home to the world's largest nesting sites of the threatened Olive Ridley sea turtles) for trawling jetties, and the Balukhand Sanctuary (also in Orissa) for a hotel complex.

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<sup>20</sup> CSE, 1985

<sup>21</sup> Kothari, 1997

<sup>22</sup> <http://www.wii.gov.in/new/nwdc/index.html>

The declaration of PAs and the imposition of regulations under the Wildlife Protection Act (WLPA), 1972, were almost always done without consulting the local communities, and resulted in their rights being terminated or abridged, or their access to basic resources being cut off without adequate provision of alternatives. The WLPA prohibits all human intervention or settlement in national parks and allows only a limited intervention in sanctuaries. Displacement of communities, resource use restrictions and harassment by government officials have caused severe hostility and resentment amongst local communities (CSE, 1999).

Over the years, a two-way conflict situation has developed, with PAs adversely affecting local people, and local communities becoming ecologically destructive. Here are some of the major impacts PAs have had on people:

- Forced displacement from national parks, core zones of sanctuaries or special conservation areas;
- Curtailment or extinguishing of local community land and forest rights, or access to natural resources inside PAs, and
- Increase in the population of some species (elephants, wild boar, nilgai, lions, leopards, bears) in some areas, which results in a 'spillover' of animals unable to find adequate food and territory, or of those who actually prefer human-made habitats like fields. In addition, people are no longer allowed to retaliate, as they may have done in the past; officials are especially harsh when villagers attempt to retaliate against threatened species.

The PA-people relationship is, of course, by no means one-sided. Increasingly, local communities are putting excessive pressure on natural habitats or becoming conduits to serve urban and commercial demands. Some striking examples of ecologically damaging and unsustainable activities of the ecosystem people are as follows:

- Overhunting of herbivores leading to severe shortage of prey for the tiger, forcing it out of reserves and into conflict with surrounding villagers;
- Shifting cultivation practices, especially in North-Eastern India, for example, burning forests for fields;
- Selling of Adivasi-owned forests to saw-mill owners;
- Burning of forests for sal (*Shorea robusta*), and
- Seed and tendu leaf collection, oriented for the market.

Wildlife habitats also face considerable encroachment. While wildlife conservationists and community rights advocates argue with each other, the urban-industrial economy, a sector which has no qualms about destroying biological or cultural diversity for short-term commercial gains, reaps the benefits.

## Grazing Lands

Of the four major components of our lands, croplands, forestlands, wetlands and grazing lands, the last have been the most neglected. Large areas of former grazing lands have come under agriculture, leading

to a severe decline in fodder availability. The result is a hungry and malnourished livestock population. On the other hand, overgrazing prevents regeneration of forests and accelerates soil erosion.<sup>23</sup> A variety of factors have also considerably increased the spread of non-palatable weeds on pasturelands.

Village common lands and cultivable wastelands, formerly available for grazing, are being diverted to other uses both by the state governments and the Panchayats (village councils). In the pastures that still remain, overgrazing does not give a chance to many species to recover. Consequently, perennial grasses are replaced by seasonal varieties that have low nutritional value and by unpalatable weeds.<sup>24</sup>

The migrant communities, both pastoralists and shifting cultivators, remain the most neglected. Such communities have been affected by the loss of pastures and forests, blockage of migratory routes and the hostility of settled populations whose cultivation practices have changed so that the migrants are no longer welcome. Some of India's most uniquely adapted livestock breeds and crop varieties, which were found with such communities, are now increasingly being lost. There is still no clear policy thrust on these communities, or on the deep ecological knowledge they hold.<sup>25</sup>

## Agricultural Lands

Indian agriculture has changed dramatically over the last few decades. We have earlier seen briefly the effects of the Green Revolution. Ushered in with dwarf wheat varieties and with substantially enhanced investment in the formal seed sector and widespread extension services, the Indian farmer was fed a major dose of external inputs: seeds, irrigation, loans, pesticides, fertilisers and institutional back-up. While, on the one hand, this had the undoubtedly visible effect of enhancing grain production and reducing dependence on food imports, it has also had a series of negative impacts that threaten to undermine the gains made, and have in fact taken us on a slow but surely suicidal course.

The ill-effects on the environment are glaring and if you take look at the list below, you will be able to understand better some of these effects.<sup>26</sup>

- Millions of hectares of lands are losing their productivity because of water-logging and salinisation caused by careless surface irrigation, or are becoming imbalanced in their nutrient composition because of the pumping in of chemical fertilisers, or are getting poisoned by pesticides;
- Chemical poisoning of water and food is widespread;
- Erosion of top soil because repeated commercial cropping does not allow adequate fallows, or due to other mismanagement factors, is so serious that it merits being labeled a national emergency;
- Loss of seed, livestock and other agricultural biodiversity threatens the very genetic base of agriculture;
- Loss of the organic links between farming, animal husbandry, forests and so on undermines the sustainability of rural economies and cultures;
- Poisoning through food, to the extent that even breast milk has pesticide levels above permissible limits, and

<sup>23</sup> CSE, 1985

<sup>24</sup> Khurana, 1999

<sup>25</sup> Mishra, 2002; Vivekanandan, 2002

<sup>26</sup> Kothari, 1997

- A wide range of species has thus been replaced by a handful of profitable ones. There has been a massive displacement of indigenous crop diversity. The failure of a single high-yielding variety crop due to any natural calamity is a crippling blow to a farmer who has no other crop to fall back on. Such farming practices result in an increasing dependence of the farmer on the industry dominated market and government.<sup>27</sup>

The 1990s saw a new onslaught on Indian agriculture: liberalisation of the agro-industry sector and weakening of the laws and regulations that once protected farmers from being taken over by the corporate sector. The new economic policies are emphasising cash cropping for exports (e.g. floriculture), lifting of land ceilings and other laws so that corporate farmers can have huge landholdings and non-farmers can purchase agricultural lands, heavy sops to industries processing agricultural produce, and so on... all likely to cause further ecological destruction and further marginalise the already marginal farmers.<sup>28</sup>

The latest catchword, the so-called New Green Revolution, is biotechnology. Promising the moon, major Indian and multinational corporations are cashing in on India's 'moving into the 21st century' slogan. In 2000, the Government of India allowed trials of genetically modified crops in fields and, in 2001, it cleared the sale and cultivation of genetically modified cotton without long-term studies on its consequences. These new technologies are not only ecologically suspect, they are also socially questionable for, like the Green Revolution, they are likely to favour the big and corporate farmer over the small one, who will not be able to afford the inputs. It will also increase the dependence of farmers on corporate and governmental agencies.

What is also clear is that there are viable and visible alternatives. Organic or sustainable farming is an alternative which is being advocated by agricultural and environmental groups alike. This is what the future should be if we want our environment to survive.

## Development and the Environment

Development is no doubt a right. But in the course of development, important questions need to be asked:

- Whose development? Who is it benefiting?
- At whose expense? Who is losing out?
- Are the people whose livelihoods or environment are being affected being given compensation or remedies?
- Has a cost-benefit analysis been done? Do the costs outweigh the benefits?

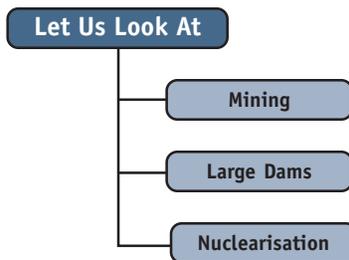
### EXERCISE

Take a look at the hypothetical situation given below and see if you can answer at least two of the questions given above:

Municipal authorities decide to create a park in an urban locality for the use of the children who are living in the apartments there. In order to do so, they cleared a slum located on a large piece of land. The slum dwellers were promised a small sum of money if they could show documents to prove they had lived there for a certain period of time. Not many of the illiterate slum dwellers had such documentation. A beautiful park was created on the site with plenty of trees, a nice path for jogging and a play area for the children.

<sup>27</sup> Shiva, 1991

<sup>28</sup> Kothari, 1988a



In this sub-chapter, we will look at three examples to show how today’s development has led to violations of human rights.

### Mining

In early 2003, the environmental group, Kalpavriksh, brought out a detailed, nationwide study of the impacts of mining on natural ecosystems, wildlife and people. Its highlights<sup>29</sup> are listed here:

- Mining activities are destroying some of India’s most ecologically sensitive areas, including catchments that provide water security to millions of people;
- At least 90 wildlife sanctuaries and national parks and hundreds of other ecologically sensitive areas with unique biodiversity and wildlife are threatened;
- Culturally and economically fragile communities residing in these areas, including many Adivasis/ Adivasi groups, are seriously affected by mining;
- Since the economic liberalisation phase in the 1990s, the mining sector has opened up thousands of square kilometres of the country, many of which are in some of our most ecologically fragile areas;
- Many mining activities are in gross violation of environmental policies and laws, of the Constitutional guarantees to Adivasis and other communities, and of the National Mineral Policy’s own assurance that ‘ecologically fragile and biologically rich areas’ will be avoided;
- The Government of India and state governments need to take urgent steps to declare ecologically and culturally sensitive areas as being off limits to mining, to commission an independent assessment of the impacts of the mining sector, to make the necessary changes in the mining policies and laws, to ensure ecological restoration of already mined areas, to provide alternative employment to workers before closing down mines in ecologically sensitive areas, and to set up an expert group to explore ways of sustainable material and energy use, including the reduction of luxury and wasteful consumption of minerals, and
- Communities, people’s groups and NGOs need to unite and network more strongly to resist the increasing takeover of sensitive areas for mining

### Large Dams

The most controversial use of water resources, arising from conflicting claims, is by the construction of large dams. From colonial times and even more so after Independence, these structures have been seen as

<sup>29</sup> Source: Vagholikar and Moghe, 2003

a potent symbol of progress, the 'temples of modern India', to use former prime minister Jawaharlal Nehru's words. And again, like any other mega-development project, while they have delivered undoubted benefits, big dams have also caused such severe negative environmental and social impacts that their very desirability has been called into question.

The main impact of dams has been summarised here:

- Diversion of rich forest land for building dams;
- Rich areas submerged, causing colossal loss to environment, wildlife and people living in the areas;
- Illegal felling of trees for timber, using the excuse of clearing the submerged areas;
- Deforestation for resettling displaced people;
- Loss to fisherfolk, particularly in coastal areas;
- Affects livelihoods of people, particularly tribals and Adivasis;
- Disrupts normal flow of the river and, consequently, fish migration, nutrient levels in the water, etc., and
- Rehabilitation is far from satisfactory.

Rehabilitation and resettlement (R&R) has become a major issue these days. Experience from dozens of dams suggests that it has never been satisfactory and several people continue to remain displaced and homeless as a result. Some of the major experiences are highlighted here:

- Rehabilitation is seen as an obstacle and an extra financial burden;
- Authorities always try and get away with the minimum possible;
- Cash compensation is very little. Land for land is a better policy, but almost impossible to implement in the case of large-scale displacement;
- There is no uniform policy, it depends on the project;
- It is treated as a technical problem rather than as a human and sociological issue;
- Even if land is given, several critical resources available at the site of original residence are not available, e.g. forest resources, grazing lands, fishing opportunities, and so on, and
- Rich farmers often manage to get higher compensation and better alternative lands, whereas the poor keep running from pillar to post.

### **Nuclearisation**

The invention of nuclear power was initially heralded as providing electricity that was 'safe, clean and too cheap to meter'. We now know that it is, on the contrary, very unsafe, highly polluting and very expensive. Indeed, it is an outmoded, dangerous technology that has left a legacy of irretrievable

contamination and a trail of disease, death and futile costs. The world over, this industry has failed to demonstrate that it can safely deal with the inevitable consequence of the nuclear fuel cycle and its highly dangerous wastes.

Today, the nuclear empire in India consists of uranium and heavy earth mines, fuel fabrication factories, heavy water plants, nuclear power stations and spent fuel reprocessing plants. But the projects undertaken by India's Department of Atomic Energy (DAE) have been an environmental liability. The highly toxic radioactive wastes generated by nuclear power plants pose the biggest headache to the nuclear industry. The wastes have not only to be handled extremely carefully during the separation of plutonium, but also have to be stored for thousands of years. Many believe that a final solution to the problem will never be found. It is widely reported that workers at the various atomic power stations in India are regularly subjected to radiation exposures much in excess of the permissible levels. Leaks and ill-serviced machinery are common features at the power stations. The extreme radioactive contamination makes maintenance and operation of the stations extremely difficult as well as expensive, leading to failures in machinery, emergencies and accidents.<sup>30</sup>

The DAE is known to employ unskilled and uninformed labourers from nearby villages, especially for maintenance jobs in radiation-infested zones, where radiation levels are very high. Over-exposure to radiation is a routine occupational hazard in the nuclear industry. The 'maximum permissible limits' of level of exposure to ionising radiation are flexible in practice and almost always stretched on the exigencies of nuclear power plant operations. In reality, however, ionising radiation is among the worst of poisons, producing cancer and irreversible genetic deformities. There is overwhelming evidence to show that there is no safe level of radiation exposure.<sup>31</sup>

Effluents from nuclear stations contain high amounts of toxic substances and, frequently, some waste uranium. These effluents are often allowed to flow onto the ground as the sedimentation tanks are either not built, not maintained or are overflowing. This results in contamination of the soil and groundwater, affecting the neighbouring settlements, causing blood disorders and miscarriages to occur among their inhabitants.

The other deadlier product of atomic research is the nuclear weapon, the most destructive creation of humankind in history. Nuclear tests, including those performed underground as in South Asia, are likely to cause damage to natural resources that will last for centuries. The experience of weapons production around the world also shows that those involved in the entire cycle – from the mining of uranium to the fabrication of weapons – have suffered grievous injury, not to mention the incalculable damage caused to the soil and water resources.

Nuclear weapon states harm people all over the world via their atmospheric or underground testing programmes. The affected populations include:<sup>32</sup>

- The soldiers and civilians who participate in atmospheric testing, doing what they believe is a patriotic duty;
- The people who live near nuclear weapons plants, mines and processing factories;

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<sup>30</sup> Bidwai, 1999

<sup>31</sup> CSE, 1985

<sup>32</sup> Makhijani, 1999

- The people downwind, who suffer heavy radioactive fallout from testing and production activities;
- Workers in nuclear laboratories and factories;
- Subjects of human experiments done without informed consent, and
- Generations far into the future who will continue to bear the health risks of the enormous burdens of nuclear pollution.

After the first nuclear test explosion in India at Pokhran in 1974, some of the wells in the area were sealed by the DAE. Water samples have been collected at regular intervals and people have been prevented from using these wells, though they have not been told why. After the second series of experiments in 1998, water from a tube well in a village 7 km south of Pokhran became jet black. Reduction in the yield and fat content of milk has been reported from the neighbouring villages. The possible pathways of radioactivity could be the underground drinking water and dairy products. The gases and particles vented out during blasts would have been carried away by the desert wind.<sup>33</sup>

The final aspect of nuclear power and arms is the extremely high level of secrecy in which they are cloaked. Invoking 'public interest' as a reason for obtaining information regarding these sectors simply does not work as the relevant laws provide almost complete immunity to the nuclear establishment in India. Denial of access to information is widely considered a serious violation of human rights, but there is no industry that epitomises such violation as the nuclear industry.

## What are the Alternatives?

If ecological destruction and the connected violation of human rights are by now pervasive in India, what is the way out? Are environmentalists advocating a total cessation of development, a 'return to the primitive' mode of existence? How would the needs of our increasing population be met if ecological safeguards were to become barriers to agricultural and industrial development?

Answers to these questions are coming from local communities who have not forgotten their roots, from government officials who go off the beaten track, from NGOs who dare to question the system, from individuals who our society unfortunately still thinks of as either crazy or dreamy romantics. In all these cases, the essence of the answer has been the marriage of ecological ethics and human values and rights. What has also been critical is that these answers have exploded the myth of the *single* answer, a sort of universal blueprint that can be implemented everywhere. Such a blueprint will not work because there is a diversity of ecological situations, diversity of cultural situations, diversity of governance structures, and so on. Nature has not found one universal solution to the problem of finding food, finding a mate, surviving the elements. Humans would do well to learn from such diversity.

What kind of solutions and alternatives are being tried out, what are the elements of hope? There are at least six,<sup>34</sup> which have been listed below:

- Resistance (to 'development' projects and processes that are destructive);

<sup>33</sup> Padmanabhan, 2000

<sup>34</sup> Adapted from Kothari, 1999

- Revival (of traditions that are still relevant, in the same or a modified manner);
- Reconstruction (synthesising traditions and modern processes/knowledge into new combinations);
- Redefinition (of some key terms and paradigms of development);
- Reorientation (of attitudes towards nature and fellow humans), and
- Restitution (handing back of territories, resource rights and knowledge ownership).

The recognition of the environment as a fundamental human right is one cornerstone of a strategy to reach such a future. It is a strategy that will bring rich rewards to all of us and to later generations. It is a strategy in which each of us has a role to play. And it is a strategy, which, if forgotten, will spell doom to the human race.



# LAND AND HOUSING RIGHTS

*By Miloon Kothari & Sabrina Karmali*



Photo credit: Piyush Patel

## 6. LAND AND HOUSING RIGHTS

### Background

Food, clothing and shelter are the basic needs of every human being. Access to adequate and secure housing is a basic human right denied to many of the world's poorest people. A hundred million people in the world today are said to be living with no shelter at all.<sup>35</sup> Part of the problem is that many individuals across the world are not aware of their rights or do not have the means to implement them. It is believed that if people are educated about the fundamental principles and provisions of international and national laws on housing and land rights and they understand the mechanisms and legal rights that are available to them, then they can use these instruments as an effective tool to struggle for adequate housing.

It is important to note that the right to adequate housing is founded and recognised under international law. However, under the Constitution of India, the right to housing and land has not been accepted as a fundamental human right, despite the fact that India has ratified several international instruments that make it obligatory for the state to provide the right to adequate housing to all its citizens. As a signatory to these conventions, India is obliged to ensure that the economic, social and cultural rights set out in each of them are promoted and protected in Indian society.

### I. Housing as a Basic Human Right in the International Context

Housing has been recognised as a basic human right in a number of international instruments as listed below:<sup>36</sup>

#### 1. Universal Declaration of Human Rights

This was the first international instrument that recognised the right to housing. Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, the right to adequate housing has been recognised as an important component of the right to an adequate standard of living, which is an integral part of the UDHR.

#### 2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

On the basis of the provisions of the UDHR, the right to adequate housing was elaborated and reaffirmed in 1996 by the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 11, which reads:

“The State Parties to the present Covenant recognise 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.”

#### 3. General Comment of the Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR) is the body set up by the Covenant of the same name (the ICESCR). The function of the Committee is to ensure that the states comply with the Covenant, which it does in the many ways. Another important role of the Committee is to interpret the application of the Covenant, to clarify it and to expand the scope of certain rights in the Covenant, which it does by way of ‘General Comments’.

The CESCR has provided a holistic understanding of housing through its General Comments: “In the committee’s view, the right to housing should not be interpreted in a narrow or restrictive sense, which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter

<sup>35</sup> Report of the Special Rapporteur on Adequate Housing as a Component of the Right to Adequate Standard of Living, Miloon Kothari, submitted pursuant to Commission Resolution 2000/9. Economic and Social Council, E/CN.4/2001/51, January 25, 2001 (Please refer to Document I C).

<sup>36</sup> For a further analysis, please refer to Section III

exclusively as a commodity. Rather, it should be seen as the right to live somewhere in security, peace and dignity...While adequacy is determined in part by social, economic, cultural, climatic, ecological and other factors, the Committee believes that it is nevertheless possible to identify certain aspects of the right that must be taken into account for this purpose in any particular context. They include the following seven core elements to determine the adequacy of housing:

- Legal security of tenure, including legal protection against forced evictions;
- Availability of services, materials, facilities and infrastructure;
- Affordability;
- Habitability;
- Accessibility for disadvantaged groups;
- Location, and
- Cultural adequacy.<sup>37</sup>

#### **4. The Istanbul Declaration and the Habitat Agenda**

In 1996, the Istanbul Declaration and the Habitat Agenda reinforced the responsibilities of all governments, without exception, to the shelter issue. States had to create ministries or agencies for housing, allocate resources and create policies, programmes and projects dedicated to housing. It also stated that the provision of the right to adequate housing required joint action by government organisations, communities and local authorities, as well as partner organisations and entities of the international community.

#### **5. UN Special Rapporteur on the Right to Adequate Housing**

In January 2001, the UN Special Rapporteur on the Right to Adequate Housing, in his Report submitted to the Commission on Human Rights, proposed a working definition for the right to adequate housing, inspired by the work of the Indian National Campaign for Housing Rights,<sup>38</sup> Habitat International Coalition, and the Committee on Economic, Social and Cultural Rights.

#### **6. Convention on the Elimination of Racial Discrimination**

Article 5 of the Convention obliges State parties to "...undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (v) The right to own property alone as well as in association with others and... (iii) the right to housing.

#### **7. The Vancouver Declaration on Human Settlements (1976)**

The Vancouver Declaration on Human Settlements, adopted by the UN Conference on Human Settlements in 1976, states under Section III (8): "Adequate shelter and services are a basic human right which places an obligation on governments to ensure their attainment to all people, beginning with direct assistance to the least advantaged through guided programmes of self-help and community action. Governments should endeavour to remove all impediments hindering attainment of these goals. Of special importance is the elimination of social and racial segregation, inter alia, through the creation of better balanced communities, which blend different social groups, occupations, housing and amenities."

<sup>37</sup> General Comment 4, Sixth Session, 1991, Paragraphs 7 and 8

<sup>38</sup> Please refer to Section V of the dossier for further information on this campaign

## **8. The Declaration on the Right to Development (1986)**

The Declaration on the Right to Development, adopted by the UN General Assembly in Resolution 41/128 on December 4, 1986, under Article 8 (1) declares: "States should undertake, at the national level, all necessary measures for the realisation of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with the view to eradicating all social injustices."

## **9. Agenda 21 (UNCED, 1992)**

Agenda 21, adopted at the UN World Conference on Environment and Development (UNCED), held in Rio de Janeiro, Brazil, in June 1992, was an important development in the area of the right to housing. The main points covered are:

- Safe and healthy shelter is essential to a person's physical, psychological, social and economic well-being;
- Provision of housing should be a fundamental part of national and international action;
- All countries should adopt and/or strengthen national shelter strategies, with targets based, as appropriate, on the principles and recommendations contained in the Global Strategy for Shelter to the Year 2000;
- People should be protected by law against unfair eviction from their homes or land;
- All countries should, as appropriate, support the shelter efforts of the urban and the rural poor, the unemployed and the no-income group by adopting and/or adapting existing codes and regulations, to facilitate their access to land, finance and low-cost building material;
- Countries should promote the regularisation and upgrading of informal settlements and urban slums as an expedient measure and pragmatic solution to the urban shelter deficit;
- All countries should consider developing national land-resource management plans to guide land-resource development and utilisation, and
- States should establish appropriate forms of land tenure, which provide security of tenure for all land users, especially indigenous people, women, local communities, low-income urban dwellers and the rural poor.

## **10. The Istanbul Declaration on Human Settlements (1996)**

The Istanbul Declaration on Human Settlements was adopted by the 2nd UN Conference on Human Settlements (Habitat II) at Istanbul on June 14, 1996.

The Declaration reaffirms the commitment of countries to the full and progressive realisation of the right to adequate housing as provided for in international instruments through the active participation of public, private and non-governmental partners.

The Habitat Agenda was also adopted, the gist of which can be found at the end of this chapter.

## II. Housing as a Human Right in the Indian Context

Housing, as a human right in the Indian context, can be broadly divided into two areas for the purposes of our study:



### International Legal Obligations

India's international legal obligations in respect of the Right to Adequate Housing are set out in a body of binding international treaties, all of which the Government of India has ratified. Some of these are:

- The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW);
- The Convention on the Rights of the Child (CRC);
- The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

As a signatory to these conventions, India is obliged to ensure that the economic, social and cultural rights set out in each of them are promoted and protected in Indian society.

Since these instruments have been discussed in the first sub-chapter of this chapter, there is no need to revisit them.

### Domestic Legal Obligations

Many national and municipal laws in a number of countries around the world are beginning to adopt and express provisions on the right to adequate housing. India is one such country which has ratified several international instruments that make it obligatory for the state to provide the right to adequate housing to all its citizens. Domestic law on the human right to housing has developed mainly through case law, though some legislation has also played an important role.

At the basis of the recognition of this right is the Constitution of India. Several Articles in the Constitution have been used to expand the Fundamental Rights to include housing. These are encapsulated here:

- Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty, except according to procedure established by law. This is indirectly linked to housing because shelter is one of the necessities of life. This Article also safeguards against wrongful evictions and deprivation of shelter;
- Article 19 (1) (e) talks of the freedom of residence anywhere. This is directly linked to housing, and

- Article 51 establishes that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another. This includes treaty obligations with regard to housing.

## EXERCISE

Answer 'Yes' or 'No':

1. In India, is the right to shelter or adequate housing a fundamental human right?
2. Without shelter, is it possible to exercise other human rights?
3. Is there a right to livelihood?
4. Is the right to livelihood connected to the right to shelter?
5. Is the state under an obligation to ensure that laws and policies are in compliance with the fundamental rights and the directive principles of state policy?
6. Is there a right to human dignity?
7. Is there a link between human dignity and the right to shelter?

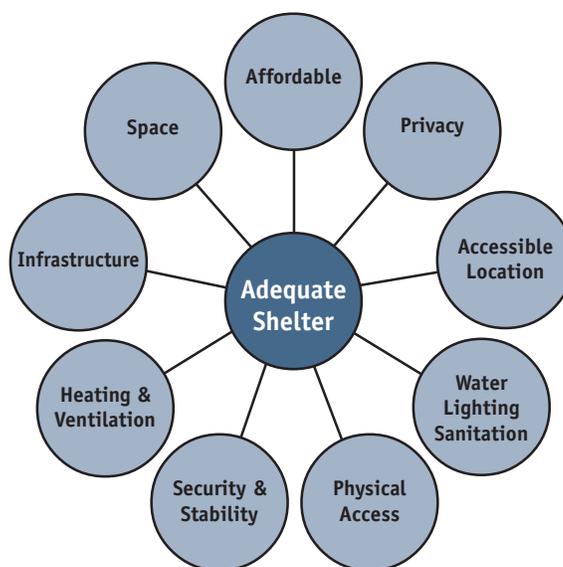
## ANSWERS

1. Yes. The Supreme Court of India has held that the right to shelter or adequate housing is a fundamental human right emanating from this provision. This has been established in numerous Supreme Court decisions, including *UP Avas Evam Vikas Parishad vs Friends Coop. Housing Society Ltd*, where the Court held that the right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1) (e) and the right to life under Article 21.
2. Yes. In any civilised society, the right to live as a human being is not ensured by meeting only the animal needs of men. It is secured only when he/she is assured of all facilities to develop himself/herself and freed from restrictions that inhibit his/her growth. All human rights are designed to achieve this objective. The right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, healthcare and shelter. These are the basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights or under the Constitution of India cannot be exercised without these basic human rights (*Chamelli Singh and Others vs State of UP, JT 1995 (9) SC 380*).
3. Yes. In *Olga Tellis vs Bombay Municipal Corp. (1985 3 SCC 545)*, the Supreme Court held that Article 21 of the Constitution also encompassed the right to livelihood. The right under Article 21 is the right to livelihood because no person can live without a means of living, i.e. the means of livelihood. If the right to livelihood is not treated as part of the Constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. There is thus a close nexus between life and means of livelihood. And as such that which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life.

4. Yes. In *Olga Tellis vs Bombay Municipal Corp.* (1985 3 SCC 545), the Supreme Court held that Article 21 of the Constitution also encompassed the right to livelihood and that this right was indivisible from the right to shelter. Eviction of the petitioners from their dwellings would result in the deprivation of their livelihood. Article 21 includes livelihood and so, if the deprivation of livelihood is not reasonable, the same would be violative of Article 21.
5. Yes. The Supreme Court, in *Madhu Kishwar vs State of Bihar* (1996 5 SCC 125), affirmed this. Articles 13, 14, 15 and 16 of the Constitution of India and other related articles aim at the elimination of obstacles to enjoy social, economic, political and cultural rights on an equal footing. Legislative and executive actions must conform to and give effect to the fundamental rights guaranteed in Part II and the directive principles enshrined in Part IV and the Preamble of the Constitution and the Covenants of the United Nations.
6. Yes. In *Francis Coralie Mullin vs Union Territory of Delhi*,<sup>39</sup> the Supreme Court held that the right to life includes the right to live with human dignity.
7. Yes. There have been several important judgements that have clearly established the relationship between the right to housing and the right to dignity as guaranteed in the Constitution of India in Article 21. In 1981, in *Francis Coralie Mullin vs Union Territory of Delhi*,<sup>40</sup> the Supreme Court held: “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings.”

### III. Adequate Housing and its Relation to Other Rights

What do we mean by adequate shelter? This chart identifies the parameters of adequate shelter:<sup>41</sup>

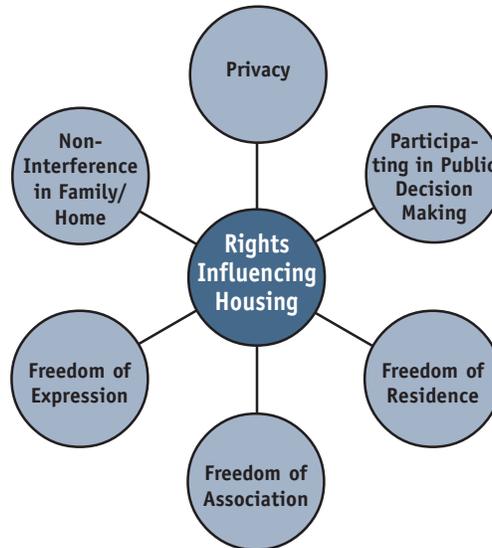


<sup>39</sup> AIR 1981 SC 746, at 753

<sup>40</sup> AIR 1981 SC 746, at 753

<sup>41</sup> 1996, The Habitat Agenda, Paragraph 60

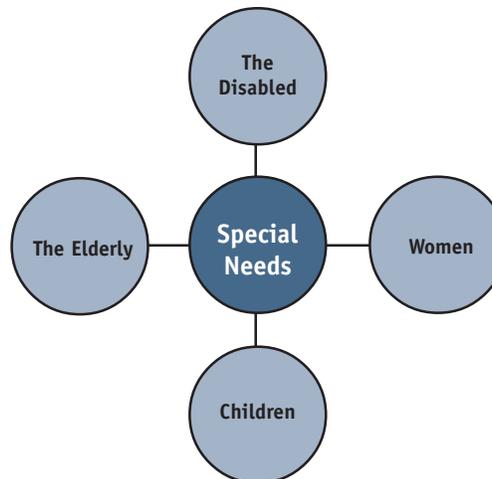
The right to adequate housing cannot be viewed in isolation. The full enjoyment of other rights often influence the right to housing. Look at this diagram for details:



#### EXERCISE

1. Can you think of how the above rights can influence the right to adequate housing?
2. Can you think of groups whose special needs must be met?

A number of international documents have talked about housing appropriate to needs. Take a look at the diagram given below. These groups need to be taken into special consideration:



Let us briefly examine the importance as well as the special housing needs of one of these categories, Children. Why are housing rights for children important?

- Half of the world’s population consists of children. In a couple of years, there will be more children living in cities than in rural areas, and many of them will be very poor;
- Childhood is both the most vulnerable and the most formative period of life. Early experiences leave a lifelong imprint and have a vital impact on a child’s development;
- Children need protection, support and encouragement and a safe and peaceful environment; areas of violent conflict, social unrest, high criminality or alienation cannot provide these, and
- Children spend much of their time in the home and in its immediate vicinity; consequently, these environments have great social and emotional impact. They become the frame of reference when the child explores its town and its world step by step.

## International Legal Resources Referring to Children and Housing Rights

Although there are several other human rights laws and instruments that recognise the human right to housing, they do not specifically address issues on children’s rights to housing. It is however, widely recognised that children are entitled to special attention and protection with regard to all human rights established by international laws, as well as in all programmes and policies led by governments or international agencies. It is also important to keep in mind that all human rights instruments, and all references contained in them about the right to housing, are fully valid for children and should be more widely used as the legal basis for the recognition of children’s rights to housing.

The main international legal resources referring specifically to the housing rights of children are:

### 1. The UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child is the most comprehensive and, therefore, the central convention to address the rights of children. We have come across this Convention earlier in our chapter on Rights of the Child. The Convention has reinforced the right of every child to survival, development and protection, which is intrinsically linked to the child’s right to adequate housing, wherein he/she can develop in a healthy manner and feel protected and safe.

### 2. The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The gist of the rights covered in the ICESCR is outlined here:<sup>42</sup>

- The family must be protected, especially in its role as being responsible for the care of dependent children;
- Special measures must be taken to protect and assist all children;
- Children (among other groups) suffer from forced eviction and the government is obliged to prevent discrimination in this aspect,<sup>43</sup> and
- Physical accessibility implies that adequate food must be accessible to everyone. Accessibility is thus a crucial issue.

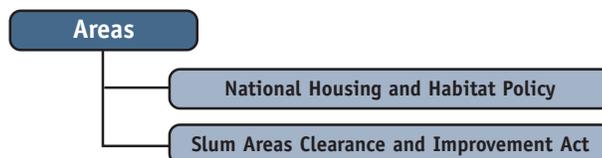
<sup>42</sup> Articles 10 & 11, ICESCR

<sup>43</sup> General Comment 12 (20th Session, 1999) adopted by the Committee on Economic, Social and Cultural Rights

### 3. Commission on Human Rights Resolutions<sup>44</sup>

The resolutions recognise that all children have the right to shelter, along with other rights. It also urges governments to actively seek comprehensive solutions to tackle the problem of street children and to take measures to provide adequate shelter along with other needs.

## IV. Current Policy Programmes and Practices<sup>45</sup>



In this sub-section, we will look at two important areas of policy, programmes and practices that affect the housing rights of the marginalised sections, the National Housing and Habitat Policy, 1998, and the Slum Areas (Improvement and Clearance) Act, 1956.

### The National Housing and Habitat Policy, 1998

After a long struggle by housing rights activists, the Government of India passed the National Housing and Habitat Policy in 1998. The document is quite comprehensive and addresses the need for housing for various categories of persons, including SCs/STs, women and the disabled, and also the various situations in which housing needs special attention, as, for instance, in areas that are prone to natural disasters. This is the first ever policy document so far to have accorded significance to women's right to housing in detail.

The ultimate goal of the policy is to ensure that the basic need for 'shelter to all' is fulfilled and a better quality of life provided to all citizens by harnessing the unused potential in the public, private and household sectors.<sup>46</sup>

The aims of the policy are wide-ranging:

- Greater availability of housing, either on rental or ownership basis;
- Providing quality and cost-effective housing and shelter options to citizens, especially the vulnerable groups and the poor;
- Ensuring that dwelling units have easy accessibility to basic sanitation facilities and water;
- Removing legal, financial and administrative barriers for facilitating access to land finance and technology;
- Involving women at all levels of decision making and enabling them in the formulation and implementation of housing policies and programmes. Land to be given in the joint names of husband and wife;
- Promoting disaster resistant housing to prevent continuing loss of housing stock and human lives from major natural hazards like earthquakes, cyclones and floods;
- Rehabilitation of those who have been displaced will be an integral part of any project;

<sup>44</sup> Resolution 1994/L.92 on the plight of street children, adopted unanimously on March 4, 1994, by the Commission on Human Rights at its 50th Session, and Resolutions 1993/L.102 on the plight of street children, adopted unanimously on March 8, 1993, by the Commission on Human Rights at its 49th Session

<sup>45</sup> There are a number of laws and policies that can be incorporated, but for this purpose, only a select few have been included. Please refer to Darshini Mahadevia, 'Land and Housing Rights for All: New Approach', pages 9-16, for a discussion on other relevant programmes and policies (Document IV C), as well as an article written by Amitabh Kundu (Document IV F)

<sup>46</sup> Section 6

- Standards of workers' benefits, safety, wages, etc., to be set and followed in the construction industry. Child labour to be stopped;
- Slum improvement programmes, and
- Disabled friendly planning and design of buildings and public places.

### **Slum Areas (Improvement and Clearance) Act, 1956<sup>47</sup>**

The Slum Areas (Improvement and Clearance) Act, 1956, provides a starting point to understand the role that law, and the courts, have played in matters of shelter for slum dwellers.

Very large sections of the urban population live in slums. These are usually constructed by encroaching upon land, both government and private. The Slum Areas (Improvement and Clearance) Act, 1956, was enacted to provide for the improvement and clearance of slum areas. It is also meant to protect tenants who live in slum areas from eviction: Before the owner of the building/land can evict his/her tenants, he/she must first obtain permission from the proper authority. Before granting or refusing this permission, the authorities will have to take into account three important criteria: whether the tenants can find suitable alternative accommodation for their families that is within their financial means; whether the eviction is in the interests of the improvement and clearance of the slum areas, and whether the tenants will create another slum if they are evicted from their present home. This law also lists a series of measures to be taken by the appropriate authorities if they are of the opinion that buildings in a particular area are unfit for human habitation.

The declared purpose of the law is to enable the state to improve the housing conditions of the slum dweller. In the early years of the Act, the emphasis was, in fact, on providing the residents of slums with alternative housing, which would meet certain minimum standards. The incapacity of the state to cope with the housing needs, however, led to the shift from clearance and resettlement to improvement of existing structures. The Act concerns itself with the *conditions* of the dwelling or building and is not, apparently, concerned with questions of legality.

The Emergency years, 1975-77, saw authoritarian rule in India, and the Supreme Court interpreted the Constitution so as to circumscribe severely the challenges to state action. Recent years have seen the reutilisation of this Emergency measure.

The fact that the Slum Areas Act has remained virtually unchanged since 1964 indicates that slum dwellers have not been able to invoke the law in their favour in the courts. Moreover, the procedure for determining the parameters of the right to shelter has become bureaucratised.

There are at least four stages at which the law could be a factor in determining the legality of a slum dweller's shelter. These stages have been enumerated thus:

#### **1. When the Slum Dweller Takes Up Residence in the City**

He/she could be a migrant worker covered under the Interstate Migrant Workmen's Act, 1979, which entitles the workers to be provided, by the contractor, a decent place of residence. The implementation of this law would provide legitimacy to the claims of the slum dweller to decent shelter. Taken seriously, it would also share out the responsibility of the state to ensure shelter to its citizenry.

<sup>47</sup> The information within this section is derived from work completed by the Sajha Manch and Habitat International Coalition – Housing and Land Rights Committee

## **2. When the Slum Dweller Takes Up Residence in the Slum**

The law can also play a decisive role when the slum dwellers take up residence in a slum, and ‘encroach’, often on government land situated near their workplace with a community that may host them in their early years of settlement. A ‘prescriptive’ right emerges as the law recognises the slum dwellers’ right to shelter. Generally, when the state damages private property in the public interest, the state pays for the damage caused. In slum demolitions, however, it is significant that there is no consideration given to compensation for the losses sustained. This may be explained by the illegality of the slum dwelling and must surely affect the extent of investment made by the residents.

## **3. When the State Decides to Reclaim the Land**

This stage involves demolition of the slum, allotment of alternative sites to ‘eligible’, evicted slum dwellers and the denial of any entitlements to ‘ineligible’ dwellers.<sup>48</sup> In determining the priority among the conflicting claims on the use of the land on which the slum is situated, the absence of legality, which is a trait of slum dwelling, may play a significant role. With resettlement usually being at long distances from the site of the original slum, and with the community being at odds in this reconstructing of partial legality of some of the slum dwellers, the logic of the risks that the dweller originally took gives place to coercive eviction and resettlement at sites that may be irrelevant, or at least painfully inconvenient, in terms of proximity to livelihood and one’s community. The residents are involuntarily made to assume the risk-bearing costs. Further, the additional costs may push marginal earners below the poverty line.

The one positive effect for the slum dwellers could be the legal recognition of their right to reside on land in the city, where their long residence is recognised as culminating in a right to a resettlement site. Even though a severely circumscribed right, this could be a valued entitlement, representing progressive realisation of one element of the right to housing (security of tenure), while other elements may be degraded in the process (e.g. location).

## **4. Resettlement of the Slum Dwellers**

This fourth stage may then be recognised, where a resettled dweller may either stay at the resettlement site, or perhaps hand it over to another by sale or otherwise and move back, or he/she may lose it by having it taken over by a tenant whom he/she may install, or by default, or to a slumlord, or to the state, which may punish him/her for not staying at the site allotted to him/her.

The 1990s have been witness to a rising tide of demolitions. The right to property is thus seriously curtailed, with the threat of losing the right upon breach of the terms of licence and punishment looming over the slum dwellers.

Slum dwellers are seen as encroachers on public property, unclean, etc. However, we must keep in mind that, often, there are double standards being practised. In Delhi, for example, there is a practice of regularising illegal colonies, where residents’ associations have been able to raise the money to pay ‘regularisation’ fees. Thus, legality can be purchased! This shows that the poor are discriminated against in such practices.

This is unfair treatment because, often, it is the slum dwellers who make the land ‘liveable’. In Bangalore, for instance, residents of slums have developed the land that was marshy, low lying and uninhabitable when they first occupied it. Once they have improved the land and the value rises, they are evicted and a commercial value is placed on the property.

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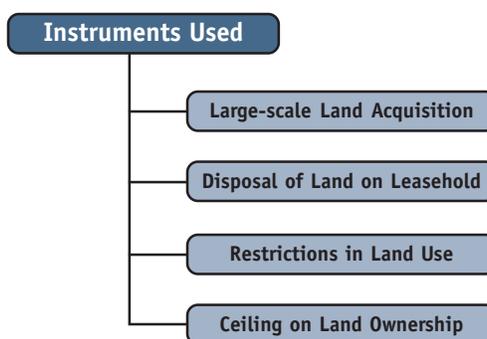
<sup>48</sup> The ‘cut-off’ date generally determines the partial legitimacy given to a claim; the onus is on the slum dweller to prove his/her presence from prior to the cut-off date. The various symbols of long residence, including the ration card, the voter identity card and electricity bills, are relevant in this process of establishing a claim

Recent cases have shown that courts are viewing slums as an urban cleanliness problem. This use of the court by proponents of one concern, which affects the life chances of another interest group, has now been recognised as an issue that has to be solved. It will require consistent work toward reversing many key concerns, which include:

- Xenophobic perceptions of slums and slum dwellers;
- Processes of impoverishment, resulting from demolition, and
- The absence of systems of accountability, where services are not delivered to slums.

## Changes in Policy

Every Plan document has expressed continuing concern over the rise in urban land prices. Thus, the urban land policy has concentrated on the control of land prices through different degrees of socialisation of land in the interests of the poor. There are four main instruments that have been utilised, as you can see from the accompanying chart.



It is recognised that:

- Civic agencies have failed miserably in providing the housing infrastructure that they are required to provide, and
- It is because of this that migrants are forced to set up their own 'illegal' sub-standard settlements.<sup>49</sup>

Yet, there is no concerted, integrated effort to increase housing stock. Thus, the paradox remains that, while much of the city's growth depends on the labour of the poor, the pro-rich bias of the policies and schemes of the state and its various agencies have ensured that the poor remain at the periphery of both land security and availability of basic services.

## V. The National Campaign for Housing Rights (NCHR)<sup>50</sup>

### A Brief History of the Campaign

From 1986 to 1996, India witnessed a historic campaign on housing rights, which successfully mobilised civil society groups and squatter settlement people to fight for housing rights. The NCHR movement, which began in

<sup>49</sup> DDA (1990): Master Plan of Delhi – 1962; Delhi Development Authority, New Delhi

<sup>50</sup> The information provided within this section has been written using the following documents as reference material:

National Campaign for Housing Rights, The Housing Rights Bill (Draft) (NCHR, Mumbai, July 1992) and other NCHR documents • 'The Reclaiming of Eminent Domain' by Jai Sen, *Frontline*, May 12, 2000 • *Environmental Consciousness Urban Planning*, M N Buch, Orient Longman, 1993 • 'National Housing Policy: The Implications', Arun Kumar, *EPW*, June 10, 1989 • Advocacy Update, February & March 1996, No. 5, National Centre for Advocacy Studies • 'The Living Environment' by Miloon Kothari, *Seminar*, No. 376, December 1990, Delhi • Report of the UN Rapporteur (E/CN.4/Sub.2/1993/15) for Housing Rights, Justice Rajinder Sachar

August 1986, developed as an all-India organisation with a diverse and widespread membership engaging in civil society representation from 21 states. The experience of the NCHR provided public arguments for developing housing as a fundamental right of homeless people, which then developed into a people's policy initiative.

The initiative was taken by organisations such as Unnayan, Kolkata, Youth for Unity and Voluntary Action (YUVA), Mumbai, Legal Resources for Social Action, Tamil Nadu, and Lokayan, New Delhi. The NCHR was very effective in the initial years (1986-93). Though, at present at the national level, the NCHR is witnessing comparatively low momentum, it is active at the regional and the grass-root level. In the state of Maharashtra, for example, the NCHR has received a lot of support in rural areas and smaller cities on issues like land allocation to deserted women, migrants, tribals, wasteland distribution and low-cost housing. In 1989, the activists were successful in initiating a Housing Rights Yatra bridging the rural-urban gap. The NCHR also pursued the state government's promise of 40 lakh houses for the poor and slum dwellers in Mumbai.

Each campaign develops itself through different phases of its growth. The NCHR served a purpose and educated the civil society on housing rights and its interrelatedness with other congruent rights, including the rights to education, health, information and livelihood. It also directed the attention of the leadership within the campaign to develop work on other sectors and cross-cutting issues. The major issues taken up by different individuals and organisations are given here:



The contribution of the NCHR can be summarised thus:

- Successful public advocacy initiatives
  1. Campaigned for a Constitutional amendment to Articles 19 and 20, declaring housing to be an explicit fundamental right
  2. Drafted the People's Bill of Housing Rights

3. Collected and disseminated information and awareness about all aspects of housing and the housing struggle;

- Defined housing rights

The NCHR redefined the right to housing as the 'right of every man, woman and child to a place to live in security and dignity'. The definition developed to be a benchmark that facilitated the linking of housing rights to other rights;

- Focused attention on the need to develop programmes for rural housing;
- Specified the nature of the states' obligations on the right to housing;
- Supported and built solidarity with organisations and individuals involved in the struggle for housing in the country;
- Provided the political perspective and space for housing rights. A direct impact was seen in the form of the inclusion of housing as an important issue in the election manifestoes of all the major parties;
- Utilised public interest litigations (PILs) to enforce housing rights and bridge the gap between domestic law and the international commitments of the government. The PILs played an important role in getting recognition for housing rights (*Olga Tellis vs State of Maharashtra*, 1985, and *YUVA vs State of Maharashtra*, 1991), and
- Contributed to the housing rights discourse at the international level.

The lessons from the NCHR provide a basis for the housing rights campaigners to develop a framework for organising advocacy at a national level in the future. The struggle will go on.

## ANNEXURE

### The Habitat Agenda

At the UN Conference on Human Settlements (Habitat II) in 1996, the Habitat Agenda was adopted.<sup>51</sup> Chapter II of the Habitat Agenda stipulates that equitable human settlements are those in which all people, without discrimination, have equal access to housing, and which provides equal right to inheritance, ownership of land and other property and credit. The Agenda also notes that women's empowerment is fundamental to sustainable human settlements and development (Para 27).

In Chapter III, 'Adequate Shelter for All' and 'Gender Equality' are two of the seven Commitments laid down in the Agenda. Commitment A (Adequate Shelter for All) commits states to 'providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technology' (Para 40 (b)).

Commitment D (Gender Equality) commits states to ensure gender equality in all aspects of human settlements

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<sup>51</sup> Report of the UN Conference on Human Settlements (Habitat II), Istanbul June 3-14, 1996, August 7, 1996, Habitat Agenda, UN Doc. A./CONF.165/14

such as integration of gender perspectives in human settlements related legislation, policies, programmes and projects; developing conceptual and practical methodologies for incorporating the gender perspective in human settlement planning; development and evaluation, and formulating and strengthening policies and practices to promote the full and equal participation of women in human settlement planning and decision making (Para 46).

These goals and commitments are complemented by strategies for implementation, recommending eradication of legal and social barriers to women's equal and equitable access to land. In Para 78 of the document, states are called upon to:

- Promote awareness campaigns and education regarding women's legal rights with respect to tenure, land ownership and inheritance;
- Review legal and regulatory frameworks to ensure that equal rights of women and men are clearly specified and enforced;
- Support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing and property ownership, economic resources, infrastructure and social services and ensure the full participation of women in all decision making processes, and
- Promote mechanisms for the protection of women who risk losing their homes and property when their husbands die.

The document time and again refers to the constraints faced by women in obtaining access to secure and adequate shelter and ways to remove these constraints. Women's equal access to land, housing and property is one of the overall guiding principles of the Habitat Agenda.

### **Review of the Habitat Agenda (Istanbul+5)**

In June 2001, the UN General Assembly reviewed the Habitat Agenda (Istanbul+5) in its Special Session in New York.

*"The human right to adequate housing is the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity."<sup>52</sup>*

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<sup>52</sup> Report of the Special Rapporteur on Adequate Housing as a Component of the Right to Adequate Standard of Living, Miloon Kothari, submitted pursuant to UN Commission Resolution 2000/9. Economic and Social Council, E/CN.4/2001/51, January 25, 2001 (Please refer to Document I C)





# THE RIGHTS OF HOME-BASED WORKERS

*By Vibha Puri Das & Aditi Kapoor*

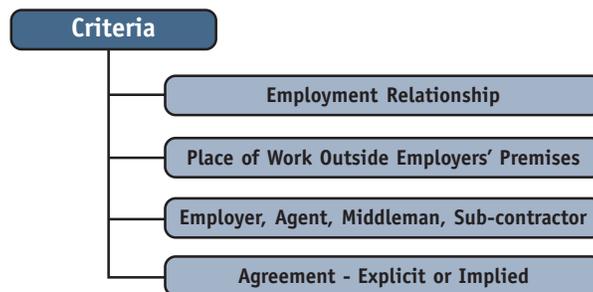


Photo credit: Anand Patel

## 7. THE RIGHTS OF HOME-BASED WORKERS

### Who are Home-based Workers?

Home workers are sometimes referred to as 'outworkers', 'home-based workers' or 'piece-rate workers'. Let us look at a few definitions of home-based work in order to understand the concept better.



### ILO Convention No. 177 (1996)

This Convention defines home-based work as:

- Work carried out by a person, to be referred to as a home worker
  1. In his/her home or in other premises of his/her choice, other than the workplace of the employer
  2. For remuneration
  3. Which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, as long as this person does not have the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions, and
- The term, 'employer', means a person, natural or legal, who either directly or through an intermediary, if any, gives out home work in pursuance of his/her business activity.

### The Ministry of Labour

The basic criteria for defining home-based workers for the purpose of the national policy framework are:

- Persons working in the unorganised sector, irrespective of whether they are self-employed or in piece-rate employment;
- Location of work being home;
- Low income, and
- Generally outside the social security net.

## SEWA

SEWA includes two more categories of people in the category of home-based workers, which are given in the accompanying chart.



### EXERCISE

Which of the following are instances of home-based work? Why?

- Girls do embroidery on cushion covers and get Rs 10 per cover from a woman who runs a handicraft shop. The woman provides the girls with the materials and patterns.
- A young boy is employed as a mechanic in a small workshop.
- Bidis are rolled by family members who are paid a certain amount for each bundle by the workshop/factory owner.
- A woman works as a domestic helper in the house of a wealthy family.

There are certain crucial differences between home-based workers and others, which has resulted in them not being recognised as workers. Some of these are:

- They have no definite employer;
- They do not fit into the traditional definition of a worker;
- They are in varying occupations simultaneously, and
- They have no fixed place of work.

## Background to Home-based Workers

The total workforce of India, including main and marginal workers, has been estimated at 314 million as per the 1991 Census. This population may have grown to 362 million by 1997, as per the survey carried out by the National Sample Survey Organisation (NSSO) on a thin sample basis. Out of this, it is estimated that 28.2 million comprise workers in the organised sector and 326.2 million comprise workers in the unorganised sector, leaving a balance of 7.6 million unemployed. Home-based workers have not found place in the Census figures; therefore, estimates of their numbers are unofficial or arrived at as a result of work in the field by activists, NGOs and trade unions like SEWA. As per these estimates, the numbers may range between 20 and 30 million, of which the two largest<sup>53</sup> categories are handloom workers (7 million) and bidi workers (4.5 million). SEWA estimates the total number of home-based workers to be in the range of 40-50 million.

<sup>53</sup> Policy Document on Home-based Workers, Ministry of Labour, Government of India

Before we go ahead, you must understand the term, 'informal worker'. Informal means that the person is not in a permanent job and that the safeguards that are available to people in permanent jobs do not apply to him/her. The trend of increasing informalisation the world over, with the proportion of the workforce in the informal sector in India going up from 89 per cent in 1981 to 93 per cent in 1991, has been reported amidst rising concern at the drop in living standards of large segments of the labouring population, even in the developed world, and a further marginalisation of those living in the Third World countries.

More recent data collected by the NSSO reveals that 96 per cent of the total workforce in the informal sector in rural areas comprises women. In urban areas, this figure is just 4 per cent, though post-liberalisation policies have resulted in more women taking to home-based work after being laid off from organised labour. The fact that more home-based workers are in rural areas is one of the reasons why they are so invisible to urban-based policy makers.

There are several reasons to presume that the number of home workers is on the increase. As these workers represent the lowest of the working class, this further means that the most unprotected, least paid category, where child labour is most in evidence, is also on the increase.

The advantages of home-based work, from the employer's point of view, lie in its low cost of employment, little or no expenditure towards social security, virtually no unionised bargaining functions and flexibility in operations. This has made it a preferred form of employment in some sectors.

The large population associated with home-based work, put variously between 20 and 50 million, necessitates organisation of home-based workers, documentation of their status, assessing alternative methods of organising and pressing for a better deal in terms of social security nets so that the exploitative home-based production system can be sufficiently humanised.

## **Milestones in the Home-based Workers' Struggle**

The rights of home-based workers were not recognised overnight, nor was there a single document encompassing the whole of these rights. What we see instead is a number of small steps over time, which finally led to the recognition of the rights of the home-based worker.

These milestones are listed below:

### **1. Constitutional Guarantees**

The progress of the capitalist system of production and the globalisation process has caused increased marginalisation of the small entrepreneur and the informal sector worker. This trend is antithetical to the basic philosophy on which the Indian nation was crafted. Principles like equality before law, equality in matters of public employment, freedom of association and the right to practise any profession, trade or business, enshrined in the Constitution, are severely compromised. So also the spirit of Article 39 of the Constitution of India, which, among other things, lays down that the ownership and control of the material resources of the community are to be distributed in keeping with the common good and also directs the state to ensure that the health and strength of workers, men and women, and the tender age

of children, is not abused, and that citizens are not forced by economic necessity to enter avocations unsuitable for their age and strength. Under Article 42, the Constitution provides for just and humane conditions of work and, under Article 43, for a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities as well as the promotion of cottage industries. The current situation of unorganised workers in our country and, more specifically, the situation of home-based workers, is an indictment of the politico-economic structure and its dispensation as it obtains today.

## **2. National Commission of Labour Recommendations**

The National Commission of Labour, appointed by the Government of India in 1966, which submitted its report in 1969, dwelt on the unorganised sector at some length.

Within the unorganised sector, it mentioned handloom and bidis as the two avocations where home-based work is quite widespread. The three recommendations of the Commission for bidi workers were:

- They should be organised into a cooperative to give them relief from their oppressive conditions of work;
- All workers, irrespective of their place of work, should be covered by the minimum wage legislation, and
- Appropriate steps should be taken to safeguard the interests of the workers in cases where bidis are rejected during inspection and the cost of materials used in the rejected bidis deducted from their wages.

The Commission also noted that where the workers have got organised, the incidence of both deduction and rejection is lower.

## **3. Legislations for Bidi Workers**

The Bidi and Cigar Workers (Conditions of Service) Act, 1966, was followed by the Bidi Workers' Welfare Fund Act, 1976.

The main provisions of the former Act pertain to annual leave with wages, maternity benefits and protection against dismissal, non-payment of wages, defective supply of raw materials and arbitrary rejection of bidis. However, the self-employed worker, a person who buys raw material to make bidis and sells them, is expressly excluded from the provisions. A fall-out of the provisions of the Act was that the contractors insisted on 'selling' raw material to the home-based workers and 'buying' back the finished bidis, effectively excluding the majority from their beneficial impact.

The Bidi Workers' Welfare Fund Act, 1976, laid out, for the first time, the framework of a government-managed welfare system for providing healthcare, social security, housing assistance and educational assistance for children of bidi workers.

## **4. Towards Equality Report of the Committee on the Status of Women in India**

In 1975, came a watershed report, *Towards Equality*, from the Committee on the Status of Women in India

(CSWI). The CSWI was constituted in 1971 by the Department of Social Welfare at the instance of the UN General Assembly. The report said: “The impact of transition to a modern economy has meant... that a considerable number (of women) continue to participate (in the productive process) for no return and no recognition. Of the majority of those who do participate fully or on sufferance, without equal treatment, security of employment or humane conditions of work, a very large number are subjected to exploitation of various kinds with no protection from society or state. Legislative and executive actions initiated in this direction have made some impact in the organised sector, where only 6 per cent of working women are employed, but in the vast unorganised sector, which engages 94 per cent of working women in this country, no impact of these measures have been felt on conditions of work, wages or opportunities.”<sup>54</sup>

### **5. National Action Plan for Women**

To operationalise the recommendations listed in *Towards Equality*, the Department of Social Welfare formulated the *Blueprint of Action Points for Women and National Plan of Action for Women* in 1976. Chapter III of the *Blueprint* not only recognised ‘self-employed’ women and organisations working for their benefit, but also laid out action plans for encouraging women’s participation in self-employment activities.

### **6. The Sixth Five-year Plan**

*Towards Equality* was almost a landmark for SEWA because it could draw upon the clauses in this report and use it as a reference point with the government. SEWA has always believed in finding spaces in the government model to benefit from them and bureaucracy has often supported SEWA’s thought and action. So, at that moment in time, though the government was not *doing* much for home-based workers, at least its own committee had *thought* in the right direction. SEWA built on the report because the report had a widespread economic and social impact. For the first time, it brought to the notice of the elite middle class that women were not only social, but also economic beings. It also brought for the first time the issue of unorganised women workers to the policy making tables of the country.

*Towards Equality* led to extensive policy debates. These contributed, in part, to a recognisable shift from viewing women as targets of welfare policies in the social sector to regarding them as critical actors in development. The report influenced the Sixth Five-year Plan (1980-85), which contained, for the first time in India’s planning history, a chapter<sup>55</sup> on ‘Women and Development’ and included therein a sub-section on employment and economic independence.

### **7. ‘Shram Shakti’ Report of the National Commission for Self-employed Women**

The *Shram Shakti* report of the National Commission for Self-employed Women (1987-89) and Women in the Informal Sector, submitted in June 1988, was the second landmark after *Towards Equality* in the struggle for home-based workers’ rights. The recommendations not only pointed to the need for recognition of home-based workers, but also called for enlarging the definition of women workers in subsequent data collection efforts. Several suggestions were offered on how to improve the living conditions of self-employed women in the informal sector, including home-based workers.

*Shram Shakti* strongly advocated ownership and control over productive resources for poor working women because this was a proven formula for qualitative improvement in the women’s living conditions (Sections 1.8 and 1.10).

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<sup>54</sup> Chapter V, ‘Roles, Rights and Opportunities for Economic Participation’

<sup>55</sup> Chapter 27, Sixth Five-year Plan (1980-85), Planning Commission, Government of India

## 8. Other Government Interventions

The National Commission on Rural Labour submitted its report in 1991. The report covers the problems of workers in activities such as bidi rolling, toddy tapping, leather and handloom. The Commission stressed the importance of recognising the contribution of such workers, regulating their working conditions and introducing social security measures for them.

The Discussion Paper for the National Consultation on Home-based Workers, prepared by the Ministry of Labour in January 2000, reflects the latest thinking in the government on the subject and also indicates the accepted action points for the future.

## 9. International Developments

The World Conference of Women was held in July 1975 in Mexico and the Mexico Plans of Action emphasised 14 'minimum objectives' that member states, including India, were to achieve within five years. The decade, 1975-85, was declared the UN Decade for Women. The fourth objective centred on women's employment: "Increased employment opportunities for women, reduction of unemployment and increased efforts to eliminate discrimination in the terms and conditions of employment."

Though the Mexico Declaration did not focus directly on home-based women workers, the international environment was becoming more responsive to women's issues. SEWA found that following only one strand – either the women's movement or the labour movement – did not yield the required results. A combination of the two was required. So, every platform of women's issues was used to advocate the cause of the rights of home-based workers. And every labour platform was guided towards home-based women workers' rights.

The Delhi office of the International Labour Organization (ILO) took the findings to its headquarters and the ILO, at the international level, found that there was more informalisation of labour, and home-based work was spreading in some of the other countries, too. Within the ILO bureaucracy, home-based workers' issues kept being projected through various studies.

## SEWA Milestones

The home-based workers' movement is synonymous with SEWA. This sub-section deals with a chronology of the major milestones in the struggle for the rights of the home-based workers. The history of the movement gives an indication of the concerns of the movement, how the organisation of members has succeeded in addressing some of the basic concerns, and how organisation is the key to success in the struggle for the rights of the home-based workers.

The goals sought to be achieved are:

- Identification of issues that were important in the struggle and which became the rallying points for those involved in the movement;
- To identify the bottlenecks and problems faced, and
- To trace the growth of SEWA.

## Chronology of Events

1973: Union of 200 *chindi* women workers formed (*chindi* is the waste cloth from textile mills used for making garments and coverlets)

1974-5: Demand for an increase in the wages of *chindi* workers from the owners

1976: Meeting of SEWA with the owners and Labour Department to press for increase in rates

1977: First-ever increase in rates

1978: Public meeting of 500 bidi workers in Patan

1980-83: A union of women workers making frocks and petticoats started. This was followed by a survey of all readymade garment factory owners. The year, 1982, also saw a public meeting of 5,000 bidi workers with the finance minister of Gujarat to press for an increase in rates and register the problem of sale of raw material and purchase of finished goods as depriving the workers of the benefit of the Central legislation

1983: A number of important developments took place this year. There was the first-ever procession of bidi workers to the Labour Commissioner's office. Cases were filed against Jivraj Bidi both in the High Court and in the Industrial Court. Compensation for the retrenchment of 200 workers at Laxmandas Bidi was obtained through negotiations and entitlement for provident fund ensured. A bidi worker became the president of SEWA

1984: Inspection of the premises of *chindi* contractors was carried out by the Labour Department with SEWA. SEWA made a presentation before the government for decrease in sales tax on readymade garments after the owners went on strike to oppose the increase. For the first time, bonus was paid in cash to bidi workers. A bidi worker elected director of the SEWA Bank

1985: Three hundred women workers lost their sewing machines in the riots and were given new machines

1987: Readymade garment workers figure on Doordarshan (the national television broadcaster), demanding a wage increase. They are covered under the Schedule for Minimum Wages. Order for inclusion withdrawn under pressure from the employers' union. Intense lobbying with legislative assembly, municipal corporation unions to get covered. Two thousand workers staged a protest in front of the Chamber of Commerce. A housing project for 110 bidi workers started

1988: Minimum wages restored to readymade garment workers. A discussion in the legislative assembly on the problems of bidi workers

1989: Compensation for retrenchment begun. Workers get identity cards.

1990: Beginning of agitation for meeting the cost of raw material like thread by the employers. Housing cooperative registered for the bidi workers

1991-93: Campaign for equal rates for all bidi workers

1993: Group insurance scheme introduced for bidi workers

1996: National-level bidi workers' meeting

## Conclusion

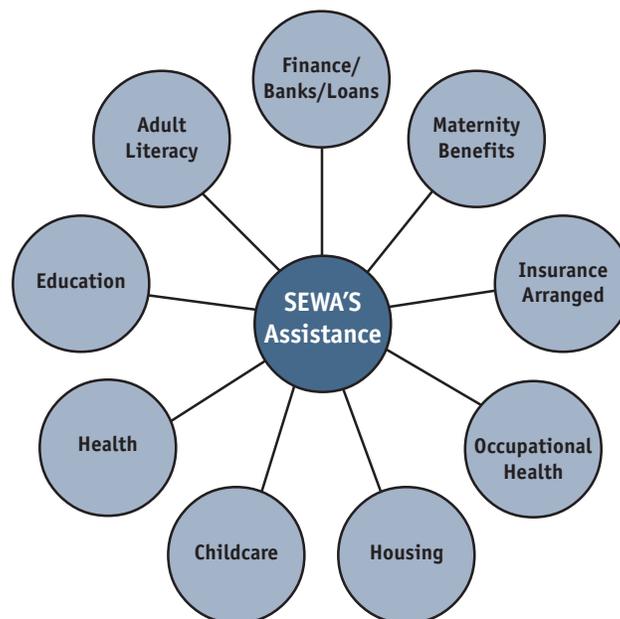
One thing that stands out from the list of milestones given above is 'organisation'. Organising workers and pressing for their demands is the only strategy that really works. However, other than the specific milestones

mentioned above, SEWA addressed the workers' needs in several other ways as well. The workers were treated as multidimensional individuals.

### EXERCISE

1. Make a list of the needs of every individual, which need to be met by society.
2. How many of these are met in the case of home-based workers?

Chronic indebtedness has plagued the lives of the marginalised. They are often exploited by moneylenders. Institutional finance from banks is difficult to obtain. The need-based origins of the SEWA experiment in micro-finance, the SEWA Bank, has built in the provision that all credit needs, for consumption, illness, housing and other productive assets, be met. This has contributed to its success in meeting the needs and aspirations of all its members. The flexible approach, advancing unsecured loans and making the bank work in an informal, non-threatening atmosphere makes the women say, "It is like my mother's place."



These are all features that may bear replication in any effort at reaching micro-finance to home-based workers.

SEWA provides many services to the home workers, including the SEWA Bank, childcare, healthcare through the health cooperative, housing, legal aid and insurance. Lok Swasthya is a cooperative of 105 *dais*, community health workers, pharmacists and doctors committed to providing healthcare to SEWA members and their families.

Childcare is provided by a cooperative of childcare workers. The members of the cooperative are the creche and *anganwadi* teachers.

The insurance scheme is run by the SEWA Bank in collaboration with the Life Insurance Company of India and the United India Insurance Company. The bank also runs the housing programme.

SEWA's development and the rapport it has with other groups and organisations have helped it focus on action points for the future and the areas of concern worldwide. These will need to be addressed in the light of the ILO Convention and the development of national and grass-root, forward-looking strategies.

### **Tasks for the Future**

- Need for a mechanism for protection;
- Programmes for assistance at the national and international levels and involving different sectors;
- Importance of statistics collected on a regular basis; need to generate employment;
- Workers and employers can be involved through tripartite mechanisms;
- Workers should have a genuine choice and there should be little difference with other forms of employment;
- Importance of protection of the informal sector as a whole, and
- Protection of home work is a way to inhibit child labour.

SEWA has been the key player in the upward spiral of grass-root movements feeding into avenues of research and policy making globally. Its penchant for institution building, so rare amongst doers, sets SEWA apart. The institutions that have come up as arms of SEWA, fusing the cooperative, women's and labour movements and essentially focussing on human rights, have liaised and worked with similar institutions across state and national boundaries. This constant interaction, going all the way up and down the various cooperatives, has enriched the experience of the organisation, imparted an objective way of looking at itself and fostered the growth of many fraternal bodies all working towards a national and global realisation of the movement.





# GANDHIAN STRUGGLES FOR LAND RIGHTS

*By Dr. D Jeevan Kumar*



Photo credit: Atul Desai

## 8. GANDHIAN STRUGGLES FOR LAND RIGHTS

Winston Churchill contemptuously described Mahatma Gandhi as a 'half-naked fakir' and an 'old humbug', adding that it was 'alarming and nauseating to see Mr Gandhi, a seditious Middle Temple lawyer, striding half-naked up the steps of the Vice-Regal Palace, to parley on equal terms with the representative of the King Emperor'. However, the eminent historian, Will Durant, in his *Story of Civilization*, commenting on historic developments in China and India in the first half of the 20th century, wrote: "China followed Sun Yat Sen, took up the sword and fell into the arms of Japan. India, weaponless, accepted as her leader, one of the strangest figures in history, and gave to the world the unprecedented phenomenon of a revolution led by a saint, and waged without a gun ...He did not mouth the name of Christ, but acted as if he accepted every word of the Sermon on the Mount. Not since St Francis of Assisi has any life known to history been so marked by gentleness, disinterestedness, simplicity and forgiveness of enemies."

That Gandhi, who came to be widely revered in India as the 'Mahatma' (Great Soul), successfully used 'truth' and 'non-violence' as his principal tools to secure independence for India from the British, is now well known. Gandhi ardently believed that truth was an objective moral reality, as real and mighty as God himself. Truth was what constituted the 'right path'. Therefore, it was not 'might' which was 'right', but 'right' which was 'might'. For him, there was no greater strength than the strength of the human spirit when it is imbued with truth and unafraid to die, unarmed, upholding it.

Gandhi's well-known affirmations were:

- Strength does not come from physical capacity, it comes from an indomitable will, and
- A small body of determined spirits, fired by an unquenchable faith in their mission, can alter the course of history.

Gandhi felt that since human beings have been created 'in the image of God' and have the 'divine spark' in them, they have to be motivated and governed by reason and love, rather than by fear and violence. When one is steadfastly rooted in truth, reason will always lead him along the path of love and righteousness. One has to live and be ready to die for truth, love and righteousness, but never to kill. The three cardinal principles of Gandhi's concept and strategy of truth and non-violence are:

- Given a just cause, capacity for endless suffering and avoidance of violence, victory is a certainty;
- The objective of all non-violent activity is always a mutually acceptable agreement, never the defeat, much less the humiliation, of the enemy, and
- Peace will come when truth is pursued, and truth implies justice.

Gandhi's steadfast pursuit of truth made him perceive, not only the inequities of British colonial rule in India, but also the dark side of Indian society, particularly the indignity and oppression of the caste system, for those at its lowest level. Gandhi renamed these unfortunate people, called 'untouchables', 'Harijans', or children of God. He made the point forcefully and repeatedly that Indians could not justifiably complain about indignity and oppression at the hands of the British, if they themselves imposed similar cruelties on the untouchables. In *Young India* of May 25, 1921, Gandhi wrote: "Swaraj, or independence, is meaningless if we continue to keep a fifth of India under perpetual subjection. Inhuman ourselves, we may not plead before the throne for deliverance from the inhumanity of others."

Subsequently, he wrote: "If it were proved to me that untouchability is an essential part of Hinduism, I would declare myself an open rebel against it." He regarded untouchability as 'an excrescence', a perversion of Hinduism, and worked strenuously to eradicate it by fearlessly speaking, writing and standing up against it. When he set up his first ashram in India, just outside Ahmedabad, he named it Harijan Ashram and admitted into it a Dalit family, whose daughter, Lakshmi, he adopted as his own daughter. This resulted in the loss of financial support from high-caste Hindus, but he remained firm and unconcerned.

## Gandhian Ideals Behind the Struggles for Rights

As humankind struggles to find ways of living responsibly in the 'global village', many of Gandhi's teachings appear relevant and are receiving renewed attention. The direction of his thought is challenging and points to a holistic world-view. Truth and non-violence were his most cherished principles. Gandhi wrote: "Truth resides in every human heart, and one has to search for it there, and to be guided by truth as one sees it. But no one has the right to coerce others to act according to his own view of truth."

Gandhi taught that truth is God and that it is our sacred duty to seek it. If truth was to Gandhi the ultimate end (i.e. God), then 'ahimsa' (non-violence) was the perfect means of attaining that end. Gandhi wrote: "Non-violence is the greatest force man has been endowed with. Truth is the only goal he has. For God is none other than Truth. But Truth cannot be, never will be, reached, except through non-violence... That which distinguished man from all other animals is his capacity to be non-violent. And he fulfils his mission only to the extent that he is non-violent and no more. From these two fundamental principles can be 'derived' all of his other teachings.

## Oneness and Equality of Religions

Gandhi taught that all faiths spring from the same ultimate, timeless, eternal religion. He wrote: "The root of all religions is one and it is pure and all of them have sprung from the same source, hence, all are equal. Let no one, even for a moment, entertain the fear that a reverent study of other religions is likely to weaken or shake one's faith in one's own. This study of other religions, besides one's own, will give one a grasp of the rock-bottom unity of all religions and afford a glimpse also of that universal and absolute truth which lies beyond the 'dust of creeds and faiths'.

## Sarvodaya and Collective Trusteeship

Sarvodaya is the name given to Gandhi's ideal of non-violent socialism. Gandhi taught that one should earn no more money than is enough to support oneself and one's family, and advocated voluntary sharing of excess wealth. While wealth should be used for the common good of all, rather than for the private gain of a few, Gandhi condemned its forceful redistribution: "Wealthy people should act as trustees of the wealth. But if they are robbed of this wealth through violent means, it would not be in the interest of the country. This is known as communism. Moreover, by adopting violent means, we would be depriving society of capable individuals."

## Gram Swaraj or Village Autonomy

Illustrating the idea of *Gram Swaraj*, Gandhi stated: “My idea of village swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity. Thus, the village’s first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playground for adults and children. Then, if there is more land available, it will grow useful money crops, thus excluding *ganja*, tobacco, opium and the like. The village will maintain a village theatre, school and public hall. It will have its own water works, ensuring a clean water supply. This can be done through controlled wells or tanks. Education will be compulsory up to the final basic course. As far as possible, every activity will be conducted on a cooperative basis. There will be no castes, such as we have today with their graded untouchability. Non-violence, with its technique of satyagraha and non-cooperation, will be the sanction of the village community. There will be a compulsory service of village guards, who will be selected by rotation from the village, maintained in the village. The government of the village will be conducted by the Panchayat of five persons, annually elected by the villagers, male and female, possessing minimum prescribed qualifications. They will have all the authority and jurisdiction required. Since there will be no system of punishment in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year in office. Any village can become such a republic without much interference, even from the present government whose sole effective connection with the villages is the extraction of village revenue. I have not examined here the question of relations with the neighbouring villages or the Centre, if any. My purpose is to present an outline of village government. Here, there is perfect democracy based upon individual freedom. The individual is the architect of his own government. The law of non-violence rules him and the government. He and his village are able to defy the might of a world. For the law governing every villager is that he will suffer death in the defence of his and his village’s honour.”

## Decentralisation of Power

According to Gandhi, a centralised government is inherently prone to violence. Therefore, he advocated decentralisation of political power. Explaining his metaphorical vision of the structure of a future non-violent society, Gandhi wrote: “Life will not be a pyramid, with the apex sustained by the bottom. But it will be an oceanic circle whose centre will be the individual, always ready to perish for the village, the latter ready to perish for the circle of villages, till at last the whole becomes one life composed of individuals, never aggressive in their arrogance, but ever humble, sharing the majesty of the oceanic circle of which they are integral units.”

## Self-reliance

Swadeshi (self-reliance) is mainly understood to mean a protectionist technique that Gandhi employed against the mercantile policies of the British, whereby the masses were urged to abstain from cloth manufactured outside India, and instead use cotton, silk or woollen cloth made in India. But Gandhi gave it a broader meaning: “Swadeshi carries a great and profound meaning. It does not mean merely the use of what is produced in one’s own country. That meaning certainly is there in swadeshi. But there is another meaning implied in it, which is far greater and much more important. Swadeshi means reliance on our own

strength. 'Our strength' means the strength of our body, our mind and our soul. From among these, on which should we depend? The answer is brief. The soul is supreme and, therefore, soul-force is the foundation on which man must build."

## Machines

Gandhi strongly disapproved of machinery since, in his time, machines typically led to the concentration of economic and political power in the hands of a few, extremely rich people. Because of his insistence on hand-spun cloth and on 'production by the masses', some critics have alleged that Gandhi was anti-machinery, anti-science and anti-progress. This criticism is unfair and unjustified. In 1924, when specifically asked why he was anti-machinery, Gandhi replied: "How can I be anti-machinery when I know that even this body is a delicate piece of machinery? The spinning wheel is a machine, a little toothpick is a machine. The machine should not atrophy the limbs of man... What I object to is the craze for machinery, not machinery as such. Today, machinery helps a few to ride on the back of the millions." Subsequently, he also declared: "I would welcome every invention of science made for the benefit of all."

## Yajna and Service

Gandhi taught that work should be done with pure motives, in a spirit of service, without desire for any type of reward. When work is thus performed, it becomes an act of yajna (sacrifice). He writes: "Yajna means an act directed to the welfare of others, done without desiring any return for it, whether of a temporal or spiritual nature."

## Passive Resistance

The word, satyagraha, was coined during Gandhi's lifetime to describe passive resistance, as developed and practised by Gandhi in South Africa. The term can be literally translated into English as 'insistence on truth'. Satyagraha was Gandhi's method of resisting injustice and violence in their various manifestations. Essentially, it consists of non-violent non-cooperation with the protagonists of violence. Gandhi's method of non-violent non-cooperation is a true and tried technique that has been successfully used to fight violent and systematic human rights violations in a number of states. Examples of leaders who have adopted the method include Nelson Mandela, Martin Luther King Jr and His Holiness the Dalai Lama.

## Human Rights and World Citizenship

Gandhi taught that every human right is fundamentally related to some reciprocal responsibility towards the world. He wrote: "All rights to be deserved and preserved come from duty well done. Thus, the very right to live accrues to us only when we do the duty of citizenship of the world. From this very fundamental statement, perhaps, it is easy enough to define the duties of man and woman and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for."

## Ram Rajya and the World Federation

According to Gandhi, it is possible to establish *Ram Rajya*, or the kingdom of God, on earth. Indeed, he seems to have believed in its inevitability. But before this can happen, nations must renounce violence towards each other and learn to live in peace. He explained that “a world federation is possible to realise and, in that case, it would not be necessary for countries to maintain armed forces. There can be no world federation of countries ruled by armies.”

## Social Justice

Gandhi obviously had a deep sense of social justice, which is conveyed in the following quotation (*Young India*, 1931): “I shall work for an India in which the poorest shall feel it is their country in whose making they have an effective voice; an India in which there will be no high class or low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women will enjoy the same rights as men. Since we shall be at peace with all the rest of the world, neither exploiting nor being exploited, we shall have the smallest army imaginable. All interests not in conflict with the interests of the dumb millions will be scrupulously respected, whether foreign or indigenous. This is the India of my dreams.”

## Sarvodaya and Social Reconstruction

The Sarvodaya Movement in India represents an attempt to apply Gandhian ideals to the task of social reconstruction. The Constructive Programme is central to an understanding of the Sarvodaya Movement. It was a programme that Gandhi developed piecemeal, beginning with khadi (handspun, handwoven cloth) in 1922, proceeding to Hindu-Muslim communal unity in 1925, to prohibition in 1930, to the abolition of untouchability in 1932, to the promotion of village industries in 1935, and so on.

From one narrow perspective, the programme of constructive activities initiated by Gandhi may be seen as a means by which the Indian National Congress sought to build up support among the masses. In addition, these activities provided a training ground for freedom fighters and a necessary outlet for their energies at times when a halt had to be called to direct confrontation with the British *Raj*. Gandhi no doubt appreciated this role of the Constructive Programme in the freedom struggle, but the programme was never simply a matter of expediency for him.

In 1931, he wrote: “My work of social reform was in no way less than or subordinate to political work. The fact is that when I saw that to a certain extent, my social work would be impossible without the help of political work, I took to the latter and only to the extent that it helped the former. I must, therefore, confess that the work of social reform or self-purification of this nature is a hundred times dearer to me than what is called purely political work.”

This view he held to the end. Speaking of the programme in 1944, he said to his followers: “Through it, you

can make the villagers feel self-reliant, self-sufficient and free, so that they can stand up for their rights. If you make a real success of the Constructive Programme, you will win swaraj for India without civil disobedience.”

In 1941, Gandhi published the pamphlet, *The Constructive Programme: Its Meaning and Place*, listing 18 items of social work. These were:

- The building of communal unity;
- The removal of untouchability;
- The introduction of prohibition;
- The development of khadi;
- The promotion of other village industries;
- Improvement in village sanitation;
- Adoption of new or basic (craft-centred) education;
- Introduction of universal adult education;
- Amelioration of the condition of women and securing them equality of status and opportunity;
- Education in health and hygiene;
- Assisting the preservation and development of provincial languages;
- Adoption of Hindustani as the national language;
- Working to secure economic equality;
- Organising the kisans (peasants), protecting their rights and helping them to lead a happy and non-violent life;
- Organising industrial labour on the basis of truth and non-violence;
- Looking after the welfare of the Adivasis (tribal people);
- Providing lepers adequate care, and
- Working with students to improve their mental, moral and physical equipment.

Neither were these items listed in order of importance, nor was the list exhaustive. The Constructive Worker was invited to add to the list any item, provided it was consistent with the principle of non-violence. Gandhi himself, however, did attach particular importance to the attainment of economic equality, which he regarded as the ‘master key to non-violent independence’.

The contemporary Sarvodaya Movement is the direct descendant of the Constructive Programme. In its widest sense, the movement embraces all those who hold themselves committed to the Gandhian social philosophy. In their general approach to the problems of social reconstruction and political action, those

associated with the Sarva Seva Sangh come closest of all to carrying on Gandhi's work along the lines envisaged in the last years of his life. This is creative Gandhism, a movement of thought and action conceived in the spirit of Gandhi, which developed new insights into the potentialities of non-violent struggles for rights and social justice.

The main credit for creative Gandhism must go to the acknowledged leader and inspirer of the Sarva Seva Sangh, Vinoba Bhave. It was Vinoba, Gandhi's 'spiritual heir', who discovered the talisman needed to give a new impetus and shape to the Gandhian Constructive Movement.

Vinoba's general approach to Gandhism is evident in his Christmas address to the World Pacifist Meeting at Sevagram in 1949, before he had emerged as a prominent public figure: "Ahimsa is not merely non-participation in destructive activities; it principally manifests itself in constructive activities – services which lead to the upward growth of man. People say that the Goddess of Ahimsa has no weapons; I say that is wrong. The Goddess of Ahimsa has very powerful weapons at her command. They are the weapons of love and, therefore, creative and not destructive."

Two years later, this creative approach led to the Bhoodan Movement and, with it, the revitalisation of the Gandhian movement. Bhoodan, the campaign to persuade landowners to donate voluntarily a portion of their lands for redistribution to the landless labourers who constituted the poorest fifth of India's rural population, could be seen as a new addition to the items listed in Gandhi's Constructive Programme. But, in the eyes of its promoters, it rapidly became much more – it came to be seen as the vital lever by which revolutionary social change might be effected along Gandhian lines.

Intuitively, Vinoba sensed that in India, as in other Asian countries, the peasants held the key to social revolution. Critics might condemn Bhoodan as organised charity and as involving no more than the redistribution of poverty, but Vinoba saw it otherwise. Describing the aim of the campaign, he said: "In a just and equitable order of society, land must belong to all. That is why we do not beg for gifts, but demand a share to which the poor are rightly entitled. The main objective is to propagate the right thought, by which social and economic maladjustments can be corrected without serious conflicts."

Although the campaign came to be known widely as the Bhoodan Movement, it gradually became evident that Bhoodan itself was only a symbol of something greater – the first step in arousing the conscience of the people, the beginning of a mass revaluation of values, which was designed to lead ultimately to the establishment of a new social order based on Sarvodaya ideals. This was underlined by Vinoba's willingness, on occasions, to accept land donations from those owning a few acres or less – the equivalent of the widow's mite. In his eyes, there were no 'have-nots'; 'attachments may lurk even in a loin-cloth', and the movement is a movement of giving and sharing in which every individual can and should participate. "My aim," he explained, "is to bring about a three-fold revolution. Firstly, I want to change people's hearts. Secondly, I want to create a change in their lives. Thirdly, I want to change the social structure... We do not aim at doing mere acts of kindness, but at creating a Kingdom of Kindness."

## Vinoba Bhave, the Man

On May 11, 1953, the cover of *Time* magazine was devoted to a 'trusted and faithful disciple of the late Mahatma Gandhi'. In other articles throughout the 1950s, Acharya Vinoba Bhave was variously described as a 'mystic', a 'practical saint' and as 'a skinny, penniless oldster with sunken cheeks, a wispy white moustache and beard'. It was reported how millions spoke of him as 'the new Gandhi' and how many of India's leaders looked upon him as 'Gandhi's moral heir'.

To be discussed in such terms is understandable, given the background of Vinoba's life. Born into a Chitpavan Brahmin family on September 11, 1895, he was reared in a religious atmosphere, to which the asceticism of his mother contributed greatly. At the age of 12, Vinoba took a vow of lifelong chastity, and by the age of 21, he had resolved to abandon his university studies in order to seek moksha (self-realisation) in the holy city of Benares. It was in that city that Vinoba met Mahatma Gandhi.

From 1916 till Gandhi's death in 1948, Vinoba deserves to be called 'the son of Gandhi', for such was the relationship that existed between the two men. Vinoba so revered his adopted father that he once wrote to him in a letter that 'with me, nothing counts in this world except your blessing'. From Gandhi's viewpoint, Vinoba was 'a Bhim – a Hercules' and even his spiritual superior in many ways. In 1940, Gandhi selected Vinoba even above Jawaharlal Nehru for the honour of initiating the individual resistance campaign against British rule in India.

It was only after independence and Gandhi's assassination that Vinoba really came into the world limelight. Holding that the 'land problem... is the main problem for the whole of Asia', he began to propagate the saying of Tulsidas, '*Sampati sab Raghupati ki hai* (all wealth, including land, belongs to God)'. Interpreting God, in this case, to mean society, Vinoba called upon the rich and poor alike to voluntarily give up land for redistribution to the most desperate in their village.

Believing that 'there is no human problem but can be solved by human intelligence', Vinoba appealed to both the heads and the hearts of the landed. To their heads, he argued that his Bhoodan Movement was the only alternative to the redistribution through violence advocated by the communists. He told them, in other words, that it was in their self-interest to part with a portion of their land since 'the time will come when he who owns great possessions will be looked on as a thief'.

To self-interest, he added an appeal to the heart, which said, "It is more blessed to give than to receive." The spiritual attainment of society would be enhanced, he maintained, as individuals came to realise that "God dwells in the hearts of all beings" and demands service, particularly with regard to the poorest. Speaking of the landed, therefore, Vinoba observed how they 'should remember that I am not asking for alms, but want land as a matter of right', and how he was initiating them into the tenets of a new ideal.

The 'new ideal' was represented in a word of ancient usage, which had been resurrected by Gandhi, 'Sarvodaya'. This is a Sanskrit word, comprising *sarva* (all) and *udaya* (rising), which may be roughly translated as meaning 'the all-round well-being or good of all'. Put more simply, Sarvodaya is often understood as the 'common good', including 'compassion for all'. Faith in such a 'common good' inspired Vinoba to journey, on foot, at least 25,000 miles, village to village, between 1951 and 1960, campaigning for Bhoodan.

## Vinoba Bhave on the Bhoodan (Land Gift) Movement

The following statements of Vinoba Bhave on the Bhoodan Movement, made at different points of time during the campaign, serve to clarify and educate the reader about the essence, the motives, the modalities and the ideals of Bhoodan:

- The Bhoodan movement is no one-sided affair, confined to just one sector of our economic life. It includes all efforts aimed at building up a strong and noble life throughout our land. It certainly includes moral regeneration of our people. The redistribution of land and promotion of village industries will help in eradicating poverty and clear the way for moral uplift;
- Land gifts have significance only so far as they are an index of a change in the outlook of the donors. A land gift is not a religious act of charity. It is a conscious act of a person who desires to bring about a change in the social order. The old idea of charity assumes a revolutionary importance if its social context is understood properly;
- My mission is not to stave off a revolution. I want to prevent a violent revolution and create a non-violent one. The future peace and prosperity of the country depend upon a peaceful solution of the land problem;
- Bhoodan wants and loves to become the dominant value in society. All problems ought to be solved by negotiations in a spirit of friendliness;
- We seek to reconstruct society on a new basis. That is the purpose behind the Bhoodan work. It is not merely to collect land. What we want is to establish new values – to make morality the guiding principle of social life and to make economics, which enjoys undue importance at present, subservient to the former. The Bhoodan Movement is, for us, an instrument for achieving a non-violent and peaceful change of values;
- The basic idea of the Bhoodan Yajna is that wealth, intelligence and all such things which a man has, belong to society and they should go to it. If something remains with somebody, he is its trustee;
- Just as air, water and the sun are freely available to all, even so all must be allowed to have a claim on land, which is equally a gift of God;
- Some persons think that there are those who have only to ask and not give anything. But I say that there is none who has not got something to give. There is wealth, there is land, there is intelligence, there is labour and, if nothing, then love at least is there. All have to give;
- The present national boundaries are bound to be demolished, and it is already happening. The whole world is sure to become one, and this cannot be prevented. The people of a country with less land are entitled to go to another which has more. This is the application of Bhoodan and its message in the world context of today;
- The movement I am carrying on is not, as some seem to imagine, a counter-action against the communists. It is based on positive ideology, which stands on its own right. The rays of the sun are a counter-action against darkness;

- The little achievement we have had so far is not at all negligible. It is, in fact, inspiring. Till today, no political party or organisation in the country has been able to distribute one million acres, nay, not even half as much land, to the poor. The government also promises to provide the landless with land. But the combined contribution of all these agencies is not to the extent of one million acres, and
- So, we see that the Bhoodan Movement has surpassed the combined efforts of the government and the political parties. Never do I entertain pessimism in my heart. For, I have seen that His blessings are more in comparison to the quantum of labour put in the Bhoodan Movement.

## The Bhoodan Movement

After Mahatma Gandhi's assassination on January 30, 1948, many of his followers looked to Vinoba for direction. Now that India had reached its goal of Swaraj, Vinoba advised them that the Gandhians' new goal should be the creation of a society dedicated to *sarvodaya*, the 'welfare of all'. The name stuck, and the movement came to be known as the Sarvodaya Movement. A merger of the constructive work agencies produced the Sarva Seva Sangh – the Society for the Service of All – which became the core of the Sarvodaya Movement, as the main Gandhian organisation working for broad social change along Gandhian lines.

Vinoba had no desire to be a leader, preferring a secluded ashram life. This preference, though, was overturned by events in 1951, following the annual Sarvodaya conference in what is now the central Indian state of Andhra Pradesh. At the close of that conference, Vinoba announced his intention to journey through the nearby district of Telengana. He could not have picked a more troubled spot!

Telengana was at that moment the scene of an armed insurrection. Communist students and some of the poorest villagers had united to form a guerrilla army. This army had tried to break the land monopoly of the rich landlords by driving them out or killing them and redistributing their land. At the height of the revolt, the guerrillas controlled an area housing 3,000 villagers. But then, the Indian army was sent in and it began its own campaign of terror. Many villages came to be occupied by government troops during the day and by communists at night. Each side would kill villagers they suspected of supporting the other side. So, most villagers lived in terror of both sides.

The government had shown clearly that it would win, but the conflict wasn't nearly over by the time of the Sarvodaya conference. Vinoba hoped to find a solution to the conflict and to the injustice that had spawned it. So, refusing a police escort, he set off on foot with a small company.

On April 18, 1951, the third day of his walk, Vinoba stopped in the village of Pochampalli, which was an important communist stronghold. Setting himself up in the courtyard of a Muslim prayer compound, he was soon receiving visitors from all the factions in the village! Among the visitors was a group of 40 families of landless Dalits, who told Vinoba that they had no choice but to support the communists because only the communists would give them land. They asked, would Vinoba ask the government, instead, to give them land?

Vinoba replied, "What use is government help until we can help ourselves?" But he himself was not satisfied by his answer. Late that afternoon, by a lake next to the village, Vinoba held a prayer meeting that drew thousands of villagers from the surrounding areas. At the beginning of the meeting, he presented the Dalit problem to the assembly. Without really expecting a response, he asked, "Brothers, is there anyone among you who can help these Harijan friends?"

A prominent farmer of the village stood up and said, "Sir, I am ready to give 100 acres!" Vinoba could not believe his ears. Here, in the midst of a civil war over land monopoly, was a farmer willing to part with 100 acres out of simple generosity. And Vinoba was just as astounded when the Dalits declared that they needed only 80 acres and would not accept more.

Vinoba suddenly saw a solution to the region's turmoil. In fact, the incident seemed to him a sign from God. At the close of the prayer meeting, he announced he would walk all through the region to collect gifts of land for the landless

So began the movement called Bhoodan, or 'land gift'. Over the next seven weeks, Vinoba asked for donations of land for the landless in 200 villages of the Telengana region. Calculating the amount of farmland needed to supply India's landless poor, he would tell the farmers and landlords in each village: "I am your fifth son. Give me my equal share of land." And in each village, to his continued amazement, the donations poured in.

At first, most of the donors were farmers of moderate means, including some who themselves owned only an acre or two. To them, Vinoba was a holy man, a saint, the Mahatma's own son, who had come to give them God's message of kinship with their poorer neighbours. Vinoba's prayer meetings, at times, took on an almost evangelical fervour. As for Vinoba, he accepted gifts from even the poorest – though he sometimes returned these gifts to the donors – because his goal was as much to open hearts as to redistribute land.

Gradually, though, the richer landowners also began to give. Of course, many of their gifts were inspired by fear of the communists and hopes of buying off the poor, as the communists were quick to proclaim. But not all the motives of the rich landowners were economic. Many of them hoped to gain 'spiritual merit' through their gifts, or, at least, to uphold their prestige. After all, if poor farmers were willing to give sizeable portions of their land to Vinoba, could the rich be seen to do less? And perhaps a few of the rich were even truly touched by Vinoba's message. In any case, as Vinoba's tour gained momentum, even the announced approach of the 'god who gives away land' was enough to prepare the landlords to part with some of their acreage.

Soon Vinoba was collecting hundreds of acres a day. What is more, wherever Vinoba moved, he began to dispel the climate of tension and fear that had plagued the region. In places where people had been afraid to assemble, thousands, including even the communists, gathered to hear him. At the end of seven weeks, Vinoba had collected over 12,000 acres of land. After he left, Sarvodaya workers, continuing to collect land in his name, received another 1,00,000 acres.

The Telengana March became the launching point for a nationwide campaign that Vinoba hoped would eliminate the greatest single cause of India's poverty: land monopoly. He hoped as well that it might be

the lever needed to start a 'non-violent revolution' – a complete transformation of Indian society by peaceful means. The root of oppression, he reasoned, was greed. If people could be led to overcome their possessiveness, a climate would be created in which social division and exploitation could be eliminated. As he later put it: "We do not aim at doing mere acts of kindness, but at creating a Kingdom of Kindness."

Several hundred small teams of Sarvodaya workers and volunteers began trekking from village to village, all over India, collecting land in Vinoba's name. Vinoba himself – despite his advanced age and poor health – marched continually, touring one state after the other. The pattern of Vinoba's day remained the same. He and his company would rise by 3 am and hold a prayer meeting for themselves. Then they would walk 10 or 12 miles to the next village, Vinoba leading at a pace that left the others struggling breathlessly behind. With him were always a few close assistants, a bevy of young, idealistic volunteers – teenagers and young adults, male and some female, mostly from towns or cities – plus some regular Sarvodaya workers, a landlord, a politician, or an interested Westerner.

At the host village, they would be greeted by a brass band, a makeshift archway, garlands, formal speeches of welcome by the village leaders and shouts of '*Sant Vinoba, Sant Vinoba!* (Saint Vinoba!)' After breakfast, the Bhoodan workers would fan out through the village, meeting the villagers, distributing literature and taking down pledges. Vinoba himself would meet visitors, read newspapers and answer letters. In the late afternoon, there would be a prayer meeting, attended by hundreds or thousands of villagers from the area. After a period of reciting and chanting, Vinoba would speak to the crowd in his quiet voice. His talk would be completely improvised, full of rich images drawn from Hindu scriptures or everyday life, exhorting the villagers to live lives of love, kinship and sharing. At the close of the meeting, more pledges would be taken down.

There were no free weekends on this itinerary, no holidays, no days off. The man who led this relentless crusade was 57 years old, suffered from chronic dysentery, chronic malaria and an intestinal ulcer. He restricted himself to a diet of honey, milk and yoghurt. As the campaign gained momentum, friends and detractors alike watched in fascination. In the West, too, Vinoba's effort drew attention. In the United States, major articles appeared on Vinoba in *The New York Times* and *The New Yorker*. He even appeared on the cover of *Time* magazine.

By the time of the 1954 Sarvodaya conference, the Gandhians had collected over three million acres nationwide. The total eventually reached over four million acres. Much of this land, however, turned out to be useless. In many cases, landowners reneged on their pledges. Still, the Gandhians were able to distribute over one million acres to India's landless poor – far more than had been managed by the land reforms programmes of the government. Around half a million families benefited.

## **From Bhoodan to Gramdan and Beyond: A Creative Metamorphosis**

Soon, Vinoba Bhave shifted his efforts to a higher gear. After 1954, he began asking for donations, not so much of land, but of *whole villages!* He named this new programme, Gramdan or 'village gift'.

Gramdan was a far more radical programme than Bhoodan. In a Gramdan village, all land would be legally

owned by the village as a whole, but parcelled out for the use of individual families according to need. Because the families could not themselves sell, rent or mortgage the land, they could not be pressurised to get off it during hard times, as normally happened when land reform programmes bestowed land titles on poor individuals.

Village affairs were to be managed by a village council made up of all the adult members of the village, taking decisions by consensus – the council could not adopt any decision until everyone accepted it. This was meant to ensure cooperation and make it much harder for one person or group to benefit at the expense of others.

While Bhoodan had been meant to prepare people for a non-violent revolution, Vinoba saw Gramdan as the revolution itself. Like Gandhi, Vinoba believed that the divisiveness of Indian society was the root cause of its degradation and stagnation. Before the villagers could begin to improve their lot, they needed to learn to work together. Gramdan, he felt, with its common land ownership and cooperative decision making, could bring about the needed unity. Once this was achieved, the people's power it would release would make anything possible.

The differences between Bhoodan and Gramdan are significant. Bhoodan involved donations from individuals; Gramdan involved community action. Under Bhoodan, individual ownership of land was retained; under Gramdan, it was abolished and ownership vested in the village community. Thirdly, under Bhoodan, the beneficiary was an individual or a group of individuals, while under Gramdan, the beneficiary was the whole village community. In short, the substitution of Gramdan for Bhoodan represented a move from a basically individualist to a more socialist programme.

The patently revolutionary character of Gramdan made it more difficult to promote. Although the Congress and other political parties were persuaded to endorse Gramdan as a desirable method of land reform, in practice, it elicited less enthusiasm and support from such quarters than Bhoodan had received. Nevertheless, in the wake of Vinoba's march, village after village declared itself in favour of Gramdan. By the end of 1956, the number of Gramdans had reached 1,935 and, by March 1964, the number had risen to 6,807. Their distribution throughout the country, however, was much less even than in the case of Bhoodan, and the villages concerned were generally small, very poor and concentrated in low-caste and tribal areas, such as the Koraput district of Orissa. By the early 1960s, the pace of the movement had slackened considerably.

In this situation, a new approach was developed in the form of Sulabh (simple) Gramdan. This concept represented a concession to the principles of private ownership and its effects were decidedly less egalitarian than Gramdan in its original form. In the autumn of 1965, the movement launched a *toofan* (whirlwind) campaign for Sulabh Gramdan, which, within the space of four years, multiplied by a factor of 16 the number of Gramdans. By October 1969, the movement could claim that 1,40,020 villages – approximately a quarter of the total number of villages in India – had declared for Gramdan. But, perhaps, the most significant aspect of this campaign was not the number of Gramdan declarations achieved, but the fact that, for the first time, villages in large contiguous areas joined the movement. Gramdans were no longer separate islands in a sea of non-Gramdan villages.

Just as Bhoodan had paved the way for Gramdan, so Gramdan paved the way for Blockdan, a 'block' being the unit for planning and administration in the government's Community Development Programme and

consisting of about 100 villages. By October 1969, there were 1,030 Blockdans. Blockdan, in turn, paved the way for Districtdan, a district being one of the main administrative areas into which a state is divided. By the end of 1969, the movement was able to declare 30 of India's 330 districts as meeting its definition of Districtdan. The rapid ascent from Gramdan through Blockdan to Districtdan inevitably raised the prospect of Statedan in at least one of the then 17 states of the Indian Union. Concentrating its main efforts in Bihar, the movement set itself the objective of achieving Bihardan by the end of the Gandhi Centenary Year. In the event, it did not completely succeed in reaching this objective, 12 blocks remaining undeclared in December 1969. But with 98 per cent of the 587 blocks in Bihar within the movement's fold, there was some justification for regarding Bihardan as virtually achieved!

While 'villagisation' of land in the form of Sulabh Gramdan was the most striking plank in the movement's programme, it was by no means the only one. Vinoba's fertile imagination widened the concept of 'daan' (gift) and created other forms of it. These included Shramdan (gift of labour), Sampattidan (gift of money, income or wealth), Buddhidan (dedication of one's mental abilities to the realisation of Sarvodaya ideals) and Jeevandan (dedication of one's life to the cause). In addition, in 1957, Vinoba pledged the Shanti Sena (Peace Army) open to all those who pledged themselves to work for truth and non-violence. This army numbered some 8,000 in 1964 and, four years later, enrolments had reached the figure of 12,000. The Shanti Sena and its related organisations, the Shanti Sevak Dal, confined to peace work within a member's own village, and the Tarun Shanti Sena, the youth corps, were intended to function primarily as a non-violent police force. The development of khadi and other village industries also remained a central part of the movement's programme, so that the programme of action became a three-fold one, emphasising Gramdan, khadi and Shanti Sena.

## Vinoba Bhave on the Gramdan Movement

The following statements of Vinoba Bhave on the Gramdan Movement, made at different points of time during the campaign, serve to clarify and educate the reader about the essence, motives, modalities and ideals of Gramdan:

- What do we mean by achieving the Gramdan revolution? We mean, first, to establish the right of the landless labourers over land. That is the beginning. Then the next step would be to say all would be the owners of the land. Just as we all share light, air and water alike, land should become common to all. This brings us to the present stage when we say that no individual can own land. All land belongs to the village, that is, to the village community;
- In Gramdan villages, individual ownership comes to an end. But in another sense, it increases. An individual owns no land, but he can very well say that all land belongs to him. Just as a mother has a ubiquitous authority in the house, or a little baby has common rights, so an individual citizen will have power and rights in the village. Whatever is done for the development and welfare of the individual, will add to the social well-being and strength. Sarvodaya looks on life as an integrated whole. It believes that the individual and society are indivisible;
- Gramdan is not a reformist activity. It aims to bring about a radical change in society. It wants to do away with all the class divisions that exist today. It wants to create real equality. Gramdan may be said to lay the foundations of the new order. It ends private ownership in land;

- Gramdan is the expression of the spirit of the age. It asks people not only to break the narrow domestic walls and consider the whole village as one family, but goes further and asks all the villagers to meet together to consider their common problems and solve them with one mind;
- This is the essence of Gramdan: In it, there is no individual possession of land, labour and wealth. Each owns everything. Each will offer his all to the community and it will take care of him. People think it is a great sacrifice to give Gramdan. Gramdan is not a sacrifice, but a sound investment in good living;
- All the affairs of the village will be in the hands of the people. They will decide what they want to do. You will have a sense of owning all the land of the taluk together. So, we are asking people to throw off the burden of individual ownership. Individual ownership is the root cause of our unhappiness and slavery. If individual ownership in land is ended, a new cooperative and collective social life will emerge. Every family will work for the good of the village and a new life will emerge if the whole taluk lives and works as one family;
- The meaning of Gramdan is a solemn resolve made by the villagers to manage their own affairs. They will take all the decisions henceforth. It is their law which will prevail in the village. They will decide how land should be distributed and cultivated and what should be grown. They will decide that they will make their own cloth woven on a hand loom. The government will not be able to force powerlooms on the villagers. In all the spheres of activities which are vitally and directly related to the life of the villagers, the government will accept the decisions of the villagers;
- Let it be clearly understood that increasing agricultural production is certainly not the aim and object of Bhoodan and Gramdan. That would be only incidental. Its main object is to widen man's loyalty to the entire society. It hopes to create a climate where man will feel the same solicitude for the least in society as he feels for his own children. Gramdan will end duality between the individual and social life. They would be like the two sides of a coin. This is bound to bring about greater production and happiness. But if, for some reason, production does not increase, it would not matter. Gramdan, thus, is trying to give a new vision or a purpose to people. Human life is full of joy and suffering. People can fight bravely against the calamities that befall them. Floods and cyclones devastate lands every now and then. Man shares calamities and, in sharing, gets the strength to conquer them;
- I hope that the young men of our country will be filled with enthusiasm and will dedicate themselves to Gramdan. It is not enough if we get a Gramdan here and there; whole taluks and districts must be given in Gramdan. There is so much talk about the Five-year Plan in the country. But so long as this fundamental transformation does not take place, planning from the top will not end the poverty and misery of the villagers. Gramdan is the foundation of social reconstruction;
- Immediately after Gramdan, the Gram Sabha has to be constituted; khadi and village industries will have to be accelerated; the Shanti Seva Mandal will have to be organised. No dispute should go out of the village for settlement;
- The Triple Programme (Sulabh Gramdan, Khadi and Shanti Sena) is regarded as very important, both from the long-range and short-range points of view. This is why I introduced the idea of the Sulabh Gramdan. If we do not encourage 'easy Gramdans', we will lose our own ground and fail to

influence national planning. Sulabh Gramdan contains the potentialities to change the plan structure and alter the pattern of village planning, which, in its turn, will affect the cities, too;

- In a Gramdani village, the Gram Sabha is formed by the consent of all, neither by the majority nor even by unanimity. The word 'consensus' prevalent today can be better comprehended as *sarvanumathi*, or general consent, that is, a decision arrived at by the considered opinion of all. Unanimity means *sarva sammati*; majority means *bahumati*; consensus denotes *sarvanumati*. The ownership of land goes to the Gram Sabha thus formed;
- Some consider Gramdan as the prototype of the Russo-Chinese pattern of land management. The land there is no more the property of the individual and this factor, in the view of some, has been responsible for lowering the production in communist countries. But I want to emphasise that there is a vast difference between the system I enunciate and the system followed in communism. In communism, the ownership is handed over to the state, whereas in our system, the ownership is with the Gram Sabha. The individual has the fullest right as regards tilling the land and the rights of its inheritance;
- There are three kinds of rights regarding agriculture: the right of inheritance, the right of sale and the right of tilling. In Gramdan, the individual surrenders the right of selling the land or mortgaging it. But if one is in pressing need, the land can be sold on the advice of the Gram Sabha, but selling the land to an outsider is an anti-village activity;
- The idea of Sarvodaya stands for complete revolution. I want to transform old values and norms and establish new ones. Hence, the call for voluntary surrender of ownership and vesting it with the Gram Sabha. Land ownership is the basis of life. Some people stand for forcibly appropriating land ownership from the individual and entrusting it to the state. In that case, the state becomes the supreme arbiter controlling agriculture, trade and industry and everything else. This is state capitalism or statism. Russia and China have tried it, but it has not satisfied the people, who become mechanical in this system and lose all initiative;
- What is my alternative for it? I suggest that land should remain with the owner, but its ownership should be vested with the Gram Sabha. The land holder will continue to have rights of inheritance and cultivation. Besides, he will also donate one-twentieth of his land for the landless. The point is that the land of the village should remain with the village and not sold to outsiders;
- The emergence of Gramdan out of Bhoodan is an extraordinary feature. The essence of Bhoodan is that there should be none in the village without land. In Gramdan, the ultimate end will be that there will be no individual landowner in the village. It is the birthright of everyone to secure his food. But ownership of land is not the right of everyone. This is the revolutionary idea in Gramdan;
- In the beginning, we asked for one-sixth of the land. Now we ask for one-twentieth of the land. We took up then the distribution work ourselves. But now the donors themselves will distribute the land. That the land offered should be cultivable land is the general rule. In the beginning, we had a target of 50 million acres of Bhoodan to meet the needs of all the landless. The work of distribution was to follow later. By this new method, 25 million acres may be available and they will be distributable;

- In Bhoodan, we received good land, average land and bad land. But in future, only good land will be available. Further, all the rights of the land will vest in the Gram Sabha. The name of the government will be only nominal. In the records of the government, there will be only the names of the villages. The individual names of title holders will disappear. This method will open the way for the total progress of the village;
- The old scheme of Gramdan was conducive as an incentive for the village community as a whole, but it was not favourable to stimulate individual initiative. I have been thinking of combining both these. I felt that it would not be proper to leave the basic principles of Bhoodan. Therefore, I have retained my appeal for one-twentieth of cultivable land from each landholder. He will himself distribute it. He will join the village community by offering the right of ownership of the balance of the land to the village itself. This land will remain with him. The hereditary right will remain with his children. The rights and benefits of cultivation of the land will not be alienated without their consent. If there is any dispute, the Gram Sabha will settle it. The successors will be given necessary land for their needs. The land will not be given away to others without their consent. I believe that this will induce more people in the future to offer land to Gramdan than at present. The people will be slowly prepared to carry on cultivation in a cooperative way, and
- Is the government's recognition for Gramdan necessary or not? If 50 per cent of the land is offered as Gramdan and if 75 per cent of the landholders of a village offer Gramdan, the village will be declared as Gramdani, according to the decision of the Sarva Seva Sangh. The government will recognise all such villages as Gramdan villages. The villages, which have not completed these minimum conditions, will be considered as Gramdan communities. Whether the government recognises them or not, these communities can form their own Gram Sabhas.

## Later Developments

Vinoba Bhave's Gramdan efforts progressed slowly until 1965, when an easing of the Gramdan's requirements was joined to the launching of a 'storm campaign'. By 1970, the official figure for Gramdan villages was 1,60,000 – almost one-third of all India's villages! But it turned out that it was far easier to get a declaration of Gramdan than to set it up in practice. By early 1970, only a few thousand villages had transferred land titles to a village council. In most of these, progress was at a standstill. What's more, most of these few thousand villages were small, single-caste or tribal – not even typical Indian villages. By 1971, Gramdan, as a movement, had collapsed under its own weight!

Still, the Gramdan Movement left behind more than a hundred Gramdan 'pockets' – some made up of hundreds of villages – where Gandhian workers settled in for long-term development efforts. These pockets today form the base of India's Gandhian movement. In these locales, the Gandhians are helping some of India's poorest by organising Gandhian-style community development and non-violent action campaigns against injustice.

As for Vinoba Bhave, he returned to his ashram for the final time in June 1970, after 13 years of continual marching, and five more of presiding over the 'storm campaign'. During his final years, Vinoba continued to inspire new programmes – for instance, Women's Power Awakening, a Gandhian version of women's liberation.

He also launched a campaign against cow slaughter, to try to halt the butchering of useful farm animals, a practice that was detrimental to India's traditional agriculture.

Vinoba Bhave died on November 15, 1982. In his dying, as in his living, he was deliberate, instructive and, in a way, light-hearted. After suffering a heart attack, Vinoba decided to 'leave his body before his body left him'. He, therefore, simply stopped eating until his body released him. Another Mahatma had passed away.

Commenting on the utility and relevance of Gandhian struggles today, Thomas Weber writes: "Despite the objective reality of their present weakened position in Indian society, the Gandhians are nevertheless generally optimistic about the value of Gandhism as a force to be reckoned with, one which can bring about change for the good. And the most optimistic are the Vinoba supporters, who have not suffered the same tangible defeats as their colleagues who entered the political fray. They see that their message, if not necessarily their movement of old, is one for the ages. They realise that the process will be slow, that there will be setbacks, but are convinced that they will eventually win through, that with a continuation of grass-root work, success is assured. By organic means, Gandhi's message will triumph. They firmly believe that all signs point to this outcome – the increasing number of social movements around the world now employing Gandhian methods, and the approach of environmental collapse is forcing a re-evaluation of the hegemony of Western lifestyle and consumption patterns in a way that indicates a shift towards a Gandhian outlook. Although others may see them as anachronistic, and it is reasonable to be pessimistic about the future of the old Gandhians ever again being in the vanguard of a dynamic and influential social movement, they believe that the march of history is now coming full circle and that they are merely ahead of the times..."



# THE RIGHTS OF FISH WORKERS

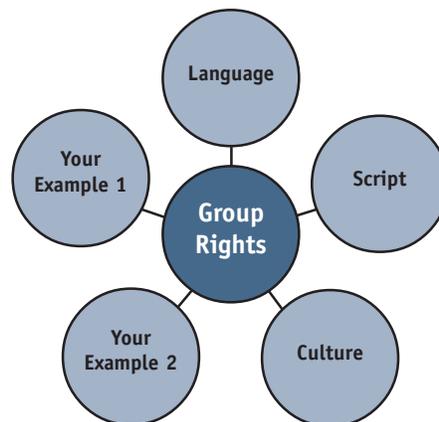
*By Nalini Nayak*



Photo credit: Prithwiraj Dhang

## 9. THE RIGHTS OF FISH WORKERS

We have seen in the Introduction that human rights are the rights of individuals. However, there are certain rights that can be enjoyed only as groups. Of late, group rights, which are often referred to as 'third generation rights' also, are receiving a lot of attention in the human rights arena. Here are some examples of group rights. Can you think of any more? Write them in the empty bubbles:



This chapter deals with the human rights of a community or a group as opposed to the human rights of an individual – the rights of the coastal community to the resources of the ocean. Why is it necessary to make this distinction?

We have seen earlier in the Introduction the difference between civil and political rights and economic, social and cultural rights. In formulating the Declaration of Human Rights, the Western nations were concerned about the civil and political rights of individuals and groups primarily. Though civil and political rights are invaluable because, without them, freedom and democracy cannot survive, they do not exist for a vast majority of poor people in the developing countries. Only if social, economic and cultural rights are ensured to these large masses of people will they be able to enjoy civil and political rights. Thus, the International Human Rights Conference in 1968 declared: "Since human rights and fundamental freedom are indivisible, the full realisation of civil and political rights without the enjoyment of social, economic and cultural rights is impossible."

In India, it has been clearly stated by the National Human Rights Commission (NHRC) that it will examine all violations of social, economic and cultural rights. Among the various economic, social and cultural rights, one right that is gaining importance is what is called development as a human right. Judges of the Supreme Court have said that the right to life includes the right to live with basic human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter. They have also said that the right to development is one of the most important basic human rights and it constitutes the culminating point of the evolution of the concept of human rights. It has been considered a 'super right', transcending the differentiation of civil and political rights and socioeconomic rights. It has been termed a third generation human right and is recognised both as an individual right as well as a collective right of groups.

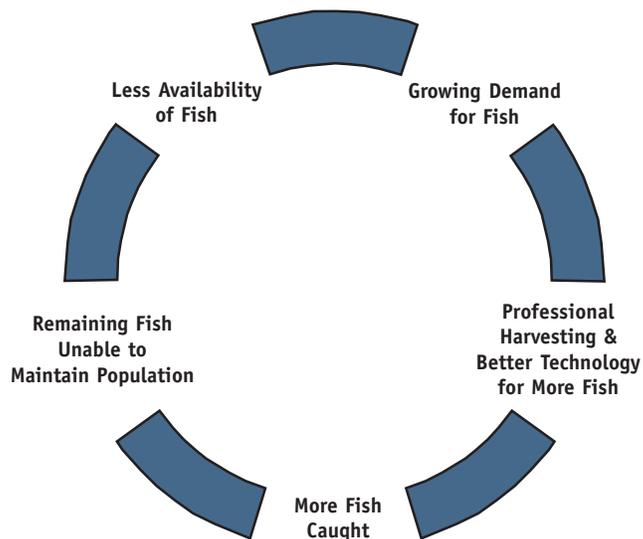
Collective rights are especially important for fish workers. This chapter deals with the rights of the coastal communities in general and fish workers in particular. For these people, the only source of livelihood over

generations has been the fish resources of the ocean. Most of them have no other skills than those related to catching, processing and distributing fish. Years of 'development', while benefiting a few, have marginalised them. In their struggle to survive, they have organised themselves, despite many obstacles, to fight for their right to life and livelihood.

## The Ocean Commons

Seventy per cent of the earth is covered with water. One would imagine the ocean to be full of life. It is. However, from a biological point of view, most of the oceans are the equivalent of deserts on land. Like terrestrial deserts, most of the open sea supports only a small number of highly specialised plants and animals. The exception to this is coastal waters. The narrow band of coastal waters adjoining land contains large numbers and varieties of fish. In contrast, the open ocean is generally unproductive and oceanic fish such as tuna are generally restricted to particular areas that are unusually rich in nutrients.

All over the world, numerous coastal communities have fished the rich oceans for food from time immemorial. Nature's bounty and the rich interface between land and sea have provided a rich diversity of aquatic life to humankind, from sea weeds and grasses to crustaceans, cephalopods and innumerable varieties of fish. In the past, fishing was more a gathering activity in which the main players were women. Resources were plentiful and the population demands small. The collection of fish for food, which meant only mature fish, did not impact the regeneration of resources. But the human population and its demands for seafood have grown. Fishing became a male profession based on hunting and navigational skills and experiential knowledge of hydrology and astronomy. Gradually, with the introduction of more efficient technology, the work of fishing has grown beyond that which can be supported by the finite resources of the oceans. The dilemma is that as demand for fishery resources is increasing, the ability of the marine environment to sustain this demand is decreasing.



Thus, we see that:

- Fish is a renewable resource that is not produced;

- Fish can only be harvested. As a rule, it is freely harvested;
- Like any renewable resource, for example groundwater, fish has its own regeneration cycle, which requires a specific environment, which, in turn, is interlinked with other cycles – in this case, the currents, water temperature, salinity, etc.;
- Major changes in either the environment or the cycles can have a detrimental effect on the food chain and, consequently, the fish resource, and
- A low adult population will lessen reproduction and, ultimately, fish resources.

In India, access to fish resources is free. This is referred to as ‘open access fisheries’. The oceans in which this resource exists are therefore treated as ‘commons’. The term, ‘commons’, is derived from the shared grazing systems on the village greens of feudal England. It refers to an important form of resource management, involving land and natural resources held communally.

In the case of a common resource, whether it is fish in the high seas or up-river sources of fresh water, it is seldom in the short-term self-interest of any harvester or consumer (or firm or country in the modern world) to limit their consumption voluntarily. Therefore, in the absence of an effective regulatory structure, it is very difficult to stop overexploitation of the commons.

We can distinguish three types of commons:

- **Global commons:** Those outside national territorial limits, such as the high seas, the atmosphere and Antarctica, with rights invested (in theory) in all countries, but more commonly in those with the opportunity and technology to exploit resources on this scale;
- **Regional commons:** Watersheds and basins and other ecosystems crossing national borders and under the potential control and management of a group of nation states, and
- **National commons:** Local resources within the territory of a nation state, such as fish stocks in lakes, almost all agricultural genetic diversity, soil stocks, or rain or temperate forests under the control of nation states or sub-national governments.<sup>56</sup>

The growth of the modern state has impacted on the customary practices that communities followed in fishing. The modern local government has displaced traditional community social norms. Very few states in the world have been able to substitute such norms effectively and, as a result, traditional management methods are being eroded, more so with increased population dependence on coastal resources and the trend towards money based economies and commercial fishing. Without community controls, the access to coastal resources is now open to all and marine resources are considered common property.

Many fish stocks have been overexploited. A fish stock is a population of fish that is exploited. A fish stock may be regarded as overexploited when the number of fish is reduced to such an extent that the remaining adults are unable to produce enough young fish to maintain the stock. The Antarctic baleen whale, the Peruvian anchovita, the North Sea herring and mackerel and the Australian southern school shark have all been dramatically overexploited. Some particularly vulnerable species, such as the giant clam, have been driven to extinction in several areas.<sup>57</sup>

<sup>56</sup> ‘Governance for a Sustainable Future: A Report by the World Humanity Trust 2000’, Russell Press Ltd, Nottingham, UK

<sup>57</sup> The Oceans and Coastal Areas and their Resources, Environmental Education Module, UNESCO-UNEP, 1995

In the broadest sense, all fishing is environmentally damaging to a greater or lesser degree. In some countries, the use of explosives and poisons to disable and capture fish represents a serious threat to marine ecosystems and the long-term viability of fisheries. The challenge is to devise fishing gear and methods that do not threaten the environment or non-target species, yet catch the target species in the most economically efficient manner.

Fisheries are often divided into non-commercial and commercial sectors. The non-commercial or subsistence sector involves the catching of fish to eat rather than to sell. The commercial fishery may be divided into an artisanal sector, usually small-scale fishing to supply local markets, and an industrial sector, involving large-scale fishing for canneries, fishmeal and exports.

More than 120 million people throughout the world are estimated to depend on fish, the largest wild food harvest, for all or a part of their incomes.<sup>58</sup> Seafood is a major food item in many countries. The dilemma is that as demand for fishery resources is increasing, the ability of the marine environment to sustain them may be decreasing. The freedom to catch fish or to use the marine environment without control is now more likely to be at the expense of someone else's freedom to do the same thing. Some of these freedoms must be sacrificed to allow the continuing use of the marine environment and its resources by present and future generations. The use of natural marine resources such as the coastal vegetation or mangroves or the harvesting of fish requires careful control to avoid overexploitation. The renewability of natural resources depends on our ability to see that too many marine animals and plants are not harvested and that the environment on which they depend does not deteriorate. This implies that fishing has to be regulated and the marine environment protected. The attitudes of most governments that the fish of the open sea can be fished without restraint, and that the sea is a convenient dumping ground for the wastes of society, have to be changed.

In India, up to 22 km from the shoreline falls within the jurisdiction of the state government, and from 22 km to 200 miles within that of the Central government.

## International Law and Fishing Rights

Despite the fact that several varieties of fish had already faced depletion by the turn of the 20th century, for the most part, fisheries were left unregulated because many of the richest fishing grounds were outside national jurisdiction, which, before World War II, was usually three nautical miles from the coast. Soon after, there were a number of changes. Some of these are:

- Post-World War II tendency to expand national fishing zones and territorial limits at sea;
- The Truman Proclamation in 1945, following which, several Latin American countries began claiming national sovereignty over water covering the Continental Shelf;
- In 1950, the UN General Assembly instructed the International Law Commission to prepare draft articles and conventions on the law of the sea;
- The Territorial Sea Convention;
- The High Seas Convention;

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<sup>58</sup> <http://www.fao.org/gender/en/fishb3-e.htm>

- The Continental Shelf Convention;
- The Fishing and Conservation and Living Resources of the High Seas Convention;
- The UN Convention on the Law of the Sea (UNCLOS), UNCLOS I in 1958 and UNCLOS II in 1960, and
- UNCLOS III, 1982, which brought in concepts like exclusive economic zones (EEZs) belonging to a nation and high seas as the common heritage of humankind.

Having an international regime did not mean that individual nations were concerned only about the international sphere. Within their own waters, several countries developed their own fisheries management regulations in order to conserve stocks. In the more advanced countries, all fisherfolk are licensed and entry is no longer open. Quotas are fixed for each species, the duration of the season is stipulated and the gear monitored. In the southern or developing world, regulations, though they exist, are not implemented merely because of the massive nature of the task, as there are millions of fisherfolk operating from all parts of the coastline. Such monitoring is an expensive task and poorer countries cannot afford this. Moreover, it is only the actual fishworkers that can recreate their legislation and monitor the fisheries.

## Some Concepts

In the course of this chapter, you will come across certain concepts with which you are not familiar. Do spend a couple of minutes going through this section to familiarise yourself with some of the terms used. Of course, you may refer back to it when you come across the term in the chapter itself.

**Open Access:** A person who fishes does not require any licence to fish.

**Quota:** The limit set to the amount of fish that can be caught in a particular year or fishing season. Once this quota, or maximum catch, has been reached, the fishery is closed. Alternatively, each fisher may be allocated an individual quota now referred to as **Individual Transferable Quotas (ITQs)**. There are also community quotas allotted to specific communities.

**Limited Entry:** Entry into the fishery may be limited to a certain number of people or boats; for example, a limited number of licences may be issued, which permit people to fish. The alternative is a fishery in which anyone can go fishing.

**Limiting the Catch of Small Fish:** Preventing the capture of small fish may allow them to grow to a more valuable market size; in some cases, it may also allow individual fish to reach a size where they can reproduce before capture. The capture of small fish may be prevented by mechanisms such as enforcing the use of nets with a large mesh size. Where fish are not harmed by the catching method, in trap fishing for example, fisherfolk can be forced to return small fish to the sea.

**Controls on Fishing Gear and Methods:** Highly destructive methods of fishing, such as the use of chemicals bleaches or explosives, are illegal in most countries. Highly efficient fishing methods may also be controlled to allow more people to share the resource. Controls may include banning or reducing the efficiency of particular fishing methods or fishing gear.

**Closed Seasons and Areas:** Fishing may be banned either at particular times of the year or in particular places. Closures during particular seasons, for example, may allow small fish to grow to a more marketable size, or adults to breed without interference.

**Maximum Sustainable Yield:** The maximum permitted catch of a particular species, which will permit rejuvenation so that the productivity stock can be sustained.

## Globalisation and Fisheries

While the concept of the nation state still exists, for all practical purposes, its autonomy is being gradually eroded. There are several pressures on countries to conform to a common pattern of behaviour, or what is often called the current international 'order'.

This current international 'order' does not support the rational use of global common resources such as the oceans, fresh water, fisheries and the atmosphere. The process of 'globalisation' today reinforces the unrestricted, irrational and uncoordinated use of essential resources by individual enterprises. 'Good global governance' implies not only good governance at the multilateral level, but also good governance at the national and local levels. It is unlikely that sustainable management of the global commons, such as the high seas, could occur in conditions where national commons, such as coastal and fresh-water resources, are being mismanaged or destroyed.

Globally, several traditional and informal governance systems existed historically for many fisheries. These informal governance systems were local and vested in coastal communities or village institutions. Communities and local leaders controlled who could fish and how. In this way, they moderated the race for fish and ensured that the fish populations remained stable. These locally based governance systems were particularly important in many developing countries.

However, many of these local governance systems lost their effectiveness. The reasons for this are:

- They ceased to be legally recognised;
- They could not cope with modern technology;
- They could not exercise governance over the full range of fishery resources or gear types such as industrial scale trawling;
- They lacked community backing or cohesion, and
- They were powerless to exclude or control new entrants.

## A Background to Indian Fisheries

India has a coastline of 7,000 km, running through nine maritime states. Maritime states are states that have access to the sea coast. The other states are often referred to as land-locked states. Although each of India's maritime states is a different cultural region, speaking a different language, there are similarities

in the fisheries, depending upon the physical geography. A large number of people in the maritime states are dependent upon fishing and connected activities for their livelihood. These persons are collectively termed fish workers. Fish workers represent about 1 per cent of the Indian population. Of these, about 3.5 million depend on marine or ocean resources, while the rest live along rivers, lakes and backwaters. Of the sea-going fishermen, nearly 90 per cent are 'artisanal fishermen', operating small traditional craft and gear. They are traditionally from fisher families and this is their sole livelihood. It was estimated that they owned about 1.5 lakh fishing craft and 7 lakh gear and tackle.<sup>59</sup> In 1994, the actual fishermen in the country, according to the Directorate of Fisheries, Tamil Nadu, was said to be 2.4 million full time, 1.4 million part time and 2.1 million occasional.<sup>60</sup>

## The Artisanal Fishery

As we have seen earlier, of the fishermen who go to sea, nearly 90 per cent are artisanal fishermen. Though the fishermen are male, there is a complementary sexual division of labour in artisanal fisheries, where men fish and women perform the shore jobs. This means that women are active participants in the economic life of the community as they generally attend to all the land-based aspects of the fishery, both in the pre- and post-harvest work. The making of the fishing nets was traditionally the work of women and, in some areas, they even bait the hooks for line fishing. It is they who take hold of the catch of their husbands or other fishermen once it is landed as they market the fish and convert it into other food and money for the sustenance of the family. In several areas, marketing the fish is a laborious task as the women travel several miles under difficult circumstances to reach markets. Initially, women also processed fish, salting and drying it as there were no other conservation measures. Moreover, women, like in all other communities, take on the responsibility of nurturing the entire family and keeping the home fires burning. This sexual division of labour gave the artisanal fisheries the resilience to survive heavy odds such as bad seasons and debt.

## Changes Affecting the Artisanal Fishery

### The Trends in the Indian Fishing Scene Affecting the Artisanal Fishery

#### 1. Gradual Improvement of the Artisanal Fishery

Until the end of the 1960s, no fishing craft was mechanised and the navigational skills of the artisanal Indian fishermen, who, in some areas, made week-long voyages, were acknowledged. Over the years, like artisanal fishermen all over the world, the Indian fishermen, too, adopted fishing techniques that they came across during migration or through contact with foreign traders. Adaptation was always tested over time and the evolution was, therefore, gradual and calculated. Since there was no mechanisation, the work was more intensive in labour and skill, rather than in capital. It was a way of life practised by a group which worked hard for its livelihood and could, by no stretch of the imagination, be called affluent.

#### 2. The Indo-Norwegian Project

It was the Indo-Norwegian Project (INP) that gave an impetus to the modernisation of Indian fisheries. This began in 1953. The first phase of this project extended from 1953 to 1963, when the activities were primarily concentrated in Quilon in Kerala. The stated objectives were:

<sup>59</sup> A.J.Vijayan, *Need for Conservation in Struggle to Survive*, NFF, 1987

<sup>60</sup> Tamil Nadu Fisheries Statistics for the Year 1998-99, Government of Tamil Nadu, 2001

- To raise the productivity of the fishermen and to increase their returns;
- To develop efficient distribution of fresh fish and improvement of fish products;
- To improve the health and sanitary conditions of the fishing population, and
- To raise the general standard of living of the fishing population.

Although the objectives were laudable and sought to improve the standard of living of the fishing population and increase returns as well as distribution networks, the reality was quite different. Although the initial intention was to improve the effectiveness of the local craft used by the fisherfolk, they failed to do this and the introduction of a smaller, flat-keeled boat designed in Norway proved to be an easier alternative. By 1958, they introduced the trawl and purse seine gear onto small mechanised crafts. The INP provided infrastructural facilities such as ice plants and freezing and processing technology to cope with the increased production and, thus, further develop the export market. Within six years, the trawl boats increased to 700 and their share of the shrimp catch rose from nil to 90 per cent. The INP forgot its initial objectives in the excitement of earning foreign exchange and strayed far from them as it was further pressurised by private interests and the government.

### **3. Support from the Kerala Government**

The government was quite excited, seeing the unexpected boost in foreign earnings. It was largely responsible for moving away from some of the objectives of the INP to focus on 'productivity', which would bring in foreign exchange. Government allocation of funds for such modernisation also increased.

### **4. Increase in Exports**

The introduction of a new kind of fishery got a boost with the growing demand for shrimp in the US and Japanese markets and private investors were lured into the fishing industry. Until now, the fisherfolk were the only players, but now this became big business.

From the early 1960s, all attention was focused on prawns. From an export turnover of a little under 500 tonnes of frozen prawns at the end of the 1950s, by 1961, the figure had reached 1,462 tonnes, with an export value realisation of over Rs 4,000 per tonne, compared to the internal fresh fish shore price of Rs 150 per tonne. In 1962, having lost their access rights to Mexican waters, the Japanese paid Rs 8,900 per tonne for prawns from India. The phenomenal export earnings of shrimp made both the INP and the fisheries administration of Kerala devote their undivided attention to the pursuit of prawns.

### **5. Rapid Increase in Disparities between Mechanised and Artisanal Fishery and Threat to Livelihood**

By 1963, the most notable structural change in the project area, consequent to the introduction of the new technology of fish harvesting and processing, was the creation of a new class of non-operating entrepreneurs or capitalists, who owned the means of production and, through this, opened up avenues for a large migrant labour force recruited from outside the INP area. The change in the technology and labour process in the realm of fish harvesting and processing, taken together with the entry of this new segment of merchant class interests into the fish economy, sounded the death knell for the fisheries development policy in Kerala, which had commenced with the stated objectives of providing cheap protein for local consumption and ensuring a more decentralised mode of functioning and greater spread effects with

regard to employment generation. A sector that was relatively outside the mainstream of the economic and social processes of Kerala society was suddenly transformed into a respectable avenue for investment and involvement. The possibilities of a 'modernised' fishery emerged quickly, breaking down traditional barriers of entry into the sector. The export-oriented thrust that began to get engrained in the sector was blessed by the country's own attempt to boost foreign exchange earnings.<sup>61</sup>

The most catastrophic decline was experienced in the landings of the traditional fishermen, whose production fell to 2,30,000 tonnes. This was well below what they were catching between 1956 and 1959. The cumulative deterioration in the conditions of the majority of the fishermen in Kerala became more apparent following an official socioeconomic Census survey conducted by the Department of Fisheries in 1979. Only 2 per cent had an SSLC qualification or more. Housing conditions were poor, 48 per cent had shabby huts and only 16 per cent had pucca houses. Fishing villages were marked by their excessive crowding along narrow strips of coastline. Access to drinking water was meagre and sanitary and lighting facilities were abysmal.

As a result of motorisation, the income disparities among the fisherfolk widened over the decade. Yet, despite the high investments, the average earnings of a fisherman were lower than that of a mason; a fishing household's earnings was around Rs 2,717 as against Rs 3,451 for other workers at the state level in 1990. By 1998, as a result of rapid motorisation, there was a reduction in the non-motorised fishing craft. There was also change in the fishing gear. Mini trawls increased from 1,648 to 4,351, which meant that the catch capability increased by 160 per cent. The adverse impact of any trawling operation on a tropical ecosystem is well known. That the coastal people engage in this suicidal activity is a sign of their desperation for no other diversification and no other job opportunities are open to them. It was a question of their livelihoods and their very lives.

## **6. Fish Workers' Movement Begins**

It is in this framework that the fish workers' movement grew in India. All the changes in the fishery, which were basically market induced, had an impact on the coastal people. As some grew richer, a large number grew poorer. Being an open-access system, there was migration into the fishery in some areas and out-migration in others. The problem was that wealth in one section grew at the cost of the other after a certain level of production was reached, as there was competition for the same resource. This meant that sustaining such development in the fisheries was not possible. Wherever these conflicts were pronounced, the base of the movement was strong and demanded state intervention. When catches from the oceans began to decline, the government sought to meet the growing demand through the introduction of aquaculture. This again met with a hue and cry from the coastal people as will be seen in the struggle documented below.

## **The Fish Workers' Struggles**

The new democratic Constitution that independent India gave to herself attempted to shatter the old feudal structure. It had the basis for equality and for a welfare state. India continued to be a largely rural economy, with over 70 per cent of its population eking out a livelihood from agriculture, artisanal trades or natural resources held largely as community property. With the creation of the nation state, the state became very powerful and the rights of local communities over their resources started

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<sup>61</sup> J Kurien, 'Norwegian Intervention', in *Struggle to Survive*, NFF, 1987

diminishing. We have examined this process in the chapter on the Right to Environment. Caught in the dilemma of a fast-growing population and the demands of the democratic process, the state adopted a line of modernisation to enhance production. However, modernisation was expensive and not all could afford it. A natural result of this logic was the development of a small and rich elite, an ambitious and aspiring middle class and over half of the population remaining around or below the poverty line.

The marginalised people did not remain silent. All over, we have seen a number of struggles. What was important about these struggles is that they survived despite the fact that they were not connected to political parties or the trade union movement. Through these social movements, marginalised people called attention to their existence by organising themselves under extremely difficult conditions. They articulated their demands and dreams of a society that would provide space and livelihood for all. In several ways, these struggles question the foundations of a 'growth-oriented' development focus and the logic of modern science.

The fish workers' struggle is one such story.

## The Beginnings of the Struggle

Earlier, we have seen how fisheries were modernised and how this affected artisanal fishery. Faced with the threat to their lives and livelihoods, South India witnessed spontaneous outbursts of protests by artisanal fishermen against the trawl boats that were increasingly fishing in the inshore waters. Such protests were most prominent in Tamil Nadu. The first big reported clash between coastal fishermen and trawlers occurred near Chennai in May 1977, when a few artisanal fishermen also lost their lives. This was a period when Tamil Nadu was under President's Rule and no serious action was taken, despite the fact that the Government of Tamil Nadu, as early as 1964, had issued an order giving exclusive rights to artisanal fishermen upto within three miles from the coast. This was followed by another major revolt in Tuticorin where, by the end of 1978, fishermen had destroyed 11 trawlers in the course of their agitation; 16 fishermen lost their lives in this agitation.

In order to control and study the reasons for the violence at sea, the Central government appointed the Majumdar Committee, which submitted its report in 1978. The main proposal was that Parliament should create a consolidated legislation called the Marine Fishing Regulation, so that the existing dichotomy between the territorial waters (22 km from the coast) and national waters would be regulated. Unfortunately, instead of this being discussed in Parliament, the draft bill was sent to the state governments, where things got stuck and the protests continued.

These protests first took on the form of organised collective action in the state of Goa in 1975. There, the artisanal fish workers were involved in hauling shore seines, or *rampons*, as they were locally called. These bag-like nets, sometimes a kilometre long, were cast out from large wooden outrigger boats and each unit consisted of around 70-100 people. When the operations of this sector were hampered by the trawl boats fishing for prawns that were to be exported out of Goa, the *rampon* owners (*ramponkars*) mooted an agitation under the leadership of Mathany Saldanha, a schoolteacher cum environmentalist. He was able

to rally support from the public by raising the slogan, 'Fish for Goa', 'Save Goa, Save our Beaches'. The struggles of the *ramponkars* took the state of Goa by surprise. With no former history of organisation, the *ramponkars* were able to get large numbers of workers on the streets, as they held command over them, and they got the support of the local people because fish – an indispensable component of the Goan diet – was either becoming scarce or very expensive. This made news all over the country. Not only fishermen, but also large groups of the population, nature lovers and conscious citizens, came out on the streets demanding a ban on trawl fishing.

In the very beginning, the mobilisation of the fish workers was not only a protest against modern technology, which was destroying the fisheries and, therefore, their livelihood, but was also linked up to conserving the 'Goan way of life' and conserving the beaches. But these were new demands and the question was to whom should these demands be addressed? Unable to find any framework or legal basis to oppose trawl fishing, the Goenchar Ramponkarancha Ekvott (GRE) realised that they had to first wage a struggle for a marine regulation and this would have to be done at the national level. The GRE would, therefore, have to find other allies around the country and work out a strategy to pressurise the Indian Parliament to frame a marine regulation. At the national level, this would be a herculean task. There were no parliamentarians who hailed from coastal fishing villages. Those that came from the big coastal cities did not consider fishing an important sector of the economy. Parliament House was located far from any ocean and the generally vegetarian population in the north of the country would not understand the implications of such a demand.

Activists from Goa then took the initiative to contact other fish workers' organisations along the coast and invited them to a meeting in Chennai. There were finally about 30 participants from 13 fishing organisations and all echoed the same issues of conflict between the artisanal and trawl sector and diminishing catches. They decided that they would create a national organisation and make a representation to the Prime Minister. They thus created the National Forum of Catamaran and Country Boat Fishermen's Rights and Marine Wealth. Mathany Saldanha was elected chairman of the Forum.

What followed was a long legislative process that was pursued only because it was accompanied by people's uprisings and protests all over the country. Getting a bill passed in the Indian Parliament is no easy task. There was some support from the left parties and there were finally about 18 parliamentarians who were willing to support the cause. After a 'sit in' or *dharna* before the house of the Minister of Agriculture on July 28, 1978, the Forum was assured that its demands for a marine regulation and some welfare measures for fishermen would be looked into seriously.

In 1979, fishermen's organisations in different states initiated fasts and conducted other public action to pressurise the government to enact the legislation in Goa. The fishermen fasted in relays for 367 days. In 1980, the Forum presented the Central Ministry of Agriculture with a model copy of a marine regulation. The minister agreed that he would act on it without delay. From 1981 onwards, because of the pressure from the fish workers, some states began to formulate and pass Marine Regulation Acts, but the boat owner associations, which were more powerful and better organised, instantly opposed this. Then began a long process of litigation between the states and the fish workers and these struggles and litigation experiences became the schooling ground for the fish workers and their leaders.

## Structuring the Organisation

Structuring the fish workers' organisation was the next step. In this phase and for the decade of the 1980s, it was the state of Kerala that took the lead. The fish workers' protests had already commenced in the 1970s, when one fisherman in a plank canoe was killed by a trawl boat in Alleppey. This resulted in the mobilisation of the fisherfolk around Alleppey under the leadership of Father Paul Arackal. Subsequently, the struggle moved southwards. In the southern part of Kerala, where the struggle gained momentum, the main fishery was a *katamaram* (log raft) fishery, which was very diversified and engaged thousands of fishermen. In labour terms, this was a small operation, consisting of 2-4 fishermen with very traditional and efficient skills, using hooks and a variety of nets and sails and, in some areas, going out for 2-3 days at a time. Women, too, were very involved in the post-harvest fishery, drying, processing and distributing head loads of fish. The majority of the fish workers in this region were Christian. Kerala was the state in which the first project to modernise fisheries took off with the assistance of the Norwegians in the early 1960s. It is also the one state in India where fish is an important part of the population's diet, just like in Goa.

## The State's Response

Following the recommendations of the Majumdar Committee, the Central government directed the states to create a Marine Regulation. Responding to the demands of the fishermen at the state level, the Kerala government issued an Ordinance. This Ordinance was passed as Act 10 of 1981, called the Kerala Marine Fishing Regulation Act, which gave the state government the power to prohibit and regulate fishing activity in order to conserve marine resources and maintain law and order at sea. Immediately after, the state demarcated zones beyond which mechanised craft could operate. These zones were specified in each area, depending on the extent of the Continental Shelf.

In 1981, the Kerala Government announced a ban on trawling, but the ban was repealed within three days. This set the fishermen on fire as they sensed the political tussle in the government and they launched a long struggle, beginning with Father Thomas Kocherry and Joyachan Anthony, a fisherman, going on a hunger fast. This was the beginning of a series of struggles while the government created one commission after the other to study the problem. There was the Babu Paul Committee in 1981, the A G Kalavar Committee in 1984 and the Balakrishnan Nair Committee in 1988 and again in 1989, which finally proposed a ban that would be reviewed after three years.

Detailed suggestions were made for fishery management, which included regulation of the mesh size of fishing nets and limiting of craft (boats) according to fish resource availability. Subsequently, in March 1986, the government issued an order regulating the mesh sizes of mid-water and bottom trawls.

Finally, on June 29, 1988, the government issued an order to prohibit trawling throughout the area along the entire coastline of the state, but exempted the region south of Quilon. It was only on July 2, 1988, following protests by the fish workers, that the government prohibited the use of bottom trawls all along the Kerala coastline, up to the period ending on August 31. But this did not imply that this was a prohibition for the years to come as well. Hence, the prohibitory orders had to be issued each year and that too only after the fish workers protested and demanded it. The periods were not uniform either.

There was another government order on April 24, 1986, that stated that there would be no new licences to trawl boats after August 31, 1986. Again, this regulation did not hold water as the Marine Products Export Development Authority (MPEDA) was the authority that issued licences to boats that fished beyond the territorial waters and so this could not be controlled by any particular state. There was no way also to monitor whether the boats actually did fish beyond the territorial waters or not.

## Consolidating the Base

These years saw the creation of the fish workers' trade union in this sector, which itself was the first of its kind. Kerala had a tradition of organising workers. Workers of all sections, except in the fishing sector, were organised and the concept of workers' rights was well accepted. On the one hand, there was the political space for more mobilisation of workers, but sustaining an artisanal or traditional sector was not within this political space. So, this was another significant breakthrough when accurate data from the sector, compiled by the Programme for Community Organisation, an NGO with its origins in Marianad village, could prove that artisanal fishery was more viable than modern fishery on both economic and social counts.

The process of structuring a political organisation was greatly debated. By this time, as the result of the first spontaneous outburst of struggles, conscious church leaders had also associated themselves with the struggles as they continued to be important rallying points in the fishing communities. While it was clear that the political organisation of the fisherfolk should be independent and free from all party affiliations, the bone of contention was whether it should include fisher people from all coastal communities or whether it should be based on religion, including only Latin Catholic fisherfolk as the majority of the fisherfolk in the southern districts of Kerala are Latin Catholic. What finally took off was the mobilisation of fish workers from all communities and this was gradually registered as a trade union. Those priests who supported the process remained in the trade union; in fact, the first president of the Kerala Swatantra Matsya Thozilali Federation (KSMTF) was Father Jose Kaleekal, a Catholic priest, while Joyachan Anthony was its general secretary.

The union had to prove its strength and this was achieved through persistent struggles, especially hunger fasts and ingenious mass protests during every monsoon from 1981 to 1989. The major demands of the union were transport facilities to the market for women, reduction of market taxes and a ban on trawl fishing in the months of June, July and August.

The protests made the government sit up and take note. It was uncomfortable for the government to negotiate with a union that had no political affiliation. Though the political parties did not support the struggle for a long time, on seeing the massive turnout of people in the demonstrations, they tried to make use of it. Negotiations took place with the union at a round table with all other party 'unions' (unions only in name). Right from its first struggle, the KSMTF realised that the other political unions would appropriate the gains of its struggle, and that was indeed what happened. But in doing so, the party unions which blindly followed a party line were forced to take positions on crucial issues that impacted on the life of the artisanal workers. Although the government, through this watering down of the negotiation process, instituted one study commission after the other, the actual trawl ban – and that too only for a mere 45 days – was first implemented only in 1989.

## Appeasement

The government tried to appease the fish workers' union by sanctioning all kinds of welfare measures. The most significant aspect of the Welfare Fund Act was the stipulation that all those engaged in fish trade should contribute 1 per cent of his/her sales proceeds to the Welfare Fund. This was challenged on grounds of being extortionist and the amount was reduced to 0.9 per cent and the writ was withdrawn. Subsequently, it was again raised to 1 per cent when actual collections were made and the exporters challenged the constitutional validity of the Act itself in the High Court. This was shot down in the High Court, although the High Court did rule that the term, 'trader', had to be defined more clearly. When the exporters refused to make their payments, the Welfare Fund Board went to the Supreme Court. The exporters defended themselves on the ground that they were adding value and what they were exporting was not actually 'fish'. This was again struck down and, in its judgement, the Supreme Court defined the term, 'dealer', and they were obliged to make payments.

## Legal Tug of War

Despite the fact that the pressure built up by the struggles of the fish workers did force the state to enact legislation in their favour, there were always the lobbies of the powerful, in this case the boat owners and the fish exporters, who challenged the state in the courts. In 1986 itself, the boat owners challenged the prohibition on purse seining and trawl fishing on the grounds that this was a violation of their fundamental right to work. The Supreme Court initially responded that the prohibition was only a 'reasonable restriction' and not a total prohibition. Again in 1989, the boat owners went to the High Court, arguing that they were capable of fishing beyond the territorial waters, where the state had no jurisdiction. Therefore, the closure of the harbours in the monsoon months was illegal as it amounted to restricting their passage to their fishing grounds. The court appointed a commission, at the cost of the boat owners, to verify the fishing capacity of their boats beyond the territorial waters as the KSMTF alleged that their boats were not capable of trawling beyond 22 km. The commission included scientists from the Central Institute of Fishing Technology, officials from the Fisheries Department and KSMTF representatives. Despite the fact that some fish were caught, though not by a trawl, the High Court ruled that the crafts were seaworthy to fish beyond the 22 km limit and that the harbours should be opened to them. As there was then no way to monitor the actual fishing operations and as the fish workers continued to protest, the High Court judgement was stayed by the Supreme Court in 1994 on the grounds that there was no monitoring machinery in place and on social justice concerns for the artisanal fish workers, whose livelihood was at stake. Interestingly, the neighbouring states all closed their harbours for the monsoon months and this was not contested as it had become a practice.

Realising that fish catches had begun to fall all over the country by the end of the 1990s and that fish stocks were under severe threat, all the West-coast states in India decided that there should be no fishing in the monsoon months, except for artisanal craft – this meant only craft without any mechanical propulsion. This total ban of mechanically propelled fishing caught the KSMTF on the wrong foot. A union that had been advocating a ban on ecologically destructive fishing in the monsoon months for two decades now had to defend its base, which had also modernised, become highly capital intensive and was using aggressive fishing gear like mini and mid-water trawls and ring seines. As a result, only Kerala could not implement the ban orders in 2002, but the government insisted it would be implemented in the following years.

The end of the 1990s also saw a backswing in the Welfare Fund Act. In 1996, an exporter went to the Supreme Court on the grounds that the constitutional validity of the Act had not been justified by the court. Before his petition was admitted, the exporter was asked to make his tax payment, which amounted to Rs 14 lakh, to the Welfare Fund Board. Only after he had paid the arrears did his petition go before the Constitutional Bench of the Supreme Court with a sitting Chief Justice and four judges. The petitioner pleaded that as an exporter, he did not employ the fishermen and was, therefore, not responsible for meeting his welfare contributions. On February 1, 2002, the Supreme Court said in its judgement that “the state cannot in an Act under Entry 23 of List 111 place the burden of an impost by way of contribution for giving effect to the Act and the scheme made thereunder for the social security and social welfare of a section of society upon a person who is not a member of such section of society. The burden of the impost may be placed only when there exists the relationship of employer and employee between the contribution and the beneficiary of the provisions of the Act and the scheme made thereunder.”

## The International Debate

In 1984, the Food and Agriculture Organization (FAO) organised the World Conference on Fisheries Management and Development. This was a conference that focused on the management of the 200-mile Exclusive Economic Zone as the UN Convention on the Law of the Sea (UNCLOS) had been ratified finally and became binding in 1982. The fish workers had gathered under a separate roof – 100 fish workers and their supporters from 34 countries. As the FAO did not pay any heed to the existence of artisanal fishermen, this was their way of making their presence felt.

The initiative to organise the conference actually came from India, when friends in Rome, who were aware of the fish workers’ struggles in India, sent news about the FAO conference and suggested that the National Fishermen’s Forum (NFF) ask to participate in it. Permission was not granted, the NFF not being recognised as a national trade union, so the Indians decided that the presence of the artisanal fishers should be made visible in other ways. Spontaneously, friends from various NGOs from all over the world rallied together and it was decided to organise a parallel conference of fish workers and their supporters in Rome with John Kurien as the organising secretary.

The open letter to the delegates of the FAO conference read, “You gather here under the auspices of the FAO to formulate and endorse policies which will affect the lives of millions of fish workers. Much of this takes place without their participation. We meet to assert our rights to share the experiences of our life and struggles and to expound our perceptions of fisheries development and to build new links of solidarity and cooperation. The world over and particularly in Third World countries, fish workers do not receive a fair share of the wealth they create. They are victims of development and, in response, have begun to organise to demand their rights.”<sup>62</sup>

This conference, besides creating a forum for the first time for the fish workers from the coastal fisheries of several countries to interact with each other, also made two very significant contributions to the international discourse in fisheries. First of all, it spoke about fish workers and not fishermen. In this way, it highlighted the reality of the southern world in which fishing was still a family occupation in which men, women and children were all involved and where any development of the fisheries had to take into

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<sup>62</sup> International Conference of Fishworkers and their Supporters, Hong Kong, 1984

consideration the development of the whole community. It was clear that the involvement of women in the coastal fisheries is what made it viable and sustainable. Their contribution and spaces had to be recognised and safeguarded. The second important aspect that was highlighted was the viability of the small-scale artisanal fishery. This essentially meant a fishery as a means of livelihood for thousands of coastal people, a fishery that is diversified, environment friendly and not just export oriented. Another important impact was that the fish workers saw the potential of organisation and struggle for their rights and this stimulated a growth of fish workers' organisations in the southern countries.

The important fact was that these positions were taken at a time when the whole world was trying to convince itself that there were large fish resources in the deep sea that the developing countries had no means to exploit and that industrial fisheries and joint ventures were the answer. History revealed that this was a bluff and the same FAO, which provided the leadership to this thinking at the time, changed its position entirely a decade later (in 1994) and tried to lobby for a Code of Conduct of Responsible Fisheries, inculcating many of the positions of the fish workers' conference of 1984.

One of the important fallouts of the Rome Conference was the creation of the International Collective in Support of Fishworkers (ICSF) in 1986. This was in response to the suggestions of the fish workers in Rome, who realised that building up their national organisations was imperative if they were to make any impact on policy making at the national level. For this, they would need support and this should be the task of a supporter group. The initiative to call a meeting of supporters was taken jointly by the Centre for Development Studies and the South Indian Federation of Fishermen Societies in Thiruvananthapuram. Support to the fish workers' organisations could be conceived of in various ways, but in the ICSF, it boils down to an involvement in those issues that national movements think are beyond their ability to tackle single handed and for which an international network would be necessary. This has been the role essentially, which the ICSF has played from its inception. Initially, a totally voluntary endeavour of committed individuals, it created a full-time secretariat in India in 1991 with a liaison office in Brussels. Without speaking in the name of the fish workers, the ICSF also succeeded in ensuring artisanal fish workers' issues a place on the agenda of international forums.

In the late 1990s, the term 'fish worker' was replaced by 'fisherpeople', when the union began to focus on the community dimension of rights to marine resources.

## **The Kanyakumari March**

Towards the end of the 1980s, after a sufficiently long period of action in the southern states, the National Fishermen's Forum (renamed the National Fishworkers' Forum) decided to push for a nationwide mobilisation campaign as fisheries was a national issue and to build up its profile as a national trade union.

The Kanyakumari March, as it was later called, projected the NFF as a workers' movement with wider ecological demands. As the demand for a marine regulation was also essentially an ecological demand, the Kanyakumari March widened the ecological concern as water resources and coastal communities were being threatened in diverse ways, such as industrial pollution, destruction of fish habitats and industrial development of the coastal zone. What also made the news was thousands of women from a coastal community, which was threatened by the proposal to construct a nuclear power plant, joining the rally and

insisting that the NFF take up the anti-nuclear issue as well. This was a very sensitive issue politically and caused the state to sit up and direct its guns at the movement. The final gathering of the Kanyakumari March was ruthlessly disrupted and ended with the police firing at the marchers for no reason.

This mobilisation carried the fisheries issues to the inland areas as well and that created a new spate of dynamics and voluntary action in the movement. From then on, the NFF, with more contacts along the northern Indian east and west coasts, moved into a decade of national struggle.

## **Influence of the Feminist Movement**

All through the 1980s, the feminist movement, which was growing in India, also influenced the NFF. As we have seen earlier, women are active participants in the post-harvest fishery. The division of labour is in many ways complementary, with men fishing and women either processing or selling the fish, transforming it into money and other daily requirements. But no significance is generally attributed to the women's work when 'fisheries development' is talked about. Valorising their contributions to the community and making them visible and protecting their spaces in the fishery was considered an important demand in the movement. This was initially done by taking up the issues that women faced as workers: their right to travel on public transport with their produce, their right to vending space in the markets, protection from exorbitant vending taxes, etc. Later, national struggles were waged to see that women were accepted as workers in the welfare programmes of the government. These struggles certainly gave women a consciousness of their own rights and the fact that, by not asserting them, they could be easily marginalised in the development process.

Several women, who supported the fish workers' movement, were active in the feminist movement, too. In this process, they not only stimulated the participation of women in the fish workers' movement, but also brought new dimensions to the macro-analysis through what was called a 'feminist perspective on fisheries' and a feminist critique of development. This presence of feminists in the movement has not been without its difficulties.

It was feminist thought that highlighted the need to focus on the nurture perspective in the fisheries and introduced this perspective in the movement. This nurture perspective, besides focusing on making women's work in the fisheries visible and protecting their existing spaces in the fisheries, pushed the union to take up issues that related to daily life in the community – water, health facilities, education, childcare, etc. It also opened the thinking and action for conserving fish habitats, protecting the vegetation in mangroves and estuarine niches and recreating destroyed habitat through artificial reefs.

This women's core group also studied and took up the issue of the injustices done to migrant women workers in the fish-processing plants. Under the auspices of the NFF, they organised a public hearing on 'Women's Struggles for Survival in Fisheries'.<sup>63</sup> Live testimonies of women workers in the fish processing plants convinced the jury that serious consideration should be given to protecting the rights of these migrant women workers and the spaces of women in fisheries. Subsequently, the NFF was successfully able to intervene and see that the Department of Labour took the plight of these women seriously and insisted that the processing industry treat these women on par with other contract and migrant labour as per the legal stipulations. Although some states did respond positively, the problem has not been fully solved yet.

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<sup>63</sup> Public hearing on the Struggles of Women Workers in the Fish Processing Industry in India, Samudra Dossier, Women in Fisheries Series, No.1, ICSF, Chennai, 1995

Despite the fact that all these attempts were made to create gender awareness in the movement, there continued to be a resistance to the more vocal and able women leaders who were emerging. The women of the core group were consistently chided and, by the end of the 1990s, most of them withdrew. Nevertheless, the male leaders in the union, either because they were convinced about gender equality or because the general ethos of recognising women's participation was more accepted by this time, took it upon themselves to see that women's issues remained on the agenda. Here again, the men seemed more secure when they talked about women's issues than when the women talked about them. Some state unions have resisted accepting an all-women union as a member of the NFF. The present requirement is that the women's unions should be part of the state federation in order to be accepted.

In 1999, the NFF took up a large national struggle demanding that women be nationally considered as fish workers and get the welfare benefits that fishermen get from the government. In some states, like in Orissa and West Bengal, the mobilisation around the issue challenged the accepted norm that fisheries were a male domain. This took the legislators by surprise. The state had to accept the fact that women also earned their livelihood from fish-related activity. So, as such, the NFF has succeeded in projecting this fact at the national level. It is interesting that the demand for parity of women's representation in the World Forum of Fish Harvesters and Fishworkers also came from the NFF in India and was finally carried through, despite initial resistance from some quarters.

## The Path Ahead

It is clear from the above that no rights to life and livelihood are established without major struggles. The manner in which the capitalist state grows and penetrates all corners of daily life is something that seems to have a momentum of its own with the logic of might is right disregarding people and the environment – or life, to be more precise. Fortunately, the fisherfolk, through the NFF, have been able to wage battles both at the state and national levels and now, through the WFFP, may be able to do the same at international levels, too. Challenging the mainstream concept of development and establishing their right to resources and, thereby, their development, has been the main thrust of their struggles. Unfortunately though, winning legal battles does not mean that the real battle has been won. The NFF has not really been able to take advantage of the legal battles that it has won, namely the ban on night trawling and the ban on purse seining. Getting such judgements enacted in practice has not been easy administratively. When the state is the violator of people's rights, then the state certainly does not have the political will to implement the decisions of the court and finds all possible excuses to nullify such decisions. This has become a bigger task in this era of globalisation and liberalisation and, with the Indian state well entrenched in this logic, the fish workers and other sections of the working class will have a tremendous battle to fight for their survival. Simultaneously, as all unions are forced to respond to their own members, it is obvious in this case that the NFF also carries with it this pressure to become more capital intensive, thereby becoming a pressure on the resource itself.

The situation that has prevailed since the 1990s is vastly different from that in the earlier decades. Most of the commercially valuable stocks are overfished, leading to both biological and economic overfishing. Even so-called scientifically managed stocks have collapsed. Modern economic theory, which puts the market at centre-stage, has seen the ruin of world fisheries. The rights to life of the disadvantaged still have to be

fought for and, in this era when people's rights are citizens' rights, the right to life, which is a universal value, has to be fought for in the context of the nation state. It is for this reason that it is the United Nations, and not the World Trade Organization, that is the prime organ for mediation on access rights to natural resources.

Upholding the basic right to livelihood becomes a more complex task increasingly as power games penetrate the economy more intensely and natural resources become scarcer. It also becomes clear that human rights are indivisible and the basic right to be human is the focus. Basically, the fish workers' movement is making a plea for an alternative development paradigm, which focuses on the following:

- Rights over resources to be bestowed on the people who work and draw a livelihood from them;
- A development process that is sustainable, which implies that technology is at the service of humans, respects natural cycles and does not displace people;
- Social processes that are democratic and participatory so that men, women and children may have their rightful space to grow as human beings, and
- Diversity rather than uniformity manifests the wealth of humanity.

The demands for these different rights in the fish workers' struggle have, therefore, to be accompanied by nurturing seeds that will give rise to an alternative.

Several questions rise in the context of people asserting their rights over resources. In this case, whose rights are we talking about? Rights also imply duties to conserve resources. How will users negotiate these rights and duties? In the context of a weak state apparatus, to whom can such marginalised people appeal to safeguard their rights?

Hopefully, in the not too distant future, some answers will be found and the rights of the unprivileged will be protected.





# THE RIGHT TO INFORMATION

*By Aruna Roy et al.*

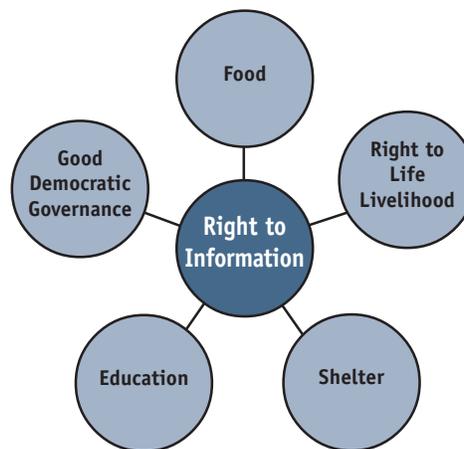


Photo credit: Mamish Chauhan

## 10. THE RIGHT TO INFORMATION

Like the earlier chapter on the rights of fish workers, this chapter on the right to information is also in the form of a narrative. The fact that this right has been recognised as a human right is surprising because nowhere has it been mentioned in international or domestic law as a human right. The recognition of the right to information as a human right is a testimony to the long struggle of dedicated people.

The right to information is an important piece of the history of human rights in India. It is a story of the triumph of democracy among the rural poor in Central Rajasthan.



You have perhaps heard of the term, ‘information technology’. The right to information is very different from information technology. The right to information is the right to know about key conditions affecting oneself. In the course of this chapter, we will see how the right to information has impacted all these rights and more of the people of Rajasthan, who were part of the struggle. This chapter is the story of their struggle.

### Introduction

#### What is the Right to Information?

The right to information is the right of every citizen to be informed about information relating to every matter that may be of personal concern, or that may affect the public interest. This begins with the right to cast a vote, which would be meaningless without the right to have full information on the basis of which an informed choice can be made. It extends to citizens’ wider participation in a decision, which is only possible when there is complete and open access to all the information related to the decision. Access to information is, therefore, an essential element of democratic government. That is, for democracy to flourish, citizens must be adequately informed about the operations, policies and decisions of all the institutions that affect their lives.

The importance of the right to information (RTI) has been acknowledged implicitly in the Indian Constitution under Article 19 (1) (a) enumerating freedom of expression as a fundamental right. The Supreme Court of India has elaborated on this in the *S P Gupta* case,<sup>64</sup> where the court has emphasised the scope and importance of the right:

<sup>64</sup> *S P Gupta vs Union of India*, 1981 Supp. SCC 87

“Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their government is doing.”

Transparency and the right to information are, therefore, twin requirements for fostering an open democracy.

### **The Characters in the Story**

The Mazdoor Kisan Shakti Sanghatan (MKSS) is synonymous with the right to information struggle. Formally constituted on May Day, 1990, it consisted of a mixed group of people united to work for a common goal.

Let us take a look at the main characters in this drama:

**Aruna Roy:** A former officer of the Indian Administrative Service, 1968 batch, now working with the Social Work and Research Centre (SWRC), and wife of Bunker Roy;

**Sanjit Roy:** Better known as Bunker Roy, founder of SWRC, a voluntary organisation, and husband of Aruna Roy;

**Shankar Singh:** A local young man and SWRC’s ace communicator, a homespun genius – barefoot, in SWRC terminology;

**Nikhil Dey:** A young man educated in the US, who joined to work on finding a path to social change beyond the road of rural development;

**R N Mishra:** An English teacher at a government school in Bhim, and

**Mot Singh, Chunni Bai, Lal Singh,** his mother, **Bhuriya, Bhanwar Singh, Tej Singh, Chunni Singh** and several others: Ordinary peasants and rural labourers.

### **The Story**

Sohangarh lived under the terror of Hari Singh, who, despite ceiling laws, still controlled large areas of land. He levied a personal fine on the villagers for trespassing if they grazed their cattle or collected firewood from the village grasslands that were illegally controlled by him.

The villagers decided to corner Hari Singh by identifying a piece of land in his illegal possession and getting it out of his control. One day, there was an announcement that the sub-divisional magistrate (SDM) of the area would hold a court there as part of a programme of the state government. Quickly, a 25-hectare piece of the village grazing land was identified and details of the land, such as the plot number, got from a cooperative Patwari (the person who kept the records).

The SDM ruled that the land did not belong to Hari Singh. This helped the villagers to combat his power, but there were still two problems to tackle: To bring the land directly under the possession of the local people and to take care of the division in Sohangarh between Hari Singh’s supporters and those trying to liberate themselves from his feudal grasp.

To solve these problems, a women’s cooperative was set up in the village and the land was allotted to it for forestation. The villagers cooperated to quash the power of Hari Singh’s supporters. A small forest now stands within an enclosure of barbed wire on that piece of cooperative land.

## First Phase of the Jan Sunwais, leading to the Right to Information Law

The major milestones in the right to information movement were the Jan Sunwais or public hearings, where people could express their opinions on a particular matter. Each Jan Sunwai built on the experiences of the previous ones and helped to take the RTI movement forward. There were other milestones, too, as we will see, but most of them are a direct result of the Jan Sunwais.

### The First Public Hearing: Kot Kirana

An underpaid villager came to the MKSS in August 1994, complaining of the manipulation of muster rolls (list of workers) and corruption in development works. On his complaint, the MKSS approached the Block Development Officer, Nirmal Wadhvani, a young probationer of the Indian Administrative Service. Wadhvani conducted an extensive enquiry. He went from village to village and got people of the area to look into the muster rolls. He cross-checked with them the vouchers of the construction work, which had been undertaken in the Panchayat. The enquiry exposed the corruption of the Gram Sewak (Panchayat secretary) and the Junior Engineer, who had misappropriated the funds of the Centrally sponsored Desert Development Programme.

The people of Kot Kirana Panchayat became very angry at this campaign to suppress evidence and cover up corruption. As far as official and legal proceedings were concerned, the police did not take any action.

When no action was taken, the MKSS and the people of the area thought of a novel idea, a Jan Sunwai, or a public hearing, as a mode of bringing the matter out into the open. The public hearing was a public debate with and among the local villagers on the 'development' being carried out for them

Held on December 2, 1994, the first Jan Sunwai looked at small development works executed in 1993-94 in Kot Kirana and Bagdi Kalaliya Gram Panchayats. Unlike some later Jan Sunwais, no government official was present to put forward the official point of view.

The muster roll (the official record of names and payments made to them of those employed on a particular site) was read out in public before hundreds of people. Outraged people testified that they had never gone to those work sites, that false signatures had been used and that there were names on the muster rolls of people dead and gone, and others unheard of. Similarly, the bills referred to a completed Patwar Ghar, which was not there!

The culprits were a retired teacher, Moti Singh, who had entered the names, the Gram Sewak, who had made the payments, and the Junior Engineer, who had certified that the work was done and payments made in his presence. The people also spoke out against the former deputy speaker of the Rajasthan Vidhan Sabha, who had camped in the village prior to the hearings, trying to intimidate the villagers into changing their statements against the accused.

Eventually, an official First Information Report (FIR), or complaint, was lodged with the police.

## The Second Public Hearing: Bhim

The Bhim Jan Sunwai followed within a week of the first public hearing, on December 7, 1994. It was presided over by a noted progressive poet of Rajasthan, Harish Bhadani. This Jan Sunwai, too, followed the same process of reading out details from government records, like bills, vouchers and muster rolls, relating to rural development work and getting people's feedback on them. A lot of preparation went into the Jan Sunwai, with MKSS activists, along with the local people, inspecting work sites. People spoke out freely in the Jan Sunwai, undeterred by the fact that it was held in front of the Block Office. Like the Kot Kirana Jan Sunwai, the Collector and other government officials were absent, except for the Tehsildar, who stayed just for an hour.

An FIR regarding the irregularities detected in the Jan Sunwai was lodged with the Bhim police.

## The Third Public Hearing: Vijaypura

Held on December 17, 1994, the third Jan Sunwai at Vijaypura was attended by nearly 500 villagers from seven local Panchayats. The chief discovery here was a scam which was narrated by *anganwadi* workers of the Integrated Child Development Scheme, involving two supervisors who had taken bribes and pilfered goods and medicines worth Rs 14 lakh.

A fraudulent public auction was also exposed in which Panchayat pastures worth more than Rs 70 lakh had been auctioned off dirt cheap. The villagers testified that none of the 800 people who were supposed to have attended the public auction had actually done so, although many of their signatures had been forged to show attendance. None of the government officials concerned were present to offer their viewpoint, although Aditi Mehta, a Rajasthan cadre IAS officer, attended the Jan Sunwai in her personal capacity. *Lokayan* editor and social activist Vijay Pratap presided. Apart from the villagers of seven nearby Panchayats, people from other places also attended the public hearing. After the Jan Sunwai, an FIR was lodged about the land auction scam. An administrative inquiry into the *anganwadi* irregularities was also conducted against the supervisors.

## The Fourth Public Hearing: Jawaja

A qualitative change occurred between the third Jan Sunwai in Vijaypura on December 17, 1994, and the fourth Jan Sunwai in Jawaja in Ajmer district on January 7, 1995. What had started out as a quick campaign for the social audit of development expenditure at the Panchayat level through four planned public hearings, began etching out the battle lines for a prolonged fight for the people's right to information during the run-up to the fourth Jan Sunwai.

As MKSS activists, armed with the orders of the Ajmer district collector to make available to them copies of documents relating to development expenditure, went around seeking records of development works in the Panchayats of the area, the Gram Sewaks refused to comply. They said they were prepared to submit these records only for a government audit, not to the people.

People began saying that by this, the petty Panchayat officials were merely confirming their corruption. Reading these grass-root signals, the Gram Sewaks all over the state became even more alarmed. A delegation of the Gram Sewak Sangh or the association of Gram Sewaks in the state met the development commissioner of Rajasthan to protest against being asked to share information. This reaction transformed the demand for transparency of development expenditure at the local level into a statewide issue of the people's right to information.

Even though people's access to official records relating to rural development expenditure was effectively blocked, the Jawaja Jan Sunwai did take place on January 7, 1995. People from seven Panchayats came up with a plethora of information. The sheer authenticity of the people's information proved so strong that within two days of the hearing, pilfered money began to be returned to individuals and the communities, which had been cheated squarely by the Panchayat functionaries. For instance, five Dalit families of Jalia Peethawas, who had testified in the Jawaja Jan Sunwai that their Gram Sewak had taken a cut of Rs 1,500 from each of them for their Indira Awas housing grant of Rs 9,800 each, got the amount back within 48 hours of the hearing. The Gram Sewak visited them at home to return the money.

Pressurised on one side by the Gram Sewak Sangh and on the other by the MKSS, the Ajmer district collector referred the matter to the state government for a decision. By doing this, he unwittingly brought to a head for the Rajasthan Government the twin issues of the people's right to information and the social audit of development expenditure, which would be fought out and debated between the people and the three tiers of government at the local, state and national levels in the next few years.

### **The First Step by the Government: Chief Minister's Announcement**

The MKSS wrote to the government, demanding that information should be made available to everyone and threatened to launch a statewide agitation if the government succumbed to the pressure of the Gram Sewaks. No reply was received.

Yet, on April 6, 1995, a prominent regional daily of the state, the *Dainik Navjyoti*, carried a report of the then chief minister, Bhairon Singh Shekhawat, promising to give the people the right to information with respect to all affairs of the Panchayati Raj institutions in the state assembly the previous day. The salient points of the chief minister's promise were:

- Transparency regarding development works carried out by Panchayati Raj institutions since 1990;
- Accessing photocopies of bills, vouchers and muster rolls and other records related to rural development expenditure on payment of photocopying charges;
- Instituting an enquiry wherever fraud was detected, and
- Punishment of the guilty and recovery of embezzled funds.

This spurred the MKSS to hurtle into a campaign for a legislation on the right to information.

## **Fifth Public Hearing: Thana**

It was against this background that the Thana Jan Sunwai on April 25, 1995, became the first public hearing to be conducted with the active support of the elected Panchayat functionaries, in this case, the newly elected Sarpanch Ladu Singh and his colleagues. Ladu Singh still faced difficulties in getting hold of the records relating to development expenditure in his Panchayat during the past five years.

The reasons for the administration's reluctance to share information with the people became clear. For the first time, government officials were present. The junior engineer and the Gram Sewak were pointedly asked about the bribes they had taken. Even government employees like the village school teacher spoke out openly to validate the facts showing misuse and misappropriation of development funds.

The popular demand for the return of the money stolen from the village community or individuals and the public shame that sometimes forced public functionaries, elected or permanent, to bow to it were there. The irony was that in due course, the MKSS was forced to disown Sarpanch Ladu Singh for his association with some organisation workers who were found to have pilfered money from a shop that the MKSS ran under the government's Public Distribution System.

## **Beawar Mass Meeting**

It was a mass meeting in Beawar on September 25, 1995, that publicly marked the stepping up of the campaign to make the right to information a legal entitlement of the people. More than 2,000 people, mostly poor peasants and workers from villages, from all over Rajasthan, for the first time in the course of the campaign, gathered and made this demand. More than 30 speakers, speaking on behalf of workers, representatives of mass organisations and voluntary organisations, ex-bureaucrats, journalists, doctors, intellectuals, trade unionists and elected representatives of Panchayati Raj institutions lent their support to the demand.

The main MKSS spokesperson, Aruna Roy, was invited along with her colleagues and other individuals from different professional backgrounds, to deliberate on putting into operation the people's right to information. These deliberations culminated in the framing of the first draft of a bill, produced unofficially, on the subject following a meeting in October 1995.

## **Beawar Dharna**

A day after one year of chief minister Shekhawar's announcement in the state assembly, the MKSS started an indefinite dharna, or sit in strike, on April 6, 1996, in Beawar to press for its implementation. The dharna was preceded by the MKSS issuing a notice to the state government on April 2. With the parliamentary elections at hand, the government issued an order on the very first day of the dharna, giving citizens the right to inspect all documents relating to development works executed by the Panchayat bodies. Not fully satisfied with the order as it did not meet the demand for granting the right to obtain photocopies of such documents, the MKSS continued with the dharna.

It was a dharna quite unlike those that the small town of Beawar had witnessed thus far. Here was a big

group of poor villagers not raising any sectarian demands. They were demanding a right for society as a whole. The dharna was alive with songs, puppet shows, street plays and talks continuously communicating the message of the agitation. The vitality of the dharna soon embraced the whole town and Beawar extended it wholehearted support and solidarity.

## Jaipur Dharna

The Beawar Dharna drew widespread support from various non-government organisations (NGOs) and mass-based struggle groups in Rajasthan. The MKSS began a dharna near the secretariat in the state capital of Jaipur at the end of 30 days of the Beawar sit in. After more than five weeks of relentless agitation by the MKSS, the state government announced that it would set up a five-member committee to suggest ways to implement the chief minister's announcement on the right to information made in the state assembly more than a year ago. After running for 40 days in Beawar and 10 days in Jaipur, the dharna was lifted on May 16, 1996.

## Report of the Committee

It took two months for the state government to constitute the Arun Kumar committee, which finally submitted its report on August 31, 1996. Ironically, the report of the committee was made secret as soon as it was submitted, its copies not even left with its members for fear of leakage to the Press. The MKSS later obtained the report through informal channels. The recommendations of the committee are summarised here:

- Certified photocopies of relevant information should be made available;
- Where no photocopying facilities are available, handwritten, certified true copies of the documents should be provided;
- Photocopier machines should be installed by the government or by the private sector on a priority basis;
- The following are entitled to receive information:
  1. A resident of the area
  2. An elected representative of the Panchayati Raj bodies
  3. An MLA or MP of that area;
- Information up to the last three years should be made available;
- Fee should be at least Rs 5 per page, and
- NGOs taking funds should also be audited and share information about their activities.

## Formation of the National Campaign for People's Right to Information

The Press Council of India, a statutory body, was involved in these efforts. On July 20 and 21, 1996, the MKSS and the Press Council of India held a joint meeting in Jaipur, in which prominent persons, including chief

minister Bhairon Singh Shekhawat, participated. There was a discussion on the details of the draft Right to Information Bill prepared at the workshop held at the LBS Academy, Mussoorie, the previous year with a view to improving it and submitting a viable draft bill to the Central government. This was followed up with a similar, but bigger, meeting called in Delhi on July 31 and August 1, 1996.

This was called the Press Council Draft Bill on the Right to Information. It was later revised at a workshop hosted by the National Institute of Rural Development and was thereafter called the Press Council-NIRD Bill. The Centre appointed the H D Shourie Committee, which finally produced its own draft Freedom of Information Bill, now being considered by the Parliament. Several state governments, beginning with Tamil Nadu and Goa in 1996-97, produced their own Right to Information laws.

## Jaipur Dharna Two

As the Arun Kumar Committee Report was made secret by the Rajasthan Government and its implementation blocked, the MKSS decided to launch a fresh agitation in February 1997.

This phase of agitation saw dharnas, each a few days long, in all the five divisional towns of the state. The dharnas were lifted after the state government conceded the MKSS' major demand of making available on demand to citizens photocopies of all records of Panchayati Raj bodies, including bills, vouchers and muster rolls of rural development works carried out by them.

The MKSS received more than it had asked for, including display by the government at Panchayats/Panchayat Samitis and work sites details of sanction and expenditure of construction works carried out by Panchayati Raj bodies. Being in the rules of the Rajasthan Panchayati Raj Act, these provisions had the legal status no executive order of the state government could have.

## The Second Phase: Operationalising the Law

In the first phase, we saw how through public hearings, dharnas, etc., the right to information was finally recognised by the state. In this sub-chapter, we will see the developments that took place to put this right into action and to strengthen the base of the right.

The MKSS wanted to test the newly introduced right to information provisions in the Panchayati Raj Act in the state.

## Kukarkheda Public Hearing

This covered the Panchayats of Kukarkheda, Barar and Kushalpur. Sarpanch Basanta Devi of Kukarkheda announced she would return Rs 1 lakh, the amount she confessed to having embezzled. She also did not resist giving photocopies of the documents for which the MKSS activists had asked.

The Barar Panchayat experience was the opposite. Sarpanch Asha Devi of Barar did not cooperate at all in providing information. Rather, she threatened Laxman Singh, who was involved in trying to access these documents.

## Surajpura Public Hearing

Surajpura saw two Sarpanches owning up to responsibility for corruption in development works and agreeing to return money that had been misappropriated. A high point in the public profile of the Jan Sunwais was the arrival of and address by the former prime minister, Vishwanath Pratap Singh, at the Surajpura Jan Sunwai.

## Bori Public Hearing

This was held in a year that saw both the government and the MKSS interacting to get a new right to information law enacted in Rajasthan. With both the district collector and the superintendent of police present at the Jan Sunwai, the new turn in the administrative orientation was amply evident as this was the first time such senior administrators had actually become part of a Jan Sunwai. A Dalit Sarpanch, Pyarchand, had approached the MKSS when he realised that he was being taken for a ride by a small, upper caste coterie who had him elected to the reserved post in order to manipulate him for their own benefit. In the four years of his office, Pyarchand never knew what he was signing. The Bori Public Hearing has important lessons to offer. First, complete transparency is the best defence against blackmail and manipulation. Second, reservation as a means of empowerment is inadequate without any corresponding support structure.

## Bhim Public Hearing

Some startling instances of corruption were exposed in the Jan Sunwai, of which a case of non-payment of minimum wages grabbed most of the attention. Women workers on a work site were paid as little as Rs 8 per day. All the cases of corruption unearthed in the Jan Sunwai were put up for social audit in their respective Ward Sabha meetings in May. The Ward Sabhas also passed resolutions recording these cases of corruption and forwarded them to the state government for action, but in vain. Nothing happened.

## Janawad Public Hearing

Held on April 3, 2001, it was the people of Janawad who took the initiative of following up with complaints regarding cases of corruption levelled against ex-Sarpanch Ramlal, during his tenure from 1994 to 1999. With a lot of high-level political backing, Ramlal still had a stranglehold over the new Panchayat, which was now headed by a woman, Bhuri Bai. The available records and the subsequent Jan Sunwai revealed corruption on an unprecedented scale and explained why there was so much resistance in the system to parting with the records. Though the local collector and the superintendent of police chose to abstain from the Jan Sunwai (the district administration was represented by lower ranking officers), a high-ranking Government of India official, Sudha Pillai, joint secretary in the Rural Development Ministry, was there on the panel. To cut a long story short, under pressure from the unprecedented mobilisation for the Jan Sunwai, the high profile of the case and the widespread national media coverage, the police arrested those involved.

Meanwhile, in response to an MKSS representation to the chief minister, an inquiry committee was set up to look into development works. The committee was headed by Bannalal, a deputy secretary and known for his integrity. The committee's findings include nearly every kind of corruption that is possible in development works in a Panchayat.

## Conclusion

The right to information is a crucial right in itself. Its recognition as a human right of every citizen of India has had a great impact on other rights as well, as agitations and cases have shown.

## The Right to Food Agitation

In the context of the fourth successive year of drought in Rajasthan, the effect of the right to information made the state part with information at various levels with respect to famine relief works, food for work programmes and various other state and Central schemes related to employment and food security.

## Atrocities against Women and Human Rights Violations

The Government of Rajasthan suffered from an attitude of public denial on the issue of increasing crime against women. Women's rights and human rights groups found it difficult to prove the atrocities and had no facts to establish either the increasing vulnerability of women to violence or the role of the police in manipulating the subsequent investigations. They were refused information and data on the point. This changed after the right to information was recognised.

After much public agitation against the attitude of the government, the state government set up a forum of dialogue and information sharing with the women's rights and human rights groups under the chairmanship of the home secretary. This forum met on a monthly basis. The success of this forum resulted in similar forums being set up at the district level. Today, the message is clear that the police and police stations have to be transparent, accountable and provide information to the people. This has had a good impact and resulted in improved police accountability even with regard to cases of general human rights violations and custodial crimes.

Transparency and openness, like freedom, are complex, evolving concepts with unlimited boundaries and universal attraction: After all, we all want to know. The most effective steps to take would be to arrive at a common understanding of the basic principles of transparency, openness and the right to information.

The right to information covers such a wide canvas that there can be a whole range of people interested in promoting its use. Some points must be kept in mind while attempting to understand the efforts to access information. These are:

- Who is seeking information? From whom?
- Who frames the questions?
- What is the purpose for which information is sought?
- What is the benefit expected from the answers?
- Are the questioners transparent and open?

- Is the information obtained then put in the public domain? Or is it collected for use for a different purpose?
- Can the information be directly understood and used by ordinary people?
- Do the questions foster more open and democratic debate?

Having an effective access to information law is important as it gives far greater space – in particular to individuals or small groups – to use the law. However, far more critical is the understanding amongst people that such access is necessary. It is this motivation that will push people – even individuals or small groups – to take on genuine struggles for information, which may grow into larger people’s movements. These movements will obviously be more capable and equipped and committed to effectively mould and overcome the stumbling blocks in the existing social, political and legal framework. Otherwise, even a progressive law will not be very effective.

The results of the Rajasthan campaign have been unexpectedly dramatic and the impact has been far reaching. It began as a small local struggle and grew in both scope and area as a wide variety of people and organisations began to contribute to it and strengthen it in their own way. However, an issue like this has a long gestation period, and there is already enough evidence from other parts of the state and even India to show that the idea has taken root amongst various individuals and groups who can see that the right to ask questions and demand answers is one of the critical first steps in their various struggles.

As the legal entitlements were obtained, it became clear that the law was only part of the battle won. It was only through sustained public pressure that the law could be implemented even in select areas. The fear of potential public exposure has deterred the kinds of brazen corruption that were commonplace until very recently.

The public hearing itself was used strategically and periodically as a tool/platform/mode. This was accompanied by a series of sustained action and pressure. Apart from the meticulous preparation required for the public hearing itself, a combination of various campaign strategies and follow-up action was just as critical to the process.

We now have Right to Information laws in many states. This has been a hard-won right and we must strive to preserve it.



