

# HUMAN RIGHTS AND HUMAN DEVELOPMENT

# INDIA



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## INTRODUCTION

India of 1999 projects a picture of confusion and contrasts - from too many contending forces, not the least of which are opinions representing polar opposites – within and outside the country. One point of view finds that only the word 'revolutionary' can capture the nature of the transformations that have swept the people and the complex social institutions since Independence - through the operation of a vibrant democracy. Defying the gloomy foreboding of many India 'experts', democracy in India has proved to be not only stable, but capable of accommodating a growing consciousness and assertion of rights by the people. The Constitution of India completed 50 years and its institutions have achieved legitimacy.

The new Commission constituted by the present Union Government at the Centre is not expected to alter its basic structure: -

- q because the ruling government is a coalition of parties with disparate ideologies and aspirations;
- q because many members of the coalition along with the opposition parties have reaffirmed their faith in the Constitution; and
- q the Indian electorate has so far given little indication of its loss of faith in the present Constitution. If voting participation is viewed as an indicator of democratic advancement, then India compares very favourably with many western democracies.

Table 1  
**Voting Percentage in Lok Sabha General Elections (1984-1999)**

Year	Total	Male	Female
1984	63.5	68.1	58.6
1989	61.9	66.1	57.3
1991	56.9	61.5	51.3
1996	57.9	62.0	53.4
1998	61.9	65.7	57.8
1999	59.8	N.A.	N.A.

(Source : The Election Commission of India, Govt. of India, New Delhi)

Table 2  
**Vth and XIth Lok Sabha – Voting Percentage**

	1971	1996
Average	55.2	57.9
Women	49.1	53.4
Educated	61.2	52.9
Illiterate	51.7	58.4
Tribal/Muslim	48.5	57.0
Scheduled Castes	55.5	60.0

(Source : The Election Commission of India, Govt. of India, New Delhi)

These figures indicate that socially deprived, the people regarded as the 'weaker sections' in India have come to realise the value of their vote and are determined to exercise their rights.

Elections are, by and large, free and fair, though money and muscle power exert some influence, and traditional institutions of kin, language, caste, religion and ethnicity remain important political forces. Contrary to the dominant expressions of gloom among the business and professional elites, elections are welcomed by the people for many of whom they offer both excitement as well as possible increase in earnings. Posters, flags, buntings, public transport, microphones and pandal suppliers, caterers, and a host of other small producers of goods and services actually make large earnings during all elections at the national, state or local levels. The media – print and electronic – which convey gloomy warnings about political instability and frequent elections being non-productive expenditure - which the country cannot afford at present, also collect a substantial share of the profits after meeting their major investments in opinion polls.

External manifestations of political power – in life styles, marriage celebrations and occasional use of criminal elements – not altogether unknown in other democracies – provoke furious debates but political analysts find solace in the negative role of the incumbency factor in successive elections, especially at the state and local bodies level.

The Indian Constitution aimed at a democratic welfare state and a social order in which 'justice – social, economic and political' - 'shall inform all the institutions of national life' (Article 38). The task of balancing rights and freedoms of the people and the Directive Principles of state policy was left to the political process and the judiciary. The Directive Principles provided guidelines for the future social, economic and political transformation. Though described as 'non-justiciable', they were 'nevertheless fundamental in the governance of the country' and it was the duty of the state to apply them to making laws (Article 37). Civil Society, therefore was expected to play an important role in making the directive principles enforceable. During the second half of the republic's life, however, the Supreme Court has occasionally lent its weight to enhance the relative status of the Directive Principles – for instance in translating the Directive Principle regarding primary education into a part of the fundamental right to life, or making legal aid a necessary part of the right to a fair trial and personal liberty.

It is interesting to note, however, that textbooks on the Constitution tend to ignore the political dynamics promoted by the Directive Principles, focussing more on the rigidity of the structures and institutions. For the 'uneducated and uninformed' majority, however, elections and movements have remained the basic channels of expressions – of their dreams and their anger, their expectations and entitlements. Occasional demonstrations of sensitivity to these shifting contours of public opinion have undoubtedly enhanced the political prestige of the higher judiciary and encouraged - if only intermittently - judicial activism.

In the pre-independence period, most educated Indians, including a large section of the national leadership believed that education, economic development/modernisation, legislative intervention and the operation of democracy would be the prime movers

after independence to eliminate structural and institutionalised inequality within Indian society. The towering personality of Jawaharlal Nehru with his faith in planning and a 'socialistic pattern of society' dominated the political and cultural scene. Some early protests by radicals were crushed and a majority of the participating electorates agreed with the ruling elites that after the destabilisation and human misery experienced during the partition, an assumption of all major responsibilities by a person of Nehru's stature was the best thing for India.

The Nehru era ended in the early 1960s, and from then onwards dissenting voices within and outside political parties began to be heard. They spoke with many voices, but the common theme was that the bulk of the people had remained outside the reach of education or legal instruments, and were becoming the victims of economic modernisation and development - losing many other 'traditional support systems' but without getting access to the new ones. Extreme poverty, malnutrition and inequalities were increasing, even while the expanding middle class in urban and rural areas were 'beneficiaries' of the changing processes.

An important section of the 'beneficiaries' were social scientists in a rapidly expanding higher education system, who could generate and mobilise official data through their research, and engage in sharp debates on estimates of increasing poverty, malnutrition and socio-political inequalities. India's social scientists led the way nationally and internationally in identifying the negative fall out of the 'golden years' of the international economy, demanding policies of distributive justice at global as well as national levels. Some of them did not hesitate to challenge the increasingly top heavy education system (which they served) as responsible for eating up the bulk of national resources available for education, depriving the majority of the poor of their right to free, compulsory primary schooling promised to them by 1960 under the Constitution and accused unequal political power of the 'vocal middle class' for tilting the balance against the claims of the poor. (A.K. Sen, Lal Bahadur Shastri Memorial Lecture, 1966).

Similar critiques came from scholars engaged in examining the unequal distribution of health care, employment or livelihood resources. Centralisation of national resources and growing regional disparities in economic and social development fuelled the demand for increasing autonomy by state governments and the monopoly of electoral support enjoyed by one national party received increasing challenges - climaxing, by the mid-1970s, in the declaration of national emergency (i.e. virtual suspension of democracy) by Indira Gandhi.

The critiques were not confined to a minority of individuals. A series of national investigative commissions and committees, examining problems in education, health care, labour, employment and unemployment, the status of women etc. reflected substantially much of the social discontent and the critical voices coming from different corners of the country. These public documents with the processed data and analysis that they contained were used most successfully through the 1970s by forces of democracy, which ultimately ended in the massive defeat of Indira Gandhi's government in March 1977. They also assisted new people's movements and struggles that have made India's democracy so vibrant as well as complex.

Rights Discourse within the Legal System:

## A Post-Emergency Phenomenon

The key word propagated by the emergency government was discipline. The political mobilisation was for enforcement of the rights guaranteed by the Constitution, and also for a more liberal interpretation of these rights - demanded by political parties suppressed during the emergency and a new wave of people's organisations and movements – bringing new actors on the political arena.

### The Mathura Case and Amendment of Rape Laws, 1979-1981

When the Supreme Court acquitted two police constables convicted by the Maharashtra High Court for having raped a tribal girl called Mathura\*, four law professors – Upendra Baxi, Lotika Sarkar, Raghunath Kelkar and Vasudha Dhagamwar - issued an Open Letter to the Chief Justice of India – pointing out inadequacies not only in the provisions of the Indian Penal Code, but in the judicial proceedings and the attitude of the judges. Condemning this "extraordinary decision sacrificing human rights in the Indian law and the Constitution".... the letter emphasised the social context, "the young victim's low socio-economic status, lack of knowledge of legal rights and lack of access to legal services, and the fear complex which haunts the poor and the exploited in Indian police stations".

The letter raised fundamental questions: "must illiterate, labouring, politically, mute Mathuras of India be condemned to their pre-constitutional Indian fate?... "Nothing short of protection of human rights and coconstitutionalism is at stake" ( SCC Journal, Vol. 4, p. 17,1979).

A campaign in the Press followed, led by some legal correspondents, and ex-students of some of the professors. The spontaneous spread of the agitation by old and new organisations of women and civil rights groups in major cities forced the government to request the Law Commission to undertake an urgent study of the rape laws and eventually led to the Criminal Law (Amendment) Act of 1983, prescribing a differential treatment of 'custodial rape' : (a) by transferring the onus of proof of innocence to the accused rather than victims; and (b) through a mandatory minimum punishment seeking to uphold two basic constitutional ideologies: (i) that the Indian republic requires higher accountability of the public services; and (ii) that equality before the law becomes meaningless unless the courts take into consideration socio-political inequalities that generally affected victims in such cases.

Demand from women's organisations that evidence regarding the women's previous sexual history or character should not be admitted have not persuaded the Government to change the law, resulting in the provision against cases of 'custodial rape' ineffective in many cases (Premchand v. State of Haryana) despite protests. The demand from a section of young feminists that the onus of proof on the accused should be adopted as a general principle in all cases of rape was, however, resisted by the authors of the letter, as an inappropriate power to be handed to the state.

While the post-emergency government repealed amendments that promoted authoritarianism, one which was retained was the Constitution (Forty Second Amendment) Act, 1976, which laid down fundamental duties of citizens. These duties (Art.51-A) were again not to be enforced by any court but were to be monitored and internalized by civil society. They were:

- q to abide by the Constitution and respect its ideals and institutions, the national flag and the National Anthem;
- q to cherish and follow the noble ideals which inspired our national struggle for freedom;
- q to uphold and protect the sovereignty, unity and integrity of India;
- q to defend the country and render national service when called upon to do so;

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\* Tukaram v. State of Maharashtra

- q to promote harmony and the spirit of common brotherhood amongst all the diversities;
- q to renounce practices derogatory to the dignity of women;
- q to value and preserve the rich heritage of our composite culture;
- q to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- q to develop the scientific temper, humanism and the spirit of inquiry and reform;
- q to safeguard public property and to abjure violence;
- q to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.

It is surprising that the rights discourse within legal and political authorities has not, so far extended to this particular addition to the Constitution – perhaps due to its tainted origin. At the expanding grassroots base of the women's, and other non-violent peoples, movements (especially among the poor) however, there are more expressions of the collective responsibilities that should come with rights. The traditional legal order was enforced by community organisations through religious and social morality evolved by caste/ethnic groups – depending on their positions in the socio-political hierarchy. The modern legal order needed to be enforced through a commitment to democracy and democratic ethics. The present mainstream of justice continues to be outside the reach of the majority, being too expensive, dilatory and excessively formal. Justice delivery as such, civil or criminal - suffers from many handicaps - not the least of which is general ignorance of law among people, an outcome not only of illiteracy, but also of over-professionalisation of legal education.

The decade of the 1980s saw a resurgence of social action groups which spread consciousness of rights among people in general, and the victims of social, economic and political injustice in particular. By the 1990s the government's initiatives for social change went into a decline. The only landmarks of this period were the acceptance of the Mandal Commission Report to extend reservations to the socially and educationally backward classes/castes in public employment by V.P. Singh's National Front Government in 1989, and the passage of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments creating Panchayati Raj institutions and Municipalities as the third tier of Indian federalism by the Narasimha Rao government in 1992. (See Chapter 4).

The emergence of coalition governments, which enjoyed shorter duration, followed by successive elections, has contributed to the waning of Parliamentary and governmental initiatives towards social change. In the earlier half of the Republic, debates on rights focussed more on the right to property and were discussed primarily in Parliament. Constitutional amendments (starting with the first, 1951) were passed to exclude such matters from the purview of the courts. In the debate on the contesting claims for supremacy of Parliament or the court the political elite voted in favour of the supremacy of Parliament.

Significantly enough, the people did not figure in the confrontation of the two institutions. Only the rich and those who could afford went to court, therefore decisions of courts revolved around the right to property. Till 1982 there was no occasion for the Supreme Court of India to speak on the right formulated by Article 23 of the Constitution, namely the right against trafficking in human beings and



various forms of forced labour, since no one who was denied that right could go to court. In 1982, the right to a minimum wage, and for the protection of contract labour and inter-state migrant labour was asserted by the court, and the state's responsibility was emphasised – particularly where the indirect employer was the state itself. Similarly until the late '80s there had been no occasion for the Supreme Court to speak on the right guaranteed by Article 24 of the Constitution of a child below the age of 14 not to be employed to work in a factory or a mine or engaged in any hazardous employment.

The right to life was also not interpreted in the early years. Only in the late 1970s did the court expand the meaning of the right to life and personal liberty. The right to life now includes the right to dignity, livelihood, shelter, education, health care, fresh air and potable water. The entire field of environmental jurisprudence has grown out of the expanded meaning of the right to life.

These processes have certainly resulted in increasing the importance of the courts as makers of policy – attempt to commit suicide should be punishable or adultery as a penal offence should be re-defined, whether an HIV+ patient is entitled to the right to privacy or to marry have come before the courts for adjudication. Courts have espoused the right to efficient and honest governance by admitting petitions against repromulgation of ordinances in disregard of constitutional procedures, arbitrary transfers and political appointment of judges of higher courts etc.

Some examples of judicial activism have certainly legitimised people's demands for socio-economic rights within the fold of existing fundamental rights. At the same time, some examples e.g. setting immediate deadlines to eliminate environmental pollution, have earned the criticisms of irresponsibility, by the courts, ignoring the social or economic consequences of sudden closures of such polluting industries on large numbers of workers.

Finally, India has not escaped global trends – positive or negative. The new phase of globalisation – economic, technological, cultural or philosophical – have affected many. Political and ideological certainties of the earlier period have now to contend with transitional flux, hesitations and uncertainties – of electoral arithmetic in a social system shaking itself out of frozen social formations; and unexpected unions of liberalising economics with religio-cultural fundamentalism. Not being a closed society, India remains vulnerable to all global influences, whether they come bearing gifts of life and hope or death and destruction.

## CHAPTER 1

### The Dynamics of Democracy within an ancient social system with multiple diversities - linguistic, cultural, religious, ethnic - and deep-rooted institutionalised and structural inequalities: **Some Paradoxes and Unresolved Issues**

The late M.N. Srinivas, an eminent sociologist, in an article written in 1991 entitled 'On Living in a Revolution' succinctly summarised the changes that have occurred in India since independence. While a variety of forces underlay the post-independence changes, in his opinion, the single most important factor was the introduction of adult franchise at a time when nearly 90 per cent of the population lived in semi-isolated villages, and only 17 per cent of it was literate. The political mobilisation of the vast number of illiterate and isolated people occurred through articulating such traditional ties as provided by caste, kin, village and patron-and-client networks. "Paradoxical as it may seem, traditional institutions associated in the minds of educated Indians with backwardness provided the door to modernisation" (EPW, March 30, 1991: 833).

The other two important forces, according to Srinivas, were:

- Ø The banning of untouchability, making its practice in any form a criminal offence. Simultaneously, measures were taken to reserve seats/jobs for Scheduled Castes and Scheduled Tribes in the lower houses of state and central legislative bodies, in government offices and educational institutions. Strategies were also introduced to promote the 'socially and educationally backward classes (SEBC)'. Thus, special measures were taken to deal with institutionalised inequality or 'exclusion' from centres of power and influence (See Chapter 4).
- Ø A third force which worked towards revolution was the introduction of land reforms intermittently all over the country, leading to the disappearance of the holders of concessional tenures such as 'zamindars', 'jagirdars', 'inamdars' and 'jodidars'.\* Even though the process of land reform remained uneven across states, in Srinivas' view, agricultural/cultivated land by and large came to be owned by dominant peasant castes and others "living in the villages and having an agricultural tradition".

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\* Members of castes/communities not included among scheduled castes or tribes, but covering a wide range of primary occupations – agriculture, textiles, processed food, handicrafts, small cottage industries – producing daily necessities to luxury/trading products for the domestic and foreign markets; marketing activities for these and other items produced elsewhere; business and money-lending, etc. These occupations were not mutually exclusive, and many entrepreneurs as well as those in wage labour, engaged in multiple activities, the latter under compulsions for survival, the former for access to greater economic, social and political power.

### Dynamic Diversity : India's Castes

"Reservations for these (SEBC) 'classes' has been in force for over 60 years in the dravidian-speaking states, and was introduced after Independence in a highly diluted form in a few north Indian states". (Srinivas, 1991). Added to the dynamics of agricultural modernisation/growth, expansion of educational/employment opportunities for younger members of these sections created major economic disparities among them as well as within the Scheduled Castes and Tribes – but retained the capacity of all the groups to use this social closeness of caste/kin networks as 'vote banks' in their bid for political power. The invisible line distinguishing the 'forward' from the 'backward' castes could not be ignored by any political party which entered the game of competitive politics.

A direct consequence of the change in economic/social status was a switch over – from the traditional practice of bride price to the opposite one of dowry (large gifts of cash and kind to the groom's family by bride givers). Women's status in these communities declined at least in the first generation – because of their withdrawal from visible rewarding labour in family occupations; without substantive access to education or other channels of mobility. To some it brought more leisure and access to better health care – but within the framework of subordination – affecting their self esteem, identity and development. Victims of downward mobility, on the other hand, swelled the ranks of the poor – without having acquired the traditional poor's skills and capacity for survival. This was reflected in demographic trends (See Chapter 2).

These forces brought about a silent, gradual and nonviolent revolution in the country and both elites from the high castes and foreign observers remained unaware of the 'revolutionary' nature of the changes. However, in the 1980s, the country witnessed this revolution 'turning red' (violent) as a result of the above said forces interacting with each other. Intellectuals wondered whether India would survive the multiple crises it was facing in terms of caste, class, religion, and gender conflicts.

Srinivas' view is echoed by K. Suresh Singh, planner and coordinator of the People's of India Project (POI), of the Anthropological Survey of India. Democracy, in his view, has accelerated all processes of social change within India's diverse communities. '50 years witnessed more dynamism than five thousand years of history'.

Most Indians familiar with India's pluralism are still not able to comprehend its range or scale. The memories of religious communalism which led to the partition of the country haunt political parties, media, and most of the intelligentsia. Caste is acknowledged as a 'troublesome fact' and politicians are held as primarily responsible for the politicisation of caste. The truth lies somewhere in between but the findings of the POI Survey need to be better known. This ethnographic survey completed in the 1990s lists 4635 castes or communities within the Indian population. Earlier census and other estimates ranged from 1646 in 1901, 4147 in 1931\* ; estimates from district gazetteers and village surveys reached a maximum of 1301. The POI figure of 4635 comes closest to the 1931 estimate. What is more important is that this total includes over 300 castes whose religion is recorded as Christianity and over 500 who are recorded as Muslims.

Acknowledging the diversity of motivations behind these dynamics of social formations, Srinivas also notes that his generation has only seen the beginnings of the 'feminist revolution'. He was disturbed by the increasing violence in recent years but pinned his faith for the future on the vibrancy of India's democracy and that "deep down in the minds of the Indian people there is an acceptance of group diversity – and what diversity! – which in turn is its source of tolerance".

In the sections that follow we discuss some selected but vital issues of India's development that have remained unresolved. There is far greater consciousness about them today than 50 years back, and new ones of unfulfilled rights are being added as

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\* The last census which enumerated population by castes. Caste-wise enumeration was abandoned after Independence by a political decision, except in the case of the Scheduled communities.

issues. Exclusion of women in this selection is not intended to suggest that the issues on that front have been resolved. On the contrary, women form the major section of the deprived within all these categories. Since the late 1970s however, the interaction between the expanding women's movement and political and legal authorities has substantively altered the dynamics of the issue and its perception. It is therefore presented separately in Chapters 4 and 5.

## A. RIGHT TO EDUCATION

"Education for All is not a mere question of literacy. It is an empowerment of people. What is it that we are seeking? We are striving to achieve a world in which peace and harmony reign, a world free of poverty and malnutrition. Education is the path that leads to that world" (P.V. Narasimha Rao, former Prime Minister of India, at the Education For All Summit of Nine High Population Countries, New Delhi, 16 December, 1993).

Education is the fundamental right of every human being, the means for self-realisation and self-expression, physical, intellectual, social, emotional and spiritual development of human beings. Education has to be free and compulsory at least in the elementary and fundamental stages.

The Constitution of India, (Article 45) states that 'the State shall endeavour to provide within a period of 10 years from the commencement of this constitution for the free and compulsory education of all children until they complete the age of 14 years'<sup>\*</sup>. This commitment was made more than 50 years ago. Forty years earlier Gopal Krishna Gokhale, had introduced a private member's bill to this effect in the Imperial Legislative Council, which was supported by various nationalists and educationists. He pleaded that universal, free and compulsory education was essential for development of the country and that the government should provide adequate funds for the purpose. The bill was however defeated. At the time of independence, almost 85 per cent of India's population was illiterate and only about 31 per cent of children in the age group of 6-11 went to schools (Mohanty 1994).

### A Review of Five Year Plans

By the 1970s, planners had to include Universal Elementary Education (UEE) as a part of the minimum needs programme. Investment in UEE does not merely include the financial and infrastructural aspects, but also involves the identification and addressal of

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<sup>\*</sup> The fundamental right to education has been held by the Supreme Court in its hearings of two cases in 1992-93. *Mohini Jain v State of Karnataka*, the Supreme Court, speaking through Kuldip Singh J, had held that the right to education was part of the fundamental rights to life and personal liberty guaranteed by article 21 (Sathe S.P. 'Constitutional Law - I' in Annual Survey of Indian Law, Volume xxviii: 1992, The Indian Law Institute, New Delhi). In a subsequent case, *Unni Krishnan v. State of Andhra Pradesh*, it was asked 'whether the constitution of India guaranteed a fundamental right to education to its citizens?'. While it was agreed that the right to education emanated directly from the right to life guaranteed by article 21 of the constitution, the judge, Jeevan Reddy J. observed that '...every child/citizen of this country has a right to free education until he completes the age of 14 years and after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development'. (Sathe, S.P. 'The Constitutional Law-I' in Annual Survey of Indian Law, Volume xxix: 1993, The Indian Law Institute, New Delhi).

problems that various sections of the population face. A review of the Fifth Plan identified several states which were not in a position to allocate the necessary economic resources to achieve the goal of UEE; there were socially disadvantaged groups like economically poor, Scheduled Castes, Scheduled Tribes whose children existed at the periphery of the schooling system; there were socio-economic compulsions in families that forced parents not to send the children to schools, and that the irrelevant nature of curricula and lack of essential facilities were responsible for the slow progress in the area.

The Sixth Five Year Plan (1980-85) proposed to give special attention to educationally backward states and socially disadvantaged groups. It suggested changes in school hours according to local conditions and proposed a non-formal system of learning. For retention of children in school, it introduced incentives like free mid-day meals, supply of uniforms and learning material, and compensation to the families of Scheduled Caste girls. It also made provisions for educationally backward states to step up their existing rates of enrolment. Emphasising high enrolment and retention of girls in schools, it proposed to attach *balwadi-cum-crèches*\* to the schools to release girls from sibling care to attend schools, income generation work for girls outside school hours to supplement family's income, appointment women teachers in rural areas to encourage girls' education, provision of residential quarters to teachers, and the need to strengthen the teaching of science in girls' schools.\*\* A review of the Sixth Plan emphasised the need to improve quality, relevance, effectiveness of the elementary education system, enrolment and retention rates, and to promote girl's education in all the states and union territories.

The Seventh Plan (1985-90), apart from strengthening the existing schemes/facilities, also emphasised the role of local communities in this goal. Schemes like Operation Blackboard to improve school facilities, revision of non-formal education, and a number of schemes for teacher's education were taken up. In 1986, the National Policy on Education, (earlier framed in 1968) was also revised. It made a resolve that it would give highest priority to solving the problems of children dropping out of school and would adopt an array of meticulously formulated strategies based on micro-planning and applied at the grassroots level all over the country, to ensure children's retention at schools; all children who attained the age of about 11 years by 1990 will have had five years of schooling, or its equivalent through the non-formal stream. Likewise, by 1995 all children will be provided free and compulsory education upto 14 years of age. For the first time in the history of independent India, the government of India itself prepared a 'Programme of Action' covering 24 subjects for the implementation of NPE, 1986. The subjects included distance education, correspondence courses, open schools and universities, women's studies etc. A chapter entitled 'Education for Equality' had to be included on the insistence of the women's movement. It was reviewed and revised in 1992. NPE 1986 is considered a landmark in the approach to women's education also. A major outcome of it was the initiation of Mahila Samakhya projects (education for women's equality). This programme placed emphasis on processes rather than targets (National Profile on Women, Health and Development: Country Profile – India, August 1999). The policy and the Programme of Action (1986 and 1992), directed the national education system 'to play a positive, interventionist role in the

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\* Day care centre for infants

\*\* This was the first Plan with a separate chapter on Women and Development

empowerment of women, and promoted women's studies as a part of various courses, to be active in the cause of gender equality.

The Eighth Plan (1992-97) adopted strategies like a decentralised approach to educational planning and management at all levels through Panchayati Raj institutions, large scale participation of voluntary agencies, development of innovative and cost-effective complementary programmes like Open Learning System (OLS) relevant to the needs of girls, women, Scheduled Castes and Tribes and poor etc., setting up of district boards of education and treating them as nodal agencies for planning and management of education at district level, involvement of people in school management through village education committees, and involvement of NGOs, students and university teachers in a big way. It focussed more on educationally backward districts rather than states as identified in the sixth and seventh Plans. Primary or non-formal centres were to be provided to every child within a walking distance of one kilometre. Voluntary agencies, factories, cooperatives etc. would be encouraged to set up part time primary schools to serve the children of groups like migrant labour, hill areas, desert areas, nomadic tribes and urban poor. It also suggested opening of night schools in urban areas.

The Ninth Plan (1997-2002) targeted the elimination of gender discrimination in admissions, removal of gender bias and stereotypes in curricula, text books, promotion of gender sensitisation of teachers on regular basis apart from strengthening other facilities and incentives mentioned in earlier plans.

The problem of women's education had been examined by a number of committees since independence, the National Committee on Women's Education (1958-59); Hansa Mehta Committee on Differentiation of Curricula for Boys and Girls, appointed by the National Council for Women's Education; the Education Commission (1964-66) and the CSWI (1975). The first committee recommended top priority to girl's primary education, It suggested measures like appointment of women teachers, provision of free books and materials, part time education for girls between the age group of 11-14, and special assistance to all states until 80 per cent of girls in the age 6-11 were enrolled.\* The Hansa Mehta Committee strongly opposed separate curricula on the basis of gender. The Education Commission endorsed the recommendations and suggestions of these committees. In all the Five-Year Plans special provisions were made for education, health and the welfare of women. But in spite of great expansion of education in the country after independence, progress of literacy in general and that of women in particular still presents a gloomy picture. Various social reasons have been put forward to explain this, but since the CSWI's report (1975) women's studies research has found increasingly structural apathy within the system, inadequate resources and its administration as the greater culprits. There are no short-comings in the performance of girls in expensive private schools, colleges or universities – even in 'backward' tribal areas. The problem is centred in the state-administered schools for the poor, and absence of community participation in this sector and wherever the issues have been confronted by people's organisations and/or committed educators/administrators, marked improvement has resulted. The Total Literacy Campaigns (TLC) for adults and

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\* These went into cold storage during the second half of the 1960s because of a financial crisis.

adolescents mounted since the late 1980s invoked tremendous response from women and girls – particularly in rural areas, assuming the contours of a social movement reminiscent of the freedom struggle in several districts (National Literacy Mission – Report of an Expert Committee on Evaluation of TLCs, 1994; D. Saldanha, V. Athreya, Sheila Rani, Nitya Rao and others, Economic and Political Weekly, 1992-95). The exceptions to this general pattern, were the states always found backward in gender indicators – Bihar, Uttar Pradesh, Madhya Pradesh. Even Rajasthan, normally grouped with the former as the Bimaru (sick) states achieved marked success in the literacy campaigns. Loss of momentum in the post-literacy phase and consequent sliding back was essentially the result of large cutbacks in finances for social services in the second half of the 1990s.

### The Present Scenario

The sharp rise in enrolment of both, girls and boys in primary schools – a direct fallout of the TLCs - has been replaced by declining enrolment. Regional, social and gender imbalances are rising again. India enters the new millennium with the largest number of illiterates in the world. The 1991 Census and the National Family Health Survey (1992-93) revealed that half of the country's population (61% of women and 36% of men, aged 7 and above) was unable to read and write. Less than 30 per cent of all adults had completed eight years of schooling, one third of all children aged 6-14 years (about 23 million boys and 36 million girls) were out of school. In India, the average adult has spent a little over 2 years at school compared with 5 years in China, 7 years in Sri Lanka and over 9 years in South Korea. Female literacy rates are much lower in India than in sub-Saharan Africa. The number of illiterate persons aged 5 and above rose from 350 million in 1981 to 371 million in 1991 (The Probe Team, 1999). The Public Report on Basic Education (PROBE) in India has identified various reasons for this failure.

### The PROBE Report: Gaps between Myths and Facts on Elementary Education

This study was conducted in villages of five states i.e. Himachal, Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan. Himachal's is a success story, inspite of its mountainous and frequently snow-bound terrain, and a high proportion of tribal population. The other four (the Bimaru) offer a radically different picture. The study covered 188 villages, 1,221 households in the four states. The myths: (a) parents are not interested in their children's education; (b) child labour is the main obstacle; (c) elementary education is free; and (d) schools are available within reasonable distances. The Report debunks these myths based on the findings of its study.

The facts: 80 per cent of the parents approved of primary education being made compulsory for all children thus showing an overwhelmingly positive response to education. In fact, private schools are coming up in many villages and even poor parents often enroll their children in private schools if the local government school is not working. When the Madhya Pradesh government announced that it would create an education centre on request in any hamlet where schooling facilities were not available, more than 15,000 requests were received within a year, mainly from tribal areas. But parents did not show much faith in the schooling system's ability to impart good education to their children.

On the issue of child labour, the report states that only a small minority of Indian children are full-time labourers. The vast majority work as family labour at home or in the fields, not as wage labour.

Cash costs of education play a major role in discouraging poor families from sending children to school, especially when the quality of schooling is poor. North Indian parents spend about Rs. 318 per year on an average to send a child to a government primary school. This is a major financial burden particularly when a poor family has too many school-going children.

Distance is measured only in terms of physical distance, and the social distance is not taken into account, which prevents many a child from going to school. Such social distances are created through caste, restricted freedom of movement for girls etc. In rural India as a whole, 43 per cent of the population lives more than one kilometre away from the nearest upper-primary school, and in this case, girls are most affected as parents are reluctant to send their daughters to schools in other villages. Even if the schools are within a reach of 1 kilometre, various problems persist; in hilly areas children have to walk long distances uphill or through streams or forests. These hurdles pose a serious problem particularly in winters. Also, it is no use having a school within reach of one kilometre when it is overcrowded or has a single teacher or is deprived of basic facilities.

The school environment as such is discouraging with poor infrastructural facilities, teacher resources, activity patterns, and social discrimination. They can absorb only a small proportion of village children in only one room. During the last decade the proportion of single teacher schools has increased. If all the children aged 6-10 in the PROBE villages were in primary school, there would be as many as 68 pupils per teacher and 113 pupils per classroom.

Often classes are held in open spaces. Many schools do not have buildings of their own and they occupy rented rooms, panchayat ghars, dharamshalas etc. The teaching thus clashes with other activities of these premises. Many schools have leaking roofs and this poses a problem during the rains. Out of 162 government primary schools surveyed, at least 51 required a new building altogether. Among all school buildings constructed after 1986, 46 per cent needed roof repair, 58 per cent needed floor repair and 73 per cent needed major repair of some kind. Fifty nine per cent of primary schools did not have a functional water supply, 89 per cent of primary schools lacked a functional toilet, 30 per cent of schools were being used for other purposes like panchayat meetings and private functions. At least, five schools were being used by the teachers for residential purposes. Many schools were being used as storage space, a police camp, place to dry cow dung cakes, cattle shed and even a community latrine. Schoolrooms are allowed to degenerate into storerooms and the area around the school was dirty and unpleasant. The teaching aids in schools were often stored in trunks or at teacher's homes to keep them safe.

Current 'teacher resources' in rural India are way behind the official goal of UEE. In PROBE villages, the pupil-teacher ratio and child-teacher ratio was amazing. Number of government teachers appointed in primary sections were 609, estimated number of



children actually enrolled in primary sections of government schools were 30,273 and estimated number of children in the 6-10 age group were 41,431. Thus pupil-teacher ratio is 50 and child teacher ratio is 68. The problem of teacher shortage culminates in single teacher schools. Although this practice has been officially abolished, it remains widespread in reality. Twelve per cent of all primary schools in the PROBE villages had a single teacher appointed. Another 21 per cent had a single teacher present at the time of survey. Thus one third of primary schools surveyed (53 in all) were de facto single teacher schools on that day. Teaching/ learning activity obviously is minimal when a single teacher has to deal with dissimilar age groups and a large number of pupils. Teaching activity in PROBE schools was minimal at the time of survey. Among 53 schools, 30 had no teaching at all. Even in the other 23 schools, teaching activity was minimal.

Social discrimination is another factor that discourages parents from sending their wards to schools. It was observed that even within the same school, children of different social backgrounds often receive unequal treatment. Dalit children were found to sit separately from other children or children of some castes sat separately than children of other castes. Harassment from upper-caste pupils is another common experience of Dalit children. As regards girls, absence of female teachers in many schools reinforces the male-dominated nature of the school environment. Gender bias in the classroom intensifies the problem of unequal treatment between boys and girls.

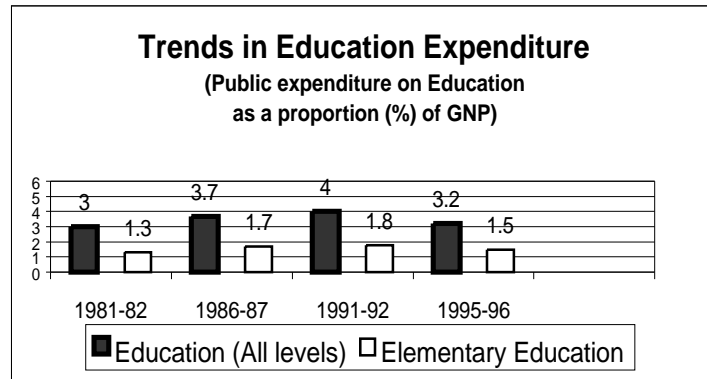
None of the sampled states have actually introduced mid-day school meals – an official programme since the Sixth Plan. As a convenient substitute, these states run 'dry rations' whereby children receive monthly grain rations (3 kgs. per child) instead of cooked food. This obviously defeats the purpose of the school meal programme. The shortcoming of this arrangement is to reward enrolment rather than attendance. In large parts of Bihar, no food was released in 1996. Supply failures and delays were also noted in a majority of schools in the other states. And when food rations are actually distributed, it was usually at the end of a long chain of corruption and red tape.

## Expenditure on Elementary Education

Neglect of elementary education has been a consistent feature of public policy in most states throughout the post-independence period (see Introduction). The best evidence of this is the decreasing expenditure on elementary education in India's GNP over the years. Going back to the 1960s, the official promises were to raise it to 6 per cent. But the 1990s have seen a contrary trend in spite of large inflows of foreign funding. The share has come down from 4 per cent in 1991-92 to 3.2 per cent in 1995-96 – more or less the same figure as in the early 1980s (The Probe Team, 1999). There has been a decline in the educational outlay.

As a percentage of total plan outlay in the First Five Year Plan, the educational outlay constituted about 8 per cent. It came down to 3.6 per cent in Seventh Plan. At intra-sectoral level, there is a disproportionate allocation across primary, secondary and higher education levels. After an initial allocation of over 55 per cent for primary education in the First Plan, primary education expenditure remained at around 35 per cent of the total with fluctuations till the Seventh Plan. There has been substantial

increase in the share of higher education till the Fourth Plan and a decline is found only in the recent period. 'Counterpoising expenditure on higher education with that of primary education seems to be a ploy, to divert the attention of inadequate allocation to education sector as a whole' (Upendranath, 1993).



(Source: Public Report on Basic Education in India, OUP, 1999)

The sluggishness around the issue also reflects in the fate of the proposal to make elementary education a fundamental right. The proposal was formally introduced in the Rajya Sabha in July 1997 as the 83<sup>rd</sup> Constitutional Amendment Bill. The bill did not even figure on the agenda of the Conference of State Education Ministers held in October 1998. Lack of funds is generally cited as the main reason for its neglect. However, it is more a matter of spending priorities than of an overall shortage of resources. The former Finance Minister, Dr. Manmohan Singh, said in a speech in New Delhi on 24 April 1998:

I sincerely believe that money can be found if representatives of the public, that is, Members of Parliament and Members of State Legislature give sufficient importance to this quest for universalising access to our education (The Probe Team, 1999: 135).

There has been however, an added controversy about this measure. The proposal was made by a Committee of the National Development Council (which includes all chief Ministers of States, and the Prime Minister), chaired by the Chief Minister of Rajasthan. The stated objective was in response to the Supreme Court's judgement (Unni Krishnan v. State of Andhra Pradesh). Anticipating a spiralling demand from people representing the entire population below 14, for what the Court had declared as their fundamental right – the NDC Committee suggested certain new measures to contain the demand: (a) deletion of Article 45 of the Constitution, and (b) its replacement by the new amendment – which restricted the state's responsibility: (i) to only persons in the age group 6-14 (thus removing all plans for child care and pre-school arrangements as 'essential support services' – particularly for girls); (ii) only government schools, leaving private schools outside any regulation, and (iii) transferring accountability for non-schooling to parents.

Protests from educationists, women's rights and child-rights groups has stalled the passage of this Bill so far.

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## B. RIGHT TO HEALTH

The development of health is not a fragmented process, it is integral in its nature which includes the overall growth and development of different socio-cultural, economic, educational, political and environmental factors.

Until 1983 there was no formal health policy in India. The resolution on fundamental rights of the Indian National Congress in 1931 mentions all the fundamental rights except health. However, for the first time the health issue was raised by the Sokhe Committee (1948) which recommended a centralised authority to provide services for mothers and children, the need for a national level minimum infrastructure, and the need to train para-medical workers and traditional dais to provide natal, ante and post natal services. Subsequently, the far better known Bhore Committee observed, 'If the nation's health is to be built, the health programme should be developed on a foundation of preventive health work and such activities should proceed side by side with those concerned with the treatment of patients.' (National Profile on Women, Health and Development in India, VHAI, 1999). In the context of the global debate on alternative strategies during the 1970s, the signing of Alma Ata declaration of 'health for all by the year 2000' and the recommendations of ICMR-ICSSR joint panel report, the government of India decided to have a formal National Health Policy (NHP). It was felt that a comprehensive and integrated approach is needed for the future development of medical education and training, research and health services which would serve the actual needs of the people specially the vulnerable groups by establishing an effective and efficient health care system.

There is a story of vision and innovation behind the formal framework of the policy that has never been adequately acknowledged. Many Gandhians and Socialists who were adults a decade or so before independence, disturbed by the trends of development in the health and education sectors in the 1950s and 1960s and the growth of rural poverty, joined the alternatives debate. Among them were medical and social scientists who developed some new models for primary and preventive health in rural areas. Some were developed by physicians/surgeons, some by medical training institutions and teacher-student teams. Many were funded jointly by the Indian Council of Medical Research and the Indian Council of Social Science Research. These agencies, entirely funded by the Government of India were then led by Dr. C. Gopalan - the nutritionist and J.P. Naik - the Gandhian educationist, who became deeply involved in the alternatives debate - at the national and international level. An unplanned, but common feature of these experiments was the use of elderly village women, chosen by the community as the front line health workers. The women were trained by the doctors to deal with minor ailments and first degree malnutrition, referring more complex ones to a better equipped centre nearby - set up by the qualified visionaries. A point to be noted is that none of these men supported the Emergency, which explains why their work did not receive publicity at international levels of the same kind as the 'bare-foot doctors' of China or South American countries. But the stature of some got them into the international conferences that led up to the Alma Ata Declaration. Virtually all of them were also involved in the ICMR-ICSSR Joint Panel Report, which was released in the post-Emergency period. We mention this story here as these experiments were the precursors, and ancestors, of many civil society interventions in the health sector in South Asia today. Most of them have no difficulty in obtaining international funding and publicity, including prestigious awards. And most of them pin their success and low costs on the women they train as frontline health workers. A team of the National Commission on Self-employed Women and Women in the Informal Sector, 1988 met some of the first generation of these women in Jamkhed Maharashtra. In 1989, when Rajiv Gandhi was considering reservation for women in Panchayats (See Ch. 4) he wanted to meet some women who had served as Panchayat leaders. A consultation between concerned officials and women activists brought one such woman from a village in Jamkhed - to have breakfast with the Prime Minister. The result was secretly reported as 'a tremendous impact'.

## Approach and Objectives of NHP and Five Year Plans

The major emphasis of the NHP was to have a strong and stable infrastructure of primary health care with an aim to attain health for all by 2000 AD. The main focus was on preventive and promotive health care services along with curative health care, close co-ordination between the health related services and activities such as nutrition, drinking water supply and sanitation; the active involvement and participation of voluntary organisations and the community; the provision of essential drugs and vaccines; qualitative improvement in health and family planning services and medical research aimed at the common people's problems (Report of The Independent Commission on Health in India, VHAI 1997:38).

In the Sixth and Seventh Five Year Plans the aim was to achieve the target of one primary health centre for 30,000 people and one sub centre per 5000 people in the plains and one primary health centre for 20,000 people and one sub centre for 3000 people in tribal and hilly areas. There was also a focus on universal immunization of expectant mothers and all eligible children by 1990. Special programmes were launched for maternal and child survival, safe motherhood and reproductive and child health during the Seventh Plan period.

Table 3

### Approach and Objectives for Health in Five Year Plans

Five Year Plans	Main Objectives for the Health Sector
First Five Year Plan 1951-56	<ul style="list-style-type: none"> <li>- Establishment of Departments of Preventive and Social Medicine</li> <li>- Launching of Primary Health Centres</li> <li>- Launching of Community Development Programme 1956</li> </ul>
Second Five Year Plan 1956-61	<ul style="list-style-type: none"> <li>- Nation-wide coverage of Primary Health Centres</li> <li>- Campaign to eradicate malaria by mid 1960s launched</li> <li>- National Venereal Disease Control Programme launched in 1956</li> </ul>
Third Five Year Plan 1961-66	<ul style="list-style-type: none"> <li>- Designed plans for a self-reliant economy by 1975-76</li> <li>- The Mudaliar Committee noted that the primary health centre network that had evolved bore no resemblance to that visualised by Bhore Committee.</li> <li>- Primary Health Centres were to be consolidated rather than expanding services, especially related to Primary Health Centres,</li> <li>- Family Planning Programme emerged as the focus of planned development and clinic approach abandoned in favour of extension approach for promoting the small family norm and for provision of services.</li> </ul>
Fourth Five Year Plan 1969-74	<ul style="list-style-type: none"> <li>- Strengthening of facilities in existing public health units.</li> </ul>
Sixth five Year Plan 1980-85	<ul style="list-style-type: none"> <li>- Introduction of National Health Policy</li> <li>- Focus on strengthening, consolidation and operationalisation of the network</li> <li>- Introduction of National Mental Health Programme in 1982</li> </ul>

Seventh Five Year Plan 1985-90	<ul style="list-style-type: none"> <li>- National AIDS Control Programme was launched in 1987</li> <li>- National Diabetes Control Programme was initiated in 1987</li> <li>- Sought to eliminate poverty by the year 2000; achieve full year employment; satisfaction of basic needs and Health for All</li> <li>- Envisaged universal immunization of expectant mothers, and all eligible children by 1990</li> <li>- Family welfare programme was implemented with greater vigour to achieve a couple protection rate of 42% by the end of Seventh Plan period</li> <li>- 20 point programme was restructured</li> </ul>
Eighth Five Year Plan 1992-97	<ul style="list-style-type: none"> <li>- Goal was on human development</li> <li>- National Child Survival and Safe Motherhood Programme 1992.</li> <li>- Revised National Tuberculosis Control Programme with DOTS 1993</li> <li>- Establishment of ISM&amp;H Dept. in the Min. of Health &amp; Family Welfare 1995</li> <li>- Launching of RCH programme in 1997</li> </ul>
Ninth Five Year Plan 1997-2000	<ul style="list-style-type: none"> <li>- Optimise coverage and quality of health care by identifying and rectifying the gap in infrastructure, manpower, equipment etc., enhancing the efficiency of the health system</li> </ul>

Source: Planning Commission, Government of India, New Delhi

Table 4

### Goals for Health and Family Welfare Programme: 2000 AD

Indicator	Level As quoted in NHP	Achievement 1990	Goal 2000	Latest Available
Infant Mortality Rate	Rural 126(1978) Urban 70 (1975) Total 125(1976)	86 51 80	Below 60	80(1995) 48 (1994) 74 (1995)
Perinatal Mortality	67 (1976)	49.6	30-35	44.3(1993)
Crude Death rate	Around 14	9.6	9.0	9.0(1995)
Pre-school Child Mortality	24 (1976-77)	33.3 (0-4 yrs. 1988)	10	26.5 (1992)
Maternal Mortality	4-5 (1976)	-	Below 2	4 (1993)
Life Expectancy at Birth	Male 52.6 (1976-81) Female 51.6 (1976-81)	58.1 (1986-91) 59.1 (86-91)	64 64	60.6 (1991-96) 61.7 (1991-96)
Babies with birth weight below 2500 gms (%)	30		10	30 (1992)
Crude Birth Rate	Around 35	29.9	21.0	28.3 (1995)
Net Reproduction rate	1.48 (1981)	-	1.0	-
Growth rate (annual)	2.24 (1971-81)	2.03	1.20	2.1 (1981-91)
Family size	4.4 (1975)	4.0 (1988)	2.30	-
Pregnant mothers receiving	40-50	60 (1988)	100	82 (1993)

ante-natal care (%)				
Deliveries by trained birth attendants (%)	30-35	40-45 (1988)	100	47.3 (1992)
Immunisation status (Coverage)				
TT (pregnant women)	20			
TT (school children)	-	78.16	100	82.48 (93-94)
- 10 years	20			60.5
- 16 years	25	60.5	100	86
DPT (Children below 3 yrs.)		86.45	100	5
- Polio (infants)	5	98.19	85	93.10 (93-94)
- BCG (infants)	65	98.86	85	93.57 (93-94)
- DT (5-6 years)	20	101.51	85	96.95 (93-94)
- Typhoid (5-6 years)	2	82	85	82.0
		62.6 (87-88)	85	62.6
TB % of disease arrested cases out of those detected	50	66	90	66

Source: Planning Commission – Nine Five Year Plan, Draft, 1998.

In spite of the NHP there has been a shift in emphasis towards the more curative aspect of health. However, there have been several successes on the health front, notably the decline in crude death rate, infant mortality rate and the increased life expectancy. There are also some achievements with regard to expansion of medical research and training, expansion of health care services specially of primary health centres. The number of PHCs increased from 20,719 to 21,854 and sub centres from 1,31,469 to 1,33,730 during the Eighth Five Year Plan (1985-90). But lack of funds, non-availability of trained para-medical and medical staff and other supportive services have made them non-functional. There has also been some success in the sphere of nutrition during the Eighth Five Year Plan. The number of children of 'normal' nutritional status has increased from 1975-79 to 1988-90 (Gopalan, C. Towards India's Food and Nutrition Security. Keynote address at the National Symposium on Food Security for the Poor organised by the FAO and the Indian Association for the Advancement of Science, 4 October 1995) yet far behind the set goal of health for all by the year 2000. The other targets, related to fertility, immunization and national disease control programmes are much below the projected figures (VHAI:1999:39). Decentralisation and demystification - mentioned in the NHP - have taken place to some extent but there has been no community participation. The public health system has not been able to provide much epidemiological surveillance services recommended by NHP.

Since the right to health was held as being included in the right to life, the court in 1994 gave directions to the asbestos industry to protect their workers from the hazards of lung cancer, to monitor their health status, and pay them compensation where they contracted asbestosis.

### A review of the National Health Policy and Successive Five Year Plan

By international norms India's performance on the health front is indeed poor. 'Right to life and right to health' have to be questioned in the context of the alarming decline of the sex-ratio, the increased incidence of female foeticide and continued high mortality of male infants in certain districts which have remained notoriously backward in health services.

In a recent workshop on 'gender bias and female foeticide and infanticide' organised by AP branch of Indian Medical Association (The Hindu, 13<sup>th</sup> Dec.1999) Justice Lakshmana Rao is reported to have said that approximately two million female foetuses are being aborted every year after sex determination. Vidya Ben Shah ( former chairperson, Central Social Welfare Board and President, Indian Council for Child Welfare) on the basis of a survey report done in Bombay said that about 8000 abortions were done after sex determination and out of them 7999 were female foetuses. As many as 3,000 cases of female infanticide occur in Tamil Nadu every year (quoted by Sheela Rani Chunkath, Joint Director, Health Tamil Nadu). In some districts of Bihar, Adithi (an NGO) found that 1, 63,200 female infants were killed every year (Telegraph, Sunday, Jan'96).

The achievement of a decline in infant mortality rate from 146 per thousand in the early fifties to 74 per thousand in 1993 has often been cited as a significant achievement. However, it needs to be noted that the decline in IMR had set in the second decade of this century and the trend merely continued. Besides, child mortality (0-5 years) still continues to be higher at 109 per thousand and constitutes almost half the deaths (45 per cent ) even if the size of this age group is only 12 per cent of the population (The Alternate Report on the CRC, India, 1998)

About one-third of all infants born in India are low-birth weight babies, i.e. less than 2.5 kgs. due to the poor health status of the mother consequent upon insufficient nutrition during pregnancy. About 87.5 per cent pregnant women are anaemic of whom 13 per cent are severely anaemic and 33.5 per cent suffer from moderate anaemia. All this in spite of the special programmes like MCH, RCH, ICDS, DWCRA, Mid-day Meal Scheme, etc.

Malnutrition and sanitation remain major issues. The norm of 2,400 kilo calories per day for a person in the rural areas and 2,100 in the urban areas is considered the bare minimum for a person to be above the poverty line. In spite of the lowered calorific norms adopted since 1976, according to the Planning Commission about 70 per cent of the rural population is below the caloric norm. Calorie inadequacy is greater among pre-school children (60 per cent) than among adults (44 per cent). Malnourishment among children is highest in the age-group of 2-5 years in spite of the Balwadi nutrition programme of the Eighth Five Year Plan.

About one-sixth of all maternal mortality in India is due to anaemia and lack of emergency obstetric care. As many as 20 per cent of all maternal deaths in the world are in India. On an average, 34 women die out of every 1,000 live births (The Alternate Report on CRC, 1998,28).

Although safe drinking water and sanitation facilities were priorities in the Sixth and successive Five Year Plans yet 60-80 per cent of all illnesses that occur in India are water and sanitation related disease. Moreover, currently less than 50 per cent of the urban population have sanitary excreta disposal systems while less than 5 per cent of the rural population have this facility.

With regard to consolidation of infrastructure of primary health care services and enhancing the health care services by identifying and rectifying the gaps in infrastructure, manpower etc. as emphasised in the Eighth and Ninth Five Year Plan, our failure is greater than our success..



Statement showing major shortfalls in sub centres,  
PHCs and CHCs as per 1991 Population and in position as on 30.6.1997.

States/UTS	Sub Centres			Primary Health Centres			Community Health Centres		
	R	P	S	R	P	S	R	P	S
Andhra Pradesh	10242	10568	-	1707	1335	372	427	207	220
Bihar	15825	14799	1026	2637	2209	428	659	148	511
Madhya Pradesh	12122	11937	185	2020	1376	644	505	190	315
Maharashtra	10533	9725	808	1756	1695	61	439	300	139
Orissa	6374	5927	447	1062	1056	6	265	157	108
U.P.	22337	20153	2184	3723	3761	-	931	262	669
West Bengal	10356	7873	2483	1726	1556	170	431	89	342
All India	134108	136339	7727	22349	22010	1966	5587	2622	2976

Source: Rural Health Statistic in India, Director General of Health Services, Ministry of Health and Family Welfare, R: Required P: Position S: Shortfall

Table 6

Manpower Requirement in Rural Primary Health Care Institution

Category of Manpower	Requirement for 1996	In position as sanctioned on 30.6.96	Number of posts sanctioned 1.00.95	Posts needed
Specialists(4/CHC)	24584	2751	4763	19821
Block Extension Educator/Health Educator	24584	5621	6287	18297
Pharmacist (1/CHC+/PHC)	30730	20022	21780	8940
Lab Technician (1/CHC+1/PHC)	30730	9711	12371	18359
X-ray Technician/Radiographer (1/CHC)	6146	1288	1596	4550
Nurse Midwife (7/CHC+1/PHC)	67606	12683	16754	50852
Health Assistant (M) (1/PHC)	24584	15745	18323	6261
Health Assistant	24584	18904	21658	2926
Health Worker (M) (1/SC)	147519	62229	71165	76354
Health Worker (F) (1/SC+1/PHC)	172103	133773	140751	31352
Total	577754	309657	347532	237712

Source : .(RHS Bulletin June,1996,MH&FW)

As far as the urban health and family welfare centres and the posts are concerned, the government of India had laid down the norms that these centres should have two medical officers and other required supporting staff to provide preventive, promotive, curative and rehabilitative services and essential maternal and child health information and facilities regarding contraception. On this front too we have not yet achieved our goal. Till June 96 only 871 health personnel were working and 19480 posts were still lying vacant. Similarly 952 urban health and family welfare centres have yet to be established to meet the primary health care needs of the urban population. In 1987 the Bajaj Committee had recommended that population ratio, inter-professional ratio and manpower mix must be considered in assessing the health manpower requirement. The present status of the health manpower in position in all categories are far below the requirement.

## Shift in Budget Allocation on Health Programme and Conflict within Policy

The failure of the NHP and subsequent Five-year Plans is not determined by endogenous factors alone. During the 1950s, 1960s and 1970s, there was at least an official recognition of the need for substantial state investment in health care. Thus, the Bhole Committee in 1946 and the Mudaliar Committee in 1967 had recommended the provision of 10 per cent of the budget allocation for health, which has steadily declined from 3.3 per cent from the First Five Year Plan to 1.7 per cent in the Eighth Five Year Plan at the central and state government level (Planning Commission, Department of Family Welfare GOI). Corresponding to the decrease in the overall budget allocation for health has been an increase in the budget for 'family welfare' often an euphemism for population control where women were targeted for population control.

There has been a steady shift away from the state's responsibility in the sphere of health care over the years. But the decisive shift comes in the 1990s with the adoption of Structural Adjustment Programme (SAP) not only in terms of budget allocations but also in term of health policy. The cut in health budget has shifted the primary focus of NHP from preventive and promotive health care services to curative health care. 'With the international and bilateral funding of some health programmes, there is gross distortion of priorities in health development and disease control'. (National Profile on Women, Health and Development, VHAI.1999.40)

Primary health care which was the main focus of NHP was seen as 'a qualitative alternative plan wherein health and disease are perceived to be rooted in the social, economic reality and condition of the people. Therefore, public distribution system to ensure food availability, drinking water, transport and other basic facilities are seen as necessary condition for health along with and based on the health care system'. (Alter. Report.1998, 34)

The economic reforms following the adoption of SAP (Structural Adjustment Programme) have had serious consequences on the lives of the majority of the population, particularly the poor. The rising cost of food consequent upon inflation, the high and rising cost of medical care and overall social and economic insecurity have adversely affected the poorest of the poor. The present policies further dilute the intersectoral emphasis on primary health care. Before the SAP period World Bank funding was generally given as grants.

In 1991 when government of India adopted SAP, the privatisation of health care system became stronger. During the SAP period the grants were transformed into soft loans which were given for various health programmes with a pressure to reorient and reprioritise health goals on certain conditionalities. This includes restricting the primary health centres only to the prevention of communicable diseases and family welfare programmes (Report of National Profile on Women, Health and Development in India, VHAI, 1999). In such a situation India has very little role in setting its own priorities for health care according to the needs of its people. Under the impact of these shifts in policy, major diseases like tuberculosis, diarrhoea and malaria which are major causes of high mortality and morbidity get lower priority.

### Women and NHP

The Report of the Committee on the Status of Women in India in 1974 'Towards Equality' had shown its concern over the declining sex ratio along with other issues. Shram Shakti (1988) recognised the dimension of occupational hazards in women's health. The National Nutrition Policy (1993) expresses concern about the nutritional

status of women. But inspite of this concern, there was no coordination between these three main areas relating to women's health. The main reason for this seems to be the absence of specific focus on women's health in our national health policy.

The trend of national and international fundings and policies does not seem to be women-friendly. There has also been a shift in the policies and orientation of the WHO (World Health Organisation) from one of a comprehensive primary health care towards a bio-medical and techno-centric approach to health. These policies of the funding agencies have had an adverse impact on the health of women. The example of the family planning programme where women are both the principal tools and target in achieving the goal of population control is a good example of this shift. This is revealed in the increased share of tubectomies in total sterilisation operations which went up from 11 per cent in 1960 to 97 per cent during 1996.

'The concept, definition and content of primary health care has shifted from comprehensive programme of preventive and promotive approach to a narrow techno-centric approach towards reproductive health, marginalising other programmatic inputs more critical for women's health'. (Gopalan, National Profile on Women, Health and Development in India, VHAI, 1999) Further, greater emphasis of health sector reform policies on 'cost recovery' ignores the fact that about 40 per cent of the population are below the poverty line and cannot afford the cost of private health care. This can be seen in the fact that still a large number of deliveries are done with almost no medical attention. It is reported that during 1997 only 28 per cent deliveries were attended by trained personnel and only 34 per cent deliveries at home and institutions were attended by trained personnel.

However, over the last few years many women's groups have been actively focussing attention on women's health and have emphasised the close relationship between women's health and their socio-economic condition. The Swaminathan Committee (1994) on continuous pressure from women's organisation seeks to salvage the Family Planning Programme from the tyranny of targets and focus attention on fundamental aspects like literacy, education, health, skill information, gender issues, informed choice of contraceptives and ethical aspects of new contraceptive technology. The Committee also suggested one health care package for maternal and child health and family planning as well as for the ongoing programmes for tackling malaria, TB, blindness and AIDS. How much of these recommendations feature in the new population policy remains to be seen.

## C. RIGHT TO SHELTER

Shelter is a concept broader than housing, for it includes a number of the essential prerequisites for human survival. It is an important component of the right to life, securing citizen's entitlements in civil society. Lack of shelter not only renders an individual vulnerable to the hardships of an uncertain existence, it precludes his/her participation in the processes and discourses of social and economic development.

Though a basic need and a right, the right to shelter is constrained by factors such as rights to land, access to construction material and finance. Resource limitations to obtaining shelter means that for most persons falling in the lower income group, housing may not be available at all or if available, in the form of hutments or shanties lacking basic amenities. The focus of this discussion is on the shelter needs of the poor, for it is in this context that the rights discourse acquires the greatest urgency, and policy interventions and community participation most needed. A critical look will also be taken at the interface between the highly standardised, modernistic top-down solutions proffered by state programmes of mass housing and the localised needs of people.

### State Policy in the 1990s

The housing policy initiated by the state in the early 1990s carried forward the shift in perceptions and assumptions about state roles and citizen's participation which marked shelter policy post Habitat in 1976, further strengthened after the adoption of the Global Shelter Strategy by the UN in 1988. The government's role was conceived as one of an enabler and facilitator which would 'not therefore, try to build houses itself: its crucial role is to create an environment which enables the full potential and resources of the people to be fully utilised.' (GOI 1990: 1). Stress was laid on the following: interlinkages between housing and overall development; provision of basic services by the state at household and city level, particularly in slums; promotion of local building material and technology; laying emphasis on securing tenurial and homestead rights for the landless in rural areas and security of tenure in urban areas; in-situ upgradation of slums, etc. The state also assumed direct responsibility for improving the housing situation of the most disadvantaged (GOI 1990, 1994).

However, a significant displacement of emphasis can be noticed in the National Housing and Habitat Policy 1998 which stated that '[w]ith the expected increased role of the private sector, the government's role of direct intervention for the benefit of the poor and deprived will need to be redefined' (GOI 1998: 2-3). The policy prioritises private initiatives in habitat development, even in areas like provision of basic services and shelter for the homeless and poor, hitherto considered state domains. Such a paradigmatic shift can probably be read in the context of the state limiting the ambit of its roles post structural adjustment.

Although state policy and interventions in dealing with shelter issues for the poor have been problematic and fallen far short of targets set, the fault lies with inadequacy and misapplication rather than the looming presence of an all-pervading state. In India, nearly 90 per cent of all construction activity had always been privately

initiated (Revi, 1991). This, coupled with the presumed 'higher efficiency' (GOI 1998: 11) of the private sector had still not been adequate to prevent a housing shortage of 21.23 million dwellings by 1997 (HUDCO n.d.). Instead of positing the issue as one of a public-private interface, the felt needs of communities and individuals-in-communities with regard to shelter should be salient.

#### Shelter for the Urban Poor

According to Correa, '[i]n the eyes of the well-to-do citizen, the squatter struggling to shelter his family is an anti-social element; from any other point of view, his endeavour is as marvellous, intuitive and socially-positive as a bird building a nest.'(1985: 15). Although both the urban shanty and the rural hutment represent unique innovative solutions to shelter needs, they are marginalised by the wider socio-legal and economic contexts. The illegal and unauthorised status of urban squatter settlements leads to meager and at times non-existent provision of basic services like toilets, potable drinking water, sewerage systems and garbage disposal ( Revi, 1991; Kundu, 1993). Being priced out of the urban housing market means often existing on the edge of open sewerage drains, riverbeds and landfills. In all towns and cities in India with a population above 50,000, slum dwellers form 21.2 per cent of the total population (GOI, 1996). In spite of forming a substantial part of the urban population, their presence is still viewed as anomalous and they continue to be described as ugly blots 'which today totally disfigure the national landscape' (GOI, 1998: 20) in state policy documents. The slum is a toehold for the poor, in many ways functioning as a symbol of the in-egalitarian nature of the straitjacket of standardised town and city planning which carves out urban land for the affluent, placing the poor on the periphery.

The status of the urban homeless, however, is worse than that of slum-dwellers, with even the tenuous anchorage of a shanty unavailable to them. In many cases, the urban homeless are victims of slum eviction drives, mentally ill or physically disabled. According to the Census there were about 0.7 million urban homeless in 1991 of whom nearly 0.25 million were women.

In-situ upgradation with programmes like Environmental Improvement of Urban Slums (EIUS) and Urban Basic Services for the Poor (UBS) has led to improvement in slum habitat in a limited way wherever implemented, especially with the emphasis of the latter on community participation and involvement of voluntary agencies in partnership with the state. For the homeless, Night Shelters and short stay homes provide temporary reprieve from life on pavements and crumbling, abandoned structures. However, these programmes still fall short of the basic issue of provision of secure housing for the poor. Even the lowest priced housing constructed under state schemes of low-cost housing and housing for the economically weaker sections (EWS) have been beyond the reach of the poor in squatter settlements. In the absence of security of tenure, the status of squatter settlements remain forever uncertain, even in cases where in-situ upgradation programmes have been initiated.

The case of *Olga Tellis v. Bombay Municipal Corporation* (AIR 1986 SC 180) highlighted the plight of pavement dwellers in the city of Bombay who constitute nearly half its population. The then Chief Minister of Maharashtra made an announcement that all pavement dwellers in Bombay would be evicted forcibly and deported to their respective places of origin or relocated on the outskirts of the city. In pursuance of the said announcement many hutments were demolished without issuing any notice to the dwellers. The petitioners therefore sought from the court a judgement to protect the slum and pavement dwellers from arbitrary eviction from their shelters without being offered alternative accommodation. The court held that although no person has the right to encroach by erecting a structure on footpaths, pavements or any other public place, slum dwellers who had been settled there for 20 years or more could be evicted but only alternative sites were given to them. The court also stated that the low-income shelter programme and slum upgradation programme under which basic amenities are provided to slums should be implemented without delay. While deferring the evictions till after the monsoons to that year, 1985, the court said: "The pavement dwellers who were censused ... in 1976 should be given, though not as a condition precedent to their removal, alternative sites at Maharashtra or at such other convenient places as the government considers reasonable, but not far away in terms of distance."

The linking of shelter provision with employment and anti-poverty programmes such as the Nehru Rozgar Yojana displayed a holistic understanding which has not been further integrated into more comprehensive measures with greater inter-sectoral coordination and cooperation. It follows then that the housing shortage for the poor is but symptomatic of the macro dimension of a shrinking livelihood base outside large towns and metropolitan areas.

Regional disparities in economic development, the stagnation and sometimes decline of formerly industrially active small towns and a development consensus that has marginalised rural areas has led to the creation of megacities which act as magnets for the economic and human resources in the rest of the country. The urban bias in development planning excluded not only rural areas but also small towns in their exclusive concentration on the industrialisation of large urban centres. It is in the context of the above phenomena that any alternatives in urban shelter for the poor are to be explored.

#### Shelter for the Rural Poor

In the rural areas there was a shortage of nearly 13.72 million houses in 1991 (GOI, 1991). Traditionally homestead rights in rural areas have been associated with ownership or tenancy rights in agricultural land. With a number of small and marginal farmers losing their landholdings and turning into landless agricultural labourers due to factors such as indebtedness or displacement due to development projects, they also lose the homestead or land tenure rights that had guaranteed them a shelter in the past (Revi 1991). Although the House Sites for the Rural Homeless programme, launched in the early 1970s, represented a break with state housing policy of the earlier years which had assumed that land was not a constraining factor in rural shelter, the conflation of rural shelter issues with the wider agenda of rural land rights has not been fully accomplished.

The Indian Science Congress, during a session in 1981, organised a competition in low cost housing. Some very well-known and established architects along with many bright young ones participated in the competition. But the prize, awarded by the jury of the Indian Science Congress went to an illiterate tribal woman who constructed a tribal hut using only naturally available material. The house was built while the Congress was in session.

Of the housing shortage of 13.7 million houses, nearly 10.31 million have been classified as unserviceable kutchcha (semi permanent) houses. It has been argued that the norms used for enumerating the rural housing shortage does not reflect the actual condition of the housing stock: the practice of evaluating the quality of rural shelter using the standards that are only appropriate for evaluating urban housing is questionable (Revi, 1991).

The imposition of these standards on rural housing has led to increasing use of modern building materials, promoted by state shelter projects, which not only lead to inflated construction costs, but also the decline of ecologically sound traditional shelter-building which predominantly relied on bio-mass materials. Also, the commercialisation and alternative use of traditional bio-mass construction materials has meant limited access to such materials for the poor, making construction, upgradation and maintenance of homesteads increasingly difficult.

#### People's Participation in Housing: Resisting Impositions

The participation of the poor has been limited in the planning and implementation of state projects for provision of housing for them. The modernistic bias and marginalisation of traditional skills and materials has led to the foisting of type housing projects on the Indian landscape with their aesthetic-numbing geometric standardisation. The houses constructed under these projects, with no involvement of the eventual inhabitants in their design, do not match their needs and aspirations, forcing them to live in unsuitable settlements. Thus the shelter discourses in India falls within the larger ambit of the larger discourse on modernisation and development versus the lives of the vast masses and has to be addressed as such.

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## D. RIGHTS OF MINORITIES

It is widely recognised that the protection of the rights of religious, linguistic and ethnic minorities is an essential part of the mainstream human rights movement. This is so because these groups being minorities both numerically and in terms of their powerlessness are likely to face discrimination in the realisation of their fullest potential as citizens.

The Universal Declaration of Human Rights (UDHR) in its various articles has affirmed the principle of non-discrimination. The same principle is also upheld in the Constitution of India. "The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth or any of them"(Art. 15 of the Constitution). Article 14 of the Constitution states: 'The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India'. However, it is important to note that nothing in Article 15 prevents the state from making special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes and for women and children. (See Ch. 4). Article 25 on Right to Freedom of Religion provides that : 'All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion'. Article 26 provides minorities special safeguards to manage religious affairs and states, 'Every religious denomination or any section thereof shall have the right to establish and maintain institution for religious and charitable purpose; manage its own affairs in matter of religion'. Article 29 safeguards the rights of the cultural and religious minorities; Article 30 gives them the right to establish and administer educational institutions and says, 'All minorities, whether based on religion or language shall have the right to establish and administer educational institutions' (Singh, 1993, pp205-232).

### The International Dimension

The international discourse on minority rights has been beset with conceptual and definitional problems. The 1977 study by Francesco Capotorti on the rights of persons belonging to ethnic, religious and linguistic minorities emphasised certain criteria for the determination of a minority, i.e. numerical inferiority, non-dominant status and the possession of certain distinct religious, linguistic and ethnic characteristics, along with the collective desire on the part of the group to preserve its culture, language or identity. The UN Sub-Commission on Minority Rights (1985) while preparing the draft Declaration on Minorities considered another definition developed by J. Deschenes which while basically concurring with Capotorti's definition differed with the latter on the importance of the question of preservation of identity as far as the definition of minority was concerned. Deschenes' contention was that groups like the Blacks in America and Europe or the low castes in India had a distinct inferior social status imposed on them by the dominant groups and would certainly not wish to preserve crucial aspects of their 'identity'. He therefore suggested that for these racial and social minorities recognition of their 'collective will to survive' and their desire 'to achieve equality with the majority in fact and in law' was more appropriate in defining a minority rather than an emphasis on 'preservation of identity'. (Banerjee, S. 1999: x-xi).



However, in spite of the above mentioned discussion, the UN Sub-commission on Minority Rights was unable to adopt a definition of 'minority'. Even Article 27 of the UN Covenant on Civil and Political Rights which guarantees rights for persons belonging to ethnic, religious and linguistic minorities does not define a minority. Moreover, it does not define these rights as group or community rights; it defines minority rights as the rights of individuals who are members of a minority (Banerjee, S., 1999: ix).

It is important to note some features of the discourse on minority rights in the West. The question of group rights or collective rights has come up at a time when communities have more or less disintegrated and community life has all but disappeared; secondly, it has arisen in a situation when the basic rights of citizenship have been extended to communities that were previously excluded from it and therefore the current day Western discourse is more concerned about the cultural rights of minorities; besides, it has been borne out of the experiences of the immigrant groups and indigenous peoples and their discrimination and vulnerability in the face of the homogenising political system and culture of western liberal democracies (Seth and Mahajan, 1999: 1).

## The Indian Context

The Indian context is different on two important counts: for one there are no immigrant populations or outsiders who have to be accommodated and for another, there has been a recognition of the role of communities in the social and political life of the country. While the British provided for community-based representation for purposes of real politik, the post-colonial Constitution granted special rights to minorities and communities with a view to ensure representation of diverse interests and as aspects of democratic citizenship in a secular and plural polity. However, given the background of the partition of the subcontinent, the Constitution of India made 'a subtle but basic distinction between the cultural rights of religious minorities and political group rights of communities, which were socially discriminated through forced segregation or physical isolation' (Seth and Mahajan, 1999: 3). Thus the Scheduled Castes and Scheduled Tribes were to be given representation in the political sphere and protected in the economic sphere, while minorities were only granted the right to protect their religion, language and culture and establish and administer educational institutions.

Debates and discussions in the Constituent Assembly reveal how the safeguards for the minorities, which included separate representation, were eliminated in the name of an unalloyed, pure nationalism. The rights for minorities, (religious and linguistic) were so ambiguously formulated that educational institutions run by minorities could not even reserve seats for students of their own community.

Thus Article 30 of the Constitution was pitted against Article 29 (2) of the Constitution. It was only as late as 1991 that the Supreme Court of India in the St. Stephen's case ruled that the right to regulate admissions to maintain the minority character of an institution was 'a necessary concomitant right which flows from the right to establish and administer educational institutions under Article 30(1)' (Ansari, I., *The Politics of Constitution Making in India*).

Thus the Indian discourse on minorities has always been overshadowed by the historical experience of the partition. It has not been viewed from the perspective of human rights, but defined and worked out within the parameters of the discourse of communalism versus

secularism and nationalism versus separatism. Because of this, prevailing political realities have influenced the process by which groups are to be designated minorities. The Sub-Committee on Fundamental Rights held in February and April of 1947 admitted with much candour that 'it is difficult to expect that a country like India where most persons are communally minded, those in authority will give equal treatment to those who do not belong to their community'. Thus in the Report on the Advisory Committee on Minorities (dated May 11, 1949), Muslims, Scheduled Castes and Indian Christians were considered to be minorities. Parsees and Sikhs were designated minorities only much later, as late as the latter part of the 1980s. As of now, the officially designated minorities in India are Muslims, Christians, Parsees, Buddhists and Sikhs [Government of India, Ministry of Welfare Notification, dated 23.10.93].

If one considers the nature of Indian society, given its size and its diversity and given the historically evolved complex and segmented social structure, the question of determining minorities is daunting. The above-mentioned government notification has limited minorities to just religious minorities, leaving out of purview the linguistic and other ethnic minorities. The fact is that many groups experience different kinds of deprivations. Thus, for example, while many of the Scheduled Tribes in the Northeastern states do get the benefits of reservation, the fact that their languages and cultures are marginalised intensifies their vulnerability and sense of alienation. The same could be said for the other Scheduled Tribes as well. The Dalit converts to Christianity are doubly disadvantaged, as Dalits and as Christians. The most significant aspect of the contemporary Indian situation is that traditionally rooted disadvantages and deprivations have been exacerbated by the development paradigm followed so far leading to a situation whereby the vast majority of the India population, constituting the Scheduled Castes and Tribes, the Other Backward Classes and the religious minorities are disadvantaged and deprived in significant ways, principally by being denied equal access to resources and opportunities.

"Communities are marginalised ...because a small but dominant minority controls national resources. In fact, it is a new minority of modern and modernising elites which exercises hegemony over national life, which disadvantages large sections of the population, not by devaluing their culture, but by denying them an equal opportunity and access to the available resources"

One might add that devaluing the culture and denying access to the basic assets and resources is in fact part of an integral whole in the project of constructing national hegemonies, and often the struggle to preserve cultural identity on the part of minorities of various kinds is a weapon to articulate the basic aspirations for equality and dignity in all spheres. The project of constructing national hegemony has led to the pernicious use of the minority sentiment for political gains while effectively denying the minorities the Constitutional safeguards thus promoting what has been termed 'minoritarianism'.

The parties who use the minority's sentiments for political gains, as such, have no specific agenda for their upliftment. Of course, some parties show 'deep concern' over the plight of Muslims, especially at the time of election, but this is hardly translated into action and generally put on back burner soon after the election is over. Thus the electoral rhetoric is mainly designed to win Muslim votes. On the other hand, some parties will give undue attention to minor issues in order to show their commitment towards the minorities. As an example, one Chief Minister of UP got the number plate of his car and name plate at his residence written in Urdu to indicate his 'love' for the Muslims. An official notification was also issued that in certain districts of state, the applications and petitions in courts could be filed in Urdu.

Recent political developments particularly over the last decade or so have serious implications both for rights of minorities and for certain basic features of the Constitution, like secularism (conceived as respect for all religions and neutrality of the State) and a plural and democratic polity. The rise of Hindu majoritarianism has cast its shadow on most institutions. Till recently, the right-wing Hindu majoritarianism had affected only the civil society, and the State by and large managed to preserve its secular, plural and democratic character. But now the very institutions of the State seem to have come under its influence. In the following sections we outline some of these aspects particularly as it affects the rights of minorities. We deal with three aspects: 1) ambiguities and biases in the Constitution and the laws; 2) the judiciary, and 3) the operation of the state machinery, particularly the law-enforcing agencies, like the police and the para-military forces.

## Ambiguities and Biases in the Constitution and the Laws

If one were to examine the section on language (Part XVII of the Constitution), there are certain provisions that are meant to protect minority languages. Thus Articles 347, 350, 350 (A) and 350(B) deal with minority languages. But the manner in which these articles are framed make them ineffective in protecting these languages. Thus Article 347 reads: 'On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a state desire the use of any language spoken by them to be recognized by that state, direct that such language shall also be officially recognized throughout that state or any part thereof for such purpose as he may specify.' As of now 18 languages are included in the Eighth Schedule of the Constitution. Konkani, Nepali, and Manipuri have been included in the Schedule as late as in 1992 and after prolonged political agitation. The languages of the 8 per cent tribals find no place. Thus in spite of right to instruction in the mother tongue being guaranteed, millions of tribals and those belonging to groups whose languages are not included in the Eighth Schedule are unable to avail of education in the mother tongue.

In spite of the general principle of non-discrimination upheld by the Constitution, there are laws which privilege Hindu religion. Thus the benefits of reservation to the Scheduled Castes could be availed of only if they continued to remain within the Hindu fold. Thus an 'untouchable' who converted to Islam or Christianity would have to forgo the benefits of reservation. Till recently, even religions like Sikhism or Buddhism were treated likewise. But a strong movement on the part of the Dalits led to Sikh and Buddhist Dalits gaining the benefits of reservation. But Dalit Christians have not yet been able to make a dent. Similarly laws relating to marriage and rights over children accord a privileged status to Hindu religion. Thus if a Hindu father or mother converts to Islam or Christianity, he or she cannot act as his or her minor child's guardian in respect of the latter's person or property. If the only son or daughter of a Hindu converts to Islam or Christianity, treating this as his or her civil death, the parents can adopt a Hindu son or daughter (if otherwise entitled to it) (Tahir Mahmood (ed) 1991, *Freedom of Conscience and Conversion to a Minority Religion – Legal Parameters and Social Realities, Minorities and the State in Indian Law*). Even on the question of personal laws the bias of the administration gets expression when equity considerations are raised regarding the personal laws of minority groups while similar considerations are glossed over in the case of the personal laws of the Hindus, as for example in the case of the Hindu undivided family.

The Role of Judiciary

The role of some sections of the judiciary in recent cases of 'communal tensions/issues' has led to serious misgivings on the part of citizens.

### **Babri Mosque:A National Tragedy**

The stand of the Supreme Court before and after the demolition of the Babri mosque lead to serious doubts about its non-partisan character. In the case of Faruqi vs. Union Government the Supreme Court dealt with the validity of the Acquisition of certain Areas Act 1993. The Babri Mosque was under litigation for several years due to Hindu fundamentalists' claim of Lord Rama's image appearing on its own, - which was disputed by the Muslims - and a suit was filed. The court gave an injunction against the use of the site by both the communities. In 1985, another court order allowed Hindus to worship. After the demolition, the impugned Act authorised the Union Government to acquire land adjacent to the disputed land and authorised itself to give it to a suitable body in the future. After the demolition, Hindu fundamentalists had built a make shift temple on that site and started worshipping. The Act under the guise of maintaining the status quo allowed Hindus to continue prayers.

The whole issue raised two significant questions regarding the attitude of the apex court – (i) could places of worship be acquired by the state without violating the freedom of religion; (ii) did the Act not give a preferred treatment to Hindus as against Muslims? It was alleged that the Union Government did not give equal treatment to both the religious groups and thereby violated secularism. The majority judges (Verma, Venkatachalliah and Ray, J.J.) gave positive response to first question and negative to the second question (Sathe, S.P.).

Chief Justice Bharucha and Ahmadi had questioned the propriety of such acquisition. They said that the government could have got itself appointed as a receiver of the property, and that it could have been handed over to the appropriate group on proper adjudication of the dispute. But it did not happen.

On this issue, Justice Hosbet Suresh observes 'The majority judgment of the Supreme Court while returning the Presidential reference on Ayodhya.... is blatantly perverse. The whole world knows who were responsible for the demolition of the mosque, yet the Supreme court says that the demolition was the act of unidentified persons' (Anand, 1999 : 160). The Supreme Court has made all these observations to justify the status quo (not as of December 6, 1992 when the Babri mosque was demolished but as of January 7, by which time a make shift temple had been erected in its place). The majority judges have rightly said that 'the provisions of Section 7 (of the Act, pertaining to status quo) indicates that the Act is skewed to favour one religious community against another. It is this status quo which the majority judges upheld - favouring one religion as against the other – all in fine tune with the diabolical package plan offered by the government' (Anand: 1999). Further, minority judges objected to the failure of state to protect the religious properties of minorities and a disregard of the previous commitments made to the Court.

### **Other Straws in the Wind**

The Bombay High Court (Sept. 1994) absolved the Shiv Sena chief for his editorial in 'Saamna' inciting violence against Muslims. The case was crucial because this editorial played a major role in inciting the mass killings in Bombay. The Supreme Court refused to entertain a special leave petition against the Bombay High Court a few months later in January 1995. Retd. Justice Hosbet Suresh of the Bombay High Court found the Supreme Court's ruling shocking and subversive of the rule of the law. The Supreme Court was reluctant to issue directives to the Maharashtra government for speedy and effective

#### **prosecution of the perpetrators of the riots (Oct.94).**

**In a controversial ruling, Justice Hari Nath Tilhari (March 94) of the Uttar Pradesh High Court, who while ruling in a case of property dispute jumped to the conclusion that Shariat laws are “unconstitutional”. Justice Kuldip Singh of the Supreme Court cast aspersions on the loyalty of Indian Muslims to the nation while ruling on a petition filed by four Hindu women whose husbands had conveniently converted to Islam in order to get a second wife.**

**Finally, the 1995 judgement of the Supreme Court on electoral speech which sought to give a benign interpretation to the term “Hindutva” describing it merely as a way of life, provoked a lot of discussion and controversy. This wider meaning of Hindutva is an imposition of the majority’s way of life on all Indians. The insistence that Indian culture means Hindutva is to deny the diversity and pluralistic character of the Indian nation. Editorial of December 13, 1995, pointed out: ‘By stating that the use of the term Hindutva should not be construed per se as antagonistic to other faiths, the court appears to have virtually excluded it from the purview of sections 123(3) and 123(3a) of the Representation of the People Act which define corrupt electoral practices. In doing so, the court could be seen by an already disillusioned minority to be putting its imprimatur on a politico-religious philosophy which can be freely propagated ... without fear of incurring penalties.’**

**A constitutional Court, with secularism as part of its basic structure, ought not to praise one religion as being more tolerant and generous than other religions. Therefore, it was amazing that the Court found nothing objectionable in Manohar Joshi’s statement that if his party came to power, Maharashtra would be the first Hindu state.**

What is most alarming is that for these custodians of the Constitution, as one eminent lawyer of the Supreme Court, Indira Jaisingh has put it: “The barriers between law and religion have broken down”. She drew attention to the fact that several chief justices on retirement had joined the BJP and some had even contested elections on a BJP ticket. These developments have shattered the confidence of the minorities in the non-partisan character of the judiciary [Anand, in Banerji].

#### **The Role of the State Machinery**

Civil rights groups, citizens’ committees, women’s organisations have repeatedly questioned the attitude of the state administration and the law and order machinery in most cases of riots and atrocities on minorities for the former’s failure. Many commissions of enquiry have commented on the partisan behaviour of the police and the para-military forces.

It is not only Muslims who have been the targets of this bias and religious intolerance and anti-minorities mindset of the law and order machinery but other minorities like Sikhs and Christians are also facing this bias. The 1984 riot was the worst communal carnage in India’s history since 1947 when over 3000 innocent Sikhs were mercilessly butchered within a period of three days in Delhi. The senior police officials refused to save the innocent Sikhs as stated in various articles published in the newspapers. The Justice Ranganath Misra Commission which was appointed to probe into the riots ‘castigated the total passivity, callousness and indifference of the police in controlling

the situation and protecting the affected members of the Sikh community' (Anand,163.1999).

There is a widespread, vocal and strong assertion by various civil society groups as well as several political parties regarding attacks on minorities. This includes the women's movement, human right activists, scholars, bureaucrats, other defenders of India's democracy. For example, in a recent, international seminar on Constitutional Ideas and Political Practices : Fifty Years of the Republic, it was unanimously recommended that having revisited the entire debate on the foundation of the Constitution and its developments, including the norm of the secularism, there is no case for a review of the Constitution. It may be noted that the Indian participants in this included outstanding scholars from the field of law and social sciences drawn from the majority as well as minority community.

The recent attacks and atrocities on the Christian community cannot be ignored. Some 21 Christian missionaries of both the sexes were mercilessly murdered (1978-99) (Deccan Herald 1<sup>st</sup> March 99). The latest in the murder chain being the murder of the Australian missionary, Staines and his two children. The Government appointed a commission of Inquiry headed by Justice Wadhwa, a sitting Judge of the Supreme Court, who was asked to inquire into the murders, and their possible communal connotations. About 90 attacks on Christian establishments since January 1, 1998 have been reported which stand higher than the total reported incidents during the 50 years of India's independence. This includes priests, nuns, religious personnel, institutions in Gujarat, Maharashtra, Uttar Pradesh, Madhya Pradesh, Bihar, Orissa and Rajasthan. Gujarat alone has accounted for 30 cases of violent atrocities in less than six months in 1998 (Pioneer, Dec 8,1998). When Christians are attacked, it is mostly the converted Dalits and Tribals who become the target.

The general bias of the state in practice is not only against religious minorities, but also others -- be they linguistic or regional during civil strife. In 1994, a peaceful assembly of Gowari tribals of Maharashtra seeking their constitutional right to be scheduled were dealt with by the police in such a brutal manner that more than one hundred tribals were killed. The People's Union of Civil Liberties (PUCL) at its VIII National Conference held in April 1999, noted that the attacks on the Dalits and tribals have been on increase. The Annual Report of the Scheduled Castes and Scheduled Tribes for the year 1990 by the Ministry of Welfare, Government of India, shows that between 1981 and 1990, the number of atrocity cases registered in the country as a whole under the Indian Penal Code was 153,369 for the SCs and 37,159 for the STs, the average number of cases for a year being 15,337 for SCs and 3,715 for STs. The Report further reveals that for the years 1988, 1989 and 1990, 79 per cent of the crimes against the Scheduled Castes have been committed in the four states of Uttar Pradesh, Madhya Pradesh, Rajasthan and Bihar, while crimes against Schedule Tribes were reported to be 90 per cent from the states of Madhya Pradesh, Rajasthan, Maharashtra, Orissa, Kerala and Gujarat (Report of National Commission for Scheduled Castes & Scheduled Tribes, 1990).

The sixth report of the National Police Commission (3<sup>rd</sup> March 1981) noted that in various instances the law and order machinery, the police officers and policemen have shown an 'unmistakable bias' against a particular community in dealing with communal situations. Another example of bias on the part of the state government (Gujarat) was where the police had been asked to gather information about the Christian community, their profession, the number of missionaries and source of its funding etc. Similarly, a ten point circular had been sent out to district police chiefs and police commissioners seeking information about the Muslims, their organizations, educational institutions, religious congregation etc. which has created a fear psychosis among the members of the minority communities (Indian Express, 2<sup>nd</sup> Feb, 99). The bias against the minorities is so pervasive that when an investigating team of National Minorities Commission went to Ahmedabad to investigate the demolition of churches (April 98) and violent attacks on Muslims (August 98), the members were humiliated by certain elements with slogans like 'Minorities Commission Quit India' or 'Muslims go to Pakistan'.

**Under the Commissions of Inquiry Act, 1952, the time lag in tabling the report must not exceed six months. State governments have often got away with a caveat in the Act that allows it to delay the tabling of the report indefinitely "in the interest of the sovereignty and integrity of India, the security of the state.... or in public interest" (Indian Express, 2<sup>nd</sup> Feb, 1998). A few illustrations with regard to the inefficiency and bias on the part of the state administration and the law and order machinery can be cited:**

**1. In the 1989 Bhagalpur riots where officially 414 people (majority of them were Muslims) died, a judicial inquiry was set up on 8 December 1989 and its report was submitted in 1995. The inquiry report held the SP wholly responsible for the riots and indicted several top police and administration officials.**

**2. In the Meerut riots of 1987, the Provincial Armed Constabulary (PAC) jawans broke into the houses in Hashimpura in Malliana and arbitrarily picked up 40 young Muslims, drove them in a truck and killed them. No action has to date been taken on the Gian Commission Report (1987) and the Justice C.D. Parekh Inquiry into 1982 riots (Meerut) (Human Rights Today, Quaterly 1, Autumn 99).**

**3. In the Bombay riots (1992-93), the Justice Sri Krishna Commission appointed shortly after the riots submitted its report in 1998 after numerous attempt to stymie its proceeding by the state government mainly because the evidence blamed members of Shiv Sena and the city police officials.**

**4. The findings of the investigating team constituted by PUCL to inquire into the Coimbatore riots of November 97 in which 27 Muslim youth were shot dead by the police and 100 seriously injured shows anti-Muslim mindset of a section of the police force (Human Rights Today, Vol.1, No. 1, July-Sept.1998).**

**Last year Padma Rosha, Director of National Police Academy and Vibhuti Rai, Deputy Inspector General, BSF have publicly warned about the serious consequences of the growing loss of faith of India's minorities in the impartiality of the state in handling riot situations, stopping the increasing atrocities on minorities and in stymieing the proceedings of commissions of inquiry (Anand, 1999:160).**

## **E. TRIBAL RIGHTS**

In India, apart from all the fundamental rights granted to every citizen, Scheduled Tribe as a specific category is also provided with special provisions under the Constitution. This recognition of tribal rights can be traced back to the 1931 Congress resolution on Fundamental Rights and Economic Policy, a programme of social, political and labour reforms to end the exploitation of the masses.

The Constitution enjoins on the State the responsibility 'to promote with special care, the educational and economic interests of scheduled tribes and protect them from social injustices and all forms of exploitation' (Article 46). The Scheduled Tribes in India are regarded as those groups or communities which the President may specify by issuing a public notification (Article 342). More than 400 such groups are identified from the tribal population of about 70 million, constituting 8.08 per cent of the country's population (1991 Census).

**Special grants are provided for the development of scheduled tribes (Article 275(i)) and seats are reserved for them in political institutions at various levels (Articles 330,332,334) and in government services (Article 336). Special provisions are made for the administration of scheduled tribes in the Fifth (244(i)) and the Sixth (244(ii)) Schedule Areas. The development of tribal areas and the people are undertaken in different states under tribal sub-plans drawn and modified under various Five Year Plans. India has also ratified the ILO Convention 107 on Indigenous and Tribal Population of 1957 which includes protection of properties of the tribal people.**

However, despite these provisions, the tribals' rights over their land, forest and its resources have declined owing to the various policies and Acts of the government which emphasize national and commercial interests in opposition to the local people's needs, in the name of development.

Developmental processes like mining, construction of dams or building of sanctuaries by acquisition of land without taking people into confidence has become a major issue in recent years, with the coming together of environmental concerns and people's rights struggles. The Land Acquisition (Amendment) Bill, 1998 aims to speed up land acquisition by big business groups and multi-nationals, by making the process of acquisition of land and rehabilitation easy and vesting powers in the district collector (Pinto, Ambrose, 'Fillip to Land Transfers: Land Acquisition Bill, 1998', EPW, Dec., 5-11, 1998). As 80-85 per cent mineral resources are in the tribal territories, there has been a large scale land alienation, deforestation, displacement and migration of tribals, affecting women the most.

A study reveals the negative impact of deforestation on Kond and Saora tribals of Ganjam and Kalahandi districts of Orissa, like increased workload and extra distance to be covered, fuelwood crises, reduced food supply, deterioration of nutritional status and the loss of the right to property (W. Fernandes and Geeta Menon, Tribal Women and Forest Economy, Indian Social Institute, New Delhi, 1987). Studies on survival migration with a gender perspective show adverse consequences on women, where women migrate with men or when they are left behind in male-alone migration (Loes Schenk - Sanderbergen (ed.), Women and Seasonal Labour Migration, Sage Publications, New Delhi, 1995). Depletion of forest resources has led to increase in the health problems of tribals, affecting women significantly. These are - higher infant mortality rate, low nutritional status, women life



expectancy and high fertility rate, all compared to the national average (Status of Tribal Women in India, Social Change, 1993, Vol. 23, No.4).

The sex-ratio among tribals has also declined from 983 (1981) to 972 (1991), but it is still better than the national average (935 in 1981; 927 in 1991). Though the literacy level of tribals has shown a marked improvement from 16.35 in 1981 to 23.63 in 1991, there is a huge gap when compared to the national average (36.23 in 1981; 52.21 in 1991). This gap is widened when sex-wise break-up is considered. For tribal men it is 32.50 (average male = 64.13) and for tribal women it is only 14.50 (average female = 39.39) as per 1991 Census. (Status of Tribal Women in India, Social Change; 1993, Vol. 23, No.4). The work participation rate among tribal women (30.3) is much better than among the non-tribal women (16.0), but it is much lower than that of tribal men (53.7)(1991 Census). It is a known fact that tribal women's share of work is much larger than men as they participate in various productive, reproductive and domestic activities which are often not counted as work. They also have little access to and control over resources, are paid less and virtually have no property rights.

Similarly in cases where compensation is to be given to displaced tribals, it is made to 'heads of families' which are often not women. It is reported that over 40 per cent of those displaced till 1990 (300 lakhs) by development displacement are tribals (Twenty Ninth Report of the Commissioner of Scheduled Castes and Tribes, GOI Press, 1990). The Narmada Water Dispute Tribunals Award which governs the rehabilitation of the people displaced by the Sardar Sarovar Project, considers every adult son a separate family but not the daughters, as all rehabilitation policies go by ownership of land and property (E. Ganguly Thukral 'Development, Displacement and Rehabilitation: Locating Gender'; EPW, June 15, 1996).

The issue is not only that tribals are deprived of their economy and livelihood and hence to be compensated and rehabilitated, as is often understood, but that they have been alienated from their very culture which evolved from their symbiotic relationship with forests over the years. The tribals' customs and laws have evolved from the concept of common property and collective rights to natural resources. Tribal women, who shared equally, are at a greater disadvantage because of this shift to individualistic way of life and private ownership of property.

Experience of working with poor rural and tribal women of Bankura district in West Bengal indicate that these women have a better sense and understanding of the value of collective responsibility which gets extended from the family to society. The women's perceptions on particular development issues related to natural resources are markedly different from men in their own communities as can be seen in their distinct approach to plant life and life-sustaining role of trees and forests. For instance, unlike men they would oppose planting of eucalyptus trees or growing of cash crops and cutting of trees merely for timber. (Vina Mazumdar, 'Peasant Women Organise for Empowerment: The Bankura Experiment'. Occasional Paper No. 13, 1998, CWDS, New Delhi)

It is for this reason that there has been a large scale participation of women in protests all over the country among the communities which are deprived of their land and

natural resources. Women's organisations led the Chipko Movement in Garhwal region of U.P. for forest protection, in Orissa tribal women had to wage a consistent struggle for rights over minor forest produce as well as for their livelihood and survival (Das, Vidhya 'Human Rights, Inhuman Wrongs : Plight of Tribals in Orissa', EPW, March 14, 1998) and in Bihar a group 'Ayo-Ayidari' (women's rights) is fighting for land rights to women ( Rao, Nitya and Kumar Rana, 'Land Rights and Women : Case of Santhals', EPW, June 7-13, 1997). The SEWA experiment in Gujarat and Bankura in West Bengal are well known cases of rural and tribal women organising for their economic independence and empowerment.

These efforts are supported by those who consider the autonomy, identity and self-governance of the tribals as essential conditions for their life with dignity in Indian society. This is opposed by those who view it as a method to keep the tribals backward by not letting them become a part of the mainstream and of the programmes of development. The debate is not new and can be traced to the two dichotomous approaches of 'isolation' and 'assimilation' before independence. This has accentuated to the extent that where one group blames the other for the denial of tribal human rights, the other calls the former a supporter of the self-deterministic or secessionist tendencies among the tribals.

The issue of self-determinism has become an important one in the context of tribals being seen and recognised as indigenous people in the political realm and international domain. The Government of India did not sign the revised ILO Convention (1957) in 1989 which spoke of indigenous population as progressively marginalised and the need for the recognition of their specific indigenous rights. The declaration of 1993 as the International Year of Indigenous People further sharpened this identity.

In India too, the tribal or the adivasi identity and consciousness evoked a sense of self-esteem and pride and the movement of self-determinism/autonomy has gained ground in recent years. In the North-east the traditional leadership sees this in the form of independence while the modern elite demand autonomy within the Indian State. In this region, conflicts rose between the tribals and non-tribals and also within different tribal communities mainly because of the competition and control over lands, jobs and economy by outsiders. The problems were aggravated as the government put forth the administrative and military solutions to the socio-economic concerns. (Fernandes, Walter, 'Conflict in North-east: A Historical Perspective', EPW, Dec., 18-24, 1999).

The issue of tribal identity is however, much more strongly articulated in central and western India where there is a greater degree of exploitation and marginalisation of the tribals. In some parts of India, like in Chhotanagpur, it has already become a political issue, with a demand of a separate state for the adivasis (Xaxa, Virginius, 'Tribals as Indigenous People of India', EPW, Dec.,18-24, 1999). This is catching up in other states like Madhya Pradesh, Gujarat and Rajasthan with Scheduled Areas where the enactment of the Panchayati Raj (Extension to the Scheduled Areas) Act, 1996 has taken place.

**The extension of Panchayati Raj Act, 1992 (Article 243) to the Scheduled Areas was made after certain modifications (Article 243)**

M4(b)) based on the far reaching recommendations of the Bhuria Committee Report (1995). The Act provided for wide ranging powers to the Gram Sabha (a full gathering of the village population) to safeguard and preserve the traditions and customs of its peoples, their cultural identity, community resources and the customary mode of dispute resolution. All the plans, programmes and projects for the socio-economic development of the village are to be consulted and approved by the Gram Sabha. Some states, like Madhya Pradesh have made compulsory, the presence of atleast one-third women for all Gram Sabha meetings (*Madhya Pradesh Panchayati Raj Adhiniyam, 1993, Chapter XIV A*). The Act has also provided for the reservation of half of the total seats for the Scheduled Tribes as well as all seats of Chairpersons of Panchayats at all levels. One-third of all these seats are reserved for women.

Though the Act was passed in Parliament without any opposition, the backlash and counter-protests are already visible in the Scheduled Areas. Panchayat elections in Madhya Pradesh were postponed at the last moment in response to cases filed in the High Court against reservation of seats for Scheduled Tribes in Panchayats. Several people have expressed their apprehensions regarding powers of self-governance to tribals based on their customary laws. Their plea is that different communities have different laws, some have undergone changes, while the others are no longer desirable and are against the principle of equality.

Tribal women become victims of this backlash by non-tribals, as well as by the members of their own communities when they attempt to codify those customary laws and practices which are discriminatory to women. Tribal women in many parts of India have started opposing such a move. In Mizoram, an attempt to pass a Bill in the state legislative assembly for codification of Mizo Hnan Dan was thwarted in 1991 through the initiative of a federation of women's group called MHIP. In 1995 Arunachal Pradesh women's organisations at the local level like APWWS and the National level like CWDS along with National Commission for Women, prevented the President from signing the Arunachal Pradesh Protection of Customary Laws and Practices Bill. This Bill which would have legitimised discriminatory customs like polygamy and child marriage was earlier passed in the state assembly in November 1994 without any discussion.

Along with the issue of codification of customary laws, women's organisations in the North-east are also demanding the extension of Panchayati Raj to the Sixth Schedule areas. Though there is a provision for such an extension in the Panchayati Raj Act (Article 243 M4(a)), no step in this direction has been taken so far. However, there is also a need to extend the provisions of the 1996 Act to the other states with tribal concentrations like Karnataka, Tamil Nadu, Kerala, West Bengal and Arunachal Pradesh.

The issues at stake, however, is in balancing the demand for self governance in tribal areas based on customary laws with human rights. The Panchayat (Extension to Scheduled Areas) 1996 Act does provide for women's presence in panchayats in the 6th Scheduled Areas, but the issues involved are diverse and complex. Human rights

activists supporting tribal rights oppose codification, pointing out that customs would then lose their elasticity and become frozen, like religious codes, which are by and large, discriminatory especially against women.

It is certainly important to focus on the systematic study and understanding of the customary laws as some of them provide equal opportunities to women. At times the uniform application of the concept of equality or justice may induce elements of inequality in an otherwise egalitarian society.

**Madhu Kishwar challenged the denial of land rights to women in Bihar under the Chotanagpur Tenancy Act 1908/1976 as a violation of Articles 14 and 15 of the Constitution read with Article 46 of the Directive Principles of State Policy (Madhu Kishwar vs. State of Bihar (1992) 1 Sec. 102). The petition prayed that in order that these fundamental rights become meaningful in the lives of Ho women it would be necessary that the provision of the Succession Act 1925 apply to the Ho People. The Court declined this invitation to intervene and introduce constitutionally recognised norms to tribal contexts. Also, since this Act does not recognise common property or user rights, so central to tribal economy, it is apprehended that its application would defend non-tribal rights and subvert those of the tribals. (Haksar, Nandita, 'Human Rights Lawyering : A Feminist Perspective', *Engendering Law*, Amita Danda and Archana Parashar(eds.), Eastern Book Company, Lucknow, 1999).**

The growing consciousness among some tribal women that equity demands better rights for themselves can best be illustrated in comparison with other minority women within the peasantry. The women's movement in India had to adopt the demand of landless Muslim and tribal peasant women since 1979 - when they questioned why they were denied titles in redistributed land under land reform measures (West Bengal - Operation Barga - 1979-82).

It is generally forgotten that apart from loss of land/forests by tribal groups as communities, substantial acreage of tribal land is no longer collectively owned. Ownership has become private, and is predominantly male. Women and development studies of peasant women from other parts of the Third World have echoed the same demand "Are we not peasants? Don't we labour on our own and others' land and produce food for the family? Are we not primarily responsible for keeping children alive? Why should we be denied this security".\*

Tribal women have however benefitted from the reserved seats in Panchayats since 1993 (See Ch. 4). But in the Sixth Schedule areas of the North-east women have no place, either in the Autonomous Development Councils, or the traditional bodies. Even in the matrilineal state of Meghalaya, no woman has been elected to the legislature or village/local councils.

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\* The Santhal Pargana Tenancy Act in 1949 provided no room for the women to inherit land on the excuse that 'Santhal tribal law is quite definite in not allowing women to inherit' as it was based on the codification during the British time denying women's claim to property ( Rao, Nitya and Kumar Rana, Ibid).

It is also recognised by different groups and women's organisations that the lack of gender sensitivity in the policies and programmes of the government is because of the limited number of women in the democratic political institutions at all levels. The extension of Panchayati Raj to the Sixth Schedule Areas or opposing arbitrary codification of customary laws is as important as the strengthening of land rights to women, or redefining 'family' to include female headed households or ensuring joint ownership of both the spouse at the time of new allotments in terms of women's fundamental and human rights. These, and similar issues are more important for tribal women as they are most affected by the developmental processes and are marginalized in policy decisions. However, tribal women are a part of the tribal communities who have special rights and who are also the most marginalised and deprived groups. There is a need therefore, to build a movement across the country based on tribal socio-cultural traditions, human rights and women's perspectives.

## **F. RIGHTS OF THE CHILD**

India ratified the Convention on the Rights of the Child (CRC) in 1992. As a signatory state, the Convention requires that within two years the state will report directly to the Committee on the Rights of the Child about the steps that have been taken for implementing the articles of the Convention. After that a Report has to be sent every four years. The Country Report of the Government of India sent in 1997\* reiterated the fact that the Convention 'vests an obligation on the States to review and revise all laws pertaining to children. Inherent in the commitment is also an obligation to review the manner in which the existing laws are implemented' (2.3, P. 110). This section examines the provisions in Indian Law relating to the child in the context of the CRC.

### **Defining a Child**

The first problem one is faced with is to find out how a child is legally defined. The CRC states that a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. In India, there is no uniform definition of a child : the Census of India defines all persons below the age of 14 years as being children, whereas the Indian Majority Act defines a minor as a person below the age of 18. The Constitution prohibits the employment of children below the age of 14 in any factory or mine or to be engaged in any other hazardous work. In addition, the age of a child differs depending on the branch of law we are dealing with, namely criminal law, family law, labour law, or even the law dealing with juvenile justice. The age of the child has ranged from 7 years to 18 years, depending on the legislation and the purpose for which a child needs to be defined.

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\* Convention on the Rights of the Child - Report, Government of India (1997) forwarded by the then Minister of Human Resource Development hereafter referred to as the Country Paper. Sarala Gopalan, the then Secretary of the Department of Women and Child in her Preface referred to the Convention as "a commitment to provide to our children a first call on our resources".

The Government of India is therefore considering reviewing the definition of a child in the light of the definition in the Convention. The Alternate Report on the Convention on the Rights of the Child (hence Alternate Report) points out very realistically that 'any attempt to evolve a uniform position in this question has to be informed by an awareness of the diversity and complexity characterising Indian society'. The Report further explains that the 'realities of our society make it difficult to choose a uniform 'age' to define the child, especially when it comes to child marriage and criminal justice".\*

The Convention mentions the need to register a child's birth immediately in order to give the child not only a nationality but a family status. Should not the government accord priority to the implementation of the requirement of birth registration which would give the child legal benefits rather than stressing on a uniform definition of the 'child'?

The Registration of Births and Deaths Act 1969, is however still not fully implemented, though the country report notes that compulsory production of birth certificates at the first school admission and for obtaining ration cards (a step which is being followed in certain urban areas), has yielded results. Hospital birth and births in health centres - urban and rural are duly recorded. Problem is mainly with deliveries in rural areas or slums. But inadequacy/inefficiency of administrative infrastructure is always cited as cause of incomplete registration. Situation is substantially better in states which have transferred the responsibility with some local bodies staff support.

The Convention draws attention to four sets of basic rights:

- (i) the right to survival which includes the right to life and adequate standard of living;
- (ii) the right to protection which includes freedom from all forms of exploitation, including the right to special protection in situations of emergency and armed conflicts;
- (iii) the right to development which includes the right to education;
- (iv) the right to participation which includes respect for the views of the child, and freedom of expression.\*

Many of these basic rights are already part of the Constitution. The Indian Constitution not only guarantees the right to life and personal liberty as a fundamental right; since 1981, the Supreme Court has spelt out clearly that the right to life does not mean 'only protection of limbs or faculty but includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate

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\* The Alternate Report India by the Working Group on the Convention on the Rights of the Child, p. 5, 6 (1998) hereafter referred to as the Alternate Report.

\* The Right to be a Child, UNICEF India Background Paper 1994, p. 1.

nutrition, clothing and shelter...' (Francis Coralie Mullin v Administrator Union Territory of Delhi (1981) 1 S.C.C 618-619.)

A report from the Ministry of Human Resource Development (1994) mentions that 15 per cent of India's two million sex workers are children - 30 per cent are under the age of 20 years. (Sankar Sen, National Human Rights Commission, Telegraph, 4.3.98). Another report calculates that in 1993, of the 190 million underweight children at the global level, as many as 72 million were in India alone. (Satya Sundaram - State of India's Children Social Welfare, Vol. 44, no. 8-9 (1997) p.7).

While the right to equality before the law and the equal protection of the laws are available to all citizens including children, Article 15(3) of the Constitution empowers the state to have special laws for children without being constrained by the concept of 'equality before law'.

There is complete agreement between the Convention and our Constitution on the need to make education not only freely available but to make it free and compulsory upto the primary level as education is regarded as the right of a child.

Recently the government proposed an amendment to the Constitution (the 83rd Amendment) to make education free and compulsory for children who are between the ages of six and 14 years. It is inconceivable that such an amendment can be contemplated when the relevant Directive Principle is clear. What happens to children below the age of six years? While a Directive Principle cannot be enforced in court, it is equally clear that 'they are fundamental in the Governance of the country and it is the duty of the State to apply these principles in making laws'.

### **Child Labour**

Both the Convention and the Constitution recognise the fact that the child has 'to be protected from economic exploitation and from performing any work that is likely to be hazardous...' Apart from Article 24 of the Fundamental Rights which prohibits children from being engaged in any hazardous employment, in addition, Article 39(e) of the Directive Principles, requires the state to direct a policy where the tender age of children is not abused and they are not forced by economic necessity to enter vocations unsuited to their age. The Convention mentions the need to protect children from work that threatens the child's health, education, or development and our Constitution mentions the need to give children opportunities and facilities to develop in a healthy manner. The underlying principle of both is that a minimum age for employment must be provided as also regulation of conditions and hours of work.

In 1986 these principles were legislated on in the Child Labour (Prohibition and Regulation) Act which clearly prohibits the engagement of children in certain kinds of employment and regulates the conditions of work in certain other types of employment. There are six occupations listed in Schedule Part A and 14 processes in Part B where the employment of children is prohibited. But unfortunately, there is a proviso in the Act which was also present in the earlier Employment of Children' Act 1938 (since repealed), which permits circumvention of the prohibition on employing children, if

a workshop is run by the owner with his family members. Unless these workshops are regularly inspected - which they are not - the salutary provisions of the Act are generally violated. The Supreme Court has also referred to this loophole in the Act by quoting the statement made by Neera Burra that 'one of the clear loopholes is that children can continue to work if they are a part of a family of labourers' (M.C. Mehta v. State of Tamil Nadu (1996) 6 S.C.C 756, 770).

The Minimum Wages Act which fixes the minimum wages for all workers, take into consideration three categories - adult, adolescent and child. A child is one who has not completed the age of 14 years and an adolescent is one who has completed the age of 14 years but is not yet 18 years old. Unless clear guidelines are given as to what should be the minimum wages of the child and the adolescent it is obvious that there will be clear exploitation as neither category is strong enough to bargain with the employer. It is therefore desirable in the interests of working children that there should be a uniform definition of a child worker so that a child gets the benefits, however limited, of the labour laws.

The Country Report states that there are a number of children who, because of the poverty of their parents, are working to supplement the family income. But drawing a distinction between child labour and exploitation of labour, the Report acknowledges that a certain degree of child labour will persist, and estimates the figure to be around 20 million.

In the meantime, there are reports of child domestic help being subject to battering and ill-treatment which have been surfacing. Within the period of a month, in 1999 in Delhi alone, the media reported a child servant jumping or being pushed to his death; and two children suffering serious injuries at the hands of the householders. Domestic work is not in the prohibited category of employments under the Child Labour (Prohibition and Regulation) Act 1986. Often, children are taken away from their homes in distant states to live and work with the hiring family, thus aggravating the vulnerability of the child. A small step towards eradicating this practice of employing children to do home work was set in motion by the NHRC when it recommended that such engagement of children by those in the employ of the government be prohibited and disciplinary action be taken against errant officials.

The spurt of crime in the metropolis which are suspected to have been committed with the connivance of domestic help has given the problem another dimension. Apart from exposing the child to criminal investigation, and possible prosecution, protection of the identity of the child is weak. This reduces the possibility of avoiding stigmatisation, and puts further obstacles in the path of re-integration. This is despite the law not allowing the record of crime by a child pursuing the child into adulthood.

## Child Marriage

The Child Marriage Restraint Act of 1929 makes the performing of child marriage an offence. However, the law has, in practice, been found to be flawed and implementation very weak. A child marriage is not void, or voidable, the Act only provides for prosecution of those who are instrumental, or participate, in performing the child marriage. If a court does not 'take cognisance' within a year from the date that the



marriage is performed, the rule of limitation will bar prosecution. The punishment is not stringent: where it is a male adult between the ages of 18 and 21 who enters into a child marriage, he may be sentenced to simple imprisonment upto 15 days and fine upto Rs. 1000. Other adult males are punishable with imprisonment upto 3 months and fine. No woman, however, shall be punished with imprisonment.

The 1929 Act was amended in 1978 to raise the minimum age of marriage to 18 for girls and 21 for boys. Expressly, this was done as part of the population control measures of the government. This subversion by the state of a legislation meant to protect the health, safety and childhood of the child, more particularly of the girl child has been unequivocally castigated by the women's movement (See Chapter 5).

The continuing practice of child marriages is evident when, during Akkha Teej, in Rajasthan, children, even infants, are married.

Another face of this problem was seen when Ameena, a 12 year old girl, was given in marriage to an elderly man who had come in from Saudi Arabia to contract the marriage. The intervention of an airhostess on the aircraft in which she was travelling with her 'husband', who noticed her distress, and of the court prevented Ameena from leaving India as a child-bride. But there is reason to be concerned that this was not an exception. Administrative reforms have since been undertaken to make the emigration of child brides more difficult. Their efficacy is now on test.

### **Child Exploitation**

Another area of deep concern for many of the member states has been the growing violence against children both within the family and outside. This was clearly reflected in the Convention which has as many as six articles which deal with the various types of exploitation and violence children are subjected to.

There is only one article in Part 3 of the Constitution which deals with the right against exploitation and prohibits traffic in human beings, begar and other forms of forced labour. Though there is no special mention of children, it applies to all citizens including children. In addition to this the Directive Principles have one clear provision regarding children which provides inter alia that 'childhood and youth are protected against exploitation and against moral and material abandonment'.

Even though Indian law has not enumerated the various forms of exploitation, there is considerable awareness of child battering and physical injuries to the child caused by parents, teachers, and others in positions of authority. The Country Report regrets the fact that sexual abuse, "is the least reported form of child abuse despite its high incidence..." The Country Report also mentions that some estimates show that "in 30% to 50% incidents, the offenders are family members..." Unfortunately there is no law for separating the child from his or her parents when he or she is being abused by them; apart from sexual abuse, child battering is on the increase and the question one has to face squarely is whether law can do anything about it. The National Policy of Children, 1974 states that 'children shall be protected against neglect, cruelty and exploitation'.

The Indian Penal Code has a number of provisions which deal with the problem of exploitation of the child especially leading to prostitution. The Indian Penal Code was drafted by the British and the problems that the government then faced were naturally reflected in the law.

What is interesting is that the object of these provisions in the Indian Penal Code is not to deal with the exploitation of children but the aim "is to prevent immorality and the provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one woman". There are two provisions which make buying and selling of minors for purposes of prostitution also punishable. As the purpose is to save young persons from being trafficked, the age was raised from 16 years to 18 years to bring it in line with the Majority Act. As times changed new offences came to the fore and the law had to be amended to include these offences. One very serious offence which the authorities had to deal with was the kidnapping of children for the purposes of begging and, in some cases, of maiming them as well. As there was no provision in the Penal Code to deal with this, it became necessary to add these. The punishment provided for maiming for the purpose of begging was mandatory life imprisonment and fine.

### Sexual Abuse – Conundrums and Contradictions

There is no specific offence such as sexual abuse of a minor. The law of rape deals with it in a limited way. Sexual intercourse with a girl below the age of 16 years will be rape -- her consent will be no defence. But the salutary effect of this is almost negated by another provision in the Penal Code which lays down that where a wife is concerned, sexual intercourse with her will not be rape as long as she is not below 15 years of age. The special significance of this age is not explained, particularly when the age of marriage under the Child Marriage Restraint Act, 1929 as amended from time to time has been raised to 18 years. The Law Commission had also made this point in their Report on Rape and Allied Offences by pointing out very clearly that "since marriage with a girl below 18 years is prohibited, sexual intercourse with a girl below 18 years should also be prohibited" (84th Report 1980).

This very limited right given to the young wife is also whittled down by a provision in the Criminal Procedure Code which requires that a complaint of marital rape must be made within one year of its occurrence. Taking into account our social conditions, it must take parents of a young girl and certainly of the young girl herself a long time before they can complain about marital rape against the son-in-law/husband. The condition of having to make a report quickly almost negates the law. Another provision in the law which would indicate that the real purpose is not to try the husband for marital rape, is the difference made between rape and marital rape. In all cases of rape, the offence is non-bailable and cognizable but in the case of marital rape, the offence is bailable and non-cognizable.

An alarming view still prevalent among many is that sexual intercourse with a wife below 15 should not be treated as rape, i.e. a valid marriage gives the right to intercourse to the husband. The consent of the wife is not relevant. The Report of the Joint Committee of Parliament on the Bill (Rape and Allied Offences) 1980 also suggested that a mild punishment should be given if the wife is not below 12 years; in any case the intercourse cannot be treated as rape. The punishment suggested is significant, as the extent of punishment is a good indicator of how seriously an offence is regarded by policy-makers. The punishment suggested for marital rape is imprisonment which may extend to two years or fine or both. Thus, it is evident that even if a case is brought to court a small fine will be regarded as enough.

Expressing the same views as the other members of the Joint Committee on the Bill, N.K. Shejwalkar in his dissent note wrote, "concept of rape upon one's wife is rather foreign to our country. It may be improper that the husband forces sexual intercourse upon his wife who is less than 12 years...." Another member L.K. Advani (currently the Home Minister) in his dissent note was more categorical in rejecting marital rape and wrote that there should be "an unqualified exception saying that sexual intercourse by a man with his own wife is not rape". It is interesting that he does not even qualify his statement by excluding forcible intercourse with a wife who is below 12 years.

### Child and Criminal Law

In criminal law a person is regarded as a child if he or she is below the age of seven so that no criminal liability will attach to the child, irrespective of the crime or precocity of the child. Between the ages of seven years and 12 years, the position is different: if the child has not attained sufficient maturity to understand the nature and consequences of his act, only then will he/she be treated as a child and not suffer any criminal liability. The difficulty lies in proving a negative; namely that the child does not understand

the nature of the act committed. In addition to this the person defending the child has to prove that the child did not understand the nature and consequences of the act; ironically, often, the person defending the child is not aware that the onus is on him to prove this. The result has been that in many cases ignorance of the law has gone against the interest of the child.

A young boy below the age of 12 along with his two elder brothers attacked and killed a person, in revenge as the deceased had earlier attacked their father. The young lad attacked with a sword and gave a blow on the neck of the deceased. The lower court convicted all three brothers of murder and sentenced them to life imprisonment. When the case of the young boy went on appeal, the Supreme Court made a pointed reference to the fact that "no attention to feeble understanding or youthful frolics are addressed. The prima facie inference of intent to endanger the life of the deceased with a sharp weapon stands unrebutted" (*Hiralal Mallik v. State of Bihar, 1977, Crim.L.J. 1921*). The judge had therefore no option but to hold the boy guilty of causing grievous hurt by a dangerous weapon and sentenced him to four years imprisonment.

It is clearly evident that no evidence was produced before the court to try and convince the judge of the immaturity of the boy and his inability to comprehend that the consequence of his act would lead to the death of the person attacked.

## **Crimes Which May be Committed Against Children**

There are a number of crimes which may be committed against a child and normally they are punished fairly severely. But because of the influence of the British, who framed the Penal Code, whenever there is a conflict between the rights of the child and those of the parents, the rights of the child invariably take a second place.

There is a clear conflict between the rights of the parents and the rights of the child in the offence known as kidnapping. The technical meaning of the term kidnapping no doubt is child stealing - but the offence as defined today is that it is the right of the parents/guardian to keep the child under their control. The age, when compared to other offences is extremely high - 16 years for boys and 18 for girls. As long as the children are below this age even by a few weeks the parents have the right of complete control. If either the boy or the girl leaves the house with someone else without the consent of the parents then not only can the minor be brought back but also the person who had helped him or her to leave will be prosecuted for the offence of kidnapping. The reason for leaving is not taken into account at all even though it may be because the child is very unhappy and is being abused by the parents. The only way that the child can leave the house is if she or he does it on their own without the help of any other person and if any person subsequently helps then it will not be kidnapping.

The object of kidnapping is as much to protect children of tender years from being abducted or seduced for improper purposes as for the protection of the rights of parents but the high age of 18 years for girls makes it clear that it is more to give parents the right to control their daughters. One provision in the Penal Code makes this clear. If a girl of 16 years and above gives her consent to sexual intercourse there can be no offence which the seducer can be prosecuted for. The contradiction is clear. She is

regarded as mature enough to give consent to sexual intercourse but not mature enough to leave the house without the consent of the parents.

Another area where there may be a conflict of interest between the rights of the parents and that of the minor is where the guardian is empowered to consent to the infliction of harm on a child below the age of 12 years if it is for the child's benefit. On the face of it, it seems a reasonable provision but the Country Report has drawn special attention to this which is regarded as "an issue of great importance...the relevance of the consent of the child or young adult in medical treatment". The Report points to the fact that great awareness is needed as many a time the parent's consent may not be in the interest of the child".

The Penal Code does recognise the fact that a child above the age of 12 years can give consent to what may cause harm to his body. This means that the child above the age of 12 years is regarded as being competent to decide what is necessary for his or her medical treatment or is in his or her interest. On the face of it this does seem to be a very advanced provision as it not only recognises the right of the child to decide but to decide what is beneficial for him or her also without referring to the parents.

Unfortunately a subsequent legislation cannot be reconciled with this. The Medical Termination of Pregnancy Act passed in 1971 to save women from the effects of illegal abortions performed by quacks (often leading to the death) has a provision which states clearly, without any qualifications, that a child below the age of 18 years cannot have a medical termination without the consent of the parent/guardian. Considering that a child of 12 can give consent for an operation to be performed on him, or her, it is illogical that a medical termination which is also done by recognised doctors cannot be performed with the consent of the pregnant girl because she is below 18 years. If a girl of 16 years can give consent to sexual intercourse, how can a young woman of 18 years not give consent for medical termination of pregnancy?

Pregnancy may have resulted from seduction or even rape, and by not allowing the traumatised girl to terminate her pregnancy, the law is doubling her anguish. A young 15 year old girl who is married can have her pregnancy terminated by telling the doctor it was due to the failure of contraceptive device but an unmarried girl of similar age is not given the similar liberty. There can be no doubt that this is one law which needs to be changed not because it contradicts other provisions of the criminal law but because it cannot be justified on any account as it violates the right of a girl to decide whether she wants her pregnancy to be terminated or not. This is clearly a case where there may be a conflict between the rights of the parents and the rights of a minor even when the parents right to continue with the pregnancy is definitely not in the interest of the minor.

Another crime against children which does not fall into any of the other groups discussed above is where a child below the age of 10 years is kidnapped or abducted with the intention of stealing any moveable from the person of the child, which is punished fairly severely – imprisonment upto seven years and is also liable to a fine.

### Adoption and Children in Need of Care

Indian law is woefully deficient in the matter of adoption. This is despite the growing number of children needing homes, and care. In part, this is because adoption has got embroiled in the debate about personal law. As the law now stands, only Hindus have a right to adopt. Even this right is restricted; parents with a daughter may not adopt a girl child, and those with a son may not adopt a boy. This puts a limit on the number of children who may be adopted in a home. Non-Hindus cannot adopt; they may be guardians of a child, but that does not bestow on the child the rights to which a natural-born or adopted child are entitled.

Children needing care are therefore relegated to the Guardians and Wards Act, or, classed as 'neglected' juveniles, they may be taken within the concern of the Juvenile Justice Act 1986. This latter Act makes some provision for placing children in 'safe custody' which sometimes translates into foster homes; or they may be sent to institutions ('Homes' for children) established under the Act.

Bureaucratisation of these institutions :-

- The rules and physical structure of these Homes which makes them resemble 'jails', in some places, local people identify these Homes as 'Bachon ka jail' or jails for children.
- The perception that poor children - who naturally have overwhelming presence in these institutions - get more within the institutions, however meagre that may be, than they got without; and
- the powerlessness presumed because of both their poverty and their minority, apart from the fact of their being in custody,

**have given rise to very poor conditions within these institutions. The Supreme Court, in its PIL jurisdiction, was confronted with the issue of childrens institution. This however only exposed the institutions to the judiciary, and imaginative remedial measures have been hard to come by. In the past two years, the possibility of involving NGOs in the running of institutions has been essayed. Prayas, an NGO established with the involvement of the police, has been given the responsibility of running the Observation Home for Boys in Delhi. This is still in an experimental phase.**

Inter-country adoptions have been another way of finding homes for orphaned or abandoned children. The law of adoption in India not providing a legal framework for it, the Supreme Court, in a series of orders in what is known as the Laxmikant Pandey case, set out guidelines to govern inter-country adoptions.

## G. RIGHTS OF THE AGED

Concern about ageing population has been predominant in the developed countries since long. The international community first debated the question of ageing at the United Nations, on the initiative of Argentina, in 1948. In view of longevity becoming one of the major challenges of the 20<sup>th</sup> century, the United Nations convened the World Assembly on Ageing in Vienna in 1982. The same year the UN General Assembly endorsed the International Plan of Action on Ageing. The International Federation on Ageing and the United Nations formulated certain rights for the elderly on the grounds that the elders do not contribute less to society. They are entitled to their fundamental human rights, once they become old. Their right to live with dignity, which article 21 under the International Convention on Civil and Political Rights to which India is also a signatory gives them, the following rights : (i) right of independence; (ii) right to

participation in the society; (iii) right to be cared; (iv) right to dignity ; and (v) right to self .

The UN General Assembly designated 1999 as the International Year of the Older Persons, to raise awareness of the fast changing demographic character of the population, to stimulate debate, promote action strategies and encourage research and information exchange. The International Year of Older Persons 1999 celebrates the increasing importance of older people in today's society. The theme of the year - towards a society for all ages, emphasises greater integration between the young and the old and to build stronger understanding between them.

Until recently India had not taken note of the problem. Till the early 1950s, the pattern of high birth rates accompanied by high death rates kept the proportion of India's population aged 60 and over at a low level. The country also did not have much of a problem of the aged since the traditional family culture took care of the older members. However, since the 1950s the proportion of the elderly has grown, as there is a steady decline in the fertility rate and improvements in the chances of survival which in turn have improved the life expectancy. The technological advancement with industrialisation has been changing the physical and the socio-economic contexts of old age. It has brought better health services due to which the death rate among the older persons is reduced.

India today has the second largest number of elderly persons, China having the largest number. The population of the aged in India i.e. 60 and above increased rapidly from 50 million in 1991 to 70 million in 1998 and is expected to be 177 million by 2025. The ageing population presents a burden on the socio-economic and health infrastructure of any society. India is no exception to this. On the international front, to meet with the demands of this global phenomenon of ageing population, countries have responded very well to the United Nations' call for action. Significant policies, programmes and long term plans covering health care, social and cultural needs, and education of the elderly have become the focal points of reform in many countries. India has thus far not formulated any effective old-age plans, nor any social security programmes for the benefit of the old. The welfare of the old is still largely dependent on the social institutions i.e. family and caste. They are relied upon as the major factor sources for the welfare of the elderly.

In India, the elderly occupied a revered position in the family and the society. The joint family system wherein all the members of the family, young and old, the employed and the unemployed, the kith and kin, the near relations and not so near relations all lived together with a sense of responsibility towards each other. The family was a social unit, which took care of the elderly, sick, widows and orphans. In traditional Indian families, the oldest members of the family were consulted and their decisions were prevailed on all matters that concerned the family. They played a significant role in decision making.

But there is a rapid change in social behavior and family institutions in India, and there is a transformation from the traditional joint family concept to the nuclear family concept. There has been a decline in extended family system and religious values. Tremendous changes in the lifestyles and values of the younger generation in big cities

have resulted in lesser respect for the old and lesser participation of the older person in the family affairs. This leads to isolation of the old. Adjustment in the family or society become painful. Joint households are decreasing in number due to migration of the younger people from the home to different places for better job prospects. Situations where the younger generation has difficulty in making choices regarding equal distribution of time and resources in the care and support of the elderly on the one hand and on the other hand for his own family, children and for ones own advancement culminate in letting the old to live on their own. There has been a change in the ways of life.

The change in the family pattern has hostile implications on the care and the well being of the elderly. Growing old carries a certain stigma or reminder of what is yet to come. Reduced role activities in old age has negative implications like financial insecurity, health and care giving, housing etc. An older person, whose contributions are no longer considered productive due to artificial and socially defined criteria for ageing, is considered redundant. Since the onset of the notion of retirement age, which is the result of industrialisation, old age has been directly linked with chronological age and a person's worth and abilities are determined solely by this.

Problems such as inadequate income and housing make the lives of the old a misery. Worries about issues such as long-term care cause them great anxiety. Lack of accessible transport and leisure facilities can leave the elderly home-bound and isolated. The problems of elders in India have to be looked into with a holistic approach. Transplanting the western pattern in totality to India would not be beneficial. By looking at the proportion of percentage of Indian population living in rural areas, the problems of the elderly as regards the rural old and the urban old has to be looked differently. Appreciating the tremendous diversity in the situation of older persons, within India, between elderly in the rural and in the urban setup, programs, plans and national policies require different methodology to be adopted to meet with the diversities of the situation. India lacked a unified and comprehensive policy till recently and the current legislative framework for care of the elderly has evolved periodically making provision for services and benefits for the old. Article 41 of the Constitution stressed the needs of the elderly and enjoins upon the state the responsibility of making effective provision for public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.

There is no single specific central law in India for the benefit of the elderly but there are number of laws which confer certain advantages on them. These laws are :

1. Hindu Adoption and Maintenance Act which makes it obligatory for the son/daughter to maintain his/her parents who are aged and infirm and who are unable to maintain themselves out of their own earnings. Parents include natural parents, adoptive parents, childless stepmother etc.;
2. The Code of Criminal Procedure creates a duty on every person having sufficient means to maintain his/her father and mother who are unable to maintain themselves. This provision gives legal effect to the natural and moral duty of a person to maintain his/her parents;



3. The Hindu Succession Act gives the mother of a deceased son the status of class I heir and thus has a share in his property which she takes absolutely;
4. The Workmen's Compensation Act provides financial assistance to the members of the family in case of accidents or occupational diseases resulting in the death or disablement of a worker. Members of the family includes the elders of the such deceased;
5. The Employees' Provident Fund and Miscellaneous Provisions Act has made welfare provisions for the future of an individual worker after his retirement and for the benefit of his dependents in case of his early death. The fund, which acts as an old-age benefit for the worker, is built up by contribution both by the employer and the employee. In the event of the premature death of the worker with a view to providing long term benefits to the bereaved family members a Family Pension Scheme has been introduced by carving out 25% out of the Employees Provident Fund which is augmented by an additional contribution from the Central Government;
6. The Payment of Gratuity Act provides for a scheme of gratuitous payment of an amount by the employer to an employee who has rendered continuous service for not less than five years on his retirement by choice or due to his advanced age;
7. The Pension Act makes provision for periodical payments of money paid by the Government to a pensioner made on account of past service;
8. Income Tax Act has made provisions for the benefit of the senior citizens, and a rebate to the tune of 40% to 100% of the tax payable subject to a limit of Rs. 10,000/- is made available to them;
9. Directions have been given by the Supreme Court and various High Courts to give preference for the hearing and final disposal of the cases wherein one of the parties has crossed 70 years of age.

Two states have initiated legislation to protect the elderly. The Himachal Pradesh Maintenance of Parents and Dependents Act, 1996 includes in its definition of 'dependant' the wife, parents and grand parents, who are unable to maintain themselves. Directions have been given to set up tribunals in every district for clearing and determining claims for their maintenance. All proceedings, including appearances, are to be completed within nine months. The Maharashtra Maintenance of Parents and Dependents Bill 1997 closely followed the Himachal Pradesh Act. These legislative measures are in addition to the general provisions for maintenance which is in the code of Criminal Procedure, 1974.

Besides these legislative provisions certain other measures of protective discrimination like railway concessions; airfare concessions for the persons of age 65 and above; privileges of entering buses and separate reservation counters for the elderly; novel schemes introduced by the Life Insurance Corporation to give financial security to the persons who are 50 and above; special benefits to retired servicemen like defense scholarships for their children, children's education allowance, etc. have been taken. Certain schemes are not designed for the elderly but the State scheme for the benefit of those persons who had participated in the freedom

struggle benefits a considerable number of elders today. The Union Budget for 1999-2000 had proposed a new scheme to provide for 10 kgs. of food-grains per month free of cost to all indigent senior citizens who are eligible for old age pension but are not receiving it and whose children are not living in the same village. The Gram Panchayats are to be responsible for identifying, preparing and displaying a list of such persons after giving wide publicity in the village.

The existing legislative and other beneficial measures are not sufficient enough to help the elder population of India to lead a worthwhile healthy and prolific life. The elder population should not be taken as a liability or a burden but considered as a precious human resource.

Certain national policies are on the horizon. The National Housing Policy which has received the approval of the cabinet has recognised the elderly as an especially disadvantaged group for whom housing schemes should incorporate dwelling units of appropriate designs, formulated to meet their specialized requirements.

A general plan of action for the aged on behalf of the State was the need of the day and the Ministry of Welfare drafted a National Policy for the Welfare of the Aged somewhere in 1995 which was finalised in 1996. In pursuance of the constitutional directive and also on the basis of international developments in the field of aged persons the National Policy for the older persons is drawn. The final plan on 'National Policy for Older Persons' formulated by the Ministry of Social Welfare was submitted for cabinet approval in January 1999.

The Policy has provided for many programmes for the benefit of the elders and some of which are as follows :-

- (a) improved health care and nutrition, financial security, education and empowerment;
- (b) by way of new initiatives the policy promises the establishment of a pension scheme in the private sector as well for both self-employed and salaried persons;
- (c) housing and shelter for the elders - the policy paper calls for speedy urban land development for housing, time bound provision of civic services and communications links, necessity for property layouts of housing colonies with shopping complexes, community centres, parks and other services;
- (d) taxation policies which reflect sensitivity to the financial problems of older persons. Like increase in standard deduction, annual rebate for medical treatment etc.;
- (e) post retirement employment, income generating activities after retirement, career guidance, counselling, training are important components of the policy paper;
- (f) some salutary provisions like the promise for the inclusion of a clause in the Indian Penal Code protecting the older persons from domestic violence - both physical as well as psychological or mental;

- (g) legal changes have been promised in the policy paper to enable the elderly to access their property from tenants more easily.

Recently the National Council, as recommended by the policy, has been established which is to be headed by the Minister of Social Justice and Empowerment.

The Policy does not pay adequate attention to gender issues. The section on Health Care, shelter and education does not mention women. A big omission in the policy paper is that property rights for women are not discussed. The policy paper also does not touch upon the financial burden falling on the government in implementing the suggestions and recommendations contained in it. There is no financial memorandum attached to the policy paper. Many of the proposals, commitments and initiatives in the policy paper refer to the urban ageing population and their needs whereas three-fourths of the Indian elderly reside in rural areas.

The policy only makes references to the formal, organised section of employment. Creating work opportunities for the physically fit elders is also very important to improve the quality of life for the elderly. Elderly individual is less likely to be physically and mentally fit and as ageing and disabilities go together, measures to ensure that the lives of the old is comfortable, enjoyable and productive must be taken on a priority. The policy paper also does not make any recommendations for making laws to regulate death by wish and mercy killing (euthanasia), which could be beneficial for the old and infirm. Till such time the laws are framed provision to recognise the 'living will' should be given effect to.

Many registered organisations working to encourage fellowship among senior citizens in India have resolved in this International Year of Older Persons to get together regularly and push their common agenda. They intend to lobby for day-care centres (prefer to call them as 'enrichment' centres) for older people on priority basis throughout the country. Enrichment centres are to provide the elderly with a place where they can be happily and constructively occupied for as many hours a day as they like. This will not only help ease domestic tensions but also provide company to lonesome single elders.

Dignity Foundation, a Bombay based voluntary organisation, has masterminded the various welfare-cum-work projects to help the elderly pass their twilight years with a modicum of dignity. A large number of voluntary organisations like Help Age, Age Care, and society for Gerontology are found very active in the implementation of many of programmes which are for the benefit of the aged.

## **H. MANUAL SCAVENGERS (Safai Karamcharis)**

The Approach Paper to the 8<sup>th</sup> Plan mentioned the Scheduled Castes as the most vulnerable group. But in this group a sizeable section has been traditionally engaged in transporting dead animals and human waste. They are known as the manual

scavengers or the Safai Karamcharis. They have been defined in law as persons who are engaged in or employed for manually carrying human excreta or any other sanitation work [Sec 2(j) of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993.] According to the National Commission of Safai Karamcharis (referred to as NCSK) "untouchability has been worst manifest against Safai Karamcharis...What is more deplorable and sad (is) that even other Scheduled Castes/Communities which resent untouchability being practised against them consider Safai Karamcharis untouchables".

The estimated figure in 1989 was 4.21 lakhs of manual scavengers according to the NCSK. The Ministry of Social Justice and Empowerment in their latest report (1997-98) estimated the number of scavengers as being 8,25,572. This is one group, which can claim none of the constitutional mandates of social justice, equality or a life with dignity. According to the Government they are very poor and are engaged in menial jobs and are continuing with the practice of carrying night soil on their heads. They live in miserable conditions and for want of any concrete assistance and due to their social status they are not in a position to attain a better standard of living and improve their lot economically. (Statement of Objects and Reasons by Mangal Ram Prem in the proposed Bill No. 4 1997).

They are made to work on daily and part time basis and they do not get the wages in full or in time. The wages are fixed on many bases like the left over meals in a village family, the number of families in a locality. Since most of the Gram Panchayat Town Area Committees are not able to earn profits the Safai Karamcharis are not able to get even the minimum wages and often face starvation ( mentioned in the Statement of Objects and Reasons in Bill No. 3 1997). In the words of one of the Safai Karamcharis, Patasi Bai from Sikar "Yes, I carry night soil. The payment is one roti a household daily and may be Rs. 10 a house each month. I clean around 25 homes every day. We do have to carry the night soil in baskets on our heads to the dumping place". That could be half a kilometre from the latrines she cleans. The work she does earns her no more than Rs. 250 a month, often less. Her counterpart Girja Bai in Jodhpur gets even less "each household gives us Rs. 5 every month and one roti everyday" (Grassroots, November 1999, p.1).

The 8<sup>th</sup> Plan had stated quite categorically that manually carrying human excreta has to be put to an end. There was a clear admission that earlier efforts to discourage manual scavenging, and liberate the families engaged in this inhuman task had not borne satisfactory results. The suggestion, was, therefore that the programmes for liberation and rehabilitation of scavengers should be streamlined to cover legislation, involvement of NGOs and adequate funding. There was a budget of Rs. 464 crores but not much was done. (8<sup>th</sup> Plan Vol. 2, 14.10.5(d)).

A law was passed in 1993 – Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, employing a person for carrying human excreta or constructing or maintaining a dry latrine was made punishable with imprisonment and/or fine. Implementation has, however, been slow. But the Government did have

a current scheme for liberation and rehabilitation of families. It had three components (i) survey to identify the number of scavengers and their dependants; and to identify their aptitude for alternate trades and professions (ii) training of those so identified; and (iii) their rehabilitation under a prescribed funding patterns (Pillai – Manual Scavenging: A Challenge to Human Rights).

The scheme was launched in 1992 for the Survey. But many of the State Governments did not take the survey seriously. The Annual Report of the Ministry of SJ&E (1997-98) mentioned that Bihar, West Bengal and Orissa had not completed the survey even though it was a time bound programme to be completed by 30<sup>th</sup> June 1992. Even in the states where the Survey was completed there were complaints about coverage of eligible persons. As the purpose of the scheme is to rehabilitate the Safai Karamcharis, the apprehension of the NCSK that the number was much more has made them recommend that a “resurvey should be conducted within a time bound framework, covering urban, semi-urban and rural areas to identify Safai Karamcharis and their dependants”. The NCSK has also given an account of the non-governmental efforts in the area of abolition of manual scavenging and the detailed work being done by the Harijan Sewak Sangh founded by Mahatma Gandhi. The suggestion also is that a national inventory should be made of NGOs working in the area where manual scavenging is really concentrated. Uttar Pradesh, Madhya Pradesh, Rajasthan and Maharashtra account for about 60% of the scavengers identified and have received about 73% of the money provided for rehabilitation. (Pillai, p. 126).

Apart from certain sections of the government who seem extremely bothered about the fact that even now manual scavenging is continuing the National Human Rights Commission is deeply concerned about the problem. The Commission had noted that the implementation of all the schemes for liberation and rehabilitation of the scavengers have been ‘dismal’ except in a few States. In January 24, 1997 the central government had issued a notification bringing the Act into force in all the Union Territories and six states – Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal. The National Human Rights Commission (NHRC) has been interacting with the NCSK, Ministry of Social Justice and Empowerment, Ministry of Urban Affairs and Employment and other Ministries for evolving suitable measures to eradicate this social evil. The two Commissions NHRC and NCSK had discussed the problem in detail with the Union Ministries of Welfare, Rural Areas and Employment and Urban Affairs and Employment to chalk out a combined strategy to widen the role of these agencies. The consensus arrived at the meeting was that the inhuman and degrading practice of manual handling of night soil is a major social evil and needs to be eradicated. It was decided to set up a Group consisting of Secretaries in the Ministry of Urban Affairs and Employment, Social Justice and Empowerment, Law and Justice and a representative of the Planning Commission to consider and make recommendation, as to how the problem should be tackled. Two of the issues which were specially mentioned which needed to be considered were whether rehabilitation schemes could be funded in states which have not adopted the legislation and the programmes for the rehabilitation of the manual scavengers who were relieved from this job.

## The position regarding the Act as given by the NHRC

The Central Act Applicable – Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal and all UTs implemented on January 1997.

Central Act Adopted – Assam, Haryana, Orissa, Punjab, Gujarat, Bihar and Madhya Pradesh.

Central Act Adopted under consideration – Rajasthan, Tamil Nadu and Uttar Pradesh.

No Decision Taken – Arunachal Pradesh, Jammu & Kashmir, Himachal Pradesh, Meghalaya, Manipur, Mizoram, Nagaland and Sikkim (Human Rights Newsletter, June 1999).

Before the Committee gets down to work seriously and take some meaningful steps, some steps could be taken immediately. Trolleys or wheelbarrows and longer brooms, which the women have been demanding, could be provided immediately. The longer brooms will make women bend less and help in their not coming in direct contact with the muck. The Union Officials 'confirm that when trolleys were given they went to the male employees. The few given to night soil workers were stolen and sold as scrap' (Sainath, Hindu 3.11.99).

It is hoped that with the NHRC making the abolition of manual scavenging a priority and the concerned Ministries being involved, this degrading practice will disappear and the constitutional mandate of life with dignity will have some meaning for the Safai Karamcharis. (A Challenge to Human Rights in Protector of Human Rights – A Critique ed. R.M. Pal.)

## I. ISSUE OF DISABILITY

In the Approach to the 8th Five Year Plan 1990-95, important sections of society, other than women have been mentioned who suffer from inherent imposed disadvantages which call for positive intervention. Mention is particularly made of the Dalits and the highly exploited group, bonded labour. One group which suffers from all the disadvantages and more are the physically and mentally disabled sections of society but they have not been mentioned at all.

An unofficial estimate places the number of disabled persons of both mind and body as 5.6% of the population. What is however more distressing is that in many of these cases ignorance and poverty are often factors which are responsible for their continuing to be unable to pursue even routine activities. A recent study done by a NGO - Concerned Action Now (CAN) found a majority of them who could not move around because they suffered from polio, which is a completely preventable disease. Many children were completely immobile, where calipers or surgery would help them to lead a fairly normal life.

But in spite of the Act and a comprehensive plan to see that all efforts are made to integrate the disabled children with the normal children, as recent as October 31 1999, the Committee on Petitions of the Rajya Sabha had referred to the implementation of the Act as being "dismal" and urged the Prime Minister to hold a Conference of Chief Ministers and Ministers handling the Welfare portfolio to ensure speedy and effective implementation of the Act. Earlier, in March, the Committee in its interim report had suggested that there should be no further delay in bringing the benefits of the Act within the reach of the disabled reminding the Ministry that the disabled constituted 5% of the total population.

As nothing had been done they had severely criticised the Ministry in their final report and advised it to 'reorient' its approach and be 'more pro-active'. Hopefully the break through will come and disability will no longer be treated as a welfare problem but a matter of social justice. An Act to ensure proper care and protection of the disabled particularly after the demise of the parents/guardians was passed by Parliament in December 1999. A trust will be created of Rs. 100 crores which will set up residential centres, homes, day care centres. The Minister of Social Justice and Empowerment hopes that the Trust will help an estimated 2.5 crore mentally retarded persons. Another feature will be to appoint guardians for disabled persons who will have to give their reports to a Committee which will be set up by the Government. The guardians will be responsible for not only the care of such persons but will have to give feed back to the Committee. The work of the guardians will be monitored and all complaints investigated.

## A RAY OF HOPE

But there is now hope that the disabled will not remain an invisible group as a result of the initiative taken by the Economic and Social Commission for Asia and Pacific at a meeting in 1992. It decided to launch the Asian and Pacific Decade of Disabled Persons 1993-2002. The meeting adopted the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. India agreed to implement the Proclamation and passed the law - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, which received Presidential assent in 1996. It is a comprehensive legislation and deals with the steps the appropriate governments - Centre and State - should take for the prevention of occurrence of disabilities. There are clear eight suggestions which inter alia deal with pre-natal, perinatal and post-natal care of mother and child.

The Act makes a special provision to be made for the disabled in the matter of transport, so that they may enjoy easy access (sec. 44) and recommends the adoption of toilets in rail compartments, aircrafts etc. to permit wheel chair users to use them conveniently. But has this been done? A visit to the Delhi University - a Central University in the capital - is the answer - not a single ramp or a special toilet for the disabled students who have been lucky to get admission. In early December 1999 the demand of the kids on wheel chairs was "please give us ramps so that we too can shop" (Express 4.12.99).

On 17.12.98, the Supreme Court interceded on behalf of the disabled to ensure that airlifts are provided at major airports, that air travel is made more disabled-friendly, and to extend the scheme of concessions that the Indian Airlines had in place (Javed Abidi v. Union of India).

Detailed measures are recommended for the education of children with disabilities and their rights which they can demand from appropriate governments and local authorities. The Government and local authorities shall ensure that every child with a disability has access to education which has to be free in an appropriate environment till he attains the age of 18 years. It is also necessary to promote integration of disabled students in the normal school. But where special education is needed the government and private sectors should promote the setting up of such schools. But these special schools should be set up in such a manner that any part of the country can have access to them. There should also be an effort to equip the special schools with vocational training for children with disabilities. (Chap. V)

For children who have completed their studies upto 5th class but could not continue their studies, part time classes should be provided. For those children who are 16 years and above special part time classes should be arranged to provide functional literacy. Non-formal education should be provided by available manpower in rural areas after giving them appropriate training. Every child with disability must be provided special books and equipments free of cost.

All blind students and students with low vision should be provided amenuensis. The other important provision the Act makes, having the problems of the disabled students and young people in mind, as already mentioned is to make special measures in buses, railways, aircrafts to permit easy access to such persons.

Every effort has to be made for children with disability to carry on with education and therefore apart from books uniforms and fellowships special mention is made for arrangement of transport to enable them to attend school and where that is not possible financial incentives are to be given to parents so that they can make the arrangements for them to attend schools. [Sec. 30 (a)]

Another announcement made by the Minister on the International Day of the Disabled on 3.12.99 is the meaningful steps to be taken for implementing the provision of providing employment to the disabled. She announced the General Employment Exchange for the physically handicapped; and in order to help the disabled persons in getting gainful employment it will be through special cells in the General Employment Exchange. She mentioned that there were 51 special employment exchanges in the former and 39 special cells in the latter category. The financial assistance given by the Ministry for the latter category, that is the special cells in the Employment Exchange is 100% and for Special Employment Exchange 80%. It is to be hoped that with the pressure on the Minister, both from members of



Parliament and activists working with and for the disabled, visibility will be given to the disabled and attention will be paid to their needs. The Minister has also urged everybody concerned to work towards a society where people with disabilities can work and participate as equal partners and citizens.

The Ministry had also formed a Committee to recommend suitable amendments in the existing provisions or new provisions in the Act in order to cover the requirements of the disabled sector. The Report has been submitted making various suggestions particularly dealing with the right to education of the persons with disability including suggestions for reservations in educational institutions, hostels and technical education programme. In Chapter 6 of the Act it also has dealt with non-discrimination in employment as also reservation of posts. The Report is being processed and hopefully it will become a part of the law.

## J. RIGHT TO INFORMATION

A democratic polity represents an obligation on the part of the state to govern on behalf of its citizens. The obligation also includes the duty to keep the citizenry informed of the nature and basis of objectives, policies, plans and decision-making undertaken by the state. The converse of this duty obligated on the state is the right of citizens to obtain information on all matters that directly or indirectly concern public interest.

The Constitution of India in its Art.19 (1)(a) guarantees to all citizens the Right to Freedom of Speech and Expression. Over the years, this fundamental right has been dynamically interpreted to constitute the obverse of the Right to Know, such that one cannot be exercised without the other (Mander and Singhal Joshi 1999). Other pronouncements by courts, which direct specific public agencies to introduce transparency in their functioning and open their operations to public scrutiny also reinforce the fundamental principle of the citizen's right to know. However, in spite of the proactive interpretation by the judiciary in envisaging a right to information, it has not been explicitly enshrined in the Indian legal system.

The Constitution contains some provisions conferring right to information in specific situations. For example, Art.22 (1) says that when a person is arrested, he must be given the grounds of arrest as soon as may be. The rules of natural justice require that no adverse action should be taken without giving to the person concerned a notice and an opportunity to be heard or represented. But these are exceptions. There are laws prohibiting the giving of information and also allowing the government to conceal information. The Official Secrets Act, 1923 makes the disclosure of any information deemed 'official secret' by a government official to a non-official punishable. Section 123 of the Indian Evidence Act permits the government to withhold disclosure of documents from courts. Such privilege has now been made subject to Judicial Review (Sathe 1998). There are provisions in the conduct rules of government servants forbidding the giving of information. Several Acts like the Atomic Energy Act also provide for secrecy. The concealment of information is a rule, whereas disclosure of information is an exception.

The demand for a right to information in India was first articulated in the popular movements of the late 1970s, where the need for ensuring greater transparency in

governance in the face of large-scale corruption and misappropriation was felt. India is probably uniquely placed in this respect as the demand for recognition of people's right to know came from the poorest people who had been marginalized and denied benefits under anti-poverty and food for work programmes, ostensibly created for their welfare.

Although it formed part of all the people's movements which addressed themselves to the state's failures, a campaign devoted exclusively to the recognition of a right to information was initiated in 1987 with the formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan. The awareness-raising campaign of the MKSS concentrated initially on the interface between the instrument of governance at the lowest level, the Panchayat and rural citizens in a few villages in Rajasthan. (For details see box). Similar movement for right to information has been conducted in Maharashtra by Anna Hazare.

The right to know is wider than the right to information. Information is an input which when interpreted, analysed and applied becomes knowledge. The basic condition precedent to the right to know is the right to elementary education. Although the Constitution mandated the State to provide for free and compulsory education within a period of 10 years (Art.45), that mandate has remained unfulfilled. But as people became more conscious of their right to participate in governance and also their right to honest and efficient governance, they began to assert their right to be informed as to how and what decisions are taken by the State. This is right to information.

Although right to information was held to be implicit in the right to freedom of speech and expression by the Supreme Court, the right to information is larger than the right to freedom of speech and expression. While the freedom of speech and expression includes the right to give information, it does not necessarily include the right to obtain information. The right to information therefore needs specific and separate legal recognition. The passing of the Right to Information Act is therefore being considered seriously.

## The Right to Know

The media has a duty to give correct information. With the emergence of electronic media and various non-government channels entering the field, the assertion of equitable distribution of airwaves arose. The Supreme Court held that the Doordarshan, Government of India's official channel, could not monopolise the airwaves and an independent agency, which was public but not government, ought to regulate various competing channels. The Telecom Regulatory Authority is being contemplated and a statute providing for it has been introduced in Parliament [Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal (1995) 2 SCC 161].

### Freedom of the Press

There is no separate provision in the Indian constitution guaranteeing the freedom of the press as in many other countries. However, it is implicit in the constitutional guarantee of freedom of speech and expression enshrined in Article 19 (1) (a) of the

constitution. The Indian press enjoys the freedom and autonomy on the lines of libertarian model. It is as free as in any other country in the world. Only on one occasion, that is, the national Emergency of 1975, the freedom of the press came under heavy attack. Drastic action was taken against certain newspapers. Censorship was imposed under Rule 48 of the Defence of India Rules 'in order to maintain public order'. Guidelines, specifying dos and don'ts, were issued to the press making it almost impossible for it to function.

Attempts have been made from time to time in later years to impinge on the autonomy of the press by the government, using the leverage of newsprint quotas and duties imposed thereof. Controls on the press were sought to be institutionalised through the Defamation Bill, proposed in the 1980s which sought to impose curbs on the freedom of the press to report on the doings of public figures. It generated a strong wave of protest from activists and newspapers alike and the bill was shelved in the face of this unequivocal condemnation.

The Indian press is divided into the English and the language press. The English press, despite its self-designated appellation of 'national press' is mainly confined to a small part of the English-educated elite in urban areas. On the other hand the language newspapers are mass-based and serve as fora for more broad-based and variegated debates. Over the years, the cleavage between the English and the language papers has grown wider as the English press becomes more limited in its concerns and reflects less and less on the issues affecting the masses.

Another grave aspect has been of newspaper barons who have exercised monopoly power in controlling publications. Many newspapers are owned by industrial conglomerates with substantial economic and consequent political stake in governance. The trend in recent years for editorial authority to be subverted by managerial concerns has created considerable apprehension about exercise of arbitrary controls over editorial autonomy.

## The State: Transparency and Probity

Right to information would empower the people vis-à-vis the State. It will make governance more transparent and accountable. It will help people combat corruption and abuse of power. The law on right to information ought to create a regime of information. A good deal of information such as laws, subordinate legislation, government resolutions and circulars, reports of various commissions of inquiry and various public documents must become accessible to the people. If information becomes accessible through proper institutionalization, only specific information will be sought and will have to be given. The draconian laws which forbid the giving of information need to be repealed and a comprehensive law provide for exceptions - e.g. information the disclosure of which will jeopardize national security, investigation of crime or international relations, or privacy of other individuals, etc.

Democratic advance has enhanced the demand for accountability and probity of the state, and lie at the root of people's movements during the last three decades. A right to information as enforceable against the state is an outcome of this process. Displacement without adequate compensation, appropriation of money allocated for welfare expenditure, etc. represent cases where the interest of the most vulnerable among all citizens are compromised. Information about such actions not only helps mobilise public opinion against them, but the prospect of such information being freely available, provides a powerful deterrent to high handed action by agencies of the state, as brought out by the experiences of MKSS.

### The Mazdoor Kisan Sangharsh Samiti (MKSS)

The Mazdoor Kisan Sangharsh Samiti (MKSS) has been at the forefront of the Right to Information campaign in India. The organisation established in the late 1980s, aims to curb the corruption that is rife in development projects and give villagers a direct and close involvement in these projects. It seeks to establish the right of all citizens to obtain a copy of official documents free of cost. Further, it has adopted the novel method of jan sunwais (public hearings), where documents obtained are discussed and the corruption involved in development projects exposed before those most affected by it. Their campaign, which has led to the recognition of the people's right to examine and obtain photocopies of state documents in the state of Rajasthan, has grown and spread to other states like Madhya Pradesh, with even the central government considering legislation to institutionalise the right to information.

The important gains of the campaign initiated by MKSS has been the sense of empowerment that access to information has provided to villagers organised by the MKSS. The notion that the state is to be held accountable for its actions has percolated. Thus the wider ramifications of the right to information is much further than the institutionalisation of the right per se. In a wider context, it is a movement for the strengthening of democracy as a whole.

It has been held by the Supreme Court that no public servant can claim right to privacy in respect of acts done by him in the course of his duty or in exercise of statutory power. (R. Rajgopal v. Tamil Nadu (1994) 6 SCC 632).

### State Regulation and Access to Information: A Paradox Census of India

One of the oldest and most open national data generating agencies happens to be the Indian Census organisation set up in 1870s. During the entire colonial period, it remained a temporary organisation, unlike other national agencies like Survey of India, Indian Meteorological Departments etc. and used to come into existence only prior to the decennial census and disappeared after performing the task. Within six months of the Transfer of Power (1947) a permanent Census Act was placed on the Statute Book, and within two years the Census Organisation was made permanent and made responsible for the whole range of population statistics including census and vital statistics.

While the colonial census laid greater emphasis on social categorisation of the Indian population by caste/tribe, religion, language, the first census in free India stressed more on economic aspects of the population and a new tradition was created. From 1951, census enumeration of caste/tribe was restricted to scheduled castes and scheduled tribes notified by the President from time to time. On the other hand, more importance was given to the District/village level data, and for the first time a 'District Census Handbook' for each district started appearing from the 1951 census. However, the Census Organisation grew to its full stature in the 1961 census. The activities of the census was not confined to mere census taking and publication but expanded to matters arising out of the results of the Census – like preparation of Census Atlas, study of Language, SC/ST, Crafts, Fairs & Festivals, Villages and Towns, special demographic issues, displacement etc. Despite lack of advanced technology as available today, the Indian Census not only made all such data available to the public and government without any restriction but also within a reasonable time frame. Today, even the unprocessed data is made available to public on floppies/disc.

Although, the Indian Census is attached to the Ministry of Home Affairs, and therefore subjected to broad national policy guidelines of the government in office, the Indian census today remains not only the most open, accessible and transparent producer of socio-economic characteristics of this country's huge population, but also provides a set of reliable data over a long period of time. The Indian Census' openness is characterised by the existence of a process of dialogue with the data users through Data Users' Conference involving official agencies and independent scholars,\* when new demands are made and critiques of the previous census presented.

Under various existing regulations, non-governmental commercial entities or similar entities whose ownership may be vested in the government - like companies, banks, other financial institutions, etc. – are statutorily required to provide some regular information regarding their activities to one or another official or semi-official agency. For example, under the Companies Act, all companies registered under the act are required to submit annual returns to their respective Registrars of Companies. Banks are similarly required to submit periodic returns on a weekly basis to the Reserve Bank of India.

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\* Suggestions from such independent groups (e.g. women's studies' group) are sometimes accepted by Census authorities.

Given the background of an economic regime characterised by a high degree of government regulation and planning, the extent of information about individual commercial entities(at least those in the organised sector) that has historically been available to such official agencies, and therefore the potential precision of any aggregate figures derived from them, has been much greater in India than in many of the advanced countries where regulation has not been so extensive.

Based on the information so collected, these official agencies do publish or otherwise make available to the public a wide range of statistical information. In addition, from time to time surveys are conducted and their results made available for commercial entities outside the ambit of normal regulation as well as for generating data on variables about whom information does not statutorily become available to these agencies. In general, the range of statistical information that is available in India, and not only with regard to the economic sphere, is far greater than in most Third World countries.

In the case of individual companies, a part of the information (and even that part is fairly detailed) that has to be statutorily provided to the Registrar of Companies is also available to the public on payment of a nominal fee and authorised copies of these documents can also be had on payment. These include information on shareholders, directors, the annual report of the company (excluding the profit & loss a/c in case of private limited companies but not in case of public limited companies), etc. These are made available for both commercial and research purposes (in the latter case the fee may also be waived).

## The Problems

1. General inadequacy of infrastructure and resources with these agencies, inefficiency and the continued use of archaic methods: delays, gaps because of loss/ misplacement of records, scattered nature of the information, and requirements of huge amount of time, money and effort in doing any compilation different from that done by the agencies themselves. In fact, providing such information has now also become a commercial venture where private agencies collect the information from these agencies, compile them and sell them to users. Therefore, a lot of what is theoretically accessible is not so in practice to everybody. The absence of a proper system of accountability also means that disclosure provisions can be circumvented - nobody really knows whether a commercial entity is meeting all statutory requirements of providing information, and when it does whether its ultimate non-availability to the public is deliberate or a result of general inefficiency of the system.
2. Irrationality in the provisions regarding availability of information to the public: (i) Restrictions on disclosure of available information even when there is no rationale for such restriction and on the contrary there may be a case for such disclosure. For example, the RBI regulation which prohibits banks from disclosing the names of those companies who have defaulted on repayments of loans. Strangely, the availability of information is far more restricted when it involves transactions between a government or government owned agency and a private commercial entity than when it involves two private entities. (ii) Information that is legally accessible from one source is restricted from another - even when it is easier to access it from the latter. For example, every company's annual return has to specifically include information on the shareholding in that company of government or government sponsored financial institutions and this is accessible to the public. But it is restricted the other way around - these

financial institutions do not disclose the details of their shareholdings in companies. In fact, though the supposed logic of many of these restrictions are the requirements of commercial secrecy, they are in fact restrictions that largely restrict availability of information outside the commercial world and not inside it.

### **The Paradox Compounded**

With the change in the economic regime in the 1990s, the general move towards deregulation, shifts in governmental priorities, as well as the squeeze on resources - **there is a trend towards drying up of sources of information and a general deterioration of their quality. Government no longer automatically gets certain information that was earlier ensured by the system of regulation; it no longer wants certain information that the system of planning and other social objectives earlier dictated it should have; and the process of cutting down on size of government and its expenditure and promoting privatization, and the consequent de-emphasis on improving efficiency of government - all of these are eroding the existing mechanisms of making information available but no alternative mechanisms are coming in their place; heightening the inefficiency of these mechanisms; and widening inequalities in access to information.**

### Non-state Institutions and the Right to Information

The operations of a number of non-state bodies like private corporations and voluntary organisations also affect public interest in many ways. Although initially the movements for right to information in India concentrated on holding the state responsible for providing information subsequently the need for including other non-state bodies within the ambit of this right has also been felt. The protracted battle for compensation for the Bhopal gas victims acted as a spur to these demands, with the complete lack of probity and transparency of Union Carbide before and after the incident. Thus, the public disclosure norms of corporations should also include compulsory disclosure of information pertaining to actions of the corporation which impact on public health and environment.

Every factory/enterprise using hazardous processes of substances has, since 1987, a duty to disclose information about the nature of the potential hazard and the action to be taken in the event of a hazard. This information is to be given not only to the inspectors and such agencies of the state, but also to the people residing in the vicinity of the enterprise, and to the local authority. This is a norm that has become relevant to toxic waste disposal too. A Disaster Management Plan has to set out the steps that ought to be taken in the event of a hazardous occurrence. This right to information now overrides the secrecy in trade and industry which was earlier the dominant motif.

### Information Society: Creating Enclaves of Privilege

Legislative measures in according formal judicial recognition to a right to information only acts to remove impediments to sources of information. The practical implementation of this right in India depends to a great extent on the location, interpretation and use of information available by those who are most affected by it. In

this context, measures such as jan sunwais (public hearings) conducted by MKSS where documents like muster rolls are explained to the villagers who are paid wages according to it, acquire particular significance. The point being stressed here is that for information to become a tool of empowerment, it has to be tailored to the needs and interpretive abilities of the people concerned.



## CHAPTER 2

### INDICATORS, MEASURES AND BENCHMARKS

The discourse among quantitative analysts involved in the measurement of development over the last few decades provides ample illustration of growing disillusion with indicators such as Gross Domestic Product (GDP), per capita income, employment, gross enrollment in educational institutions, vital statistics of life expectancy, mortality and so on. In a complex, diverse and unequal society like India, even hard-core quantitative analysts agree that increasing aggregation of even the most qualitatively authentic data takes us further away from actual social realities – hiding all the disparities across regions, classes and communities. While periodic benchmarks are provided by official agencies like the decennial Census, the National Sample Survey Organisation (NSSO), the Planning Commission, etc., for non-specialists, especially among peoples' organisations, the periodic reports of national commissions/committees provided, through their national review of specific sectors, information much closer to the grassroots realities. This kind of analysis influenced the democratic process and critical appraisal of state action in promoting human rights and development, often empowering people's movements and giving substance to their democratic demands. Some of them, through their critiques of gross indicators accepted at the international levels, encouraged specialists to search for more sensitive quantitative indicators.

While India's five decades experience provides several examples of such divergence, we discuss in this chapter why the women's movement in India and women's studies found trends in the sex-ratio a far more sensitive and significant indicator of social, human and human rights development. We stress our experience – that inspite of much resistance from both scholars and official establishments over two decades, new scholarship using this ratio continues to reveal significant trends in society hitherto unknown to most – even in the age of the information revolution. We also believe that greater use of it in other corners of the world may change many other perspectives as it has done in India. Gender inequality, to quote Mahatma Gandhi, is historically and universally the first fault-line of oppression constructed by human society. Attempts to achieve human and social development through human rights cannot succeed without its elimination.

Equality lies at the core of the debate on gender development. Towards Equality, the report of the Committee on the Status of Women of India (CSWI, 1975) treated equality as an article of faith for all citizens, requiring no further debate on the concept of equality, with due acceptance of the historically oppressed populations who were provided various facilities to overcome the heritage of exclusion prescribed for them within the Indian social system. The in-built forces of social dynamics give rise to not only inequality stemming from poverty, which is now accepted internationally, but

also oppression from prosperity (the late M.N. Srinivas' most significant contribution to an understanding of social dynamics in Indian society - the theory of Sanskritisation) that leads firstly and foremostly to the immurement of women.

During the period after independence, with accelerated pace of political, social and economic transformation, this phenomenon has taken new forms. While the emergence of a large number of women in the dominant sectors of politics, economics, the professions and the cultural arena are viewed with great pride as indicators of women's advance, the emergence of new processes of deprivation raise questions of their significance. These negative indicators are the methods of depriving female children of their right to life or survival (abortion of female fetuses following sex determination tests in the urban areas, female infanticide in rural areas) noted only in the last two decades; the informalisation of women's work through the increase in contractual and more exploitative work systems heightened in the post-reforms period and accelerated pace of crimes of violence against women that affect the safety and dignity of women's lives. Both the positive and the negative sides of 'development' need to be considered for a realistic assessment of women's status and progress levels.

### **The Sex-Ratio**

The declining sex ratio highlighted by the CSWI in the 1970s had been noted by some concerned demographers like Asok Mitra, Ashish Bose among others, and nutritionists like C. Gopalan since the 1950s. In 1975, the Committee on the Status of Women in India (CSWI) used it as a composite index - to highlight the large scale marginalisation, deprivation on decimation of millions of poor women over a century. In 1981 the Census recorded a slight upward movement in the sex ratio, which was lauded as the arrest of the declining trend. This rejoicing, however remained short lived as 1991 registered a further decline in the number of females for every 1000 males. The fact that the average life expectancy of women overshoot that of males during the same decade is not a contradiction when seen together with the declining juvenile sex ratios.

The use of sex captures the complexities of gender relations to a substantial extent. The comprehensive analysis of aspects of women's lives by accounting for the diversities and a thorough understanding of the structures prevalent leads to a more realistic assessment of gender development. The benchmarks provided in the document as well as the suggestions and recommendations serve as better tools both for social analysis and planning.

Other noteworthy commission/committee reports which have similarly helped in the process of planning and development are Shramshakti, the report of the National Commission on Self-Employed Women (NCSEW), the National Commission on Labour (NCL), the National Commission on Rural Labour (NCRL), National Commission on Scheduled Castes and Scheduled Tribes and so on. The NCL and NCRL have been used by defenders of labour rights to demand better wages, for organisation of labour and so on. It is noteworthy that the report of the Committee on Unemployment, like the others emphasised that the heterogeneous character of the Indian economy, and the uneven

rates of development have had varying degrees of impact on different segments of the labour force.

Although several methods of regular collection of statistics on all important development sectors have been developed and adopted in India, their aggregation at the national level or even at the state level often hid substantive realities of widening gaps and inequalities. India displays tremendous diversity across regions in levels of human development irrespective of the indicator chosen to measure progress and well being. Historical differences have not been mitigated through the process of planned development. The uneven distribution of resources and development – educational, cultural, social, legal, political and economic within the country has made the debate on indicators of progress a very lively one.

The debate ranges from the various parameters (quantitative as well as qualitative) that need to be considered and the methodology to be adopted to the very need for a single quantitative number in the form of a composite index [Rurup and Sudarshan (1996), Gurumurthy (1997), Hirway and Mahadevia (1995), Kelley (1991), Krishnaji (1997), Rustagi (1998)]. The hierarchy defined by power and authority relations designates a subordinate position to women. Access to and control over various material, human and intangible resources affect the status of women.

While the use of indicators as measures is useful both for social analysis and as a tool for planning, the composition of different variables to form a synthetic number is highly questionable. There is no way by which it can be stated whether education is more or less important than shelter or health or livelihood. Each of the aspects of one's life assumes equal importance in the context of development and well being. There is some association among different socio-economic indicators, however, the exact relationship is not always well defined due to the complexities in such relations. The assessment of gender development is further complicated by the influence of structural and institutional aspects that affect gender relations, making them unequal.

Inequality made worse under conditions of poverty is one of the major concerns of the South but gender focussed studies in India have noted that prosperity levels also relate to gender inequality, i.e., relatively well-to-do regions exhibit more gender unequal relations as compared to less prosperous areas. (Bardhan, 1974). As early as 1974 Bardhan pointed out that sex ratios are more masculine in the relatively 'prosperous' districts of North Western India. This line of analysis has been pursued further in the 1990s by younger social scientists, [see Agnihotri (1997), Rustagi (1998, 2000)]. Even this indicator needs refinement and it is more fruitful to use the juvenile sex ratio (JSR) or sex ratio in the 0-9 age group. This is because the masculinisation of sex-ratios in India essentially results from excess female mortality results (EFM) the 0-9 age group. As the roots of this EFM are essentially behavioural and not biological, the JSRs emerge as a good indicator of gender based discrimination.\* Advantages of using Juvenile Sex Ratios rather than all age group sex ratios:

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\* A further refinement in terms of sex ratios in the age group of 0-4 and 5-9 years age group is more revealing but that does not concern us immediately.

- ✓ It takes away the migration 'excuse' since the migration in the under 10 age group is not sex selective.
- ✓ It shows the masculinisation of the sex ratios more sharply since this phenomenon is essentially arising out of excess girl child mortality over male child mortality particularly in the 0-4 age group.
- ✓ It reveals the changing patterns in different decades much more readily than the all age group sex ratios.
- ✓ It allows the disaggregation of the data by 5 year age group thereby revealing the groups/regions where the girl child is at risk as well as where the male infant is at risk.

There is a case for looking into specific characteristics of a country like India to assess levels of development. This is also the case with human rights as recognition of one's rights itself serves as an important aspect towards their attainment. To emphasise, education or literacy is not necessarily the parameter, which denotes levels of awareness. The illiterate masses especially women in our country have illustrated their faith in the democratic system more forcefully than the educated. This is reflected in the voting patterns and the response of rural women to the 73<sup>rd</sup> Constitutional Amendment. (See Tables 1 and 2 in the Introduction).

The late Ester Boserup had to turn herself away from uni-dimensional theories of agricultural growth, food supply and gender roles to look for multi-dimensional explanations incorporating culture, and the roles of indigenous as well as dominant exogenous technological developments on the complex dynamics of the human condition within a process of rapid globalisation of the world economy. We take this opportunity here of recording the enormous debt of the Indian women's movement to this extra-ordinary scholar for setting us new challenges to understand the complexities of changing gender roles within the historical process of change in our own society. Like us she recognised that the conditions of 'women at the top' of the political, cultural, and social hierarchy did not necessarily indicate the state of our social development.

The use of globally set standards was found to be often misleading and incapable of uncovering actual social realities of large populations. To combine these different aspects into a single index the following assumptions are being made: that the conditions facing the people of different castes, communities, classes and countries are in some way comparable. The varied development paths are not accounted for, neither are the historical and political regimes considered. It need hardly be emphasised how these factors influence the socio-economic development and human rights perspectives of any nation. What is further pertinent to note is that education, health, livelihood and

environment have been declared explicitly as integral parts of the right to life under Article 21 of the Indian Constitution [Menon (1999)]. The absence of juridical provisions to ensure the fulfillment of these rights is now being discussed by civil rights groups and other concerned citizens. The National Law School of India University precisely focussed on these aspects in their project on access to social and economic rights.

In pursuing human rights based approach to development, additional indicators that stress on participation, empowerment, transparency, accountability and democracy are required for assessing levels of enjoyment of Human rights. The needed new indicators are those of access to justice, right to survival, right to development, participatory governance, including representation.

Unfortunately for a continued unequal society in India these moves per se are not adequate to resolve the problems made more complex by half a century of the population explosion discourse and rapid developments in new reproductive technologies. The juvenile sex ratio has helped the women's movement to substantiate its apprehensions of the impact of a demand for a policy of population control by the intellegentia and a major section of political and social elites on the right to survival of the girl child. Trends in the juvenile sex ratio within the context of a demographic transition and declining infant mortality in a relatively prosperous regions provide adequate evidence that the apprehensions are not unfounded.

### A Fundamental Question

This also raises a fundamental question for those searching for an adequate definition for development. Is human development, identical with social development. In the context of India, for instance, how do we reconcile the fact that India's tribal population (considered least developed by other indicators) is the only identifiable section which has maintained a juvenile sex ratio influenced only by biological factors, rather than sociological or behaviour ones? Should not social development also include a larger context of collective ethics and responsibility for society as a whole? Is it not time to devise some better indicator of this collective responsibilities at the community, sub-regional, national and international levels?

Chart 1

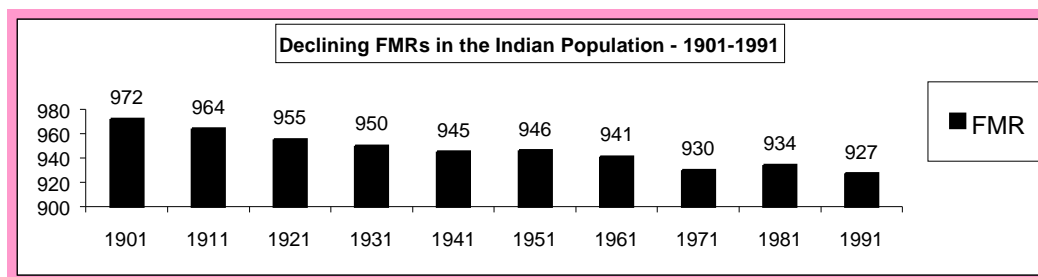


Table 3

## Number of Females per 1000 Males in Population 0-4 Years

Zone/State		Population of Age 0-4 C.S.R.		
		1961	1971	1981
North Zone	Punjab	929	917	915
	Haryana	-	921	924
	Rajasthan	972	956	983
	Uttar Pradesh	971	950	953
	Himachal Pradesh	987	984	N.A
	Jammu & Kashmir	974	967	N.A
South Zone	Andhra Pradesh	1009	1002	992
	Karnataka	973	984	973
	Kerala	975	981	969
	Tamil Nadu	995	983	972
West Zone	Gujarat	971	960	966
	Madhya Pradesh	941	992	985
	Maharashtra	983	975	953
East Zone	Assam	1035	1009	N.A
	Bihar	1016	985	1010
	Orissa	1048	1031	1018
	West Bengal	1024	1019	1002
INDIA		990	980	972

Table 4

Statewise FMRs by Social Groups: 1961-1991  
(Females per thousand Male Population)

STATE	Year	Total Population	Scheduled Castes	Scheduled Tribes	General Category	STATE	Year	Total Population	Scheduled Castes	Scheduled Tribes	General Category
India	1961	941	957	987	934	Maharashtra	1961	936	962	978	932
	1971	930	935	982	924		1971	930	947	973	926
	1981	934	932	983	930		1981	937	948	974	932
	1991	927	922	972	923		1991	934	944	968	928
Andhra Pradesh	1961	981	980	976	982	Manipur	1961	1015	942	1022	1014
	1971	977	973	973	977		1971	980	914	1009	969
	1981	975	971	962	977		1981	971	956	975	969
	1991	972	969	960	974		1991	958	973	959	957
Arunachal Pradesh	1961	894	-	1013	299	Meghalaya	1961	937	796	1001	670
	1971	861	904	1007	460		1971	942	898	996	743
	1981	862	592	1005	599		1981	954	790	1002	776
	1991	859	627	998	658		1991	955	821	997	739
Assam	1961	869	883	918	862	Mizoram	1961	1009	-	1026	390
	1971	896	917	960	886		1971	946	38	1021	208
	1981	-	-	-	-		1981	919	125	997	227
	1991	923	919	967	916		1991	921	157	982	243
Bihar	1961	994	1031	1014	985	Nagaland	1961	933	575	1007	287
	1971	954	981	1003	943		1971	871	-	973	332
	1981	946	966	993	937		1981	863	-	955	495
	1991	911	914	971	905		1991	888	-	946	558

Goa	1961	1066	-	-	-	Orissa	1961	1001	1015	1016	991
	1971	981	936	742	982		1971	988	993	1007	979
	1981	975	956	845	976		1981	981	988	1012	969
	1991	967	967	889	967		1991	971	975	1002	959
Gujrat	1961	940	972	970	933	Punjab	1961	954	858	-	852
	1971	934	950	968	927		1971	865	856	-	868
	1981	942	942	976	936		1981	879	868	-	883
	1991	934	925	967	929		1991	882	873	-	885
Haryana	1961	868	894	-	853	Rajasthan	1961	908	923	926	902
	1971	867	871	-	866		1971	911	914	930	907
	1981	870	864	-	872		1981	919	913	945	916
	1991	865	860	-	866		1991	910	899	930	909
Himachal Pradesh	1961	938	934	983	937	Sikkim	1961	904	-	-	904
	1971	958	950	1000	959		1971	863	842	-	864
	1981	973	959	978	977		1981	835	913	927	801
	1991	976	967	981	978		1991	878	939	914	862
J&K	1961	878	890	-	876	Tamil Nadu	1961	992	993	951	992
	1971	878	924	-	874		1971	978	984	951	977
	1981	892	922	-	889		1981	977	980	968	976
	1991	-	-	-	-		1991	974	978	960	973
Karnataka	1961	959	965	953	958	Tripura	1961	932	921	955	921
	1971	957	957	957	957		1971	943	940	954	938
	1981	963	968	971	961		1981	946	942	962	940
	1991	960	962	961	959		1991	945	949	965	931
Kerala	1961	1022	1013	1006	1022	U.P.	1961	909	941	-	901
	1971	1016	1012	995	1017		1971	879	896	880	874
	1981	1032	1022	992	1033		1981	885	892	919	883
	1991	1036	1029	996	1038		1991	879	877	914	879
MP	1961	953	973	1003	934	West Bengal	1961	878	916	969	861
	1971	941	941	998	925		1971	891	927	955	877
	1981	943	932	997	926		1981	911	926	969	902
	1991	931	915	985	916		1991	917	931	964	844

Census operation could not be conducted in Assam in 1981 and in J&K in 1991

- indicates data not available or no population in that category

(Source: Agnihotri 1995a)

Table 5

## Relative Death Rates of Male and Female Infant and Children - Statewise

Region	Infant Mortality Rates, 1981		0-4 yr. Death Rates, M/F		0-4 Death Rates, 1981			0-4 Deaths as % of total deaths, 1981		Neo Natal deaths as % of infant deaths, 1981
	Rate per 1000	M/F ratio	1971-75	1976-80	M	F	M/F Ratio	0-1 Yr.	1-4 Yrs.	
	1	2	3	4	5	6	7	8	9	10
INDIA	110	0.98	0.88	0.90	39.2	43.3	0.94	18.7	9.2	63.3
South Zone										
Andhra Pradesh	86	1.15	1.01	1.07	30.8	30.0	1.05	12.6	7.5	69.7
Karnataka	67	1.01	0.98	0.93	23.6	24.9	1.02	20.9	11.7	70.2
Kerala	37	1.12	0.97	1.04	13.3	11.0	1.15	8.4	4.6	68.7
Tamil Nadu	91	1.01	1.04	1.03	35.1	35.2	1.03	11.3	5.5	68.7
West Zone										
Gujarat	116	0.97	0.90	0.94	39.4	41.8	0.95	21.8	7.8	64.7
Madhya Pradesh	142	1.07	0.91	0.93	58.2	63.1	0.95	18.9	6.7	56.7
Maharashtra	79	1.09	0.97	0.93	25.9	26.6	0.97	22.9	9.2	68.4
East Zone										
Assam	106	0.99	1.08	0.98	36.7	42.3	0.98	18.0	11.8	63.3
Bihar	118	0.90	n.a	n.a	40.2	44.9	0.93	15.9	11.6	63.0
Orissa	135	1.07	0.98	0.94	42.2	42.1	1.06	21.9	6.7	59.1
W.Bengal	91	1.01	n.a	n.a	35.3	31.7	1.02	8.1	4.4	70.2
North Zone										
Haryana	101	0.81	0.78	0.75	32.7	42.5	0.82	21.7	9.2	56.9
Punjab	81	0.99	0.77	0.79	23.8	27.7	0.83	15.9	5.9	60.2
Rajasthan	108	1.12	0.84	0.90	46.8	54.1	0.89	22.4	8.4	55.1
Uttar Pradesh	150	0.95	0.78	0.74	53.1	68.5	0.82	24.4	16.0	64.0

Columns 1, 2, 5, 6 and 10 from Sample Registration System, GOI, Ministry of Home Affairs, New Delhi, 1983. Columns 8 and 9 from China and India, GOI Ministry of Welfare New Delhi 1985 Table 2.45 pp.182-183. Columns 3 and 4 (Dyson 1987).



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## CHAPTER 4

# PROTECTIVE DISCRIMINATION

Equal protection of law and equality before the law are two of the most important values of a just society. Usually constitutions of democratic countries provide these guarantees and forbid discrimination between people. The failure of non-discrimination perse inelminating inequality, however, is as old as the principle itself. Constitutional law, therefore, embodies the principle of reasonable classification of persons for different treatment. The Constitution of India provides specific prohibitions against discrimination on the ground of religion, race, caste or sex but also for affirmative action in favour of groups who had been historical victims of the traditional social system. This is known as reverse discrimination or protective discrimination – empowering the state to secure the entitlement for such disadvantaged sections by special provisions.

The Untouchability Offences Act in (1955) was amended and rechristened in 1976 as the Civil Rights Act, and latter as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act which make acts of tyranny against these groups punishable. These penal sanctions have helped to delegitimize the practice of untouchability, but not to eliminate it.

Affirmative actions, particularly reservations of jobs and seats in educational institutions have triggered a fierce debate. The Supreme Court has made a distinction between SCs and STs and the other backward classes. While SCs and STs are identified exclusively by caste, the backward classes (BCs) cannot be identified by caste alone. The Backward Class Commission under the Chairmanship of Mr. Mandal had determined backwardness by applying various social and economic criteria, of which caste was only one. The Supreme Court while upholding the Mandal Commission's recommendations observed that although caste could be one of the criteria, it could not be the exclusive criterion of backwardness.

Another disputed question is on the extent of reservation. The Supreme Court held that total reservation should not exceed 50 per cent of the total number of posts available for recruitment. The Supreme Court further held that there should be no reservation in promotion. The Court has also held that there should be no reservation in super-speciality courses in medicine or engineering. The Supreme Court has also laid down that along with the reservation strategy, the de-reservation strategy also must be employed. The Court held that 'creamy layers' among the BCs must not get the benefit of reservations. Reservations as a resource must be used economically and must be conserved for the have-nots among the BCs.

### Other Strategies to Empower Scheduled Castes and Scheduled Tribes

- q The National Commission for the Scheduled Castes and Scheduled Tribes, set up by the Constitution (Sixty-fifth Amendment) Act, 1990 replacing the Commissioner appointed by the President "to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President upon the working of those safeguards at such intervals as the President might direct". The duties of the Commission remain the same but its members include persons belonging to the Scheduled Castes and Scheduled Tribes. All reports of the Commission are required to be laid before both Houses of Parliament. Where a report pertains to matters falling within the purview of a state government, it is sent to that state government for action.
- q Article 46 of the Constitution (a directive principle of state policy) requires the State to "promote with special care the education and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation".
- q The term "weaker sections of the people" covers all those who have been victims of social injustice, thus affirmative action is not confined to the SCs and STs but extends to other people who have suffered similar injustice (see Chapter 1).
- q Compensatory discrimination restricted to the Scheduled Castes and Scheduled Tribes include - a guaranteed minimum representation in Lok Sabha (Lower House of Parliament) and state legislative assemblies, in proportion to their respective populations. This was initially provided for 10 years but the duration was extended by several constitutional amendments and is to be extended again in the year 2000 for another 10 years. The SCs and STs also have reserved seats in proportion to their population in village panchayats and municipalities (see following section).
- q Preference in allocation of cheap houses, land, loans at a concessional rate of interest, or providing higher eligibility age for qualifying examinations for recruitment of jobs etc. These facilities are generally given to the poor and since the backward classes constitute large segments of the poor, they receive them. These actions have not been controversial. The controversy, however, has been regarding reservation of seats in educational institutions and jobs in public services.
- q The original Constitution provided for reservation of posts in government service for backward classes [Article 16 (4)]. The Constitution, however, provided that claims of the members of the SC and ST shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a state [Article 335]. In 1951 by the Constitution (First Amendment) Act, clause (4) was added to Article 15 which empowered the State to make provisions for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs. This clause has been the source of all the affirmative action except reservation of jobs. (Cf. Srinivas, Chapter 1).

Affirmative action has doubtless benefited the SCs, STs and BCs. Without reservations, persons from these sections could not have competed for government jobs or access to higher education. Studies of SC students seeking admission to higher education shows that there has been marked improvement in their performance during last 50 years. The difference in the marks obtained by the last general candidate and the first reserved candidate has narrowed down over the years. There have been several SCs and STs who have secured admissions on merit. The contention that there should be no reservation for higher courses of study has no substance because ultimately the passing standards for the general and the reserved candidates are not different. The argument that reservation would help incompetent people become doctors is based on bias and not on facts. But without a dent into poverty, reservations will benefit only the better-off sections among the Dalits. Without free and compulsory elementary education, large number of SCs, and STs and BCs are eliminated from educational opportunities from the earliest stage. The result is that there are reservations in higher education and government service but there are not enough people to take advantage of it. The seats or posts remain vacant and since they are not available to others generated.

Although individuals continue to suffer from social prejudice, SCs and STs as groups have now become political forces. The Mandal Commission's report was accepted and reservations in government jobs were extended to other backward classes, only because of the political mobilisation of the BCs. When the Supreme Court declared that reservations should in no case exceed 50 per cent of the total number of jobs to be given, Tamil Nadu government severely protested and its law allowing more than 50 per cent reservation

was inserted in the Ninth Schedule of the Constitution so as to make it immune from judicial veto.\* When the Supreme Court held in *Indira Sawhney v. India* that there shall be no reservation in promotion, the Constitution was amended to specifically empower the State to provide for reservation in promotion also.\*\*

How far has protective discrimination benefited the SCs and STs as a group, beyond enabling a majority of them to access educational, economic and political power? Without drastic and effective reduction of poverty, majority of SCs and STs also cannot benefit in a substantial manner. The leadership, however, regards reservations as a panacea for their ills. Without sustained anti-poverty and anti-illiteracy measures, reservations per se would increase the already widening inequality within these groups – especially on regional, class and gender lines.

In the rest of this chapter, we illustrate a representative example of the use of protective discrimination in response to changing contexts - dealing with women's rights to equality, dignity and justice.

As in the case of other groups, the high visibility of a few women in important positions of power and influence had fostered a belief amongst the middle class, the political leadership as well as women's organisations that the women's question in India had been resolved. All that women needed – it was believed – was the spread of education and other aspects of modernisation to achieve what the Constitution promised - until the Report of the Committee on the Status of Women in India (1975) (CSWI) revealed some of the grassroot realities in their stark colours. A new wave of the women's movement and the critique of the 'dominant development paradigms' by feminist scholars – (themselves 'beneficiaries'), but who had opted to view the processes of change from the perspectives of the 'victims' appeared on the scene. Pressure groups – new and old – debates, studies and new data unearthed by adoption of innovative research methodologies armed the movement with new intellectual vigour, and internationalisation of the issue during the Women's Decade called for substantial changes from below. It found allies inside the government and in sections of academia to begin dialogues and a search for alternative strategies.

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\* The laws listed in the Ninth Schedule are those whose validity cannot be questioned before any court on the ground of their alleged inconsistency with the Fundamental Rights.

\*\* Clause (4-A) of Article 16 was added by the Constitution (Seventy-eighth) Amendment Act.

The greatest problem in pushing the state machinery into carrying out its constitutional mandate as far as women were concerned lay in locating the gender issue within the government. The structure of government and development administration in particular was sectoral, and women's development issues could not be fragmented into sectors. **The movement's demands spread across the entire economy, society and the political system - seeking equality not only formally, but actually - in opportunities, access, control and power.** Recognising the education system as having played a major role in the social construction of gender and the invisibility of the lives of the large majority of women, women's studies activists pressurised a chapter on Education for Equality within the National Education Policy (1986), providing a Parliamentary mandate to the national education system "to play a positive, interventionist role in the empowerment of women" - through curriculum change, research and direct involvement in women's development activities. **Widening avenues for poor women in rural and urban areas - in the peasantry, in the informal sector of the economy, amongst the lowest castes and communities** - to acquire a voice through the studies and organisational activities unleashed by the movement.

How did the government respond to the emergence of a 'women's lobby', and possibly also a 'vote bank'? In the rest of this Chapter we present three important examples of:

- q a systemic response from the bureaucracy;
- q a political response from a young Prime Minister (Rajiv Gandhi) with a massive popular mandate to which women had contributed substantially - through constitutional amendments (73<sup>rd</sup> and 74<sup>th</sup>) empowering rural and urban local self-government bodies - with, for the first time, an infusion of one third women members by mandate, through reservation of seats (1993), which, when fully implemented, would provide one million women access to political power and influence in directing the development process and
- q gender based demand caught within the maelstrom of identity politics: an extension of the same reservation formula to State Assemblies and Parliament which has had a chequered history since its acceptance by all political parties in 1996 and still remains only in a Bill stage with its future uncertain.

## A. DEVELOPMENT PLANNING AND WOMEN'S RIGHTS - THE INSTITUTIONAL PERSPECTIVE

The contemporary global debate on human rights for women was anticipated in India decades ago and was an intrinsic part of the freedom movement.

### The Constitutional Provisions

The ethos of the Preamble is both liberal, in terms of individual rights and liberty - and redistributive, in terms of the freeing of large groups of citizens from the distortions of the past. It promises to secure for all its citizens:

Justice, social, economic and political  
Liberty of thought, expression, belief, faith and worship  
Equality of status and of opportunity  
Dignity of the individual and  
Unity of the nation.

At a meeting organized by the Prayag Mahila Samity, Allahabad in May 1926, Sarojini Naidu told the crowd of assembled women that “it was not for men to give them or not to give them any rights; nor was it appropriate for men to make decisions for women. Women must begin to exercise their own rights.”

The Women’s Indian Association passed a resolution in 1929 demanding “a single standard of morality for both men and women, equal rights of separation and the introduction of an equal divorce law for men and women.”

Kamladevi, in 1940, wrote that “no woman can call herself free who cannot own and control her body and who can be subdued and enslaved through that very quality of fertility which once raised her to the altar as a deity in the dawn of early civilization.”

The extent to which the concept of rights has influenced ‘women’s development’ in the post-Independence period is, however, contingent on the functioning of the policy and institutional framework, its structures, its mechanisms, its processes over time and its perception of the political will of the governments of the day which it attempts to translate into practice.

The State’s choice of using the development policy and institutional framework to implement this directive has shaped the nature of the links between ‘women’s development’ and ‘women’s rights’ both in discourse and in practice. While concepts and approaches to women’s development have emerged, modified and changed quite speedily, the changes in institutional structures, processes and thinking have not kept pace, leading to a mismatch between policies, plans and implementation in the field.

- ◆ The imperative for women’s equality is rooted in Part III (Fundamental Rights) of this document.
- ◆ Articles 14 and 15 pronounce the right of men and women to equality before the law and the prohibition of discrimination on the basis of sex by the State.
- ◆ Article 15 forbids the State to subject any citizen to any disability, liability, restriction or condition, on the basis of sex, in the access to, or use of, any public place or service.
- ◆ Article 16 promises to both men and women, equality of opportunity in matters relating to employment under the State.
- ◆ Taken collectively, these provisions spell out the basic right to equality of Indian women as individuals.

The Fundamental Rights are individual rights. Sixteen years before India won independence from the British, the Karachi session of the Indian National Congress (1931) adopted the resolution on Fundamental Rights, which incorporated within it, the concept of equality of the sexes. Women's emancipation, through their right to equality, was thus a part of the new social order.

## **Directive Principles**

Article 37 includes the right to an adequate means of livelihood for men and women, equal pay for equal work, protection of the health and strength of workers - men, women and children - from abuse, just and humane conditions of work, raising the level of nutrition, free and compulsory education to children up to the age of 14, maternity relief and conditions of work ensuring a decent standard of life and full enjoyment of leisure. Many of these provisions find place in the Convention on the Elimination of All Forms of Discrimination against Women under Articles 11 and 12.

Indian women have, historically, questioned double standards of morality in marriage and other dominant value systems perpetuating unequal gender relations in society periodically - some openly, others covertly. The process accelerated during the freedom struggle - and had Mahatma Gandhi's support. The inclusion of equality between the sexes in Part III of the Constitution is therefore the logical sequel to the participation of women in the joint struggle for Swaraj and their own emancipation. Yet, when the CSWI completed their extensive review of the situation of women in India in the mid-1970s, their finding was that for the vast majority of Indian women, the Constitutional guarantee of equality of legal status and opportunity had remained an unrealized dream.

Was there a grey area, an absence of a matching policy and institutional framework that was responsible for the very large gap between precept and practice?

Dr. Ambedkar valued the Directive Principles above all because they lay down that our ideal is economic democracy. Without them, he felt, a parliamentary form of government could have come into being, but with no direction as to what the country's economic ideal or social order ought to be. While Fundamental Rights are personal rights, the Directive Principles are the ingredients of State policy and are intended to guide the State as a whole. In fact, an amendment was suggested by Shri B. N. Rao (the Constitutional Adviser to the President of the Constituent Assembly), to make the Directive Principles enforceable in a court of law, 'to make it clear that in case of conflict between the rights conferred by Chapter III,.....which are for the most part, the rights of the individual, and the principles of policy set forth in Chapter IV, which are intended for the welfare of the State as a whole, the general welfare should prevail, otherwise it would be meaningless to say that the principles are fundamental, and it is the duty of the State to give effect to them in making laws.' This amendment was not carried out, as it did not find favour with the majority in the Constituent Assembly.

The content of this argument is relevant when we pose the question--in what policy and institutional framework did the Indian State operate to carry out the pledge of gender equality in the Constitution? Did the lawmakers and the policy makers see the



mandate for gender equality as part of the overall mandate for economic and social justice? Did failure to give 'teeth' to the Directive Principles result in dereliction of this charge? Was law the prime mover or instrument to bring about equality between the sexes?

**The hypothesis – that these rights were meant to transform the position of women as part of an overall strategy in which exploitation in the name of caste, class and race is also to be addressed – is prompted by the congruence of the provisions of Articles 15(1) and 15(4) with those of Articles 15(1) and 15(3). Article 15(1) prohibits discrimination on the basis of caste and gender. Article 15(4) empowers the state to make 'special provisions' for Scheduled Castes, Scheduled Tribes and socially/educationally backward classes. Article 15(3) authorizes the state to make 'special provisions' for women and children. Both these sets of provisions are not violative of the fundamental right of equality.**

These questions arise in the context of the findings of the CSWI in 1974 that neither the norms nor the institutions are in place which would enable women to fulfil the multiple roles that they are expected to play in India today.

Rights can only build a foundation, a basis on which to build structures to provide women with opportunities. But who will monitor the State's observance of the obligations to which they have committed themselves? Rights granted by law need an organizational as well as a policy infrastructure or framework to enable women to exercise them. The mode of redressal of individual grievances of violations of basic rights is insufficient to challenge structural and policy-related discrimination.

**Women's studies scholars and feminist lawyers have differentiated between the 'formal' and the 'substantive' approach to equality. Whereas the formal model has been used in political and constitutional discourse, there is increasing concern that it cannot eliminate discrimination against certain marginalised groups and therefore the impact of the law or the justice redressal system will not have a favourable effect. In other words, 'equality sometimes requires that individuals be treated differently'.**

## Development Planning in India

Development planning was the pride of the new nation, borrowing from the Soviet model; and involved a massive investment of financial and physical resources. The Five-Year Plans disaggregated and allocated the total resources amongst various development sectors. The State's main emphasis was on achieving economic growth. The professed aims of centralized planning included achievement of self-sufficiency in food, creation of a strong industrial base in the public sector, including infrastructure, and generation of employment opportunities. In the long term, these growth processes were supposed to improve the life of the common man. But in the short and medium term, the State, in pursuit of "social justice" objectives, to protect those who would not immediately benefit from the growth processes, had to provide a certain welfare orientation to the planning process and content. This dictated the creation of social development planning, with its own objectives such as the satisfaction of basic needs. This was done through direct interventions in certain sectors, even while the engine of economic growth was revving up to attain the "growth" objectives.

## Unity in Diversity: Voices of the Indian State

The omission or failure to link the framework of women's legal rights with enabling mechanisms is a fault line that developed in the 1950s and continues to the present. It was commented upon by the CSWI, which suggested the setting up of an autonomous statutory Commission which would recommend new policies to implement the Directive Principles of State Policy.

The Government's own National Plan of Action (1976) emphasized the provision of legal services, awareness of rights and responsibilities, effective legal implementation **and follow-up machinery** to review existing legislation (including personal laws) so as to bring amendments as well as new laws. It wanted a decade long campaign 'among the affected groups' to generate an initiative 'by the end of 1985' **to ban polygamy**, to bring about **parity of rights for both partners regarding grounds for seeking dissolution of marriage** and to make the Indian Succession Act uniformly applicable to all sections of Christians. Later documents like Shram Shakti\* made a number of policy recommendations to enhance **workers' rights** including the setting up of an **Equal Opportunities Commission**, with powers of investigation, direction, advice and monitoring. It also recommended the grant of power to trade unions and others to inspect work sites and file complaints on behalf of the workers. Other recommendations included the adoption of a strategy of promoting **the organizations of women workers on a large scale by building in a component in all state-sponsored projects as a direct investment in a "people's base"**. Echoing the same principle, the National Perspective Plan\*\* emphasized the need to build up collective action, to promote mobilization efforts amongst women, to facilitate NGOs in unionizing female workers and **to form women's wings in trade unions etc.**

Gender equality as the right of an individual woman therefore had to be fought for within a social structure which is itself based on an unequal power and resource base. The preoccupation of the State was to move ahead quickly through higher growth, modernization and industrialization. Social development was subsidiary, if not subordinated, to this goal and was left to the social welfare institutional framework to work on the Directive Principles to reduce them to a set of policies and strategies.

## Social Welfare Services

However, early development planning (1950 onwards) identified social welfare services as appropriate interventions to tackle the basic problems of certain target groups of which women formed a part. Even as late as 1976, when the government prepared its National Plan of Action – which had the Mexico Plan of Action as well as the report of the CSWI for reference and guidance – this approach to women's issues found a clear articulation in the National Plan of Action (1976-77).

'Welfare services are intended to cater for the special needs of persons and groups, who by reason of some handicap--social, economic, physical or mental--are unable to avail of, or are traditionally denied the amenities or services provided by the community. Women are handicapped by social customs and social values and therefore Social Welfare Services have and should specially endeavour to rehabilitate them.' (emphasis added). The NPA went on to say that since the developmental needs of these categories are unlimited and the resources are finite, 'priorities have necessarily to be

assigned'. So amongst women in general, certain sub-categories were singled out, such as working women, women who were handicapped, destitute, widowed, in conflict with law, unmarried mothers and others similarly exploited. A good deal of attention was paid to describing, analysing and finding solutions for the widows' problems, which were seen as social disabilities rather than economic, especially amongst the older widows. Even when young widows' economic vulnerabilities were described, marriage was held to be the appropriate response. When schemes and programmes were drawn up, they were not based on or linked to rights.

In the Chapter 'Legislative Measures' the NPA does give a number of useful recommendations on laws relating to marriage, divorce, dowry, inheritance of property, nationality, adoption, etc., it refers to women in the abstract, and does not visualize the legal problems of any set of women nor attempts to design any mechanisms to actually reach legal services to the women who have been described as 'handicapped' in the chapter on Social Welfare, even while it accepts that because of their situation, they need special interventions to access the legal system.

This excerpt from the National Plan of Action (1976) has been dealt with in somewhat elaborate detail to highlight a recurring feature of the design of development programmes for women-a strong 'social welfare' bias, identifying women as victims or as vulnerable, oppressed, handicapped individuals, with the State providing services of a compensatory or ameliorative nature which are not seen as 'rights' accruing to them as citizens; and a corresponding failure to include legal rights in these programmes and services to help these women to fight for their rights. Institutionalization, for example, became one of the preferred modes of protecting such women, as it kept them safe from the depredations of the outside world

Recalling the men and women who fought for freedom and successfully placed gender equality within the Fundamental Rights, a wide gap does seem to appear between the notion of legal rights, entitlements, legal processes and safeguards on the one hand, and of social welfare services of ameliorative and compensatory nature, on the other.

**Yet just 12 years after the NPA was prepared, Shram Shakti had this to say on 'Support for destitute women':**

**'The incidence of destitution is quite high amongst the labouring women in poverty. This situation may arise as a result of widowhood, migration, illness of the husband,.....alcoholism, or taking of drugs.....labelling of such women as "destitutes", "distressed", "helpless" is counterproductive.....their worth as workers should be recognized and the entire approach should be from that angle'.**

## The Five-Year Plans and Women

The Five Year Plans were the instruments for planning in India, which emphasized and reinforced the concept of schemes and programmes denoting 'development'. Though production of food, industrial output, creation of infrastructure etc. were always given a higher development priority, sectors such as health, education, nutrition, sanitation, etc.,

were also seen as important, though as 'non-productive', 'social' sectors involving 'consumption expenditure'. Upto the Fifth Plan, (1974--1979), there was little or no effort to see women as human or productive resources nor in terms of their roles in production sectors. The 'statistical purdah' concealed the full extent of their participation in these sectors and their contribution to the domestic product, and this made them invisible to the policy planners. It was only in the Sixth Plan that a change took place.

### The 1980s -- A New Beginning

For the first time, the Sixth Plan (1980-85) introduced a separate chapter on women - stimulated by a few important policy documents\* as well as the advocacy and dissemination of information following the launching of the International Women's Decade. A first attempt at a holistic planning approach to women, it stressed economic independence, giving of joint titles to husband and wife in all asset transfers, including land, house sites and other economic units, a public policy package that was to include ownership rights and enforcement of wage laws.

The Seventh Five Year Plan (1986--90) continued the new approach and spoke of 'rights and privileges' of women, the need to 'inculcate confidence among women and bring about an awareness of their own potential for development, as also of their rights and privileges.....' the strengthening of cells set up in various Ministries for dealing with women's issues to ensure better co-ordination were all informed with the ideals of women's productive roles, women's contributions to national development and strictly eschewed the 'social welfare model'.

## The National Machinery - the Institutional Framework for Implementation

The institutional framework for women's development grew in size and complexity over the years, starting from the initial phase of planning in the 1950s. The delivery of social welfare services to women and children was carried out by the agencies created within the government as well as the organizations of the voluntary and non-government sector. These bodies were strongly shaped by the social welfare mode of planning and development.

### The Central Social Welfare Board

There were exceptions. The Central Social Welfare Board, (CSWB), a Gandhian experiment in harnessing women-power for all weaker sections created in 1953, involved women in income-generating activities, which was an innovation in the 1950s, especially when the funds were given to the women not as grant-in-aid, but as interest-free loans. The primary objective of the Board was to mobilise voluntary effort mainly by women's organisations in the task of improving the condition of women, children and other handicapped groups. Nurturing of women's leadership through the non-government route could be done with assured funding from the central government.

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\* Important policy papers which emerged during the Women's Decade: Report of the Working Group on Employment of Women (1978); Report of the Working Group on the Development of Village Level Organizations of Rural Women (1978) ; Report of the National Committee on the Role and Participation of Women in Agriculture and Rural Development (1980); Report of the Working Group on Personnel Policies for Bringing Greater Involvement of Women in Science and Technology (1984); and after the Decade: National Policy on Education--Part IV: Education for Women's Equality (1986); Report of the National Expert Committee on Women Prisoners; National Perspective Plan (1988), Report of the National Commission on Self-employed Women and Women in the Informal Sector (1988).

Led by and composed mainly of women, the CSWB occupied a pre-eminent place in the area of planning for women in the early 1950s, as its creation predated the coming into being of a central government Ministry for Social Welfare. It successfully dovetailed several activities for women with specialist national bodies such as the Handicrafts Board on the one hand, and large rural programmes such as those of the Community Development on the other. The relative autonomy and independence of the CSWB and the stature of its Founder-chairperson, especially vis-a-vis the political and bureaucratic elite of the day, helped to establish the Board on a sound footing with the help of education schemes for drop-out girls' school education, technical training and skill development for women, etc.

### Gradual Broadening of the Planning Framework for Women

From the sector of 'social welfare services' and 'social services', the planning framework opened out to include the schemes of the Community Development sector, mainly in applied nutrition, food production within the household, crafts, and later, training in agricultural production for farm women. Health, especially maternal and child health, followed by family planning and family welfare also became new priorities. Policy emphasis on education for women and girls – demanded in a report by the National Committee on Women's Education in the late 1950s, a number of interventions including undifferentiated curriculum for girls and boys, financial incentives for parents of girl students and higher resource allocations to states for achieving girls' enrolment at 80 per cent of that of the boys. The National Committee suggested a permanent institutional mechanism within the Ministry of Education - a National Council for Women's Education - [and similar bodies at the state level] for continuous review, monitoring and evaluation of girls' education.

Located outside the bureaucracy and consisting of members drawn from the women's constituency in civil society, CSWB was the first instance of an institutional mechanism for women's advancement set up in India - at a time when the International Women's Decade, which saw the coining of the word 'National Machinery' was still more than two decades away in the future.

The coming into being of a Ministry within the Government of India started a slow process of marginalisation of the Board, though it still played a major role in implementation of programmes and schemes and delivery of services. Its primary mandate to mobilise action through the 'organisations of civil society' [to use a contemporary phrase] outside the government, for the advancement of women and children, weakened over the decades.

Though restricting its interest to the formal sector, the Second Five Year Plan looked at the plight of women workers and recommended that facilities such as creches, maternity benefits, training, equal pay for equal work, protection against injurious work, etc., should be made available to them.

Legalisation of abortion [medical termination of pregnancy] was done in the early 1970s, family planning services [with focus on women] started getting a bigger and bigger share of the health budget and child health received a fillip with the launching of the Integrated Development of Child Services (ICDS).

Most important of all, the mega-programmes and projects such as Community Development, ICDS, etc. created large cadres of women whose presence in the villages gave a new meaning and significance to the concept of involvement of women functionaries in development.

## **The Search for New Institutional Mechanisms**

Mechanisms for institutional coordination needed to be put in place, however, to ensure that these expanded planning initiatives were conceived and implemented holistically. Existing mechanisms had to be revamped and new structures put in place, depending on the need. The structures and institutions had to internalise the emerging needs and values, to see women in a more holistic and multi-dimensional light. The situation called for a paradigm shift.

The CSWI's Towards Equality (1974), found neither the norms nor the institutions to be in place. The 'special provisions' that the Constitution talks about have to be understood to mean the enabling mechanisms to help women to come out of their traditional modes of thinking and ways of carrying out their day to day duties. These provisions were to help women to step out from their subordinate/unequal status to access the equality rights without adverse consequences. They were not an end in themselves, but only a stepping stone to substantive equality.

**The absence of a mechanism created a void.** The Ministry for Social Welfare continued to co-exist in an uneasy relationship. The other Ministries whose portfolio was of vital importance to women such as Education, Rural Development, Health, Labour and Employment, etc. did not invest their resources in institutional innovations for women at policy and strategy level. Large cadres of women at village and cutting-edge levels were recruited but their own personnel and working problems did not attract much attention. Mobilisation of women under the Mahila Mandal programme became a part of the Community Development plans, but no attention was paid to the task of converting them from status-quo groups to critical partners in change and development.

### **The Women's Bureau as a 'Nodal' Agency**

With the publication of the CSWI report and the launching of the International Women's Decade (IWD), things began to move comparatively faster. The National Plan of Action (1976) drew inspiration from the CSWI report as well as the World Plan of Action which had emerged from the Mexico World Conference on Women. The institutional mechanism of the Women's Bureau came as a consequence of these events. It was again, located in the under-resourced Ministry of Social Welfare. The clout possessed by it was not considerable, as compared to the other larger Ministries. It remained a discrete entity, not a cross cutting one. This was a structural feature of the Bureau, forming as it did, a part of the normal bureaucratic framework.

## Other Mechanisms

1. The National Committees: - 1976 – stillborn; 1977 (post-emergency) – A Victim of Malnourishment.

Other instrumentalities were also created during this period and after to speed up the processes of decision making on women's issues. A high powered National Committee on Women (1976) presided over by the Prime Minister and consisting of Ministers, MPs, women activists and public representatives advocating women's causes was one of them. This mechanism was envisaged to take speedy decisions on major policy matters pertaining to more than one Ministry, to cut out the inevitable red tape present in inter ministerial dialogues, but died in infancy.

2. The Women's Cells in different Ministries (Labour/Employment, Rural Development, Education, HRD, Planning Commission, Environment/ Forest etc.)

The creation of special cells for women in the important Ministries was another instrumentality that was adopted during the IWD: to focus on generic issues [relating to women in that particular sector] as well as day to day implementation; an attempt to 'mainstream' women's issues in the line Ministries and Departments where the physical and human resources were available; as a better option rather than the under-resourced Women's Ministry or Bureau taking on too many programmes for women falling under different government sectors and agencies.

The experiment met with limited success. Some of the cells, like that located in the Labour Ministry and the Department of Science and Technology, did look at generic issues. The Labour Ministry cell looked at the need for changing labour laws for women. A scrutiny was done by the cell on the laws relating to maternity benefits, provident fund, social security, etc. It was successful in initiating programmes of women's involvement in wasteland development and the training of women in non traditional skills such as masonry. It successfully used the mechanism of task forces to link with women workers in the unorganised sector.

The Science and Technology Cell took up a number of national coordinated projects in areas related to new technologies benefitting environment, health, productivity and employment as well as dealing with occupational hazards faced by women. However, in spite of considerable headway made by some of these cells, they could not be sustained over time. Some of them suffered from neglect, lack of dynamic leadership and became somewhat isolated within their Ministries.

The Working Group on Employment of Women (1977-78) set up by the Planning Commission as a preparatory activity for the Sixth Five Year Plan (1980--85) had emphasised the need for 'an administrative machinery responsible for identifying women's problems and for ensuring effective action by various Government and non-Government agencies for their resolution' and that the absence of such a machinery was the main reason for the neglect of the women's question. This was projected to be a 'specialised agency' within the government to help ensure 'mutual monitoring' and



'reciprocity' among the major supporting and technical agencies and to play a catalytic role in bringing women closer to the specialised agencies.

## **The World Conferences on Women and the**

### Concept of the National Machineries

International events in the shape of the World Conferences on women, which began in the mid-1970s, introduced, formally, the concept of the 'national machinery' into the global discourse on women and development. In these documents, the national machinery was visualised and defined in different dimensions, such as 'complex organised system of bodies or a single body', 'inter-disciplinary and multi-sectoral machinery within the Government', 'central policy-making coordinating unit inside the Government' or even as 'mixed governmental and non-governmental...in some countries, totally outside the Government'.

The imperative was very clear. The UN recognised the State as having the primary responsibility for carrying out the recommendations of the World Conferences, called for commitment at the highest political level in implementing, coordinating, monitoring and assessing the progress towards women's equality.

#### The Core Problem

The problem lay in the yoking of this concept to the reality of large bureaucracies and its stylised ways of functioning. Women, in the administrative parlance, do not constitute a sector. They are a multi sectoral and multi dimensional cross cutting presence. The concept of an all powerful and centralised mechanism is unrealistic, given the circumstances of the 'nodal' agency, i.e., the Women's Bureau. What is needed is to bring in all the sectoral Ministries and the specialised agencies within the ambit of development planning for women.

The cells in the important Ministries set up in the 1980s were an effort in this direction. But their effectiveness did not last long. The presence of a notified 'nodal agency' [however modest its profile] insisted on by the UN system did much to dilute the sense of responsibility of addressing women's 'holistic' needs in many of these large, powerful and well-resourced Ministries and agencies.

Thus, one of the biggest gaps in the Plans and other related documents has been the lack of understanding of the links between the different roles of women. New projects for women initiated in these large Ministries lay emphasis on increasing the productivity of women workers, without reflecting the overall work load of women, especially poor women.

Similarly the links between work and childcare, between work and maternal health were seldom addressed in the project design. Woman's legal rights and her awareness of these rights were not seen as essential to these projects. In later years with the increase in donor funded projects, these conditionalities, including NGO involvement, came to be included, but without the internalising of these norms and values by the policy makers and managers.

## **The National Commission for Women**

The early 1990s saw the setting up of the National Commission for Women. The impetus behind this venture was the motivated lobbying of the women's groups. [As far back as 1974 the Committee on the Status of Women in India had recommended the setting up

of such a Commission.] The Act provided a specific mandate to the Commission to study and monitor all matters relating to the Constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments and look into the individual and collective complaints involving the deprivation of the rights of women. Commissions have also been set up at the State level along the same lines. While the statute has been drafted in such a way to ensure the maximum autonomy to this body, as per the insistence of the women's groups, in practice, it has functioned administratively as a part of the governmental configuration'.

**The Country Paper prepared by the Government of India in 1995 for the Fourth World Conference for Women at Beijing contains a diagrammatic representation of the national machinery with its institutional support as a circle with the Department of WCD [Women and Child Development] at the centre of the circle and other agencies, Ministries, etc. arranged in concentric circles around it. The smallest concentric circle which is closest to the centre includes CSWB, NCW [National Commission for Women], RMK [Rashtriya Mahila Kosh] and NIPPCD [National Institute of Public Cooperation and Child Development]. The various Ministries of the Government of India are, likewise, arranged in the next concentric circle and so on.**

Substantive work done by the Commission includes a solid review of the existing laws for women and recommendations to plug loop holes and frame new laws. In this endeavour, it was able to count on the committed work and contribution of many of the women's groups, women lawyers working on these issues and others. It was also able to coordinate, to some extent, its working with that of the National Human Rights Commission. In seeking to redress individual and collective grievances of women, the Commission has put in the best efforts, but has not been as successful mainly because of its subordinate, and marginal status in the government.

## **Panchayati Raj**

The most recent entrant to the constellation of institutional mechanisms for women's advancement are the Panchayati Raj bodies at district, block and village levels. (See Section B of this Chapter).

Tracing the course of State planning and development interventions for women in India, one cannot but be struck the range of theories and approaches, from welfare to development, from anti-poverty, equity and efficiency to empowerment. There is a distinct forward and positive movement towards creating women's agency, an emphasis on rights. The women's movements played a major role in urging along these changes, whether in theory or in practice.

The Beijing PFA asks 'to include all institutional mechanisms and processes that facilitate, as appropriate, decentralised planning, implementation and monitoring, with a view to involving non-governmental organisations and community organisations from the grass roots level upwards'. It talks of 'relationships...with centres of women's studies and research, academic and educational institutions...the media...women's

organisations and all other actors of civil society'. [paras 201 and 205 of PFA]. Following such a more inclusive definition, especially in the context of the changes in local governance wrought by the Panchayati Raj, would seem to be a logical step to follow in the search for women's rights to equality.

Human rights has gained currency globally and in the developing world in the last few decades, but we find the germ of human rights discourse in the debates around the drafting of the Indian Constitution more than five decades ago. Whatever one could fault the Indian State for, it cannot be for failure to respond to different demands and suggestions from the organisations of civil society. But equally, the structural resistance is evident. Managerial and processual innovations within the State structures have been very few and far between. The global agenda, born out of the International Women's Conferences, further reinforced the primacy and the paramount nature of the State to carry out their mandates. Even while alternate NGO reporting on the follow up to the Platform of Action has been integrated into the post-Beijing process, the accountability of the State machineries and institutions stands as a major force. The women's movement in India has been pressing for a more inclusive definition of the 'national machinery', one that does not view the State and its instruments as the exclusive modality.

## B. EMPOWERMENT FROM GRASSROOTS – WOMEN IN PANCHAYATI RAJ

In December 1992, India's parliament passed the 73<sup>rd</sup> amendment to the Indian Constitution with near unanimity in both houses. In four months the legislatures of more than the required 50 per cent of the state legislatures passed resolutions for its adoption to enable the President of India to give his assent to fully make it a constitutional amendment, effective from the 24<sup>th</sup> of April 1993. This amendment to revitalise local village councils called panchayats (which literally means an assembly of five persons) throughout the country constitutes one of the most significant systemic transformations of the Indian polity and an instrument for bringing democracy and devolution to the grassroots levels in the Indian countryside. It is an important step towards promotion of the human rights and opportunity of every citizen to take part in the conduct of public affairs, to vote and to be elected and to have access on general terms of equality to public services of the country as enshrined in Article 25 of the International Covenant on Civil and Political Rights.

Despite a federal structure, the Indian nation-state has shown a centralising tendency in its political, administrative and development paradigms. Consequently, the needs and concerns of the large masses in the rural areas have remained neglected despite many poverty alleviation initiatives and other developments. The need for democratic decentralisation with a three tier rural local councils to ensure people's participation was realised in the early years.

Article 40 of the Constitution states that the state shall constitute village panchayats, endow them with powers and authority to enable them to become units of self-government. The initiatives taken to organise village panchayats in pursuance of this principle left uneven development across states and regions and could not make these institutions adequately representative of the poor and marginalised, weaker sections and women whose participation should have been the most important for ensuring the dignity and health of the human person.

The 1993 initiative has mandated a wider representation to marginalised groups like Scheduled Castes (SCs), Scheduled Tribes (STs) and women, thus deepening the roots of democracy and contributing to the processes of empowerment.

Through the amendment, the people belonging to SCs and STs are now represented in proportion to their population in the area of a panchayat - in its membership, and in proportion to their population in each state in the positions of chairpersons of these panchayats; one third of seats are reserved for women in general in each panchayat at the village, district and intermediate levels. Women from the SCs and STs also have one third reservation in the positions reserved for these communities. Finally there is one-third reservation for women among chairpersons of these bodies at the three levels.

The reservation is to be rotated among various constituencies and panchayats to spread the opportunity widely. The amendment mandates regular elections of the panchayats every five years, devolution of financial resources through constitution of state finance commissions and through central finance commission every five years. The state's responsibility to make these panchayats institutions of self-government and to give them responsibility for planning and implementation of schemes for economic development and social justice and for devolution of appropriate functions and responsibilities has also been underscored.

The issue of representation of the rural local councils of panchayats with respect to weaker sections of SCs and STs had been addressed in the country even before this amendment and panchayat legislation in a number of states included reservation for these sections in the membership and sometimes among the chairpersons of these panchayats. The national parliament and state legislatures already have reservations for these sections as mandated in the Constitution, which was originally included for 10 years but reviewed and extended further. The new amendment's significant contribution was to ensure this reservation uniformly throughout the country [except the tribal concentration areas - in the 5<sup>th</sup> and 6<sup>th</sup> Schedules (See Chapter 1 E)]. But most importantly it provided reservation of at least one-third membership and chairpersons at the three levels for women, and that too not only generally but across caste and class (the state can include even higher reservation in their legislation). It, therefore, brought a critical mass of women to these institutions and to that extent it is the most exciting enterprise undertaken so far and it is this aspect that we intend to look at here.

The Constitutional amendment was followed by state legislations to bring their panchayat laws in conformity within one year. The year 1994 and 1995 saw panchayats' elections across states and women's entry in a critical mass for the first time. Women have always and everywhere been on the fringe of political and social power. Has the formal change brought by this intervention adequately addressed women's marginality or has it just led to their numerical strength? What is its impact on women and on panchayats? Has women's presence transformed these structures, made them more responsive to women's needs and concerns or has the intention of the amendment been defeated by powerful interests? CWDS sought answers in the experience of women who

have entered these panchayats, through a major study of women's experience in rural local councils in three northern states of India - Madhya Pradesh, Rajasthan and Uttar Pradesh in 1996. The project was completed in 1999, capturing women's experience of the first half of their first tenure in these institutions.

These states are low on most indicators of social development and gender, and it was felt that it would be possible to see what women's entry in these democratic structures had achieved despite the socio-political and economic odds stacked against them. These states accounted for 80 million (almost one-third) of India's rural poor in 1993-94, and 30 per cent of India's rural population (1991). Here we see the experience of a socially and politically most marginalised group across caste, class and region. The three-year study included interviews of 1199 respondents, 843 of whom were elected women in panchayats, and 180 were community members. There were also 60 case studies.

#### Myths and Reality : Study Findings

Reservations for women in panchayats immediately led to four myths about their entry and likely performance: (1) women are passive and disinterested in political institutions, hence there won't be many women to contest; (2) only well to do, upper strata women will come through reservations; (3) women's political connectivity - only kin women of powerful politicians will enter panchayats to keep the seats for them and, most importantly (4) women are only proxy, namesake members, and they do not or will not really participate in the panchayats. Their lack of awareness and non participation, their male kins' dominance and interference, their own dependency, seclusion and lack of autonomy were cited in support.

Our data disproved these myths without, of course, discounting the existence and behaviour of some who would fit in the patriarchal framework and of the counter forces trying to discredit the experiment in order to send the women back to what they would call their "rightful place". But women not only contested the reserved seats but also got elected in a number of unreserved positions. They had, of course, largely contested the seats reserved for them. In fact, they stated how they could not have contested in the absence of reservations apparently due to the political, social and economic constraints. In the three states more than half of the women, as also the men, were elected in contests; they were not merely consensus candidates because the seats were reserved. They shattered the first myth of women's disinterest in politics. The fact that these elections were generally not on formal political party basis removed the barrier of party selection. It also made a paradigm shift in the attitude and support of the family. Women recounted how the family not only supported but encouraged them to contest.

The profile of elected women (the first elections after the constitutional amendment) shows a wide representation across social groups, weaker sections and economic class with almost half of them Dalits and tribals (SC and ST respectively) and 30 per cent other backward classes. More than 40 per cent are from families 'below the poverty line', 14 per cent are from landless families and 19.5 per cent and 20.6 per cent from marginal and small farmer families respectively. Twentytwo per cent of them reported working as hired labour and another 10 per cent as working as hired labour earlier, thus questioning the second myth of only well to do, upper strata women coming through elections.

Our data underscore the untenability of the myth of political connections of all or even a majority of women who had been elected to these panchayats. Ninety seven are first time entrants to village councils, in fact to any political institutions as such. Only three per cent women had any experience of work in such political institutions. Less than four per cent said that any of their natal family members had such experience and six per cent that any of their affinal family members had such experience. It shatters another prevalent myth that these are all women from powerful families, wives/female relations of those who could not themselves contest due to reservations. Thus, we see the potential of the instrumentality of the constitutional amendment in the Indian context for creating an environment of final acceptance of the inevitability of women's substantial presence including in key positions in panchayats and other political institutions, however reluctant and slow that may be.

Awareness is the first step towards participation and empowerment and we explored these women's awareness level about panchayats, about participation levels of men and women and about development.

About 64 per cent to 92 per cent of the women have shown high awareness levels on each of the issues - of reservations, panchayats' responsibilities, meetings, attendance in meetings, panchayats' resources and success of government's development schemes and programmes. For first time entrants, in their first term and with 70.5 per cent of them illiterate or just literate without completing even primary level education and still subject to multiple social, economic and cultural constraints this can be seen as an excellent beginning. They are not significantly more ignorant about panchayat matters than the male members of their class, general impressions and sweeping statements being made about them notwithstanding.

Women's effective participation and leadership in panchayats would require not only physical presence but articulation, joining discussions, taking up issues and solving problems. Doubts have been expressed about these women participating in panchayats. These impressions, perceptions and biases are reflected in describing them as only proxy, 'namesake' members or illiterate, ignorant, absentee members and the new appellations of 'Sarpanch pati' and 'Pradhan pati' to describe the husbands of chairpersons, and members of village panchayats imply that only they perform the panchayats' work on behalf of their wives. Significantly, these doubts and designations are focussed only on women in village panchayats where a large number of women from poor and weaker sections have entered and not on women in the higher tier of panchayats, that is, at block/district level. Women's experience and participation would vary in different groups and local contexts. It would also depend on a number of factors including the historical context, the social base and available supports. They have also to use the new political space despite the unspoken opposition or at least reservation on this change.

These new women in panchayats have reported increase in self-confidence, change in life style, awareness about critical need of education and increased concern for village development. There are positive changes which they have seen in their own attitudes and consequent impact on the family with shifts in various social practices.

Traditionally these women are expected to perform their role within the household and shoulder the caring and nurturing responsibilities even with their other work. But with panchayat work in post-constitutional panchayats, more than 30 per cent have reported sharing of their continuing household and livelihood work by other members of the family and almost 40 per cent reported sharing/performing of tasks and responsibilities by male members. And no one is ridiculing these male members now.

The amendment has begun a process of legitimacy and mandatoriness to women's new non-traditional role in panchayats which helps the supporting husbands to share responsibilities without the fear of ridicule and makes others to, at least, reconsider and think about women's new public role.

We must also see this as a refreshing contrast to women's non-entity in pre-amendment panchayats. The pre-amendment studies on 'all-women' panchayats reports the repeated affirmative response of the gram sevak (the village extension worker) to the query 'Does everyone attend the gram sabha (the general meeting) of the village?'

However, when pressed further, he replies 'Men-Yes. Women-No'. He could not even see the anomaly of an all male sabha (meeting) in a village with an all women panchayat. One of our collaborating researchers observed that a major socio-political change has been seen there when a powerful Thakur (upper caste) male has to seek redressal/development work from the SC woman sarpanch.

Women in our case studies have been seen to be effortlessly aware of women's most crucial needs, whether of drinking water facilities or measures against alcoholism. They have also brought out the serious social and political constraints they face and how they have coped with them.

Women's voices articulate their new found confidence, their successful attempt at combining continuity of traditional practices like Ghoonghat (veil) and change in its discarding it in formal public offices, in and outside the villages. They also express how they have successfully coped with the threats of the opponents from entrenched powerful elements. There is helplessness and frustration where their own illiteracy and poverty and the rural power structure in pockets of strong feudal social order with continuing culture of the gun can still successfully prevent them from being in control in the panchayats where they are in formal positions.

Even with strong forces working against them, the women have not lost their initiative and urge to do something for the village and for women whom they have identified for their support and advocacy. Women have shown their enthusiasm, capacity and will to do something despite the odds against them. It is the state and various actors in civil society who have to enable them to pursue this process further.

Training programmes for these new women have so far not measured up universally in their quantitative coverage or in their contents and approach, as they tend to address procedures and programmes rather than politics, process and critical issues. The national consensus and commitment inherent in the amendment, therefore needs to be followed up in support for training which women need - not only in skills and knowledge of panchayat law and procedures but also in respect of issues and concerns of women and how these can be effectively addressed. They need to learn innovative ways to organise, cooperate, participate, manage and build alliances, how to network with other women's collectives and how the social practices adversely affect women, how information and knowledge is to be sought, stored and retrieved.

It is necessary to promote alliance between different collectives of women in the rural areas as support systems to mobilise, inform, assist and train panchayat women and link them with other women's collectives, to explore and support new innovations, adaptations and evolve multiple models suitable for different locations, groups, times and contexts, e.g. women's information resource centres which they can access at local levels and which can also extend their out reach to rural market centres on their market days for easier access. Training, information, networking associations are important part of any strategy for strengthening the role of women in panchayats. These need to underscore the goal of a qualitatively more participatory, transparent and sensitive leadership to place women's concerns in the centre of the agenda. More information on what is happening to panchayats and panchayat representatives from the state governments and gender disaggregated analytical reports from the state election commissions will be of immense help in identifying the trends in time and in more sharply focused action, research and advocacy.

## C. THE WOMEN'S RESERVATION BILL

This has become one of the most hotly debated issues - since the 81st Constitutional Amendment Bill 1996, seeking to reserve one-third seats for women (including within the two already reserved categories - for Scheduled Castes and Scheduled Tribes) was introduced in Parliament.

It is extraordinary that none of the arguments that have been brought up against the 81st Amendment Bill came up during the passage of the far more historic 73rd and 74th Amendments (1989-92). One reason for this lack of opposition to earlier measures can be attributed to the political sagacity or ideology of the women's movement. Many activists believe that the future of India's democracy and governance rest on the long-term implications and success of these two amendments, perhaps even more than that of the 81st.

### The Problem

The question of reservation for women had surfaced even before Independence because women from the leisured, elite classes of that period - who wanted to play some role in public life realised the hurdles in their way. The women who rejected it were those who were already leaders in their own right within the nationalist movement and viewed the demand for reservation as an admission of weakness/inferiority.

The same opposition was visible during the review of the Committee on the Status of Women in India quarter of a century later. Social scientists who undertook studies on the Committee's request came back with a uniform finding that while women's participation as voters had been increasing at a faster rate than men's, their representation as candidates - successful or unsuccessful - registered infact an opposite trend. Five leading scholars - all male - recommended reservation as desirable, "for the health of India's democracy".

The marginalising trend has continued till date. In Lok Sabha elections between 1952 and 1996 the percentage of women among contestants remained virtually stagnant at 3.2 per cent. In fact with the exception of 1957 (the second general election), where their percentage was 4.4, the stagnation was very marked. In the success ratio on the other hand there was a definitive decline from 43.1 per cent in 1952 and 50 per cent in 1962 to the lowest ever 7.9 per cent in 1996. In state assemblies there were slight variations of the gross period average of representation, ranging from 1.8 in 1952 to the maximum of 6.3 in 1957, and stagnation around 4.5 per cent in the rest of the elections. In the state averages covering the period 1952 to 1997 the variation is negligible, again showing a stagnation around 4 per cent.

Surprisingly the CSWI, while recommending unanimously the establishment of statutory women panchayats with an integral connection to other Panchayati Raj institutions, failed to agree on the principle of reservation in other elective bodies. The majority decided to stand by the position taken by their seniors in the freedom movement and ignored the junior cadres of women political activists who had complained bitterly to the CSWI about discriminatory treatment by the parties in offering nominations. Only three members of the Committee - Lotika Sarkar, Neera Dogra and Vina Mazumdar - decided to dissent on this, because they felt the Committee was being unwise in ignoring the need for institutionalised measures to eliminate or at least weaken institutionalised inequalities which 25 years of universal adult franchise had failed to dislodge. They also saw the failure on the representational front as part and parcel of the secular trends of decline and marginalisation that they had identified on the economic, educational, health and other fronts.

The Committee's recommendations on panchayat and municipalities went into cold storage for over a decade. With an increase in grassroot organisations however, the new groups of poor women demonstrated far greater dynamism and challenge - economically and politically. The issue of reservation was periodically raised by political activists but not at their party levels. However, the women's movement grew



from the expansion and growth of activism among women's fronts of political parties (mostly among the left and socialist parties).

In 1985 the intention of the new government of Rajiv Gandhi to give greater priority to women's issues led to a consultation between the Secretary, Ministry of Social Welfare (which had developed a women's division as a follow up action to the CSWI's Report and the International Women's Decade) and some of the authors of Towards Equality. As a result he agreed to (a) reopen the panchayat issue; (b) intervene in the discussions for a new education policy and (c) try to persuade the Planning Commission to reconsider the special component approach for women in all sectoral development. While (b) and (c) produced some results, (a) got absorbed within Rajiv Gandhi's plan for strengthening district planning by making Panchayati Raj institutions a part of the Constitution. Built into his 64th Constitutional Amendment Bill, 1989 was the provision for a 30 per cent reservation for women in these bodies.

While the general political debate focused on provisions in the Bill viewed as attempts to increase the powers of the national government at the cost of the states, there was general support to the principle of decentralisation of government and planning. Not a single objection was raised at any level to the provision for reservation for women. At a workshop called by the CWDS to focus some discussion on this issue, leaders of women's organisations and social scientists strongly supported the idea.

The Government of India's National Perspective Plan (NPP) for Women (draft recommendations) 1988, acknowledged the problem of under-representation and recommended 30 per cent reservation for women in all elective bodies - from panchayats to Parliament. There was however a proviso that in the initial years this quota may have to be filled by nomination/co-option.

National women's organisations called for a national debate to discuss the NPP. When this was disregarded by the Government, they organised one on a limited scale themselves. This particular recommendation regarding nomination/co-option was rejected outright as 'subversion of the Constitution'. Instead, they demanded 30 per cent reservation for women in panchayats and municipalities 'with due representation for women belonging to Dalit and Tribal communities' but to be filled only by election. The rationale for this complex and somewhat contradictory position (since the debate did not recommend reservation in Parliament and state assemblies) was - 'the need for a new kind of leadership from below'.

The final version of the Government's NPP recommended reservation only in panchayats and municipalities to be filled by election. This version was then incorporated in the 64th Constitutional Amendment Bill, 1989.

The late 1980s and the early 1990s witnessed three changes of government at the national level, with two general elections in 1989 and 1991. The Panchayati Raj Amendment Bill went through successive versions, and finally emerged as the 73rd and 74th (Constitutional) Amendments in 1992.

The response of women to these two measures in the elections that followed in several states, and the political dynamism demonstrated by women voters in the Assembly elections between 1993 and 1996 persuaded women's organisations into putting forward a joint demand for one-third reservation in state assemblies and Parliament before all parties prior to the general elections of 1996 . The demand was accepted and featured in various manifestoes, as well as the Common Minimum Programme drafted to establish the coalition government of the United Front which introduced the 81st (Constitutional) Amendment or the Women's Reservation Bill.

Despite the unanimity among a section of leadership of all parties, the Bill did not pass - though it was recommended by a Joint Select Committee. It has now appeared again on the National Agenda of the present coalition government led by the Bharatiya Janata Party which promises to redraft and bring in a new version of the Bill very shortly.

In the discussion with the Select Committee of Parliament, the delegation of the national women's organisation countered all charges of elitism for not recommending reservations for women of 'other backward classes' by pointing out that (a) they had requested the quota within the sections which already enjoyed reservation within the Constitution; and (b) they saw the need for a Constitutional amendment to force all political parties to undertake much needed reforms within their own structures, since little had been achieved in more than two decades since the CSWI's recommendations to the political parties, and resolutions of many parties themselves.

The women's delegation emphasised the crisis facing India's democracy with increasing political instability and growth of irresponsibility, fragmentation and criminalisation among the political class. We would like to emphasise two other crises that face the Indian political system.

The increasing culture of violence, political irresponsibility and the discovery that 'prosperity' is producing increasing effect on the masculinity of the juvenile sex ratio indicates\* a social malaise, as well as a crisis in governance. It is time for the women's movement to demonstrate their political responsibility, not merely through the politics of protests, but also through direct intervention in the tasks of governance. And this is not possible unless a much larger number of women are present in all these bodies to make their collective voice effective, to bring Mahatma Gandhi's dream of 'feminising politics' through making 'women affect the political deliberations of the nation' little closer to reality. This calls for a new politics of responsibility.

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\* See Chapter 2

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## CHAPTER 5

# PEOPLE'S MOVEMENTS

India has a long history of people's movements, going back to the days of Gautama Buddha. Early historians recorded many of them as primarily religious or social but post-independence debates and research have eliminated the artificial division between revolts – which challenged the existing political/economic/social regimes militantly, leading to violence as well as repression; and people's active involvement in relatively less violent but sweeping changes of a long term character. Contemporary movements, including that for freedom from colonial rule, demonstrate that the distinction is not between militancy and passivity, but lie more in the scale and nature of mass mobilisation, the quality of vision of the leadership and the selection of strategies and cultural symbols used for the mobilisation. India's plural cultures provide deep roots for both violence (subject to historical limitations – of availability of the technology of destruction) and non-violence – deliberately chosen, not from weakness, but as a more sustainable strategy of resistance or 'politics' of the powerless. Mahatma Gandhi always acknowledged that he learnt the principles and practice of Satyagraha from his mother and wife.

Languages of Indian origin mostly do not provide words denoting revolution (as in the 'Industrial, Agrarian, Scientific or Technological')\*. The word 'Inquilab' (origin – Persian), however, has been fully appropriated and successfully used as an instrument of mobilisation by most people's movements in recent history – whenever people sought to assert their rights, from wage/working conditions - negotiations, or student protests with limited objectives, to calling for major transformations of the entire socio-political order.

There have been many movements for people's rights. We highlight three of them because they represent three major aspects of people's movements. In many ways they overlap each other, but are all concerned with the right to development and human rights.

## A. DALIT MOVEMENT AT CROSSROADS

Dalit literally means the oppressed, but has acquired a new meaning in the contemporary Indian context. During the latter half of the 20th century this term came to mean the ex-untouchable castes, i.e. the Scheduled Castes. Indian society is notorious for social inequality based on the caste system that views society as a hierarchical structure. Some castes were historically treated as polluting and therefore untouchable. The practice of untouchability compounded social, educational and economic deprivation among the untouchables. The Constitution abolished the practice and since 1950 the Indian state has legislated punishments against the practice or atrocities against them or tribals and adopted laws enabling them to enhance their dignity and social-political rights.\*

Twentieth century witnessed rise of a widespread movement among the Dalits in their efforts to contest social inequality. Dr. B. R. Ambedkar (1891 – 1956) was the most revered leader among the Dalits. Even before he embarked upon his political career in the 1920s, sporadic efforts for

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\* See Srinivas on the nature of changes since Independence, Chapter 1.

\* The Republic has had members of these communities in all union and most state governments since its inception, but the present President is the first to reach the highest office.

fighting against untouchability had already taken place. These included reform movements led or inspired by non-Dalits like Jotirao Phule (1826-1890) and V.R. Shinde (1873 – 1944). More notably, resistance to inequality emerged from the Dalit community itself in Punjab, U.P., Andhra, Maharashtra, Karnataka and Tamil Nadu.

Most of these activities contested the claims of Aryan/Brahmanical superiority by claiming that Dalits were the original inhabitants and the Aryan/Brahmans were intruders. There was also an emphasis on modern education and attempts were made to obtain administrative/military opportunities from the colonial government (Omvedt, 1995).

The leadership of Dr. Ambedkar changed the nature of the Dalit movement in two crucial respects. He gave a new intellectual and ideological thrust to the Dalit movement. Combining his modern Western training with the urge to intellectually confront the caste system, Ambedkar produced a devastating critique of the Hindu social order, and grounded the Dalit movement in the forefront of the anti-caste discourse. Thus the Dalit question did not remain confined only to Dalits; it belonged to the genre of anti-caste struggles, acquiring an ideology of human dignity and social equality. The other aspect of the Ambedkarite movement was its mass character. No longer confined to only the spread of education among Dalits, the movement encouraged Dalits to 'organise and agitate' against oppression and exploitation. Ambedkar realised that both in the context of colonial rule and independent India, democratic politics would require mass struggles if Dalits were to assert their role in the sphere of competitive politics. For some time he concentrated his attention on the issue of Dalits' right to entry in Hindu temples,<sup>+</sup> shifting his focus later to share in political power and equal political rights. He also organized Dalits on economic issues. Finally he aspired to mobilise Dalits for a mass exit from the Hindu fold. He made very skillful use of the mass media, floated various socio-political organisations, set up educational institutions and combined legislative–elective politics with mass struggles. In the pre-independence period, Dalits in Andhra, Karnataka and Tamil Nadu also organized themselves taking inspiration from Ambedkar, Gandhi or sometimes Marxism (Omvedt 1994).

In independent India, the Constitution (of which Ambedkar was one of the major architects) has guaranteed abolition of untouchability, promised legal equality, and provided reserved seats (constituencies) in Union and State Legislatures (also in local government) for Dalits. Besides, the Constitution has empowered the State to implement various programmes of protective discriminatory action such as reservation of seats in government jobs and educational institutions, etc. for the Dalits. However, despite the reservation policy, and a network of welfare programmes and protective regulations, the Dalit question has not been

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<sup>+</sup> This was adopted by Mahatma Gandhi and the Indian National Congress under his leadership.

resolved fully or satisfactorily. Their social existence is still marked by educational backwardness, economic inequality, nominal share in political power, frequent ostracization, discriminatory social treatment and violence by the wealthy upper castes. The post-Ambedkar Dalit movement is thus faced with an apparently favourable legal structure and an adverse social and political context.

Most followers of Ambedkar believe that share in power and control over state are crucial means of Dalit emancipation. This belief has pushed the movement to a constant search of a political apparatus. At the time of his death, Ambedkar had prepared an outline for formation of a new political party, that would not be an exclusively Dalit party. After his death, his followers formed the Republic Party of India (RPI). Initially, this party had a good following in Maharashtra, U.P. and Bihar. Soon, the RPI faced splits on ideological and leadership issues and became ineffective in North India. After the 1970s, the RPI has been restricted only to Maharashtra and there too, it has been splintered into fractions. Contrary to Ambedkar's expectations, the RPI has always been confined to Dalit following alone.

The 80s witnessed the rise of yet another Dalit party, the Bahujan Samaj Party (BSP). This party has considerable following in Punjab, U.P., Bihar, M.P. and some following in Maharashtra. The BSP has been trying to forge an alliance between Dalits and OBCs in order to broad-base itself. Many Dalit politicians have so far chosen to join non-Dalit parties like Congress, the left parties, Janata Dal, etc. in order to get better opportunities. There are instances when Dalit MPs across the parties came together on issues pertaining to Dalits. Yet, there is no Dalit lobby in Indian politics outside of the avowedly Dalit parties (Mendelsohn and Vicziany, 1998).

While politics attracts Dalit activists, Dalit movement is constantly challenged by social ostracization of poor Dalits in different parts of the country. The failure of RPI to tackle this situation effectively resulted in formation of more militant organizations since the 1970s. The more notable among these have been the Dalit Panthers in Maharashtra, the Dalit Sangharsh Samiti in Karnataka, Dalit Sena in U.P. and Dalit Mahasabha in Andhra Pradesh (Suresh, 1996). Such organizations faced a dual problem. On the one hand, Dalit question consists of marginalization in the urban context and oppression and impoverishment in rural environs. Activity of the movement has to tackle this complex nature of the Dalit question. On the other hand, this complexity forces an ideological dilemma before the Dalit movement. The Dalit question cannot be/should not be considered in isolation. Dalit movement has to forge alliance with other oppressed sections and take up broader issues of equitable access to material resources.

The Dalit Panthers movement had taken this position and widened the scope of the term 'Dalit'. This widening implied a more left-oriented ideological position. This led to a split in the movement but since then the left movement in Andhra and Bihar has seriously taken up the Dalit question. Sections of Dalit movement in these states have been part of the radical left movement with Marxist-Leninist ideology. In Maharashtra, Prakash Ambedkar has been organizing the Dalits since 1980s on the broader issues of redistribution of agricultural land and control over common property resources. His faction of RPI has floated an organization of the OBCs known as Bahujan Mahasangh.

The main concerns of the Dalit movement as a whole are : share in state power, continuation and effective implementation of reservation policv. resistance to atrocities. protectina Dalit dianity and sylvols (with reference to

Ambedkar statues, etc.), redistribution of land, access to common water reservoirs, etc. Social-political challenges also forced a realization that cultural assertion is a necessary political expression. Starting with Maratha literature, Dalit literary expression has been the mainstay of the Dalit movement in Maharashtra, Karnataka and Andhra Pradesh. Dalit theatre, too, has been a significant instrument of Dalit cultural assertion in many parts of the country.

The 1990s witnessed a slight shift in the emphasis within the Dalit movement. Activists have been situating the Dalit question onto the terrain of human rights. Atrocities, access to resources and reservation policy are seen in terms of human rights. In other words, the Dalit movement has forced a broadening of the human rights discourse. While this manoeuvre may be seen as situating the Dalit question within the matrix of liberalism, it has radicalized the liberal way of thinking. The human rights movement in India has thus grown out of its liberal inhibitions and has become more sensitive to violations of rights due to social inequalities.

This brief comment on Dalit movement cannot be complete without summarizing the main problems faced by the contemporary Dalit movement. Firstly, the movement's emphasis on politics and culture has always meant a relative neglect of economic issues. The tendency within the movement is to prioritise the questions of political power and cultural identity. As a result, the movement has not arrived at a sharp awareness of economic aspects of Dalit question. In the absence of sufficient access to resources, Dalit political power is bound to be weak and uncertain.

Secondly, Dalit movement in contemporary India has been extremely fragmented. There are state-specific organizations, issue-specific organizations, etc. Therefore, to speak of one Dalit movement is sometimes quite misleading. Fragmentation of the movement has meant that as a political force, Dalit movement is not very effective. Thirdly, Dalit movement has vacillated between state and civil society as the main sphere of action. The emphasis on politics and reservations originates in state centred view of the movement. But the neglect of civil society has meant that the anti-caste discourse has remained rather weak.

Finally, since the late eighties, forces of Hindu homogenization have been trying either to delegitimize the militant Dalit movement or to wedge splits between Hindu Dalits and Buddhist/Christian Dalits.

Attempts have been under way to appropriate the legacy of Ambedkar by projecting Ambedkar as sympathetic to many Hindu concerns. This might result in ideological corrosion of an already fragmented movement.



The policy of reservations, with all its limitations, has given rise to a large section of white collar employees in government and public sector undertakings. This section is often organized separately, giving rise to many unions of SC/ST employees in the public sector. BSP leader, Kanshi Ram, started his political career by organizing Dalit employees along with tribal and minority employees – Backward and Minority Classes Employees' Federation (BAMCEF). Even after he branched off to the more militant Dalit Soshit Samaj Sangharsh Samiti (popularized as DS4), the white collar Dalit employees continue to organize and protect their specific job related and reservation related demands.

These limitations notwithstanding Dalit activists have always felt confident that the Dalit movement alone can lead the struggles against caste system as a whole. At the same time, there is awareness among younger activists about the need to broaden and deepen the social and cultural terrain of Dalit movement (Kothari, 1997 : 457-58). As the writings of Ambedkar imply, the Dalit movement has to annihilate caste and aim at fighting exploitation because therein lies the true emancipation of the Dalits and other oppressed masses.

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## B. NARMADA BACHAO (SAVE NARMADA) MOVEMENT

India has experienced a number of mass based initiatives where people have questioned the wisdom of priorities as well as strategies of development and have asserted their right to have a greater voice and active role in decisions in such matters as they affect their own lives – often negatively. The Narmada Bachao Andolan (NBA) - one such mass based movement fighting for the rights of the tribal and peasant population in the valley, addresses the wider issue of whether big dams are necessary for solving the problems of water as well as power. It also advocates a model of development, which will be more environment-friendly and consistent with human rights.

The movement has grown from opposing the haphazard rehabilitation policies of the three state governments of Gujarat, Maharashtra and Madhya Pradesh, to questioning the entire centralised model for development that the country has adopted since after independence and continues to espouse today.

The Narmada River is 1300 kilometers long and passes through the states of Madhya Pradesh, Maharashtra and Gujarat and finally drains into the Arabian Sea. This river system being one of the earliest cradles of civilisation is home to about twenty million peasants and tribal populations that subsist on the lands, and other natural resources in the Narmada basin.

#### The Scale and Omissions

The Narmada Valley Project involves the construction of 30 big dams, 135 medium dams and 3000 small dams along the Narmada river basin. The Sardar Sarovar Dam, it is said, will irrigate 1.8 million hectares of land, provide drinking water to 8000 villages and produce 1450 megawatts of electricity. Concomitant with the magnitude of the project, the number of people likely to be affected by it is also gigantic. While around 4 million people will be displaced, the number of villages that will be adversely affected in the valley goes up to 245 - 193 in Madhya Pradesh, 33 in Maharashtra and 19 in Gujarat. Apart from this, 104 villages are likely to be affected by the state's compensatory afforestation policy and around 1,40,000 farmers by the canal system that is proposed to cover 75,000 square kilometers.

Plans and proposals to harness the water in the Narmada basin were made as early as 1949 for the purpose of flood control, irrigation, power generation and navigation. The plan for the Sardar Sarovar Dam was formulated in 1959 and formally inaugurated by Jawaharlal Nehru in 1961. The Sardar Sarovar Dam at Navagam was considered essential for irrigating agricultural lands in Gujarat as also for generating hydroelectric power. However soon after, differences arose among the three riparian states over issues of water sharing and costs incurred. In 1969 the Narmada Water Disputes Tribunal was set up to look into issues of water sharing. The final orders of the Tribunal were passed in 1978. As the main concern of the tribunal was water sharing, it did not at any stage of the hearings give an opportunity to the project affected people to present their point of view. As a result the tribunal's definition of an oustee was limited to 'one living in the area to be submerged by the reservoir', and did not recognise other equally affected persons such as those who would be affected by the canal system or persons whose lands came under the project colony itself.

Early History and Landmarks in the Movement - Till the '80s, the submergence that this project would bring about and the massive displacement of people it would result in was little known. In April 1986 the Narmada Dharangrasta Samiti was formed at Dhulia in Maharashtra supported by Medha Patkar and other activists. In September 1987 the Multiple Action Research Group (MARG) of Delhi, based on their field studies in the Narmada valley, brought out a report entitled 'Sardar Sarovar Oustees in Madhya Pradesh - What do they know?' The report pointed out that the oustees had very little knowledge of what the government had planned for them and that the government had failed from giving complete and timely information to the oustees. Such findings and more by the MARG team through 1988 and 1989 led to protest from various sections of people that were to be affected by this project (Paranjpye, 1990)

#### Towards Sustainability

In the early years, protests were mainly for a comprehensive and sensitive rehabilitation policy, and for information regarding the project plans - especially those affecting the people living in the valley. In 1988, at the Anandwan meet.

the demand changed from merely resettlement and rehabilitation to a stand against Big Dams and Mega Projects. The NBA concluded that the three state governments could not provide alternative lands of equal value to the oustees; that mere land for land did not constitute rehabilitation because oustees were losing their way of life and habitat. Why should only the poor and helpless tribals be sacrificed for development, which was going to enrich the well-off sections of society? Why should such development strategies be adopted which cause marginalisation of the powerless people for the benefit of the politically and economically powerful? The NBA therefore insisted on a review of development strategies with a view to making development more consistent with human rights.

NBA held big dams as 'symbols of destruction in the name of development'. The Anandwan Declaration pointed out that although there were over 1,500 big dams in the country, none had lived up to expectations. Such dams, while benefiting a small number of rich farmers and the urban elite, had increased drought conditions by encouraging water intensive farming systems, wholesale destruction of natural resources, particularly forests, the ecology of riverine systems, and the extensive water logging and salinity.

The Declaration called for a moratorium on big dams and for a fresh holistic appraisal by an independent body of representatives of peoples' organisations, a cost benefit analysis including a comprehensive study of social and ecological impacts. Peoples' needs could be met by localised water management schemes. The entire planning process was required to be reversed where the unit for planning would be the village and decisions regarding its development made by the people, taking the resources and the specific eco-systems into account. People had a right to know and a right to participate in the decision making process of the project at every stage, for equity and distributive justice.

The struggle since then has been to secure the right to life, right to information and the right to participation. On 30<sup>th</sup> January 1988\*, over 4000 project affected people from Maharashtra, Gujarat and Madhya Pradesh protested at Kevadia Colony demanding detailed information about the submergence that the Dam would bring, the plans for rehabilitation and sources of funds for the project. On 18<sup>th</sup> October, the Gujarat government came down heavily on the 12 villages surrounding the dam site by applying the Official Secrets Act. Activists arranged a conscientization march through fifteen affected villages. Various organisations, scholars and journalists joined in the struggle. The Narmada Bachao Samiti (Maharashtra), the Narmada Pariyojana Pratikar Manch (Gujarat), and the Narmada Ghati Navnirman Samiti (Madhya Pradesh) were formed (Paranjpye, 1990).

On 28<sup>th</sup> of September 1989, the town of Harsud hosted a gathering of thirty thousand project affected people, tribals, members of the rural poor and the backward classes, pledged collectively to oppose development that was non-sustainable and engendered greater economic disparity. The Harsud rally, for the first time, provided a platform where people involved in various struggles united for a common agenda and could henceforth depend on the participation and support of each other. It also marked the growth of a new consciousness among people affected by mega projects in various parts of India, leading to strong mobilisation of people. Many have taken recourse to legal battles in the courts for protecting their fundamental rights.

In 1990 the World Bank, Independent Review Team (Chairmanship Bradford Morse) began examination of fulfillment conditions prescribed for its loan. Its report (1992) stated that due to the noncompliance with the various stipulations and conditions of the Narmada Tribunal, the World Bank and the Ministry of Environment as the sanctioning authorities, the project was unviable and would lead to widespread violation of human rights. NBA and its supporters welcomed it, but it was strongly criticised by the development lobby in Gujarat. In 1993 World Bank funding was discontinued as Government of India renounced one-third of the loan.

The year 1993 saw one of the biggest submergence and also the Manibeli Satyagraha. The dam had reached a height of 80 meters, and flooded the village of Manibeli. Activists faced severe state repression. In Manibeli the Maharashtra police far outnumbered the inhabitants and any one associated or expected to be associated with the Narmada Bachao Andolan was not given entry (Justice Tewatia Committee).

### Issues Raised by NBA

The Narmada valley struggle opposes big dams and the policy for centralised development, which denies any rights on the natural resources acquired from communities living on them, without giving the communities the right to know, the right to participate in decision making, a share in the benefits and the right to dissent. The tribals threatened by eviction and submergence have demanded their right to development. The NBA has also used the judicial process through its writ petitions, bringing before the Supreme Court issues that include large scale human rights violations committed by the state, the noncompliance of the state with the conditions of the Narmada Water Disputes Tribunal for environmental protection and rehabilitation of oustees, and has questioned the very viability of the project.

In 1993 August, in response to the NBA's decision to take to Jal

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\* 40<sup>th</sup> Anniversary of Mahatma Gandhi's assassination.

Samparpan (sacrificial drowning), an independent five-member group was constituted by the Union Ministry of Water Resources to look into this matter. In 1994, the Narmada Bachao Andolan filed a writ petition in the Supreme Court for protection of the right to life of the project-affected persons. The five-member group now submitted its report to the Court in July 1994, which was later made public. The Report endorsed the NBA's claims regarding displacement, water distribution and hydrology, environmental degradation and cost-benefit analysis, but stopped short of recommending a complete review of the project. In May 1995 the Supreme Court ordered the five-member group to once again study the issues of hydrology, height of the dam, environment and resettlement. This second report is now with the Supreme Court.

From January 1995, work on the Sardar Sarovar project had been stalled by the Narmada Control Authority. In May 1995 the Supreme Court endorsed the decision, granting a stay on any further construction for next four years. In February 1999, the court in its interim orders allowed an increase in height of 5 meters and of 8 meters on the humps of the Sardar Sarovar Dam, persuaded by the affidavits filed by the state governments, affirming that they could provide land to all the oustees. A statistics of available lands was provided. According to NBA, the information is incorrect. This increase in height has brought submergence to many more villages. The Gujarat government constituted the Grievance Redressal Authority under Justice P. D. Desai to monitor rehabilitation of oustees in Gujarat. The committee has since been submitting reports of its study to the Supreme Court. The case is now due for final hearing and disposal in February 2000.

### **Meaning of Costs and Benefits?**

The NBA has raised the issue of actual benefits and the costs. They contend that over time, assessed cost of the Sardar Sarovar Project has changed, and urged the state to take into account environmental, social and cultural costs, which cannot be compensated. It challenged government estimates regarding power generation, drinking water availability and pointed out the environmental hazards.

The governments of the three states refute all such objections and insist that they had made full provisions for rehabilitation, and construction of the dam to the full contemplated height would help India become an economic power.

According to the governments, the NBA's approach towards development is likely to take India back to the bullock-cart age. It is important to note that not all social action groups working to secure the rights of the tribals in the Narmada valley support the NBA stand against the Project. ARCH-Vahini, working in the field since the early '80s is convinced that the Sardar Sarovar Project will deliver the goods to Gujarat and has therefore concentrated on demanding qualitatively better rehabilitation packages for the oustees in the 19 villages in Gujarat. However, ARCH-Vahini has said that it would oppose the Sardar Sarovar only if it were proved

that rehabilitation is impossible (Dhagamwar 1997).

The Narmada Bachao Andolan in its petition has highlighted the environmental impacts of the Sardar Sarovar Project. The impact of the project on the downstream of Sardar Sarovar has been totally neglected so far. It holds that the salinity ingress that has been checked so far will increase due to the storage of such large quantities of water. Since the project would submerge tens of thousands of hectares of forestland and displace lakhs of persons, an environmental clearance and forestland clearance was required from the Ministry of Environment and Forests. Till 1985 the environmental clearance for the Sardar Sarovar Project was held up by the Ministry and only upon the intervention of the then Prime Minister Rajeev Gandhi and with approval of the World Bank conditional clearance was given, on the understanding that environmental impact assessment studies would be conducted simultaneously with the construction of the dam. However, while many studies are yet to be completed others have not even begun. (Singh 1997) In December 1993, Mr. Maudgal, a advisor to the Ministry of Environment and Forests in his review of progress of the project, held that the policy for 'conditional clearance' had proved to be a complete failure. (Writ Petition 319 of 1994).

The NBA has grown over the last 14 years and become a symbol for a variety of mass based non-violent movements that are fighting to secure the rights of the socially and economically disadvantaged groups. The movement has thrown up new and innovative themes for mobilisation and spearheaded the demand for substantive realisation of democracy by espousing Hamare Gaon Mein Hamara Raj or self rule at the village level. Thus the protest in the Narmada valley or at other project sites is not merely against the displacement of masses of people and inadequate compensation but also against the violation of peoples' right to life, callous decision making, denial of their right to participation, the submergence of not only their homes and farms but of ancient cultures. The protest is essentially an opposition to the entire model for development and while doing so has developed its own new paradigm for development, which is sustainable, and governance, which is participatory. The success of the Narmada Bachao Andolan need not be counted in terms of whether the dam comes through or not. It will have to be counted in terms of the new awareness it has generated among the poor and the disadvantaged people. It has also warned policy makers that hereafter it would be difficult to plan development without taking people into confidence.

## NBA's Choice of Strategy and Widening Support-base

Justice Suresh Committee, Justice Tewatia committee and other human rights organisations [Peoples Union for Democratic Rights (PUDR), Peoples Union for Civil Liberties (PUCL), Committee for Protection of Democratic Rights (CPDR)] reported the violation of the rights of the affected people. According to the fact-finding team from Delhi University and the PUCL, the November 1993 killing of a tribal Rehma Punya Vasave in Chinchkhedi was preplanned by the police. The 'aim was to crush popular resistance by the use of brute force and brow beat the villagers into compliance'. Human rights violations have ranged from arbitrary arrests to beatings, psychological threats to sexual molestation and also gang rape of a tribal woman by the police (Writ Petition 319 of 1994).

Human rights violations have taken a subtle form in the case of haphazard and callous rehabilitation programmes. The land given to evicted in most cases is virtually uncultivable and living conditions less than basic. A study (Tata Institute of Social Sciences) noted that in the village of Parveta in Gujarat, although the project-affected persons had shifted in 1985, the first installment of their subsistence allowance was only given in 1988. The study shows that in 1988, seventeen deaths (many of children below 5) were recorded out of a population of 350 persons in the settlement. With improved facilities at the sites, the number of such deaths decreased (TISS 1997). However, those who had accepted resettlement continue to return to the valley due to unavailability of land at the rehabilitation sites. NBA contends that in spite of the orders of the Narmada Tribunal Award (1978) directing states to work out a plan for rehabilitation, there is no master plan till date.

While bringing to light all lacunae in the planning and implementation and suffering state repression, all through the 14 years, the Narmada struggle has remained a completely nonviolent struggle with nonviolence as not merely a part of its composite strategy, but a value. Apart from satyagrahas and dharnas, at times people have also had to resort to indefinite fasts or hunger strikes, but only 'minimally, as a last weapon in phases where the movement was achieving the minimum for the time, and the state was most unresponsive and even humiliating. The fast has always been accompanied by a sit in by hundreds and hence has never been an individual action. Nor has the decision to fast and its withdrawal been taken without consultations with and the consent of the decision making group in the organisation, except in very special situations' (Medha Patkar).

A major achievement of the programme for reconstruction is the establishment of Jeevanshalas. The Andolan has successfully set up primary schools in tribal villages in the Narmada valley where the method of education adopted is one that incorporates local knowledge systems and draws heavily from local examples and illustrations with a view to making modern education more accessible to the tribal populations. These Jeevanshalas are residential schools and have dedicated full time staff working and continually evolving new and better techniques of education.

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## PANI PANCHAYAT

The distribution and availability of water has emerged as one of the central problems of development equity and poverty alleviation. Pani Panchayat is one of the many local initiatives by civil society towards water conservation and distribution, through the establishment of Pani Panchayats, initiated by Vilasrao Salunkhe after a severe drought (1972) in Maharashtra.

Starting with locally managed watershed conservation and extensive afforestation, the idea of Pani Panchayats sought to avoid widening inequality in access of water availability which was hitherto based only on land-holding. Pani Panchayat was built on the principle that water is a common resource and that all villagers should have equal rights and access to water harvested in the area.

The movement is essentially based on collective efforts of villagers, who pool their resources, take decisions through consensus and share the benefits equitably. The Panchayat works through small lift irrigation schemes, which are jointly built by farmers. As water rights are not attached to land rights and cannot be alienated, members of the community including the landless who use the water for share cropping can also join the Panchayat. Members are required to contribute equally in cash or kind towards 20 per cent of the total cost. Water lifted is shared by members based on family size and not on land holding. Every member family is allotted water for cultivation at the rate of half an acre per head subject to a maximum of 2.5 acres per family. Cropping patterns are decided by mutual consultation in the group e.g. a water intensive crop like sugarcane is not cultivated.

First implemented in Naigaon in Purandar Taluka of Maharashtra, PPs have gained wide acceptance in a number of villages over the last fifteen years. The Gram Gourav Pratishthan (GGP), a voluntary organisation engaged in rural reconstruction, provided the necessary leadership to bring villagers together to take up the project. While the group of farmers put up 20 per cent of the costs of the scheme, the state government contributed 50 per cent and the balance was paid by the GGP as an interest free loan. In 1981 the government withdrew the subsidy and therefore a large part of the costs were borne by villagers and through loans from the GGP. Many of the Pani Panchayats have repaid a large part of the loan. The GGP has also provided the youth of the village with technical training on the use of lift irrigation schemes. The Panchayats, however, have faced certain problems like the lack of political will to subsidise the schemes, and the delay and irregular supply of electricity by the electricity board. The GGP is therefore considering the use of alternate sources of energy like solar or wind power.

The impact of these schemes has been remarkable. The Pani Panchayats have avoided large scale displacement/submergence of villages, and so far benefited 10,000 people,

bringing an area of 3000 acres under cultivation at a capital cost of Rs. 7 millions. A variety of crops are now grown. Lands originally barren now produce one good seasonal crop, and where water availability has increased, two crops are grown. This has also increased income levels in villages. In certain cases migrants to cities have returned to their villages as farming has now been made more viable. The conservation of water in percolation tanks has made drinking water more accessible, specifically benefiting women who had to cover long distances for water. Participative development has thrown up local leadership, empowered the underprivileged sections and brought down social barriers to a great extent.

### C. THE WOMEN'S MOVEMENT

We believe: "that equality of women is necessary, not merely on the grounds of social justice, but as a basic condition for social, economic and political development of the nation... that disabilities and inequalities imposed on women have to be seen in the total context of a society, where large sections of the population – male and female, adults and children – suffer under the oppression of an exploitative system. It is not possible to remove these inequalities for women only. Any policy or movement for the emancipation and development of women has to form a part of a total movement for removal of inequalities and oppressive social institutions, if the benefits and privileges won by such action are to be shared by the entire women population and not be monopolised by a small minority..." (Towards Equality, 1975)

The women's movement in India too is one of reassertion of citizen's claims to participate as equals in the political and development process. In contemporary India, the post-emergency - related upsurge in assertion of democratic rights and the two following decades representing a deepening crisis of the state, government and society - marked an end of the age of complacency, apathy and acceptance of the existing social order. Undoubtedly, these stem from both problems of transition as well as the outcome of the world's largest experiment in democracy. Shifts in foci and awareness of problems that impinged on women's lives, the social construction of gender relations and the identity of women from different classes in their attempts to resolve the problems of the national economy and polity occurred during a period of dissolving certainties that characterised local, national or global systems. Within the movement diversities manifested themselves in many ideological cleavages and fragmented, regionally uneven growth. But the issues on which women first articulated their visible opposition covered a vast terrain – ranging from those which were gender-specific to those which impinged on citizen's rights, class formations, values and the direction of social transformation.

The main concerns of the movement, as it emerged, were laid out in the issues opened up by the report of the Committee on the Status of Women in India (CSWI) in 1975 which drew attention to the wide diversities in 'culturally' prescribed gender roles in India's plural society. The Committee raised serious doubts about the 'development' or 'modernisation' models that not only ignored the real differences that revolved round caste, class and ethnic history, but exaggerated the influence of religion, culture and 'social attitudes' on gender role prescriptions. The CSWI noted clear linkages between existing and growing social and economic disparities and women's status in education, the economy, society and the polity, putting the demand for

equality on an actual historical terrain. It also formed a starting point for women's studies.

Coinciding with the flowering of the 'second wave of feminism' in the West and the United Nations' International Women's Decade, the Indian women's movement developed international linkages from the beginning, laying itself open to charges of being 'foreign-inspired', especially from the newly consolidating forces of socio-political conservatism within various communities and classes.

The movement confronted such charges by locating its primary concerns, and eventually its identity - among the worst victims of poverty and oppression within most of these communities. What began as a critique of economic development policies pursued by the Indian State for the 'exclusion' of women historically deeply involved in the economy for their survival - the poor peasants, landless labourers and millions in multiple occupations in the uncounted, invisible, informal sector in rural and urban areas - soon joined hands with other critics of the dominant development model - inside and outside the country.

### **Women as Economic Beings**

The CSWI's initial analysis was based more on inferences, the cries of thousands of poor women across the country voiced before the Committee, and demographic evidence of a secular trend of decline in women's value in the economy and society as a whole. Finding allies among increasing intensity of critiques of the dominant model of economic growth emanating from various parts of the third world, women's studies in India began and grew rapidly in its initial stages to study the interaction between macro-economic changes and issues concerning women's status. This focus not only fed new information to the movement but transformed many of the academics into active participants in the women's movement, where they exerted a definite influence in the choice of priorities and lines of advocacy for dialogues with policy-makers (See Chapter 4 for some illustrations).

Two important influences on the movement's decision to anchor its own identity among the overwhelming majority of women deprived of basic rights (literacy/education, health, security) - even the dignity of social acknowledgement of their labour and contribution to the family and nation's economy were:

- a) the escalation of social and political violence against women and children at different levels of society, including the most sacred cow of India's ancient culture and civilisation - the family/the domestic unit; and
- b) the violence of unrecorded history - of Indian women's own perspectives on their past, present and future.

Educated, urban, professional women - mainly the products of the 'respectable' middle class - found themselves ill-equipped to deal with violence - in their homes or in the workplace, in public or private, and recognized a shared world with their poor sisters. Some even found the latter emotionally and intellectually stronger and better equipped to deal or cope with violence as a fact of everyday life. The movement's own efforts to counter such violence through better/tighter laws having met with abysmal failure, the wise among the activists turned to their poorer sisters for strength, solace and lessons in preserving women's own sanity and dignity.

Realisation of their own ignorance (in spite of education) of the range and diversity of poor women's economic roles, problems and perspectives brought shame and a sense of intellectual purpose, especially among women in academia. Women's studies was not only studying other women, but a process of self discovery and consciousness transformation – a search for new strength and energy to create a different, more just social order.

This oversimplified analysis of the rise of feminist consciousness in India and the movement's choice of a political identity and ideology for itself should not be viewed as independent of the interaction between the dynamics of democracy and India's diverse plurality discussed earlier. What is being emphasised here is a changed scenario – external as well as internal - for those involved in the movement. The choices made in the 80s and 90s were not possible for most women in earlier periods, divided as they were by their region, community, culture, caste and class. Nationalism, Gandhism and 'revolutionary' ideologies/movements had temporarily brought some closer to each other, but the violence of the Partition had not allowed the closeness to find deeper roots and expand.

The movement has adopted a multi-pronged approach on the issue of economic roles. While the specific skills of women's studies' scholars have been directed at evolving a critique of the macro-level policies of the government, grass roots level initiatives to develop alternatives have been stepped up. One of the biggest mobilisations of women in Delhi from all over the country, in September 1989, was of over 20,000 women demanding the right to work. It is important to note that the few important concessions<sup>φ</sup> wrested from the government in the poverty alleviation through economic development programmes provided some space for poor urban and rural women to use the support to organise and articulate their demands.

The movement's critique of the current economic growth policies has adopted three basic thrusts: (a) that they are increasing inequalities among the people in general; (b) that they make condition of the majority of women already struggling for survival still more vulnerable; and (c) they are contributing to the social turbulence and violence, of which women and children are the major victims.

President K.R. Narayanan's Message to the Nation  
on the eve of the 50<sup>th</sup> Republic Day, 25<sup>th</sup> January 2000.

**"Many a social upheaval can be traced to the neglect of the lowest tier of the society, whose discontent moves towards the path of violence. Dalits and tribals are the worst affected by all this...Our giant factories rise out of squalour; our satellites shoot out from the midst of the hovels of the poor... The three way fast tracks of liberalisation, privatisation and globalisation have neglected to provide safe pedestrian crossings for the poor.**

**The status of women and the status of the dalits are the greatest national drawback and the greatest national shame. 170 years after the abolition of 'sati', the practice still manages to raise its head and what is worse, even gets explained away as suicide or saintly sacrifice. The female half of the Indian population continues to be regarded as it was in the 18<sup>th</sup> and 19<sup>th</sup> centuries**

<sup>φ</sup> Minimum quota of 30% of 'beneficiaries' under all anti-poverty programmes in the 7<sup>th</sup> Plan (85-90), increased to 40% since the 8<sup>th</sup> Plan.

In parts of rural India, forms of sadism seem to be earmarked for dalit women... it has been extended as one of the methods of ragging in our elite colleges and universities... Beware of the fury of the patient and long suffering people...Economic growth must continue but not at the expense of the poor and the tribals...(or) ecological and environmental devastation, and the uprooting of human settlements, especially of tribals and the poor."

An important factor influencing the movement's shift of identity, concerns and ideology was the emergence of some large organisation of poor women in the urban informal sector from the 70s (SEWA, Working Women's Forum, Annapurna Mahila Mandal etc.) and new research documenting the dynamism in struggle demonstrated by them as well as their rural counterparts in various agrarian struggles through the 20<sup>th</sup> century. It provided a major focus to the movement's search for alternative strategies for development with organised groups from the grassroots as primary agents of change.

Women have comprised a crucial component of those struggling for land and forest rights, against the havoc wrought by construction of large dams and ecological disasters, struggles for fishing rights in coastal waters, for recognition as workers in governmental networks of health and child care services, as urban unorganised labour, migrant labour and rural workers. In all these they have fought for basic rights as workers, for equal wages and better working conditions. Microstudies have highlighted the role women play in all these sectors. The great change in women's participation in the movements of earlier decades and now is an extension of identity and consciousness-blending occupational status with sisterhood as women. The increasing interdependence of poor women and educated women activists marks a process of mutually reinforcing empowerment and transformation of both.

#### **WHO IS EMPOWERING WHOM?**

##### **The Story of CWDS's Partnership with Peasant Women's organisations in Bankura, Purulia and Midnapur Districts, West Bengal, 1980 –**

Spanning a period of 20 years the story of CWDS is the source and a representative sample of the mutually reinforcing relationship described in the last few paragraphs. It is too long (and complex) to present coherently in a short sketch. We hope the diagram below will provide some idea of the distance travelled by the two partners : The Nari Bikash Sangha (NBS) – or Organisation for Women's Development, - a federation of 34 village level groups in three contiguous districts of West Bengal and the CWDS.

The two-way arrows seek to indicate that our joint journey was not with a begging bowl. The process of collective understanding, interaction, planning and implementation (booked by CWDS as Action-research) has, since the beginning, exerted substantial influence on policies/programmes and planning of the various agencies listed in the widening circles. In the early '80s, many activist officials within the state and national governments, and the ILO viewed the experiment as a replicable rural model of the dynamic urban workers, groups like SEWA/WWF. One of them\* saw 'as a substitute for Women's Panchayats (recommended by CSWI, see Chapter 4). It certainly provided a

\* A contributor to this Volume.

linear connection to introduction of a mandatory women's quota (initially 30 per cent, later 40 per cent) by GOI within the anti-poverty programmes. When rural development functionaries (bureaucrats + elected decision-makers ) needed training – to understand the women's perspectives – the beneficiary groups were used as trainers, with CWDS staff playing the organising role. Officials were also made to explain programmes of assistance in detail to the women.

As the network – with its confident, and articulate and questioning members/leaders expanded – it was possible to establish connections with other resource groups – non-governmental development action groups at various levels, students/teachers from educational institutions - beginning an interest in rural women's **agency**, occasionally including international, peripatetic scholars, or evaluation teams sent by donor agencies. Such relationships too, were not one way – the women sought information/knowledge/support/friends, but they were equally ready to exchange their experiences - of transformation, excitement, analysis of inherited and experiential knowledge, the dynamic identity that they had developed.

ILO's widely distributed 'Bankura Story' (1987) brought the two partners' recognition and contributed to their widening influence in international efforts in favour of women. An invitation from UNIFEM to the Secretary, NBS, to participate in a ADB-sponsored workshop in Gender issues in Agriculture was a hit, and developed into the idea of Peasant Women's Summits on environmental issues in India, Bangladesh, Nepal and Pakistan, followed by a four-country meet with official delegations in Lahore, and participation of a South-Asian Peasant Women's team in the NGO Forum at Rio. Success of this experiment encouraged CWDS, UNIFEM and other donors, to support more peasant women's meetings/projects and a far larger presence of South-Asian peasant women at the Beijing NGO Forum.

Within the state, relationships expanded. The new policy of Joint Forest Management (local people's Committees and Forest Departments) drove the NBS to demand 50 per cent membership of the Forest Protection Committees, as women depended on forests for survival more than men. A positive response enabled NBS to transform the men in the FPCs (in one Block where NBS is located) from hostile opponents to willing partners and allies "from whom men could learn the values and strategies of collective action".

Evidence of the women's groups' expanded community support comes from the calls they receive from neighbouring villages, and districts, to settle disputes involving women's oppression/protests; to act as advisors/guides/trainers in promoting similar organisations, even to interact with university communities thinking of women's studies. Such challenges sometimes lead to collaborative activities – in blending peasant women's inherited knowledge – in natural resource management, agriculture, indigenous medicine, oral traditions/history with new scientific methods, in agriculture, water conservation, regeneration of waste-lands, vermi-culture and organic compost production, spread of literacy and managing rural libraries, micro-credit programmes, child care services etc.

For the CWDS, the partners have set research agenda – taking social scientists into many unchartered territories - advocacy targets, and expanding challenges – to adequately interpret, and live upto the expectations of their partners. The relationship has helped to unleash creative energy at both ends.







## Population Policy<sup>\*</sup> and the Women's Movement

In confronting the use of sex-determination and sex-selection tests followed by abortion of female fetuses and female infanticide, the movement ran into resistance from (a) the very favoured and high priority policy of population control of the government; (b) the social impact of 30 years of the population debate on the better off sections of the Indian population, which included health professionals (doctors, medical education/research), development advocates, (scientists/social scientists, technologists, media etc.); and (c) some women's organisations - which had moved from the original demand for birth control services put forward by women in the 1920s and 30s as a women's right - to a wholehearted support for the government's policy for population control.

The CSWI had to confront two critical questions: (1) Health allocations indicated that from the Third Plan onwards the share of resources allocated for family planning was increasing at a much faster rate than all the other sectors of public health, including maternal and child health. Mortality statistics showed a widening gender gap between males and females across all age groups; (2) The Medical Termination of Pregnancy Act, 1972 legalising abortions. Consultations with many senior professionals convinced that while legalisation of abortion was necessary to save women's lives, its use as an instrument of population control had negatively affected medical ethics.

The debate was not pursued initially because feminists viewed abortion as a woman's right to voluntary maternity. Others who had tried to assist unmarried mothers after their rejection (or worse) by their families, also supported this view from humane convictions. The CSWI supported the strength of their argument that a large section of criminal abortions had belonged to this category.

In the period after the Emergency, the practice of forced sterilization of men with small monetary compensation was abandoned<sup>\*</sup> but the population policy adopted during the Emergency remained, increasing pressure on the sterilisation of women. Within one year after the lifting of the Emergency, female sterilisation rose to over 90 per cent of the total.

By the early '80s new reproductive technologies (NRIs) like amniocentesis had appeared on the scene. A woman doctor at the All India Institute of Medical Sciences involved in genetic research into sex-specific diseases had obtained access to the technology, and was offering clinical services to certain patients. To her horror she discovered that in many of the cases her diagnosis that the foetus was a female (even without any evidence of genetic disorder) was being followed by abortions. She refused to be a party to this development. The Indian Council of Medical Research directed the AIIMS to stop offering clinical services, leaving the tests only for research purposes.

Studies in Bombay showed that 98 per cent of abortions following sex-determination tests were of females. About 41 per cent gynaecologists performing the abortions felt the pregnant women were under pressure from their families. Joint campaigns

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<sup>\*</sup> See Chapter 2

<sup>^</sup> Believed to be a major cause of Indira Gandhi's losing the election of 1977.

mounted by some ethically committed doctors, scientists and women's groups finally forced the Maharashtra government to legislate a ban on such tests - the net result of which was to push them underground. Similar legislations followed in Gujarat and Goa and finally at the national level. But their impact has been similar to the criminal law amendments on rape and anti-dowry legislations – a combination of social sanction and non-enforcement.

During the last two decades both sex-determination and sex-selection tests and female infanticide has spread to many other regions, indicating a marked decline of the juvenile sex-ratio stimulating the demand for more studies and intervention strategies. Unfortunately public reaction remains muted and the movement's efforts weak/ineffective.

The movement agitated against hazardous contraceptives (Norplant, Depo Provera, Quinacrine etc.), discovering that prescribed rules and procedures were being violated by government bodies with increasingly liberal import and marketing of dangerous drugs. Liberalisation of imports accelerated the spread of NRIs - for sex-determination in mobile vans providing tests and abortion - are reported even in rural areas. The movement's protests have forced the state and national governments into announcing various schemes of financial incentives to persuade families to save their daughters. The schemes suffer from the basic premise (contested by studies) that the practice is primarily among the poor.

Women's groups are in touch with their counterparts outside the country to identify the role played by manufacturers of these products (mostly multi-nationals) and donor agencies from the developed countries who have aided and abated the government in its relentless pursuit of population control.

Some population experts have always argued against the use of coercive methods for population control or using women's ignorance to promote use of hazardous contraceptives. It is against this background that the movement went into a confrontation with the Government of India to prevent a new population policy and some proposed Constitutional amendments that the movement considered anti-democratic, anti-women and anti-poor.

The 79th Constitutional Amendment Bill, 1992 proposed to deprive persons who do not voluntarily accept the two child family norm, of their democratic right to stand for elective offices. It was drafted on the recommendation of a Sub-committee of the National Development Council<sup>®</sup> in 1991. The Committee was headed by Bhairon Singh Shekhawat then the Chief Minister of Rajasthan - who promptly introduced the principle in the Rajasthan Panchayati Raj Amendment Act without waiting for the passage of the Amendment at the national level. The Government of Haryana followed suit, while the government of India - without informing the nation of the drafted Bill, appointed an Expert (Swaminathan) Committee to draft a national population policy towards the end of 1993.

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<sup>®</sup> Includes all Chief Ministers (States) and the Prime Minister.

Some information regarding the proposed Constitutional change reached women's organisations and activists through allies within the government - beginning a direct approach to influence the Expert Group, and joint meetings to offer concrete suggestions for a more positive population policy which would promote more democratic, cooperative and egalitarian social development, abandoning the negative and coercive methods.

The Expert (Swaminathan) Committee's philosophical attempt to propagate a 'pro-poor, pro-women, and pro-nature' policy however foundered in the face of the lack of determination on the part of the government. Though the Committee did not directly support the Amendment already drafted - its reference to the Haryana and Rajasthan Acts as 'demonstrations of political will' enabled the Government of India to claim that its new draft policy, including the Amendment (and other proposed legislation) is based on the Expert Committee's Report, though the latter's entire analysis of the problem and related issues advocating a social development focused, rather than mere population control focused approach is missing from the new draft. In November 1996, a Cabinet Note enclosing the new draft policy suggested that the 79th Constitutional Amendment Bill was now ready for passage through Parliament.

Fortunately, a belated reference to the National Commission for Women for its comments - as required under the National Commission for Women Act, 1990 - brought forth a straight negative after consulting women's organisations and population experts. The Bill has not so far been passed but 'population control' figures in the present government's national agenda. It is reported however that the Bill has been rejected by members of the ruling coalition.

Another proposed Constitutional Amendment being resisted by the movement is the 83rd, or the Fundamental Right to Education Bill (See Chapter I-A).

Another objectionable legislation proposed in the new population policy, which is also being resisted by the women's movement and the National Commission for Women, is a law to improve enforcement of the Child Marriage Restraint Act by disqualifying the victims of such marriage from all public employment.

The contemporary women's movement in India spans a large canvas. There are small groups as well as large national organisations. While some are recent having been formed only over the last two decades, others go back to over 50 or even 100 years. Some organisations focus on single issues while the mass organisations cover a vast range. The women's movement has undoubtedly grown. Its outreach is far beyond the figures of enrolled membership of organisations. These have now to take note of the increasing articulation of confidence by women at the grass roots level. Nothing illustrates this better than the response to the literacy campaigns in several states where earlier attempts to reach women had been abysmal failures. At a general level it is estimated that two-thirds of the neo-literate learners as well as two-thirds of the volunteers are women.

While the ideological outreach of 'feminine' identity politics has widened, this spread has also taken on board the challenge of demolishing the centuries old

process of socio-dynamics – titled the sanskritisation process by M.N. Srinivas which links upward social mobility within the social hierarchy (through prosperity, education or access to political power) – with ‘immurement of women’ – manifested in withdrawal from visible engagement in manual labour, and increasing controls over women’s mobility, sexuality and basic human rights/freedoms.

## **D. BHOPAL GAS DISASTER**

On the intervening night of 2/3 December 1984, a massive cloud of lethal MIC gas from the Union Carbide plant at Bhopal in Madhya Pradesh engulfed the city, particularly the industrial settlement that had mushroomed around the factory. While the exact number of those who have died of its effects, and of the surviving injured (many of whom continue to succumb to the long term damage caused by the gas) is still being assessed, it is a matter of record that at least 3000 people died in the immediate aftermath of the disaster and over 200,000 were severely affected by the gas. Over the years, the numbers killed by the gas has climbed steadily, and at least 16000 people are known to have died so far. Destruction and damage to property and livestock, and to the environment including water and soil was reported. Fifteen years have passed since the disaster. The ‘determination’ and ‘categorisation’ of victims are yet underway; a hospital for the victims is still being constructed; chemicals stored on the premises continue to pollute the water and soil around the plant ; the criminal stored - watered down by the Supreme Court from the charge of culpable homicide to that of causing death negligently, for at least some of the accused - against the company and its key functionaries crawls along even as the Union Carbide Corporation (UCC) and its personnel are absconders; and the victims continue to wait for justice.

Five facets of the proceedings which followed the Bhopal Gas Disaster (BGD) illustrate some issue that have emerged.

## First - the Denials

The litany of denials which haunted the Bhopal Gas Disaster are constituted in unconstitutionally large measure, by emanations from UCC's spokespersons. In the immediate aftermath of the accident, there was the denial that MIC was a poisonous gas; this was later contrived to deny that it could have long term effects; and further that 'under certain conditions MIC is toxic, flammable and hazardous' but without specifying the conditions.

There was a denial of responsibility - despite having designed and constructed the plant, being a 50.9 per cent shareholder, and exercising control over its Indian subsidiary. The denial took the form of blaming the Indian government more than a little for having let UCC set up its subsidiary in India! It blamed its Indian subsidiary and the Indians who were its employees. In case all else failed, it sent into circulation a rumour that either extremists, or a disgruntled worker, had deliberately committed an act of sabotage. The UCC used the US district court to launch its extremist theory; and the Internet carries the fable of the disgruntled worker. Disinformation, then, has consistently accompanied denial.

In all the years that have elapsed since the disaster, there has been a denial of a liability to provide for the victim of the disaster. Courts have had to intervene at various junctures to shame the UCC into contributing towards the rehabilitation of the victims. When the Bhopal District Court ordered the UCC to pay interim compensation, UCC appealed all the way to the Supreme Court, where it used the good offices of the court to 'settle' the matter. The order of the Judge of the District Court in New York to pay towards the care of the victims was absorbed into the quantum that was finally settled - lessening the final compensation paid under the settlement to that extent. When the Supreme Court suggested that a gesture on UCC's part in setting up a hospital in Bhopal for the victims - as a palliative, given the consternation in many places over the paltry settlement and the settling of the criminal cases - the UCC set about it only when it found that to be a convenient way of siphoning away funds kept as security for their appearance in the criminal court.

## The Settlement

Three aspects of the settlement stand out :

- ◆ The sum of US \$475 million - a sum which was quite easily absorbed by the insurance cover that UCC had.
- ◆ The supplanting of the Union of India and the State of Madhya Pradesh in place of the UCC as defendant in all future proceedings - since the settlement was to free the UCC from all liabilities and proceedings. This, in effect, made the *parens patriae* state, which had taken over the litigation on behalf of the victims, now an adversary.
- ◆ The quashing of all criminal proceedings. The question of liability was to be left unresolved. That the settlement was arrived at in the name of the victims - the enormity of human suffering occasioned by the Bhopal Gas Disaster and the

pressing urgency to provide immediate and substantial relief to victims of the disaster - adds to the pathos. Victim identification being incomplete even today, and those who have received some compensation found to have got pittance, the concern for the victims in settling the case rings hollow.

#### The Criminal Cases

The blow that was sustained by the victims when the criminal cases were quashed in 1989 was lessened in its intensity when the Supreme Court grudgingly reviewed the settlement-order to restore the criminal cases. This was however a prelude to a further blow, when the charges against the Indian accused (who had appealed to the Supreme Court) were altered to offences of far less severity. The death and destruction which, it had seemed, warranted at least a charge of culpable homicide was reduced to rash and negligent conduct resulting in death. Meanwhile, the UCC and the transnational accused have remained absconders. Warren Anderson, Chairman of the UCC at the time of the disaster, who had been solicitously flown out in the Chief Minister's aircraft to ensure his safety too has failed to appear in court to answer charges laid against him. In an exercise of either callous neglect, or deliberate design, no extradition proceedings have ever yet been initiated to compel his appearance. Recent proceedings launched in a New York District Court have found Warren Anderson continuing to don the cape of the Invisible Man.

#### The Changing Identity

It is not only the accused/defendants who have performed vanishing tricks. The corporation has itself transferred its assets to others enterprises, as it did when the Macleod group bought the Union Carbide India Limited in Bhopal and now the unit is known as Eveready India. More recently, the merger of the UCC with Dow Chemicals adds to the diminishing corporeal identification of the UCC. This surgical re-assembling and re-emergence thereafter is an aspect that laws and systems will have to contend with to combat effectively the evasion of multinational liabilities.

#### The Law's Development

India has undertaken a certain revamping of the legal system to reckon with hazardous technology, and the looming probabilities of more Bhopals - characterised, euphemistically, as 'mass torts'. The Environment Protection Act was enacted in 1986 which, perhaps for the first time, provides for public interest intervention where environmental pollution, or destruction, are practised by an industrial enterprise. The Public Liability Insurance Act, 1991 was enacted as a direct consequence of the Bhopal Gas disaster, to provide for a minimum interim relief in the event of a disaster concerning hazardous substances. The National Environment Tribunals Act, 1995 - which, however, has not yet been enforced provides for a tribunal to deal speedily with victims' claims, and has a schedule detailing what is to be computed in compensation. The Factories Act 1948, amended in 1987, acknowledges, for the first time, the need to keep the people living in the vicinity and the local administration informed about the possible hazard. It also recognises the importance of workers' participation in safety management. And, it demands the existence of a disaster management plan wherever hazardous processes are used. The introduction of a provision which absolves a

manufacturer or designer of plant or machinery of liability - and that when the Union of India was arguing for liability of the UCC as a designer and manufacturer of the plant and machinery too - unmistakably suggests the imprint of multinational corporate interests in the making of the law.

The criminal law, on the other hand, remains unchanged, unsure yet how it is to grapple with an offending corporation/enterprise.

It is the victims of the Bhopal Gas Disaster, victims' groups, concerned persons in India and spread around the globe, committed professionals including in their number, doctors and lawyers and persistent academics who have resisted the obliteration of the seriousness of the issues posed by the Disaster. The Government of India and the judiciary have failed the victims more often, and more severely, than they have done the victims service; yet, at least, they are here to be addressed, reasoned with and made accountable. UCC, however, remains elusive and keeps itself beyond the enterprise of law. There is a need to force the multinational corporation to respect human life that has been the enduring legacy of the BGD.

#### Conclusion

The Bhopal Gas Disaster, appositely termed as industrial Hiroshima, pitted the victimage of a wounded citizenry against the might of a multinational corporation, and later, led to a duel between the Indian state on behalf of the victims against the MNC. The MNC came out indestructible; and the victims rendered dispensable. The process by which this was effected has been reiteratively recorded, in print and in documentaries, and the disaster has itself been most recently represented in a commercial film - The Bhopal Express. The invincibility of the MNC, acquired through legal acrobatics and amid fears about judicial manageability, has not legitimated its workings. The spread of chemicals and hazardous processes into the developing world where environmental law controls are still relatively in its nascence, implementation of the laws and controls are not stringent, and life is computed more cheaply than in the developed world has been recognised by academics, NGOs and other civil society groups and to an extent by governments too. The battle that UCC waged to deny jurisdiction to any judicial system - US or Indian - in the matter of the Bhopal Gas Disaster is a telling statement of the MNC's attempt to be above law. Even as the world negotiates the establishment of an International Criminal Court, it is necessary to consider how impunity is to be denuded where MNCs offend against peoples around the world.