

Globalisation, State Policies And Sustainability of Rights

Madhuresh Kumar

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Preface

From the end of the last decade in particular, the government of India has come up with a number of policies aimed at protecting the people who may be adversely affected by globalisation. There has been a virtual policy explosion. These policies are said to have increased our policy fund and total policy knowledge. These policies have been formulated in the background of resistance by various groups of people against the onslaught of globalisation, and the reforms carried out by the government in its wake. The significant question in the context of this policy explosion is : Have these policies been able to help the sustainability of rights under globalisation ? What are the ways in which these policies are formulated ? If these policies form part of what has been called as “safety net”, what kind of safety do these policies provide ?

This volume is an attempt to investigate the policy explosions, particular policies, and their features. The overriding concern in this inquiry is : where and to what extent do rights feature in this landscape of policies, which are occasioned by globalisation ?

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Introduction

India started its Economic Reforms programme in July 1991 under the TINA (There Is No Alternative) doctrine in wake of foreign exchange liquidity crisis, declining GDP growth rate and a near stagnating economy. Soon all the political parties across the spectrum accepted it as an 'inevitable' and 'irreversible' process. The reforms have continued since then irrespective of changes in the government at centre. After more than a decade, the 'pain' and the 'gain' of the reforms process is not hidden from anyone. The debate on the process has its supporters on both the sides depending on what they have got from it, 'pain' or 'gain'.

The ruling argument has often been that some one will have to bear the price of 'Development' in the larger interest of 'Nation'. But the people have started challenging and asking, why should only the poor suffer? Why the rights of poor already at the margins of development should always suffer? Why can't the gains of the process be distributed equitably? Why should the reforms carried in the name of generating employment and high economic growth result in further impoverishment and disempowerment? It is these issues which are now beginning to gather the centre stage all over the world.

The resistance has grown since then and the neo-liberal economic policy has drawn flak from various quarters. The protests have been stringent especially because of its predatory effects on the poor and marginalised communities, now pushed further along paths of impoverishment and disempowerment. These protests emanate from the enhanced understanding of the globalisation process among people who are beginning to see the linkages between the government's policies, wider economic processes and the impact on their livelihood. This has been confirmed by researchers, World Bank, IMF and government's own reports as a result of which in recent times a whole lot of policy measures has been introduced and tabled in Parliament with mainly two aims : 1) To control and mitigate the effects of globalisation process on the society; 2) To meet the demands posed by neo-liberal economic policies on the economy, environment and resources.

The current UPA government has acknowledged this fact especially after the election verdict that rejected the NDA government's 'India Shining' and 'Feel Good' Campaign. So, now in second-generation reforms the emphasis is on reforms with a 'human' face. But we need to critically look at the dictum of the 'human' face and resulting 'policies' in order to seek answers to the questions raised above and see if these policies lead to sustainability of the socio-economic rights of the marginalised communities and If they can ensure enhanced social and political participation by these groups in governance structures and civil society.

New Perspectives

If the years of the 1990s were known for the start of economic reforms marked by increased privatisation, liberalisation, and globalisation then it was also the time which saw consolidation of resistance to attack on natural resources, and the evolution of new perspectives on development, democracy, assertion of rights. The period saw birth or consolidation of popular struggles such as Narmada Bachao Andolan, Chilika Bacaho Andolan, Beej Bachao Andolan, Mazdoor Kisan Sakti Sangathan leading the right to Information campaign, National Fish Workers Forum, National Alliance for Peoples Movement and a host of civil and political organisations in rural and urban areas which aligned with the movements and provided resources of all kinds in their struggles. What marked the difference between pre and post 90s was the sudden surge in people's struggles over the question of livelihood, 'control' of natural resources, accountability and transparency in governance. This change can be seen in the light of general crisis of government's legitimacy on account of its failure to develop and implement a model of development catering to needs of all the sections of society. It needs to be noted that economic reforms have made situation worse in rural areas indirectly and livelihood more difficult by destroying sources of non-farm employment, increased informalisation of labour, migration etc. as we shall see later in this volume.

For instance, the Chilka Bachao Andolan, a movement by the people, mostly fishermen, who created a successful resistance in the early 90's to the Integrated Shrimp Farm Project (ISFP) a joint venture agreed upon by the Tata Iron and Steel Company and Government of Orissa for intensive prawn cultivation and export. Starting from the initial resistance to the project at local level over the immediate loss of livelihood and fishing rights they took it to the national level and questioned the development logic and policy of the government. As the Andolan puts it¹, "The Tata project is not the central point of attack of this people's movement. The prime focus of opposition is the policy of the government towards Chilka and its people, and the Tata project is only an instance of this policy."

The movement articulated the issues in the three questions it posed:

- Whom does Chilika belong to - the people or the state?
- If the big business houses enter into prawn culture what will be the fate of the people for whom fishing has been the only source of livelihood?
- In a situation where the commercial use of resources comes into conflict with the livelihood pursuit of poor people, what should be the priority of the state?

This and many other movements have contributed to the evolution of a whole new perspective on the issues of development, governance, transparency, and accountability which include:

- A model of development that will be truly sustainable and not exclusionary.

- People's power is superior to state power and they are agents for social change.
- Women are equal partners at all level of decision making and development.
- Ensure a truly participatory democratic, transparent, and accountable government.
- Nurture a culture of non-violent protest against all forms of injustice.
- Promote constructive work at the village level through efforts of voluntary action and government.
- Bring policy changes which would ensure equitable development, and ensure a just and sustainable livelihood to millions of poor.
- Emphasise non-violent direct action as a tool of basic change.
- Control of livelihood resources should be in the hands of the local people/communities so that people's basic survival is guaranteed.
- Protect the indigenous peoples culture and their way of life, especially that of the primitive tribes, which is increasingly being threatened by a 'mainstream' model of development.
- Implement pro-poor policies and legislations that have been enacted but never implemented for example, a minimum wage act, equal wage for equal work, bonded labour release rehabilitation act, harijan adivasi's atrocities act, scheduled caste and scheduled tribes atrocities act.
- Develop an ethos of conservation that is based on the synthesis of human rights of forest dwellers and required conservation needs.

Government's Responses

The demand of the movements has forced the government to open up and be more sensitive and inclusive to the demands of the popular movements. If at one level it has meant change in the language of the government's policy then on the other hand it has meant co-option of the movement's leaders in the governments consultative and advisory committees. However, the process has not resulted in significant results either in terms of more people friendly policies, or better implementation. The process of policy formulation is still fraught with a capital-intensive logic of development with precedence of economics over the social. This was very much visible in the way the provisions of the National Rural Employment Guarantee Bill were diluted only due to larger economic concerns completely bypassing the accrued social benefits.

If the response of the government on one hand is due to people's struggle then on other it is also to meet new challenges which the reforms process has thrown up for governance. It is important to note that the social security policies (even on paper) are a prerequisite to access to loans and investments from international financial institutions and Western countries.

Thus the government on one hand moves on with the reform process at policy level and tries to mitigate its fallout through social measures and policies. This does not take us anywhere as we will see later in the volume, because it is these policies which

are responsible for the deteriorating conditions, growing disparity, inequality, and regional imbalances throughout the country.

This monograph has two sections. The first section presents a broad scenario of the livelihood situation in the age of globalisation and takes a hard look at the government's Agriculture Policy, Employment Bill, Environment Policy, Information Bill, and the Resettlement and Rehabilitation policy. The second section presents short profiles of some other relevant policies and legislations. They show in nutshell the context within which these policies were formulated, their salient features and limitations vis-à-vis implementation.

Concluding Observations

Our endeavour has been to read the various policies in the light of demands made by the people's struggles and perspectives developed by them. Below we present a list of some general drawbacks that one can find after a perusal of government's policies :

The stated objectives of most of the policies are well intentioned but on almost all counts they are not reflected in the main guidelines.

The formulation of the policies has often been preceded by strong civil society campaigns and demands. So, in a way they are an acknowledgement of these demands but often the significant provisions of the draft bills submitted to the government by peoples' organisation are diluted.

An important element in the recent policy formulation has been increased emphasis on the public-private partnership which is symptomatic to the economic reforms but at the same time tries to be more inclusive of the civil society processes.

Though an effort is being made at inclusion of civil society processes but at each level the strings are in the hands of government agencies and does not provide much manoeuvring space in important decision-making.

A close reading of the policies also leads us to believe that they are not really aimed at development and empowerment of marginalized communities and does not really contribute towards ensuring sustainability of livelihood. This can be said from the marked absence of specific provisions towards the development of marginalised communities in various policy documents. The language of rights still doesn't seem to be the language of policy formulation and very often remains at the level of government's largesse and welfare approach.

Similar is the case with gender justice. This is reflected in the language of the policy documents where important government officials are always 'he' and not 'she'. Apart from the language the special needs of women and children are very

often not taken cognisance of. The various forms of disability find no mention in any of the policy documents issued by the government.

Similarly, the policy documents exclude the rights and needs of elderly people, Dalits, indigenous peoples, and other marginal communities. Lastly, the policy documents always lack an effective implementation mechanism that is needed to translate the stated objectives to reality and thus remain as guidelines to be followed.

Notes

¹ From Ranjita Mohanty, '*Chilika Bachao Andolan : A Case Study of People's Resistance to the Integrated Shrimp Farm Project in Chilika, Orissa*'. Society for Participatory Research in Asia (PRIA): New Delhi

Section I : Globalisation, State Policies and Rights

National Agricultural Policy, Public Distribution System and Sustainable Livelihood

The question of rights and its sustainability in the era of globalisation is quite complex and is indicative of the constant tension between the 'social' standing for democratic values, and the 'economic' for unhindered profit, trade, and movement of capital at the peril of social. The neo-liberal model of globalisation vigorously promotes the rights of free trade and capital bringing it in direct conflict with the two essential rights of marginalized communities right to 'food' and 'work'. The actors in the process are a) Nation states, b) International Institutions (UN, WTO, World Bank, IMF), c) Multinational Corporations, and d) Global Civil Society. The conflict of interests among them is primarily a rights conflict. Nation states fighting to hold their sovereignty. International Institutions for right of global governance. Multinational corporations for right of free trade and commerce. And Global civil society for the basic human rights.

If we look at the economic reforms since 1990s then we get two different pictures of development and growth. In India, on one hand a small section of population has saw growth in their general living standards, greater income, enhanced access to basic services, diversification in food habits and varied choices of consumer goods, food, clothing, housing, communication and entertainment. On the other hand we witness a majority section of population in rural areas who have remained at the fringes of development and further slided to impoverishment and marginalisation. In general there has been growth in social economic inequality, decline in standards of living, increased poverty and attack on the subsistence livelihood of marginalised communities SCs, STs, and women. The deteriorating conditions in the rural areas have forced the social movements to take up the question of right to food and work in a sustained manner for ensuring sustainable livelihood.

My main argument in this paper is that the growing hunger and unemployment are product of the economic reforms introduced by the government since 1990s. As opposed to the much-celebrated inefficiency in implementation it is the larger economic policies which are largely responsible for the failure to achieve desired objectives of various poverty alleviation and employment generation programmes. We would also look at the attack on sustainability of livelihood issues for the marginalized communities under the current regime of neo-liberal globalisation. For the purpose of discussion we would concentrate here on the condition in rural areas.

Right to Food and Work

Two fundamental rights for the survival of an individual are right to food and right to work. Interestingly, even after more than half a century of independence the government of India has failed to provide these two important rights to minimum one third of its population who have remained at margins of all the development India has made in these years. Never the less they have been made to pay for it in the name of 'vital national interest' more than any one else who have enjoyed the fruits of development. These communities comprise of mostly scheduled castes, indigenous peoples, backward classes and others mostly concentrated in the rural areas and the interiors.

Right to food and work though are not one of the fundamental rights guaranteed by the Indian constitution but has been interpreted by Supreme Court as enshrined in the Right to Life as in Art 21. This can also be deduced from the provisions of the Directive Principles of State Policy and Universal Declaration of Human Rights. But above all the right to food can be argued as moral and social right of every human being as Jean Drèze, one of the key advocates of Right to Food campaign, argues. He further argues that emphasis on 'rights approach' to development should be further extended to demand the 'right to work' which is the best protection against hunger and poverty. Access to gainful employment is also an important basis of participation in the society. However, since 90s there has been a sustained attack by neo-liberal policies on the largely subsistence level economy in rural areas which have increased the livelihood insecurities of marginal farmers and landless labourers.

Right to Adequate Standard of Living in National and International Laws

Article 43 of the Indian Constitution is a positive right that extrapolates on implicit ideas found in Article 21. The Article states

The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

In *K. Rajendran v. State of Tamil Nadu*, the Supreme Court articulates that in light of India's socio-economic stress, realization of Article 43 is little more than an ideal. India is currently in a second generation of economic reforms operating at the expense of the working people, while current economic liberalization and privatisation has further impaired the state's ability to monitor and ensure the protection given in this Article.

The same international law that provides rights relevant to Article 21 provides similar rights relevant to Article 43. These mainly come from the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic,

Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), and can also be found in International Labour Organization (ILO) conventions. While all of these conventions and the Indian Constitution codify the need for living wages and acceptable standards of life, it has been largely the task of NGOs to monitor the work force and implement schemes that secure these rights. *Compiled by Dr. Louis, People's Watch, Tamilnadu*

The crisis can be well gauged from the news of starvation deaths and farmers' suicide from many parts of India. These deaths has occurred independent of monsoon failures and drought like conditions of 2001-02 or the normal monsoon years. It has happened not because of the scarcity of the food grains. The FCI godowns were bulging with food stocks at staggering 63.1 million tonnes (MT) by the end of July 2002 - 40 MT in excess of the buffer norms, despite declining per capita food grain output and 4.7 MT of grain export in 2001-2002. The stocks declined only after an export of 10.3 MT in 2002-03 at half the BPL rates, and an off take of 13.5 MT of grains in welfare schemes. The problem of plenty was so grave that at one point 60% of the increased food subsidy was spent on the storage of the food grains. The grains were exported at rate below the BPL rate as cattle feeds but not released for the Food for Work programme or distribution through PDS when there was drought like condition in many parts of the country in 2001-3. This clearly shows that the deaths had occurred not due to the scarcity of the food grains but due to the declining purchasing power of these marginalised communities who couldn't buy the food even at the BPL rates. As we shall see later, how the categorisation of BPL, APL and new Public Distribution System post 1990s put their food security in jeopardy. The reports of faulty allocation of BPL cards have been common and some cases have also come to light in Orissa where these communities had mortgaged their cards to the village moneylenders for pittance that brought grains at BPL prices and sold it to them at higher prices.

Industrial Farming Model

The distress in rural areas has been aggravated mainly due to the economic reforms since 1990s which has pushed for an industrial farming model at the cost of subsistence farming as reflected in National Agriculture Policy.¹ Some important changes introduced due to reforms are:

- Reducing the subsidies on fertilizers, pesticides and bringing in multinational corporations in the field.
- Increased power tariffs due to reforms.
- Increased fuel costs.
- Reduced rural investments and lockouts in the industries dependent on agriculture like cotton and silk industries.
- Removing the trade restrictions on the dictates of WTO and bringing in direct contact with the fluctuating world prices of cereals, and cash crops.

- Gradual reduction in rural farm credit by public sector banks and other lending institutions.

The fact that agriculture is no more as profitable as it was at the beginning of the 1990s is evident from the explanation given by Edavalli farmers in Andhra Pradesh² : “The cost of paddy seeds an acre almost tripled from Rs. 120 in 1996 to around Rs. 350 now. That of urea nearly doubled from around Rs. 120 then to nearly Rs. 230 now. Pesticide, ammonia phosphate, zinc - all these have more than doubled in cost.” Other expenses, too, have risen. Tractors cost a lot more than manual work did. “In 1996”, say farmers in Edavalli, “we could raise an acre of paddy within Rs. 3,500. Today that is Rs. 7,500 or more.” Add higher power tariffs and water costs and people are now paying well over double what they did in 1996. Those who left food crops to experiment with cash crops in this period pay still more. Commenting on the fallout of these policy measures in Andhra Pradesh P Sainath writes in *The Hindu*, June 2004,

“The rural landscape is a shambles. Agricultural credit and finance systems have collapsed. Taking their place are new entities that can make the village moneylender seem relatively less coercive. Prices have pushed most inputs beyond the reach of the small farmers. For many, the move from food crops to cash proved fatal. In some cases, the shift was towards high-outlay, water-guzzling crops such as sugar cane. All this in an era of high power tariff hikes. A steady shrinking of local democracy further deepened the chaos”.

Situation elsewhere in the country is not much different, in complete contrast with the projected objectives of the agriculture policy. Overall per capita cereals production has witnessed a decline from 163.43 kg in 1991-92 to 150.09 in 2002-2003 and so has been a decline of 12.3 percent in per capita availability of food grains between 1991-92 to 2001-02, the contribution of agricultural production and allied activities to GDP saw a decline of 5.2 percent in 2002-2003,³ and worst of all as against the 1.67% population growth in rural areas there has been a growth of 0.02% in employment opportunities in the period 1993-94 to 1999-00.⁴

Devinder Sharma, writes further on the agricultural policies that blindly aping the World Bank model of agriculture, Karnataka and Andhra had pumped in huge finances to push an industry-driven agriculture that has not only exacerbated the crisis leading to an environmental catastrophe but also destroyed millions of rural livelihoods. As a result, both the states had turned into capitals of shame for farmers’ distress, visible more through the increasing rate of suicides in the rural areas. He further adds, in reality, Andhra as well as Karnataka were only making it smoother for the industry to move into the rural areas. Andhra Pradesh’s Vision 2020 document talked of reducing the number of farmers in the state to 40 per cent of the population, and did not have any significant programme to adequately rehabilitate an equally large number of people. The objective was to promote the commercial

interests of the agribusiness companies and the IT hardware units. All benefits would have accrued to these companies in the name of farmers. In fact, these two sectors, along with biotechnology, were being heavily subsidised in the name of efficiency and infrastructure, whereas the poor farmers were being divested of their only source of income - their meagre land holdings.

Tale of Food Subsidies and Minimum Support Price

The government's growing food subsidies has often been criticised by the proponents of the economic reforms and IFIs has also emphasised the need to cut them. But two points need to be noted. Firstly, the amount of agriculture subsidies is far less in comparison with those in US, or Europe and many other countries which makes their product cheaper ultimately flooding the food markets of third world countries. These imports has more often destroyed the local economies, a case in point could be the cheap import of silk from China which has affected the sericulture in many southern states. The rising figures in table 1.1 for food subsidy has often been used as a tool for decreasing the subsidy but the myth that the 'burden' of food subsidies is too high has been demolished by M S Swaminathan. He points out that food subsidy as a percentage of GDP has remained unchanged over the last 31 years at 0.31% of GDP. This is in contrast with Sri Lanka (1.3% in 1984), Mexico (0.63% in 1984) and Tunisia (2% in 1993).

Secondly, the subsidies in form of fertilizers, seeds, MSP, power and irrigation facilities are never utilised by the marginal farmers and landless labourers. The rich farmers of Punjab, Haryana and some other states from where maximum procurement of food grains takes place have often used these facilities and large majority has remained outside its ambit. It also needs to be noted that due to complexities in the procurement process the real benefit of increased MSP are enjoyed by the middlemen not farmers.

Amartya Sen speaking of the food policy questions, why is it the case that the large expenditure on food subsidy in India does not achieve more in reducing under nourishment? He says, part of the answer lies in the fact that the subsidy is mainly geared to keep food prices high for the sellers of food - farmers in general - rather than to make food prices low for the buyers of food. The high incentive to produce more food while giving little help to the poorer people to buy food has produced the massive stocks of food grains that we find in India today. Further, much of the subsidy goes into the cost of maintaining a massively large stock of food grains, with a mammoth and unwieldy food administration. Also, since the cutting edge of the price subsidy is to pay farmers to produce more and earn more, rather than to sell existing stocks to consumers at lower prices (that too happens, but only to a limited extent and to restricted groups), the overall effect of food subsidy is more spectacular in transferring money to farmers than in transferring food to the undernourished Indian consumers.

Targeting the PDS

Some Milestones in the Public Distribution System

- 1964 : Food Corporation of India set up as a sole central agency for procurement, storage, transportation and distribution of food commodities viz. rice, wheat, sugar, edible oils, kerosene and coal.
- 1964-1978 : Drought of 1965/67 and 1972/73 provide strong impetus for the expansion of PDS.
- 1978-1991 : Food grain distributed through PDS peaked in 1991 at 20.8 MT
- 1991 onwards: Food grains distributed through PDS fall substantially to 14 MT in 1994. Stocks accumulate.
- Between 1991 and 1994 PDS process doubles. The poor are priced out. Sales drop. Stocks build up. In this period, because global prices are temporarily high, export has taken place at the cost of nutrition in India.
- 1997 : Targeting in the PDS introduced.
- 1998 to 2001: Above Poverty Line (APL) prices increased by 85% (wheat) and 61% (rice) and BPL prices by 66% and 62% respectively.

One of the worst victims of the reforms process has been the Public Distribution System which has slowly been targeted and killed in a sustained manner. The attack on the PDS first came in 1992 with the 'Revamped PDS' (RPDS) and the second in 1997 with the 'Targeted PDS' (TPDS) almost at the behest of World Bank and IMF in the name of fiscal control. This came together with another major policy shift in the 1990s away from the agricultural strategy of self-sufficiency in food grain production. M S Swaminathan points that in doing so government ignored the experience of food stamp systems introduced in other countries and negative effects it had on the food security of poor sections. Since any TPDS entails extensive book keeping, transparency in the process and strict monitoring, the process is not to bear any result.

The reason PDS is in such a state is largely due to incessant corruption and misadministration that needs immediate attention. In fact it is to be noted that a substantial part of the food lifted from FCI godowns never reach their intended locations and are appropriated by vested interest and goes to main market through back door. According to recent estimates published in the report of the High Level Committee on Long Term Grain Policy (also known as Abhijit Sen Committee), all India "leakages" from the PDS in 1999-2000 were around 20% for rice and 48% for wheat. The estimated leakages are as high as 60% for rice and 71% for wheat in Bihar, 45% for rice and 59% for wheat in Uttar Pradesh, and 47% for rice and 61% for wheat in Madhya Pradesh.⁵

Secondly, the PDS has also failed to deliver because of the repeated increase in the prices in PDS shops. The prices were increased to such an extent that the cumulative price increase of food grains in the PDS was higher than the rise in the general price index. This had its effect on the reduced off take through the PDS consequently BPL categories found it difficult to buy grain from PDS shops. Then government also sharply reduced the supply of food grain to the PDS since 1991. Thus there has been a fall in per capita off take (See table 1.2).

Lastly, the introduction of BPL and APL has hit the poor section very hard because of its arbitrariness in method of calculating. The method used by the government has been faulty and Utsa Patnaik in her study has shown that according to data from *NSSO 1999-2000 Report No. 471 and 454* by 1999-2000, seven-tenths of the rural population was below the norm of 2400 calories per day (the norm adopted in all poverty studies), and about two fifth of the urban population below the lower urban norm of 2100 calories. This was in complete contrast with the governments poverty ration of 27.1 and 23.1 respectively (as shown in table 1.3). This arbitrariness means that a large section of the population has been left out of the PDS through new TPDS. In Swaminathan's opinion only top 20% of the population should be left out of the process and rest should be covered by PDS to ensure better food security. This has had its effect on the health and nutrition level of poor people and their employment potential.

Divesting Control and Access

The emphasis on growth driven development has attacked the rights of marginalised communities over the Common Property Resources (CPRs) on which they have depended for fuel wood, minor food produce, grazing their cattle etc. This has been due to acquiring these lands by the government for setting up industries, power projects, townships, highways and big infrastructure development projects. This has contributed to the general decline in living standards, increased malnutrition, unemployment and starvation deaths in rural areas. The experience of displacement has been well documented and also confirmed by many studies that the worst sufferers of these are the marginalised communities. By governments own estimates over 40 per cent of the DPs and PAFs during 1951-1980 were tribals, since then a large number of projects has been sanctioned and completed by the government. The reforms era has given an impetus to this process of acquisition of land as evident in the case of Orissa which had acquired 40,000 ha for industries during 1951-1995 but plans to acquire 100,000 ha in a decade. AP has acquired in five years half as much land for industry as it did in 45 years. Similar quantities are being acquired in Jharkhand for mines that foreign companies are eyeing. Goa had acquired 3.5 per cent of the state's landmass 1965-1995 and plans to acquire 7.2 per cent of it during this decade.⁶ This is not without attributed motives, in recent years many large projects have been acquiring only land that is the people's livelihood but leaving their houses untouched. Others focus on the CPRs that are crucial to people's sustenance. The loss of CPRs has had disastrous effects and impacted the rights of food and work

of the marginal communities in a major way. The policy document issued by the government to provide rehabilitation to these communities is also nothing more than a tool in the hands of the government undermining the rights of its less privileged citizens. The evaluation of the provisions of the policy gives every indication of being a response to liberalisation.⁷

The women have been the worst victims of any attack on the CPRs because of their increased hardship in carrying their household activities. They have to travel large distances in search of fuel wood, water and other necessities which were earlier easily available in their vicinity. It also impacts on their employment potential and the development opportunities for the girl child who has to miss school in order to help her mother run household.

Loss of Work

The economic reforms and related policies though not illogical pursue a growth model which is not suitable for most of the developing world. The requirements of growth driven economy are growth of manufacturing and services sector which has higher growth potential than agriculture. This is visible in the percentage contribution towards GDP of each sector. As opposed to 60% labour force employed in agriculture its contribution is only 22 percent and nearly 50% that of service sector. The fact that nearly 2/3 populations are engaged in farming, any policy has to be geared towards development of this sector. However, no effort is being made towards making this sector sustainable for majority of landless farm workers, and marginal and small peasants who are dependent on agriculture for their livelihood. This is also reflected in the dismal growth of 0.02 percent employment during 1993-94 to 1999-2000 as opposed to a growth of nearly 5% witnessed in the services sector (see table 1.4). In fact the emphasis is on developing agriculture on the model of industry in an unplanned and unsustainable way. The reality seems to be ignored that the conditions are not ripe for such a shift given the farm size, credit facilities, and subsistence level of farming. Any mechanisation of farming needs to consider and provide for generation of employment in non-farm sector in rural areas for the labourers who will be laid off. This is true for millions of unskilled labourers in different sectors who only have their labour to sell in the market. Any unmindful retrenchment of workforce leads to further decline in living standards and informalisation of the labour force.

The growth of slums in the smaller towns, earlier a preserve of metros and big towns, is largely due to worsening conditions in villages to crop failure and unviability of agriculture as an economic activity. The worst hit has been the landless labourers and marginal farmers bulk of which are from SC and ST communities who don't own land. The informalisation and casual nature of their employment is a disempowering experience for them and often means working in hazardous conditions, below minimum wage levels, and without any social security measures. In fact the situation of women are far worse than men. According to National

Institute of Public Finance & Policy Study on Gender Budgeting the average female wage is almost 80 percent of the male average in urban areas, while it is less than 60 percent of the corresponding male rate in rural areas. Similarly, according to 58th Round of NSSO survey (July-Dec 2004) the female workforce participation rate in rural areas declined to 281 per thousand compared to 249 in the 55th Round (July 1999-2000) in rural areas and witnessed a marginal increase from 139 to 140 in urban areas. Participation of women in organised sector is also very low and accounts for a meagre 17.9% (2001).

Alternatives

What can we do? It is common knowledge that people have to go hungry if they do not have the means to buy enough food. Hunger is primarily a problem of general poverty, and thus overall economic growth and its distributional pattern cannot but be important in solving the hunger problem. It is particularly critical to pay attention to employment opportunities, other ways of acquiring economic means, and also food prices, which influence people's ability to buy food, and thus affect the food entitlements they effectively enjoy. It is also crucial to use the means of specialized delivery of food that particularly helps poor children, such as more extensive use of feeding in the school. This can not only increase the incentive of children to go to school, but also actually make them healthier and less undernourished. The Supreme Court has been judicious in emphasizing the importance of this right.

In a country where 80 per cent of the farmers own less than two hectares of land, and only five percent farmers have more than 4 hectare; the biggest challenge is to ensure how can agriculture be made more attractive for these small and marginal farmers. The need is to provide non-farm employment to poor people in off-season which would provide them enough money to buy food even at the BPL prices. At the same time, with the green revolution areas, comprising Punjab, Haryana, western Uttar Pradesh, parts of Andhra Pradesh, Tamilnadu and Karnataka facing severe crisis in sustainability from the second-generation environmental impacts. The need is to discourage any further push towards industrial farming model which could further destroy the ability of the lands to produce enough food, and indiscriminate mining of ground water push the water table to more precarious levels.

A very important move in this direction has been the initiation by the UPA government towards legislating Employment Guarantee Act which would provide 100 days of guaranteed employment to anyone who applies for it. To mention some of the gains, according to Jean Derez, an Employment Guarantee Act would go a long way in protecting rural households from poverty and hunger. In fact, a full-fledged EGA would enable most poor households in rural India to cross the poverty line. Secondly, it would lead to a dramatic reduction of rural-urban migration: if work is available in the village, many families will stay in place instead of heading for the cities. Thirdly, guaranteed employment would be a major source of empowerment for

women. Based on past experience, a large proportion of labourers employed under EGA are likely to be women, and guaranteed employment will give them some economic independence. Fourthly, the Employment Guarantee Act is an opportunity to create useful assets in rural areas. Fifthly, guaranteed employment is likely to change power equations in the rural society, and to foster a more equitable social order. Last but not least, the process of mobilising for an Employment Guarantee Act (and for effective implementation of the Act after it is passed) has much value in itself. It could give a new lease of life to the labour movement in large parts of India.⁸

Government will have to ensure that the various poverty alleviation and development related programmes like Mid Day Meal Scheme (MDMS), Targeted Public Distribution System (TPDS), Integrated Child development Scheme (ICDS), National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS), National Maternity Benefit Scheme (NMBS) need to be implemented with sincerity because more often than not they have been plagued by problems right from its conception stage to implementation. Economic survey 2003-2004 further states that most evaluation of poverty alleviation programs done by the government or others, conclude that these programs are not very effective in reducing poverty. They suffer from ill defined and multiple objectives, limited targeting, under-funding, complex administration, high administrative costs and leakage, lack of proper accountability and adequate monitoring. A study of the PDS suggests that only 25 % of the food grains actually reach the poorest 40 percent of the population, and administrative costs accounting for 85 percent of the total expenditure far outweigh the income gains to the poor.

Hence, to ensure effective implementation it is necessary that corruption be rooted out at all the levels, and agencies involved are made accountable to the public. The money or food spent on every development activities should be properly displayed at the public places. The accountability and transparency in the whole system will go a long way in ensuring the accessibility and responsibility of the government. The right to information in this context will also empower the marginalized communities to achieve right to food and work and make their livelihood sustainable.

| Year | Food Subsidy (Crores Rs) |
|-------------------------|-----------------------------|
| 1996-97 | 6,066 |
| 1997-98 | 7,900 |
| 1998-99 | 9,100 |
| 1999-00 | 9,434 |
| 2000-01 | 12,060 |
| 2001-02 | 17,612 |
| 2002-03 (till December) | 24,000 |

Source : 3rd report of the commissioner of Supreme Court, N C Saxena dt March 2003 published in *Right to Food* Volume 1, Cloin Gonsalves, et al (eds) 2004 p 142

| Off take of food grain from central pool (in million tonnes) | | | | | | | |
|--|---------|---------|---------|---------|---------|---------|-------------------------|
| | 1996-97 | 1997-98 | 1998-99 | 1999-00 | 2000-01 | 2001-02 | 2002-03 (till December) |
| Off take through ration shops | 19.66 | 16.98 | 18.69 | 16.97 | 11.67 | 12.14 | 11.9 |
| Off take through other beneficiary schemes | NA | 2.08 | 1.36 | 1.53 | 3.23 | 8.86 | 9.87 |
| Sub total | 19.66 | 19.06 | 20.5 | 18.5 | 14.9 | 21.0 | 20.96 |
| Open market sale | | 0.06 | 0.068 | 4.55 | 1.49 | 5.6 | 4.16 |
| Exports | | 0 | 0 | 0 | 1.49 | 4.7 | 9.68 |
| Total | | 19.12 | 20.73 | 23.05 | 18.21 | 31.3 | 34.8 |

Source : 3rd report of the commissioner of Supreme Court, N C Saxena dt March 2003 published in *Right to Food* Volume 1, Cloin Gonsalves, Vinay Naidoo, Ramesh Kumar and Aparna Bhat, (eds) 2004 p 142

| Estimates of Incidence of Poverty in India | | | |
|--|-----------------------|-------|----------|
| Year | Poverty Ratio Percent | | |
| | Rural | Urban | Combined |
| 1977-78 | 53.1 | 45.2 | 51.3 |
| 1983 | 45.7 | 40.8 | 44.5 |
| 1987-88 | 39.1 | 38.2 | 38.9 |
| 1993-94 | 37.3 | 32.4 | 36.0 |
| 1999-00 | 27.1 | 23.6 | 26.1 |
| 2007 | 21.1 | 15.1 | 19.3 |

Source : Tenth Five Year Plan, as quoted in *Economic Survey, 2003-04*, Table 10.5, p 204

| Table 1.4 | | |
|--|-----------------------|-------------------------|
| Sectoral Employment Growth (CDS basis) | | |
| Sector | 1987-88 to 1993-94 | 1993-94 to 1999-2000 |
| <u>Agriculture</u> | 2.57 | 0.02 |
| <u>Manufacturing</u> | | |
| Mining & Quarrying | 1.00 | -1.91 |
| Manufacturing | 1.23 | 2.58 |
| Construction | -1.38 | 5.21 |
| <u>Services</u> | | |
| Trade, Hotels and Restaurants | 2.99 | 5.72 |
| Transport, storage and communication | 3.46 | 5.53 |
| Financial, insurance, real, estate and business services | 4.50 | 5.40 |
| Community, social and personal services | 4.06 | -2.08 |

Source : Economic Survey 2003-2004, Table 10.8, p 210

Notes

¹ As quoted in the 3rd report of the commissioner of Supreme Court, N C Saxena dt March 2003 published in Right to Food Volume 1, Cloin Gonsalves, Vinay Naidoo, Ramesh Kumar and Aparna Bhat, eds 2004. p 146

² Walter Fernandes, March 2004 - 'Rehabilitation Policy for the Displaced', in Economic and Political Weekly, Vol 39, Issue 12, pp 1191-1193

³ For details of the National Policy on Resettlement and Resettlement see further in this volume.

⁴ It is to be noted here that GOI of India tabled an Employment Bill recently in parliament with many of the diluted provisions of the National Advisory Council draft Bill in which Jean Derez played an important role. For discussion of the provisions of the Bill see further in this volume.

⁵ For significant provisions of National Agriculture Policy, see Appendix 1 at end of this volume.

⁶ As quoted by P Sainath in the seeds of suicide-2, July 2004 available at <http://www.indiatogether.org/2004/jul/psa-seeds2.htm>

⁷ Economic Survey 2003-2004, p 3, Table 1.2.

⁸ Economic Survey 2003-2004, p 210, Table 10.8.

National Rural Employment Guarantee Act and Right to Work

The Common Minimum Programme begins with the following promise: “The United Progressive Alliance government will immediately enact a National Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment to begin with on asset-creating public works programmes every year at minimum wages for at least one able-bodied person in every rural, urban poor and lower middleclass household. In the interim, a massive food-for work programme will be started.” To this end, the National Advisory Council (NAC) drafted a Rural Employment Guarantee Act¹ and gave it to the government for consideration. Drawing from this draft document government of India has recently presented a draft rural employment guarantee bill to be implemented in select poor districts throughout the country. The bill under in its current form has come under hard criticism from the people who drafted it and has generated a lot of debate around it on its various provisions. The need for such a guarantee has been felt for long but none of the governments could take it up because of insufficient political will. The congress party included it in its election manifesto prior to 14th Lok Sabha election when it wasn’t even sure of winning and coming to power. But to everyone’s dismay it seems to be dithering from the pre-poll commitment and has completely negated conceding right to work to millions of poor household in country.

In this chapter we will look at the general employment scenario in the country which necessitates such a guarantee for every household and more or so for the marginalized communities. Secondly, we would look at the provisions and functioning of the employment guarantee act in Maharashtra and lastly take a critical look at the provisions of the proposed Employment Guarantee Bill.

Employment scenario in 1990s

India started with its economic reforms in early 1990s since then there has been a lot of debate and evaluation of the process. Some has claimed the process of globalisation as ‘inevitable’ whereas its critic calls it a complete ‘sale out’. But one thing which has been commonly agreed by most is the fact that lives of large section of population has been impacted negatively and it has contributed to the growing income inequalities, informalisation of labour, rising unemployment, destruction of small scale industries, withdrawing of state from social security schemes etc. Take for example the Human Development Report on South Asia 2001, released by UNDP which is perhaps the strongest critic of globalisation. This report is entirely devoted to the effect of globalisation in South Asian countries. The report comes to the conclusion that “during the globalisation phase about half a billion people in South Asia have experienced a decline in their incomes. The benefits of globalisation have

remained limited to a small minority of educated urban population. As a result, income inequalities have increased.” The report also concludes that South Asia, which is the home of the largest number of poor people in the world (515 million), did not make much progress towards poverty reduction as a result of globalisation. The report comes to the conclusion that “the number of people in poverty have increased. The poor are being marginalized. The resource allocations to the poverty alleviation programmes are declining, reducing their effectiveness.”²

Trends in Employment and Unemployment

- Overall employment is estimated to have grown at around 1.01% per annum in 1990s compared to 1.55% per annum in 1980s. There is deceleration in rate of growth in employment in all sectors particularly more so in organised sector.
- The number of unemployed in 1997 (38 million job seekers) was more than the number employed in organised sector (31 million were employed).
- About 7% to 8% of the workforce which is in the organised sector is protected while the remaining 92% to 93% is unprotected, unorganised and vulnerable.
- There is a trend in growth of casual labour in the total workforce during all these years. From 27.2% in 1977-78, it has gone up to 33.2% in 1999-2000. The proportion of salaried workers is the same at 13.9% in 1977-78 and 1999-2000. The proportion of self employed has come down from 58.9% in 1977- 78 to 52.9% in 1999-2000. But the number of casual workers has gone up substantially from 27.2% to 33.2%. Thus, casualisation of workers has been an inevitable result of the new economic trends.
- The size of the organized sector in our economy is relatively small and the scope for expansion is extremely limited. In 1999, the organised sector employment was only 28.11 million or about 7% of the total employment of over 397 million in the economy. This employment grew at the rate of 1.20% per annum in 1983-84 and it has come down to 0.98% in 1994-2000.
- 44% of the labour force in 1999-2000 was illiterate and 33% had schooling up to secondary education and above. Only 5% of the workforce had necessary vocational skills.
- It is not enough to create employment opportunities. The quality of jobs is equally important. Regular wage employment is preferred to casual employment. There is also a strong preference for employment opportunities in the organised sector and particularly in the Government sector. This is particularly so for the educated unemployed.

Source: Report of the Second National Commission on Labour

The government has also admitted the fact that there has been growth in the casual labour force. This has happened mainly due to downsizing of the labour force

through various schemes such as voluntary retirement scheme and then curtailing employment opportunities and recruiting very limited labour in few sectors as reflected in the employment growth rates in the box above. The 2nd national commission on labour reports that 8 lakh workers have been ushered out of their jobs through VRS and retirement schemes. Since the emphasis of the government has been on privatisation of public enterprises and a policy of disinvestments it never really paid attention to the promoting efficiency in the public enterprises, disperse ownership widely, provide equity to the employees and benefit the consumer by cutting down on bureaucratic control in the public enterprises and professionalise them to improve performance and profitability. As a result with increased privatisation workers have lost whatever job security they had in public undertakings. The victims of the procedure has been the workers in lower categories because on one hand those in upper grades have witnessed considerable rise in their income and other facilities, the lower grade workers have been subject to cut in their social security schemes.

The privatisation process has seen large-scale recruitment of labour on contract often benefiting the employers. The victims of much celebrated growth in construction industries and information technology has been the poor workers who work on those construction sites or who have been laying the cables throughout India. By Government's own estimates the number of workers in this sector is around 8.5 million in 1996. It has been further estimated that by 2004 the number will be over 30 million (3 crores) out of which 30% are women and children – a growth of about 400%.³ Most of these would be working on less than minimum wages as prescribed by government in accordance with Minimum Wages Act, 1948, under hazardous conditions, without any fixed hours of duty. Most of them migrate to cities because these wages offered in their home states are higher than the wages they get after a cut in the prescribed minimum wages.

In most instances workers have been denied the statutory minimum wages and has worked in unfavourable and dangerous conditions without provisions for basic amenities. These workers are mostly from poor districts of states like Bihar, UP, West Bengal, Andhra Pradesh, who has migrated to cities out of distress situation in their villages either due to failure of agriculture, decrease in farm income due to rising input costs, or contraction of whatever non-farm employment they could find in villages. They comprise mostly of landless peasants, small and marginal farmers, very often from scheduled caste categories. They migrate to cities and join the casual labour force and contribute to the increasing number of slums in the cities. The town planners worried about the growth of slums has blamed the urban poor for declining infrastructure and additional pressure on the basic amenities and often used it as plea to evict them from the cities and push them to outer limits of cities. This has been observed in Delhi, Mumbai, Bangalore and other metropolises.

In this changed scenario the condition of women has declined further and the burden of running a household has increased many fold. Workforce participation

rates in rural areas have declined for rural women than men. There is a growing gender-based division of labour in rural areas with lowly paid menial and arduous work going to women. This has been compounded by the overall decline in women's decline in women's employment in the post-reform phase, from 1.41% in 1983—93 to a mere 0.15% in 1994-2000. Planning Commission reports a fall in employment growth from 2.04% during 1983-94 to 0.98% during 1994-2000 largely on account of the crisis in agriculture and community social and personal services, which together account for seven-tenths of total employment.⁴ Though there has been a decline in the growth of labour force from 2.29% in 1987-94 to 1.03% in 1993-2000 but it has outstripped the employment growth leading to growth in overall unemployment. This has been further testified by the agrarian crisis and farmers suicides from all over the country.

In such a dismal scenario the fact that UPA government has decided to take the lead in drafting a National Employment Guarantee Bill is commendable. This would go a long way in providing succour to the rural poor especially in distress times during non-farming season. This would also ensure a legal entitlement and responsibility on the government to provide work to its citizens keeping in line with the guidelines of the directive policy Article 41 which states, 'the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want'.

Maharashtra's Employment Guarantee Scheme (EGS)

The precursor of any national level job guarantee would always be the Employment Guarantee Act (EGA) passed in 1978 by Maharashtra government. It has its roots in the pilot projects of the EGA type programmes in 1965 in some districts of Maharashtra. Its success in the relief work during the drought period in 1972-74 in Western Maharashtra triggered off similar programmes in post draught period finally leading to the enactment of the programme. The key provision of the programme as stated in article 3 of the Act was, "Every adult person in the rural areas in Maharashtra shall have the right to get a guaranteed employment for doing unskilled manual work and to receive wages thereof weekly, or in any case, not later than a fortnight." Though this provision was very simple but it was revolutionary, because for the first time rural poor could demand work as their right and it has become more revolutionary in today's context of growing unemployment and distress situation due to economic reforms as mentioned before.

Other salient features of the EGA are :

- Every adult who wants a job in rural areas will be given one, provided that the person is willing to do unskilled manual work on a piece-rate basis on the minimum wage prescribed for agriculture labour.

- After registration with the Village Level Worker (VLW) or Gram Sevak and request for work to the Samiti Officer (i.e. the Tahsildar) it is the obligation of authorities to provide work within 15 days of receiving the 'demand for work'.
- Any failure to provide employment within 15 days entitles the person to an unemployment allowance (of Rs.2 per day).
- Ex-gratia payment up to Rs.10,000 is admissible in case of death or disablement of a worker on the site.
- Workers are to be provided with basic amenities on the site including potable water, crèches, resting place and first aid.
- Workers to be provided with free medical facilities and half the daily wage rate during the period of injury.

Various Government Schemes implemented by EGS Department.

1. Linking roads to villages
2. Internal roads construction of villages having population above 500
3. Soil & Water conservation works
4. Jawahar Wells Program - Construction of irrigation wells
5. Promoting Sericulture Industries
6. Promoting Social Forestry on barren lands
7. Promoting of cultivation of fruit crops through EGS linked Horticulture program.

The EGA in spite of its progressive provisions has not been very successful because of the problems with implementation and then targeting introduced in mid 80s. The biggest failure has been that thousands of crores of rupees are lying in the Employment Guarantee Fund even then lakhs of poor people continue to face unemployment. Other shortcomings include low wage rates; low turnout of the unemployed at the work sites due to lack of information; non-payment of compensation to the registered job seekers owing to lack of organized demand; submission of false and inflated muster rolls by government officials etc. There have been inordinate delays in the payment of wages in spite of the provision of the payment within a week.⁵ But still it has contributed to the upliftment of the poor in many ways. In a detailed assessment of the EGS working Raghav Gaiha has concluded that one of the major achievements of the programme has been that it has contributed to political activism and organisation among the rural poor. Concentration of a large number of workers in one place increases their interaction and helps them overcome their social and other differences. Also, the EGS as a fall back option provides a measure of security. Finally, eager to secure the support of EGS workers, politicians build independent organisations. As a result, multiple channels emerge to represent workers' interests and the political system becomes more responsive to them.⁶ This is a reason enough for the continuation of the programme and its expansion through out the country at a supposed cost of 1-2 % of the total GDP. Such a programme has contributed to mitigating poverty and ensuring some sense of security especially during the draught period and in times of distress

due to crop failure as witnessed very recently in Rajasthan in Food for Work Programme.

A programme of the nature of EGS would inhibit seasonal migration to cities and contribute towards greater empowerment of the marginal communities. It also means greater participation of women in labour force leading to gender justice and empowerment. Such a programme would also give greater bargaining power to the poor who would be demanding work, if such a right were conferred to them. It would also mean that the poorest of the poor would be included in the programme and have some predictability in their lives. With an aim to achieve these objectives National Advisory Council prepared the initial draft based on which the Indian Government introduced the National Rural Guarantee Bill in parliament in December 2004.

Right to Work: a Far Cry

The recently tabled Bill in the parliament has done away with even an iota of expectation raised by the National Advisory Council draft of National Rural Employment Guarantee Act prepared in August 2004 ensuring *Right to Work*⁷ for rural poor in the country. The draft presented in Parliament was no improvement over the existing employment programmes in present or past such as Employment Assurance Scheme (EAS), Jawahar Rozgar Yojana (JRY), Jawahar Gram Samridhi Yojana (JGSY), or Sampoorna Gramin Rozgar Yojana (SGRY). Infact in some cases it has been regressive in terms of its coverage, wage rate, nature of work to be taken up, participation of locally elected bodies, as we shall see later. With this Bill the fallacy of the UPA government and claim of globalisation with 'human face' would be exposed unless and until it backtracks on this and introduces a fresh draft considering the points raised at various forums by people concerned with the issue through out the country.

The process of dilution of the provisions of the NAC draft starts right from the stated objective where it states, '*to provide for the enhancement of livelihood security of the poor households..*' rather than the stated objective '*to safeguard the right to work by providing guaranteed employment...*'. The list of dilution of provisions of NAC draft is big one so we would concentrate here mainly on the provisions of the Bill tabled in the parliament.⁸ In nutshell, all the stated objectives in support of a bill like this raised by those campaigning for right to work has been divested of its argument and it looks like cruel joke on part of the government. If the government had anything to learn from the functioning of various wage-employment programmes in past then it would have done a better job in framing the provisions but it doesn't seem so.

Right to Work in National and International Laws

Article 41 of the Indian Constitution guarantees that the State will make efforts to secure work, education, and public assistance for eligible citizens. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. While making efforts to secure the right to work, the State also mandates in Article 23 that trafficking human beings and forcing labour upon others is prohibited.

- (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on ground only of religion, race, caste or class or any of them.

Article 24 relates this right to work directly to child labour. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Along with the jurisprudence that these Constitutional articles provide, a number of acts have been created to make these Constitutional rights justiciable. These include the Minimum Wage Act (1948), the Worker's Compensation Act (1923), Contract Labour (Regulation and Abolition; 1970), the Inter-state Migrant Workmen Act (1979), and the Equal Remuneration Act (1976). There are also a number of schemes that exist to preserve the rights granted through the mentioned articles, often times tied to ensuring Article 21's right to life. This includes the National Old Age Pension Scheme (NOAP) and the work for food schemes adopted in 2001.

In recent times the discourse around the right to work has been framed by the liberalization of India's economy. Big cities are creating lucrative jobs from Multi-national Corporation outsourcing, whereas catering to world market food demands in farming areas has generally resulted in unsustainable practices that take jobs away. As shown below, international law guarantees the right to work in numerous declarations and conferences. India's policy is in compliance with much of the international law, especially that stated in the Universal Declaration of Human Rights.

- Right to employment (UDHR 23.1; ICESCR 6; CEDAW 11a; ICERD 5ei)
- Freedom of Association and right to collective bargaining (UDHR 23.4; ICCPR 22; ICESCR 8; ICERD 5eii)
- Abolition of forced labour (UDHR 4; ICCPR 8.3)
- Equal Remuneration. Women have the right to equal pay with men for equal work or work of equal value. (UDHR 23.2,3; ICESCR 7a; CEDAW 11)

- **Discrimination.** There should be no discrimination in employment practices on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (UDHR 23.2,3; ICESCR 7a; CEDAW 11; ICERD 5ei)

Minimum age. Requires the setting of a national minimum wage for access to employment (ICESCR 10.3; CRC 32)

Compiled by Dr. Louis, People's Watch, Tamilnadu

Wage Rate: Unlike all the programmes in past this Bill mentions in section 6 (1), '...the Central Government, may, by notification, specify the wage rate for the purposes of this Act...' where as in most of the previous programmes minimum agricultural wages in each states were to be paid, either in cash, or kind or both. The implication of such an arbitrary wage rate could be overall decline in minimum wage rate at state and national levels and job market in general. It would also mean that the desired objective of enhancement of livelihood security of the poor households would be a chimera, given the large-scale corruption in payment of wages and when only one person per household is to get a job for 100 days in a year. This has serious implication for the fact that lack of purchasing power was behind the recent starvation and hunger related deaths amidst plenty of food stocks through out the country. In such a scenario what becomes imperative, if government is at all serious about its commitment in Common Minimum Programme, is to ensure payment of minimum national reference wage of Rs 66 indexed to the All India Consumer Price Index for Agricultural and Rural Labourers (CPI-AL) or at least the minimum agricultural wages applicable in each state.

Similarly, no rate for unemployment allowance has been fixed by the Bill and has been left completely on the states to decide with the caveat depending on the fiscal health of the state.

Number of days: The Bill promises at least 100 days of work in a financial year to every rural poor household and if it doesn't then the applicant would be paid an unemployment allowance as decided by the central and state government. Firstly, this mythical figure of 100 is based on the fact that it's the agrarian off-season and that's when the distress situation arises. However, if the government intends to target the rural poor then it must understand that BPL families in India are landless labourers, peasants belonging to Scs/STs categories who are always in a distress situation be it agrarian season or non-agrarian season. In any case it would serve the purpose of poverty alleviation, emancipation and raise the standard of living if one person of the household could be assured guaranteed work round the year, so during the agrarian season it would contribute towards savings and provide some security to the family in lean seasons. But the seriousness is visible from the various clauses which seem to be eager to calculate 100 days of work on paper to each household and once that's achieved government has no responsibility after that either of providing unemployment allowance or work. It is regressive because none of the previous wage-employment or poverty alleviation programmes had a ceiling of 100 days or

one person a household. This is significant because if all other programmes are to be combined under this programme then it would further restrict opportunities for poor people to work at a wage rate lower than that the minimum wages which is at least a legal entitlement under Minimum Wages Act, 1948.

Poor 'Household' and Position of Women: the Bill defines a 'household' as '*the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card*'. This is a much larger unit than a nuclear family and would adversely impact their entitlements because many a times rural poor stay together or share a common kitchen because of poverty or traditions. In such a scenario nuclear families living together as a joint family would not be treated as separate households unless they have separate ration cards. The household approach also involves a risk that women will be marginalized within the family and given the patriarchal structure chances are very less that women would be the first to get work if only one person gets work with all the facilities as mentioned in Schedule 2. Then as such there are no chances of achieving gender empowerment and it would be a danger that they would further get the menial lowly paid jobs available at other work sites in the distress situations.

'Rural' 'Poor': The Bill completely neglects urban poor and leaves them to suffer the vagaries of casual job markets in cities and covers only rural areas. It further excludes millions of poor who are in dire need of work at some point or the other in the year but may not come under Below Poverty Line.⁹ The problems with the targeting have been observed in the case of Targeted Public Distribution System (TPDS) so the programme was to be based on the process of self-selection if at all it was required. The fact that rural poor in all rather only those under BPL needs work is visible from the starvation deaths during the normal years or in draught period because of lack of any social security due to which their survival is always at the margins and any crisis leads to further deterioration.

As opposed to the expectation that the programme would cover all the districts or poor districts of India the Section 1(3) of Bill says, '*It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States or for different areas in a State and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such State or, as the case may be, in such area.*' The government neither fixes a starting time nor it mentions the time when it would be extended to whole of India. It's not at all clear on the time or area and leaves too much at the discretion of the central and state government, as mentioned in section 3(1). It is further to be noted that earlier programmes at least had a fixed time line or defined geographic area of implementation.

Burden Sharing: The Bill puts further burden on the fiscal health by defraying expenditure on payment of unemployment allowance, one fourth of the material

costs, and administrative expenses of the State Council as in Section 22(2) and limits the liability of the Central Government for administrative expenses only up to “*such percentage of the total cost of Scheme as may be determined by the Central Government*” as per Section 22(1). It is important to note the fact that most of the states are in the grip of fiscal crisis owing to factors beyond their control, which are an outcome of policies of reform. In such a scenario to expect them to pay unemployment allowance would be one’s figment of imagination. The government’s own experience with centrally sponsored Food for Work programme has had dramatic results in draught areas compared to other programmes where states were left to implement or contribute towards the programme.

To top, absence of provision to provide relief or justice to poor if state governments fail to pay unemployment allowance or work in stipulated duration makes it conditional and in no way equals to right to work. However, section 25 mentions that ‘*whoever contravenes the provisions of this Act shall on conviction be liable to a fine which may extend to one thousand rupees*’. But its silence and seriousness is visible else where when the District Programme Officer only has to display the reasons for not being able to provide work within the time on its notice boards and convey it to authorities higher in administrative control.

Nature of Work: Schedule I, Section 4 of the Bill mentions that, “*The State Council shall prepare a list of preferred works for different areas based on their ability to create durable assets.*” And further gives a list of work to be taken up which never goes beyond land and water resources development. The point here is if the long-term goal of the programme was poverty alleviation and enhancement of livelihood security then how this kind of work is going to help rural poor when most of them don’t own any land. It would only result in creation of a huge force of unskilled labour always dependent on government’s largesse through various poverty alleviation programmes. To ensure long-term sustainable employment and sustainability of their livelihood it is impertinent that the coverage of work areas should be extended to by design to create durable assets, which would ensure employment even when the programme ends. The ability of states to create durable assets provides enough room for non-implementation of specified work and is like passing the buck on part of centre towards state. So, the need is to make it mandatory to include work which would lead to capacity building of the labourers which would go a long way in ensuring the sustainability of livelihood.

Power to People: It has been very often the case in Indian planning that what one programme gives to people is taken away by another programme. The provisions of Panchayati Raj Act ensured that Gram Panchayat and Gram Sabha should take up poverty alleviation programmes or rural development work but the current Bill reduces them to the level of consultation, and making proposals to Programme Officer who would have the power to finalise and implement the programme. The Gram Panchayats has been at the centre of the programme implementation in programmes like SGRY or EAS giving them power to control their development. So,

what is required is to put them again at the centre of implementation procedure and not leave too much in the hands of bureaucratic control.

It is also true of the display of information about all the development work, expenditure, fund allocation and muster rolls etc. If the right to information was an issue then government is yet to display the courage to encourage pro-active display of information on all the development work undertaken under this programme. It does make it available but at a price which means it can't be accessed by those (rural poor) for whom the programme is meant and ultimately would give bureaucracy the power to keep fudging the bills, muster rolls and finding reasons for no-implementation of the programme.

Conclusion

To conclude, it would be travesty of language of rights to think that UPA government is serious about introducing a job guarantee to even BPL rural poor households to who the present Bill refers in line with the provisions of Directive Principles of State Policy of Indian Constitution. If it is serious about its concerns towards poor and poverty alleviation then a holistic approach is needed rather a cosmetic approach of drafting and presenting Bills after Bills and not learning from experiences in past, whether in terms of participatory procedure of policy formulation, or ensuring sustainability of socio-economic rights and livelihood.¹⁰ The present Bill would only achieve its objective of 'enhancement of livelihood security' by making it national, inclusive of all poor households, ensuring employment through out the year and keeping women at the centre of all developmental procedures ultimately leading to durable asset creation, skill enhancement and sustainable job guarantee.

Notes

- ¹ For details of the significant provisions of the proposed act, see Appendix 2 towards the end of this volume.
- ² As quoted in the Report of the 2nd national commission on labour p 158
- ³ From the position paper of University Community for Worker's Rights (UCWR), University of Delhi, October 2004
- ⁴ Smita Gupta, in Frontline, November 19 2004, p 85.
- ⁵ From a note prepared by Paschim Banga Khet Majoor Samity, April 2003 published in 'Working for all at a living wage, towards an Employment Guarantee Act' January 2004. Further information on the right to campaign can be had from right2food@yahoo.co.in & www.righttofood.com
- ⁶ See, Raghav Gaiha, August 2000 – 'Rural Public Works and the Poor – A Review of the Employment Guarantee Scheme in Maharashtra'.
- ⁷ Even though this right to work was limited to 100 days only to rural poor and excluded urban poor.

⁸ The detailed comparison of the provisions of the NAC draft and GoI draft Bill can be accessed at www.righttofoodindia.org.

⁹ The method of determination of BPL categories has come under sharp attack from many economists. For a detail study of the problems with the methodology and its impact on food security of poor see, Utsa Patnaik, April 2004 – ‘The Republic of Hunger, 1943-2004’. SAHMAT : New Delhi

¹⁰ In recent five years Government of India has prepared Bills on National Policy on Rehabilitation and Resettlement for Project Affected People, National Policy on Tribals (Draft), National Environment Policy (Draft), Right to Information Act, 2004, and now National Rural Employment Guarantee Bill.

The Government Policy of Resettlement and Rehabilitation

The government of India after discussions for nearly two decades over various draft policies announced National Rehabilitation Policy for Project Affected Families¹ in February 2004, which was pushed forward in near secrecy without allowing little debate or discussion prior to its approval (Palit, 2004). The policy very high on principles - as mentioned in its preamble - is hollow in reality and regressive in comparison to previous drafts and also some of the existing state or project R & R policies. The policy has also not accommodated the government's own experience of R & R in the past 50 years of dealing with development, disaster, and ethnicity induced displacement. It does very little to address the issues raised in an alternative draft policy submitted on October 5 1995 in response to the proposed draft policy document by the ministry of rural development in 1994. The alternative policy draft² prepared by an alliance of thousands of displaced persons (DPs), PAFs, social movements, civil society organisations and researchers advocated land based settlement as key to restoration of livelihood, participation of PAFs in project planning, R & R process and other measures for making it sustainable. This policy, as we shall see later, is far from that and has a strong cash-based component, provides space only for consultation with PAFs and has no provisions for addressing second generation problems (Sah, 2003)³ and making the livelihood sustainable⁴. At best the policy has provision for 'resettlement' or 'relocation' but attempts no 'rehabilitation'⁵ even though it admits that displacement has other traumatic psychological and socio-cultural consequences. The policy is nothing more than a document to appease the guidelines laid down by various loan/aid-giving international financial institutions which would ultimately provide legitimacy to the government's power to acquire land at a fast pace and hand it over to big multinational companies, all in the name of *development* and *public interest*. Certainly, it is not aimed at providing a just and quick relocation/resettlement process⁶ and opportunity for development to DPs or PAFs who ultimately lose in this game of development and pay the price of it.

NPRR extends its mandate to include landless agricultural workers, forest dwellers, tenants and artisans in its definition of PAFs, but on the whole remains gender blind. Contrary to the centrality of the idea that, 'avoidance of involuntary resettlement where feasible or minimising it by exploring all alternatives' (Robinson, 2003)⁷ should be an integral part of any R & R policy, the policy accepts displacement⁸ and then appoints the Administrator for Resettlement & Rehabilitation who will work to minimise displacement of persons and identify non-displacing or least displacing alternatives in consultation with the requiring body. The overall policy is poor in details and specificity of provisions of R & R and rich

only in ambiguities and probableness, leaving much to the interpretation of officials concerned. It has a very restricted mandate and covers only development induced displacement in rural areas and has no provisions for disaster induced or conflict induced displacement. The whole vocabulary of the document is one of welfare and relief rather than of promoting rights to resettlement of PAFs, and create a situation for their empowerment and a better standard of living. Ironically, it fails to introduce provisions which would allow participation of DPs, IDPs and civil society in the process of planning of the project, seeking non-displacing alternatives, or in sharing intended benefits accruing out of the project.

Displacement, Resettlement and Rehabilitation Policy in India

Displacement due to 'Development' in India is not new, though resettlement and rehabilitation as a policy measure certainly is. The colonial period has produced a vast segment of displaced people. The forest resources, river systems and mineral base that attract the 'developmental projects' have already seen a 'displaced' segment of the Indian society. In the Indian context, it is of interest to note that most of the developmental projects are located in the most backward areas and populated by various small nationalities – otherwise called tribals. These segments, with the enactment of land settlement laws, forest laws and commercialisation of forest products and minerals, have undergone a metamorphosis, where legally the access to the various natural resources are denied and these segments are treated as hostages within their environment. Another productive segment was also a part of displacement due to the process of de-industrialisation and forced commercialisation of agriculture – these comprise the differentiated peasantry, the artisanal groups and the traditional service groups (Bharathi and Rao, 1999). Any resistance to the displacement was treated as a 'law and order' problem, so no question of R & R policy. Land was acquired by the draconian provisions of Land Acquisition Act 1894, which still continues, with some amendments in 1967 and 1984, to be a weapon in hand of independent Indian state for acquiring land from its citizens.

The situation just after independence was not much different. Independent India's Nehruvian development model based on development of heavy industries⁹ found a nationalistic fervour with planners and its privileged citizens. That there would be large-scale displacement was not a hidden fact and Nehru while speaking to displaced persons of Hirakund Dam in 1948, said, '*If you are to suffer, you should suffer in the interest of the nation*'. Barring a few exceptions, most pre-1980 projects did not have a clear-cut resettlement plan. Resettlement was undertaken on a case-to-case basis. To mention a few, there were projects like the Nagarjunasagar, Hirakud, Tungabhadra and Mayurakshi dams; the Rourkela, Bhilai and Bokaro steel plants, several defence establishments, coal mines, etc, which did offer resettlement in the form of house sites to the displaced. Only National Thermal Power Corporation (NTPC), and Coal India Limited (CIL), two government undertakings have formulated an R and R policy and constituted R and R departments to administer it. In addition, resettlement colonies have been demarcated near all their project sites to

resettle the displaced (Asif, 2000). As a result of this ad hoc approach many of the displaced were left out of the process and even though there is an absence of accurate national database studies on displacement a study for 1951-1995 completed in six states and other research show that their real number 1947-2000 is probably around 60 millions (Fernandes, 2004).

At the national level, the first policy draft was prepared in 1985 by a committee appointed by the department of tribal welfare when it found that over 40 per cent of the DPs and PAFs 1951-1980 were tribals (Government of India 1985). The next draft came from the ministry of rural development eight long years later in 1993 and the third in 1994. In response to which the civil society alliance struggling for a national rehabilitation policy proposed its own draft to the ministry in 1995, as mentioned earlier. There was silence till 1998 when another draft came out but the ministry that prepared it also prepared amendments to the Land Acquisition Act 1894. The above alliance found about 50% of the policy acceptable but thought that the amendments rejected all the principles enunciated in the draft policy. So they came together again to dialogue with the ministry and work on alternatives. Many principles evolved out of this interaction. A meeting convened by the minister of rural development in January 1999 ended with an implicit unwritten understanding that a policy would be prepared first and that any amendments to the Land Acquisition Act would be based on the principles it enunciated. However, the newly promulgated policy seems to ignore the whole process (Fernandes, 2004). In the scenario of growing unemployment the policy could have revived one of earlier practices where till 1986, the T. N. Singh Formula (1967) stipulated that the parties concerned give one job to every displaced family. But increasing mechanisation has reduced the number of unskilled jobs (Fernandes, 2000). This is another instance where the government has failed to take responsibility for PAFs and also making them beneficiary to the supposed benefits of development.

NPRR vis-à-vis Vulnerable Communities

NPRR in its preamble says, ‘the Policy essentially addresses the need to provide succour to the asset less rural poor, support the rehabilitation efforts of the resource poor sections, namely, small and marginal farmers, SCs/STs and women who have been displaced. A close study of the various provisions, however, doesn’t say the same.

To mention the provisions for *women*, the NPRR defines a family as PAFs consisting of such persons, his or her spouse, minor sons, unmarried daughters, minor brothers or unmarried sisters, father, mother and other members residing with him and dependent on him for their livelihood. It makes provisions for adult sons to get compensation but not for adult females. This has been more or less same in previous drafts of NPRR and also in awards made by Narmada Waters Dispute Tribunal (NWDT) Award¹⁰ of 1979, a landmark in R & R policy innovation, which has recognised the male as the head and sole deciding factor for compensation and

rehabilitation but, remained completely 'gender blind' (Sahaee, 2003). There has been demand that the policy must address itself specifically to the gender question and enunciate the rights of women. The absence of such a provision has meant that the women headed households, unmarried-daughters, widows, and deserted or divorced women are not liable for compensation. There are studies which show that in the villages of Gadher, Kathkadi, Mohkhadi, Surpan, and Vadgam in Gujarat in the submergence zone of SSP there was cases where widows were not taken care of by their sons. Without land or alternative sources of income generation, they were the most vulnerable sections of the society (Bhatia, 1997).¹¹ This results in further marginalisation and disempowerment of women and decline in their social, physical and economic status. In fact, women suffer the most because of loss of their customary rights over land and supplementary income from the CPRs (Modi, 2004). The loss of customary rights over forest and land means they have to work hard to collect fuel wood, and water which was earlier easily available in surroundings but is not in the rehabilitation sites where hand pumps for providing water are few in number.

The World Bank, one of the first in developing and initiating wide ranging socio-economic studies on the cases of displacement and rehabilitation, also did not include any special provision for land allotment to women in studies conducted in the early nineties (Modi, 2004). In a study by TISS, 1993 it was pointed out that the absence of employment opportunities and adverse conditions at the rehabilitation sites in Gujarat where PAFs of SSP were resettled forced women to join casual labour market to earn and supplement family income, mainly in the sugar plantation, where they were paid less than male workers. The experience also shows that since most of the tribal communities are not familiar with the monetary economy more often than not their money is wasted on buying consumer goods or liquor which increases the burden on women. Sudha Dhagmawar et al (2003) writing, before the policy was finalised do hint that land for adult daughters did not find much favour either with the PAFs or activists may be true in some areas but is not desirable. The policy also fails to address the issues of gender equity and provisions for empowerment of women. To pay lip service, however, it makes provision for a representative of women residing in the affected zone to be included in the R & R Committee to monitor and review the progress of implementation of scheme/plan of R & R of PAFs.

NPRR has special provisions for PAFs of *Scheduled Tribes*, but treats *Scheduled Castes* families with general PAFs. The policy merely reiterates the fact that the PAFs of Scheduled Caste category enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone also. For STs the policy says each Project Affected Family shall be given preference in allotment of land and will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity and very generously mentions free of cost land for community and religious gathering.

The price paid by the government for the loss of CPRs and customary rights/usages of forest produce to each tribal PAF shall be additional financial assistance equivalent to 500 days minimum agriculture wages, i.e., Rs 43,310. It is difficult to think of a sustainable livelihood for tribals without forest. The forest is not just the source of fuel wood or other minor forest products, but is their natural habitat and central to their existence and cultural heritage. The government probably expects them, who are not used to monetised economy and urban ways of living to buy cooking gas stoves and build concrete houses with the money provided. We shall see later the instance where the previous attempts at rehabilitating tribals have failed miserably. This is enough to show the ignorance of the tribal way of life and their culture and the government on its part has learnt nothing from its own R & R experience of dealing with various kinds of displacement in the last 50 years. The government's sincerity in resettling tribals in their natural habitat is visible from the fact that it would have to pay only 25% higher R&R benefits in monetary terms if it fails to do so.

The policy very categorically mentions that the rehabilitation grants and other monetary benefits proposed would be *minimum*¹² and applicable to all project affected families whether belonging to BPL¹³ or non-BPL category. States where R & R packages are higher than proposed in the Policy are free to adopt their own packages. However, it is a known fact that the states would always prefer to choose where their obligation is minimal. So, no doubt if Gujarat government which has provision for maximum 5 acres of land backtracks on its promise, and MP government, which has a ceiling of 50 families, chooses to use it only when a project displaces 500 families in the plains and 250 in hilly areas, DPD, and scheduled areas.

The government's sincerity and the cash component of the policy are further visible in these provisions. It says any PAF owning house and whose house has been acquired may be allotted free of cost house site to the extent of actual loss of area of the acquired house but not more than 150 sq. mts of land in rural areas and 75 sq. meter of land in urban areas.¹⁴ However, only PAF of BPL category shall get a one-time financial assistance of Rs. 25,000/- for house construction and Non-BPL families *shall not be* entitled to receive this assistance (*emphasis added*). There is no compensation for loss of the house except for the fact that government would provide one-time financial assistance of Rs. 5,000/- as transportation cost for shifting of building materials, belongings and cattle etc. from the affected zone to the resettlement zone.

It is a commonly known fact that BPL families are generally landless, casual labourers, and sharecroppers and still the policy makes provision for a one-time financial assistance equivalent to 625 days - of the minimum agricultural wages. In case of displacement a Displaced PAF¹⁵ shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wages per month for a period of one year up to 250 days of MAW. A generous estimate of minimum agricultural wage at

the rate of Rs 86.62¹⁶ per day would add up to Rs 37,500 or Rs 15,000 depending on the category to which one belongs. This is the price the government proposes for livelihood of its citizens who are already at the margins of development. There is no attempt on part of the government, visible from these policy guidelines at making the life of DPs or PAFs sustainable, except for increasing their risk of impoverishment and disempowerment. The past experience has been that many a time the small-scale farmers, sharecroppers, and casual labourers in absence of any employment, adequate land, credit facilities, technology, seeds, etc. fail to adapt to the new conditions at the resettlement zones and are forced to marginalisation and become casual labourers at the project itself, if nearer, or further migrate to any other place.

The policy provides no safeguard against double or triple displacement which has happened in the past due to poor planning of resettlement process and project assessment, especially in the Dam related submergence and displacement. This is one of its major lacunae, in absence of such a safeguard chances are that these communities can be displaced again and again over a period of time.

The instances above suggest a greater thinking and study on the part of the government towards R & R measures of the indigenous peoples and other vulnerable sections to understand their needs better. The policy needs to be made more participatory and transparent in order to instil self-confidence and pride¹⁷ within PAFs because more often than not displacement and R & R has been a disempowering process due to sheer apathy of the officials and absence of a genuine effort on the part of the state in helping rebuild and rehabilitate their livelihood. In fact the whole process needs to be seen not as welfare and relief, as in times of natural disasters, but as their Right to resettlement and rehabilitation.

Absence of any provision of penalisation for R & R officials in the policy is another serious lacunae and is clearly visible where it says, “It is *expected*¹⁸ that the appropriate Government and Administrator for R&R shall implement this Policy in letter and spirit in order to ensure that the benefits envisaged under the Policy reaches the Project Affected Families, especially resource poor sections including SCs/STs” (NPRR-1.5). Where as the Land Acquisition Act, 1894 categorically mentions that ‘any person or agency obstructing the process of acquisition on conviction before a Magistrate is liable to imprisonment, for any term not exceeding one month, or to fine not exceeding five hundred rupees or both.’ What are we supposed to make of this ? Simply interpreted, it means the government can displace its citizens whenever it wants on the pretext of ‘development’ or ‘public interest,’ but is not accountable for their resettlement.

The NPRR in turn sets up a ‘Disputes Redressal Mechanism’ and ‘Grievance Redressal Cell,’ the terms of which is to be fixed by the appropriate government. Even there, only the Disputes Redressal Mechanism has provisions for accommodating the representatives of PAFs and specifically mentions women, SCs

and STs, NGOs and MP/MLA of the area, but *not* in Grievance Redressal Cell. In a way no PAFs can move to court unless and until government decides to give them the power to do so or at the most they can appeal to the National Monitoring Committee at the Centre.

NPRR vis-à-vis Development (rural and urban), Disaster, and Ethnicity Induced Displacement

Displacement in India has been caused by various kinds of development projects, ethnic conflicts, and natural disasters such as earthquake, cyclone, flood, riverbank erosion, drought, landslide, desertification, etc. The displacement by dams is only one kind which contributes around 50% of the total DPs and IDPs population. But the provisions of the National Rehabilitation Policy drafted by the ministry of rural development are in no way appropriate to address all kinds of displacement and subtle differential impacts of displacement in each of the cases. The policy draws heavily from the existing rehabilitation policies for water resources PAFs of Gujarat, Orissa, Rajasthan, Maharashtra, MP and Karnataka and covers only development projects and leaves others. The policy privileges the displacement by dams and fails to address the issues arising out of other kinds of displacement-related cases. Unfortunately, dam related displacement has been mistaken to be coterminous with all development-related displacement and this error has influenced the provisions for rehabilitation (Dhagamwar, De, Subrata, and Verma, Nikhil, 2003).

The policy makes no provisions for dealing with urbanisation and semi-urban situation arising out of projects such as railways, highways, mines, industrial townships etc. It mentions, 'In case of projects relating to Railway Lines, Highways, Transmission Lines and laying pipelines wherein only a narrow stretch of land extending over several kilometres is being acquired, the Project Affected Families will be offered an ex-gratia amount of Rs. 10,000/- per family, and no other Resettlement & Rehabilitation benefits shall be available to them'. The policy gives no guidelines of calculating the cost or damage to a family but arbitrarily fixes an amount which given the past experience would ultimately harm the interests of the affected family.

The PAFs, especially vulnerable groups in absence of any social security measures in general and in R & R provisions are left to themselves and are directly exposed to the market-like situations. The fact that most DPs and PAFs, especially vulnerable groups of SCs and STs, are CPR dependent and are service providers to the villages and exist precariously in a semi-monetised informal economy, sudden overnight change to a monetised economy often makes them vulnerable to outsiders influence spending their money on cheap trinkets and forces them in to dominant economy as cheap labour in mines, household, market, construction work, etc. leading to further disempowerment and impoverishment.

It has been observed that even though projects like NTPC and CIL (Coal India Limited) did allot land for houses for PAFs around its own township. Many a time tribals refused to settle themselves there. An example would be the resettlement colonies of the Mayurakshi dam project in Dumka district of Jharkhand (erstwhile Bihar), which was completed in the 1950s. Whereas one finds DPs from other social groups residing in the Mayurakshi resettlement colonies, not a single tribal family is to be found there, though more than half of the displaced were tribals. Similarly, the efforts of the Orissa forest department to shift two tribal villages from within the Simlipal wildlife sanctuary to resettlement colonies located outside the sanctuary boundaries proved futile because the tribals returned to the forest villages after some time (Asif, 2000). This suggests a greater thinking required in dealing with displacement of different kinds and socio-economic aspects of DPs and PAFs. It also needs to assess the differential changes brought by projects other than the dams in the region which sometimes raises the standards of living of the DPs and provides new opportunities of social mobility but also brings in to associated evils of development.

NPRR vis-à-vis Economic Liberalisation

There are indications that the previous draft policies in 1985, 1993 and 1994 formulated by the centre and other state policies and Acts, except the one by Maharashtra, were prepared only under pressure of World Bank [(Fernandes, 2004), (Sah, 2003)]. In 1980, the World Bank became the first development agency to adopt an explicit policy concerning involuntary resettlement, through a policy formulated by social scientists and grounded in social research (Sahaee, 2003). Responding to the sharp criticism regarding the devastating social impact of poorly planned population relocation, it was forced to take steps to make resettlement of relocated population an integral rather than peripheral part of project planning and implementation. The policy paper was updated from time to time and after a lengthy consultation it issued a revised 'Operational Policy on Involuntary Resettlement, OP 4.12' in December 2001 (Bandyopadhyay, 2004).¹⁹ Dr Michael M Cernea, senior adviser to World Bank also observed, "our study found that impoverishment and brutal violation of basic human rights happen most frequently in programmes that are not subject to agreements on policy guidelines and to professional outside review, supervision and evaluation. Such domestic projects account for overwhelming majority – at least 95 per cent – of the millions and millions of people forcibly displaced worldwide. This fact is irrefutable argument for adoption of national policies and legal framework for resettlement in all developing countries".

The current policy document is a result of such pressure tactics and exigencies because the government in its bid to privatise PSUs, selling out basic services providing utilities and inviting Foreign Direct Investment needs land at an unprecedented scale. The policy in fact gives every indication of being a response to liberalisation. One can see it, among others, from the extent of land most states acquire for private companies. For example, Orissa had acquired 40,000 ha for industries during 1951-1995 but plans to acquire 100,000 ha in a decade. AP has

acquired in five years half as much land for industry as it did in 45 years. Similar quantities are being acquired in Jharkhand for mines that foreign companies are eyeing. Goa had acquired 3.5 per cent of the state's landmass 1965-1995 and plans to acquire 7.2 per cent of it during this decade (Fernandes, 2004).

This is not a hidden agenda. In 1999, a loan given by the Asian Development Bank to the Madhya Pradesh government in order to enable private sector takeover of public infrastructure required that the state government first frame a rehabilitation policy. There is no doubt that the National Rehabilitation Policy is also the consequence of a conditionality of the World Bank or some other multilateral institution, in order to facilitate the same processes of the corporate takeover of our resources (Palit, 2004). The very fact that the Indian government refused to discuss the report of the World Commission on Dams, Supreme Court judgement on the Narmada and the proposed interlinking of rivers all go in the same direction (Modi, 2004). Since the policy doesn't guarantee 'land-for-land' to PAFs and remains ambiguous by including guidelines such as, "Each PAF owning agricultural land in the affected zone and whose entire land has been acquired *may be* allotted agricultural land or cultivable waste land to the extent of actual land loss subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land/cultivable waste land *subject to availability* of Government land in the districts", (NPRR-6.3) it is easier for government to displace people and complete R & R by paying cash compensation. This is no hidden fact, land being a fixed commodity, that ultimately all the DPs and PAFs can't be provided land because of unavailability of land. In case of R & R of SSP oustees MP government had categorically stated that it didn't have land to rehabilitate oustees from 193 villages.²⁰ Any land acquisition will happen only by confiscating CPRs being used by other communities causing tension between host communities and oustees, and cultivable waste land which will need investment of an unusually higher order than the amount of compensation paid by the government.

The provision that this policy will be applicable to projects displacing 500 families or more en masse in plain areas and 250 families en masse in hilly areas, Desert Development Programme (DDP) blocks, areas mentioned in Schedule V and Schedule VI of the Constitution of India is also of grave concern. No draft has ever mentioned the minimum number of families for the policy to apply. It is ironic because MP and Maharashtra state Acts make rehabilitation applicable to projects that displace 50 families or a full village with fewer families than that. So, it is for the first time that the government introduces a ceiling to the number of project affected persons. This is not without attributed motives, in recent years many large projects have been acquiring only land that is the people's livelihood but leaving their houses untouched. Others focus on the CPRs that are crucial to people's sustenance. It has happened in the Kashipur mines in Orissa. By official count the Lower Subansiri dam in Arunachal Pradesh will displace only 38 families but several thousands will lose their CPRs to it. The policy will not apply to them. Many large projects like the Golden Quadrangle and huge mines to be owned by private companies have been

splitting land acquisition into small bits, each of them displacing fewer than 500 families. Each of them can be called a project and deprive the affected families of the benefits of this policy (Modi, 2004).

The 1998 policy draft had made land for land mandatory for tribals and had applied it to non-tribals “as far as possible”. The final policy, however, ignores the tribals and finds a bigger escape route by saying that those who lose their land will get some if it is available with the government in that district. They will also be given Rs 10,000 per ha for land development and Rs 3,000 for building a cowshed. This is important to note because as the projects are now penetrating hitherto untouched areas for exploitation of its natural resources it becomes essential for the government to remove obstacles in the way because most of these regions are covered by the Schedule 5 or 6 of the Constitution. So, the policy with a greater cash component will facilitate quick displacement and act as a tool to legitimise resource alienation and to strengthen corporate control over land, without offering any protection to the affected communities.

The complicity of the government and international financial institutions is also visible in promoting the globalisation agenda by the fact that the World Bank has, meanwhile, announced its intention to dilute its own rehabilitation norms, and as a precursor to renewed large-scale lending to middle income countries such as India, it has stated that it would replace its policies, which have come into being as a result of struggles all over the world, with the national safeguard policies of the respective countries. No doubt this vacuous and damaging rehabilitation policy of the Indian government would count as a national safeguard for the World Bank. It may even be the reason why the policy was designed in the first place. (Palit, 2004) It is also learnt that another institution, Barclays Bank, is considering financing the Omkareshwar project²¹ through National Hydroelectric Power Corporation (NHPC), whose role concerning human rights violations in R & R is far from desirable. However, the Bank seems to gloss over the human rights record and is considering granting loan to the company even by neglecting its own corporate social responsibility clause.²²

NPRR and Human Rights

Displacement from one’s habitual residence and the loss of property without fair compensation can, in itself constitute a violation of human rights. In addition to violating economic and social rights, arbitrary displacement can also lead to violations of civil and political rights, including arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and the loss of one’s political voice. Finally, displacement carries not only the risk of human rights violations at the hands of state authorities and security forces but also the risk of communal violence when new settlers move in amongst existing populations (Robinson, 2003).

Ironically, NPRR makes no attempt at addressing various rights violations,²³ which are common in these circumstances, especially that of vulnerable groups whose vulnerability increases manifold in these situations. NPRR is just silent on these issues. It uses the word Rights in two instances, once to give cash compensation to tribals in lieu of loss of their customary rights over forest produce and secondly to grant them fishing rights in the reservoir. This shows the true nature of NPRR and the respect shown by the government to fundamental rights of its citizens.

Balakrishnan Rajagopala of Massachusetts Institute of Technology has noted five 'human rights challenges', a) Right to Development and Self Determination, b) Right to Participation, c) Right to Life and Livelihood, d) Right of vulnerable groups, and e) Right to Remedy, that arise in relation to development induced displacement. Indian Constitution also mentions some of these rights explicitly or implicitly within fundamental rights (Art. 19, 21, 29, 31), guiding principles of state policy (38, 41, 46, 47, 48A), special provisions relating to certain classes (Art. 330, 342), and right to constitutional remedies (Art. 32). So, if the government is serious to address the problems of R & R process, it has to introduce a rights-based approach to NPRR.

NPRR vis-à-vis “Impoverishment Risk and Reconstruction Model”

Michael M Cernea developed this model using the primacy of risk analysis as one of the sophisticated instruments employed in economic analysis for designing and financing development projects. He argued that conventional economic risk analysis evaluates the sources, magnitude, and effects of risks that may reduce the rate of return to capital investments in development projects. And it is also common practice for governments to provide guarantees against various risks incurred by investors in infrastructure projects.²⁴ The state takes responsibility for such risks in order to protect and encourage the private investors. Yet when the same private investments create risks to such primary stakeholders as the residents of the project area, by expropriating and displacing them, the state does not provide comparable protection against risks to these affected people. Except compensation, most governments do not use any refined economic and legal methodology to institute risk insurance measures for such primary stakeholders. In conclusion, he notes that while economic analysis and sensitivity tests are generally designed to identify, measure, and counteract risks to the project and project investors, they are not conversely designed to measure the risks posed by the project to the other project actors, such as the displaced people. He emphasized that these specific project risks must be pondered from both perspectives – economic and socio-cultural, for which it is necessary to understand how impoverishment risks occur, and, equally important how to counter them which requires deconstructing the anatomy of impoverishment and defining the key determinants of income re-construction. After synthesising much empirical evidence, he concluded that the onset of impoverishment could be represented

through a model of eight interlinked potential risks intrinsic to displacement, as shown in the table (Cernea, 1999).

This model has been used to analyse several situations of internal displacement. Lakshman Mahapatra applied the model to Indian condition before the NPRR was framed, and concluded “detailed examination of India’s resettlement experiences confirms empirically and theoretically the validity of the conceptual model of risk and reconstruction as an analytical, explanatory, and strategic tool” (Robinson 2003, p 13-14). Below is a comparison of NPRR vis-à-vis the model to see how its provisions addressed the potential risks as suggested by Michael M Cernea.

Comparison Between NPRR and Cernea’s Model

| | Various Impoverishment Risks ²⁵ | Remedies ²⁶ | NPRR - 2003 Provisions ²⁷ |
|---|--|------------------------------|---|
| 1 | Landlessness | to land based rehabilitation | (6.4) Each PAF owning agricultural land in the affected zone and whose entire land has been acquired may be allotted agricultural land or cultivable waste land to the extent of actual land loss subject to a maximum of one hectare of irrigated land or two hectares of un-irrigated land/cultivable waste land subject to availability of Government land in the districts. (6.17) ...wherein only a narrow stretch of land extending over several kilometers is being acquired, the PAFs will be offered an ex-gratia amount of Rs. 10,000/- per family, and <i>no other Resettlement & Rehabilitation benefits shall be available to them</i> (emphasis added). |
| 2 | Joblessness | to re-employment | (6.14) Each PAF belonging to the category of 'agricultural labourer', or 'non-agricultural labourer' shall be provided a one time financial assistance equivalent to 625 days of the minimum agricultural wages. (6.18) The PAFs shall be provided necessary training facilities for development of entrepreneurship to take up self-employment projects at the resettlement zone as part of R&R benefits. |
| 3 | Homelessness | to house reconstruction | (6.2) ...may be allotted free of cost house site... (6.3) one-time financial assistance of Rs. 25,000/- for house construction, <i>only for BPL categories</i> and (6.14) ...transit accommodation, pending resettlement and rehabilitation scheme. |
| 4 | Marginalisation | to social inclusion | (6.21.4) Tribal PAFs will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity. |

| | | | |
|----|--|---|---|
| 5 | Food insecurity | to adequate nutrition security | (6.11) Each PAF owning agricultural land in the affected zone and whose entire land has been acquired shall get one-time financial assistance equivalent to 750 days minimum agricultural wages for "loss of livelihood" where neither agricultural land nor regular employment to one member of the PAF has been provided. (6.15) Each displaced PAF shall get a monthly subsistence allowance equivalent to 20 days of minimum agricultural wages per month for a period of one-year upto 250 days of MAW. |
| 6 | Increased morbidity and mortality | to adequate health care | (6.22.2) it is desirable that provision of ..dispensaries... be included in the resettlement plan formulated by the Administrator for R & R. |
| 7 | Loss of access to CPR | to restoration of community asset | (6.21.3) Each Tribal PAF shall get additional financial assistance equivalent to 500 days minimum agriculture wages for loss of customary rights/usages of forest produce...(6.21.9) shall be given fishing rights in the reservoir area. |
| 8 | Social disarticulation / disintegration | to community reconstruction | (6.22.1 a) In case the entire population of the village/area to be shifted belongs to a particular community, such population/families may be resettled enmasse in a compact area so that socio-cultural relations (social harmony) amongst shifted families are not disturbed. |
| 9 | Loss of access to community services such as schools | to ensure access and provisions to community services | (6.14) ...each PAF shall be provided with transit accommodation, pending resettlement and rehabilitation scheme (6.22.2) it is desirable that provision of drinking water, electricity, schools, dispensaries and access to the resettlement sites amongst others be included in the resettlement plan formulated by the Administrator for R & R. |
| 10 | Violation of Human Rights | to respect and restore human rights | No mention of any provisions which violates rights of PAFs |
| 11 | Increased vulnerability of women, and children | to empower and protect their rights | (6.6) The Land allotted may be in the joint names of wife and husband of PAF (7.1.2) The Resettlement & Rehabilitation Committee constituted for dispute redressal mechanism shall inter-alia include as one of its members a representative of women residing in the affected zone. |

In conclusion, the comparison above clearly shows the inadequacies of the policy in its current form to deal with the impoverishment risks, and socio-cultural and politico-economic needs of the DPs and IDPs. What is needed, as suggested by the World Commission on Dams, is that “an approach based on ‘recognition of rights’ and ‘assessment of risks’...be developed as a tool for future planning and decision making” (Robinson 2003, p 55). Secondly, in line with the point emphasized in the guiding principles for IDPs that “ the *Primary duty* and *responsibility* for providing humanitarian assistance to internally displaced persons lies with national authorities”, and project authorities (MNCs and private companies) as is the case in era of economic reforms. Finally, there is also a need, as suggested by Medha Patkar of Narmada Bachao Andolan, to link development with displacement policy which assumes greater importance in view of the onslaught of national and international capital in the age of so-called liberalisation, globalisation and privatisation” (Bharathi and Rao, 1999) to protect the rights of vulnerable communities to be an equal partner in developmental process.

Notes

- ¹ For details of the provisions of the NPRR, see Appendix 3 towards the end of this volume.
- ² For all the texts of policies, laws and critiques see (Fernandes, Paranjpye, 1997)
- ³ See Sah 2004, chapter 4 and 6 for second generational problems of R & R in case of SSP oustees resettled in Gujarat.
- ⁴ All the resettlement and rehabilitation measures extend only for a year, after that requiring body has no role to play in R & R process.
- ⁵ Rehabilitation on the other hand, involves replacing the lost economic assets, rebuilding the community systems that have been weakened by displacement, attending to the psychological trauma of forced alienation from livelihood, transition to a new economy which is alien to those from a predominantly informal society and preparing them to encounter the new society as equals and not just suppliers of cheap raw materials and labour that they are in today’s system of displacement without any transition as quoted in (Asif, 2000).
- ⁶ Quick, even though, the policy document has no specific deadline for completion of R & R procedures and doesn’t categorically makes complete resettlement and rehabilitation compulsory for any development project to take shape.
- ⁷ Operational Policy on Involuntary Resettlement, OP 4.12, December 2001, in (Robinson, 2003).
- ⁸ Acceptance of displacement leaves no scope for discussion on the Project by PAFs and DPs and then it just remains a matter of completing the resettlement and rehabilitation within a framework.
- ⁹ The best represented in Nehru’s oft quoted statement, ‘*Dams are modern temples of India*’.
- ¹⁰ It was mandated by article 262 of the Indian Constitution and Section 5(3) of the interstate Water Disputes Act of 1956.
- ¹¹ As quoted in (Modi, 2004).
- ¹² (emphasis added) Perhaps government is more worried about total increase in cost of the project and loosing FDI by multinationals, or higher interest it will have to pay on the loans from IFIs.

- ¹³ The Below Poverty line is defined for Urban India as consumption worth Rs. 264 per person a month and Rs. 229 per person per month in rural areas at 1993-94 prices, as defined by Planning Commission. The Calorie intake for rural poor and urban poor is 2,100 and 2,400 a day respectively.
- ¹⁴ Please note there is no provision for compensating the loss of extra land and the house of PAFs.
- ¹⁵ “Displaced family”, means any tenure holder, tenant, Government lessee or owner of other property, who on account of acquisition of his land including plot in the abadi or other property in the affected zone for the purpose of the project, has been displaced from such land or other property (NPRR 2003-3.1 i).
- ¹⁶ Ministry of Labour, Govt of India minimum wages fixed under the Minimum Wages Act, 1948
- ¹⁷ Pride, that’s what Nehru meant when he talked about suffering in the interest of nation. But the bitter experience of R & R process has often left PAFs with feeling of being cheated. For example, the people of Kevadia village, whose lands were acquired for building residential colonies of SSP officials way back in 60s has not be rehabilitated yet by the government.
- ¹⁸ ‘Expected’, ‘may be’ is the vocabulary of the policy which doesn’t translate in to right to R&R of DPs and PAFs or any accountability on part of the government.
- ¹⁹ Other financial institutions also drafted involuntary resettlement policy, ADB in 1994, which is under review, OECD countries in 1991 and so on. Each emphasising the point that involuntary displacement should be avoided or minimised wherever possible by exploring all possible project designs and alternatives.
- ²⁰ A fact reiterated by independent review of World Bank in Morse Committee Report which states, “We think the Sardar Sarovar Projects as they stand are flawed, that resettlement and rehabilitation of all those displaced by the Projects is not possible under prevailing circumstances...”
- ²¹ The previous loans to the project has been turned down by World Bank’s Multilateral Guarantee Agency (MIGA), Deutsche Bank, and AMRO on the grounds of gross human rights violations, as mention in the letter sent to Barclays Bank by John Frijns, coordinator Bank Track and 100 endorsing NGOs, dt September 14 2004, Amsterdam, received through e-mail.
- ²² ibid
- ²³ The various rights violations of IDPs with in the context of international legal framework and guidelines available in Guiding Principles for IDPs, UDHR, ICCPR, ICESCR, ILO has been well documented in Robinson 2003, p 14-15.
- ²⁴ As is the case with government of India providing guarantees to two of the controversial power projects Dabhol in Maharashtra and Omkareshwar in Madhya Pradesh.
- ²⁵ The first eight impoverishment risks has been taken from (Cernea, 1999), next two from (Robinson, 2003) p 13 and the last point added by me considering the special needs in the situation like this.
- ²⁶ First eight points as proposed by Balaji Pandey, 1998 quoted in (Bandyopadhyay, 2004) and next three provided by me.
- ²⁷ As mentioned in the NPRR-2003, Govt of India, 2004

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Right to Information Bill¹

How Much Governance can be Democratised ?

The right to information is an important right to ensure transparency, accountability, and more important, ensure greater participation of citizens in governance. The experience of MKSS (Mazdoor Kisan Shakti Sangathan) in Rajasthan has shown its efficacy in ensuring greater access to health, education, development and other entitlements to people. This assumes greater importance in a country like India where the administration is plagued by corruption and inefficiency and has failed to deliver on most occasions. In words of former Prime Minister Rajiv Gandhi, only 15 paise out of every rupee spent for development purposes reaches to the places it is meant for. This is enough to delineate the extent of corruption and inefficiency inherent in the administration. The important thing to note is the need for such a right for poor and marginalised sections of society. The need for such legislation is more felt in the era of predatory economic globalisation to ensure autonomy and sovereignty of poor people over natural resources and their lives. It is necessary in order to be able to say *no* to any attack on their rights and hold the state accountable in its failure to provide social security and question legitimacy of decisions to privatise and sale national assets to private corporations at the cost of larger public interest. In the words of Soli Sorabjee, “Lack of transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity”.

This paper is aimed at exploring the contribution of right to information in ensuring sustainability of rights for marginalized communities and exploring the provisions of existing legislation. The paper is divided in four sections discussing : the existing constitutional provisions for such a right; the struggle for right to information led by MKSS and NCPRI (National Campaign for People’s Right to Information); the experience with the existing Right to Information Acts at state and national levels; and right to information in the age of globalisation and its linkages with other entitlements and rights.

Right to Information is a Fundamental Right

All Indian citizens have the right to freedom of speech and expression.
(Article 19.1(a) constitution of India)

Supreme Court has often interpreted this right as the right to information bestowed to citizens to demand information from the government. It has been best summed up in the following sentences,

“Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.”

“The people of this country have a right to know every public act, everything, that is done in a public way, by their functionaries. They are entitled to know the particulars of every public transaction in all its bearing.”

“The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19(1)(a).”

(SP Gupta vs. Union of India, 1981 Supp. SCC 87).

On other occasions such as Secretary, Ministry of I&B vs. Cricket Association, Bengal or State of UP vs. Raj Narain, Supreme Court has interpreted right to information as being inherent in Right to Freedom of Speech and Expression. It has been further reaffirmed in the context of environmental issues that have an impact upon people’s very survival. Several High Courts have upheld the right of citizens’ groups to access information where an environmental issue was concerned. Various Indian laws also provide for the right to access information in specific contexts. Section 76 of the Indian Evidence Act, 1872 contains what has been termed a ‘Freedom of Information Act in embryonic form’. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

The Factories Act, 1948, provides for compulsory disclosure of information to factory workers “regarding dangers including health hazards and the measures to overcome such hazards”, arising from the exposure to dangerous materials. Then the Environment (Protection) Act, 1986, and the Environmental Impact Assessment Regulations provide for public consultation and disclosure in various circumstances. Then the Panchayati Raj Act contains sufficient provisions which require displaying of various information about development activities and fund disbursement.

According to one of the publications of Ministry of Information and Broadcasting, Govt of India²,

... the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations

Mr. P.B. Sawant has further added that, “the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings,

with their every detail exposed to the public view, should go a long way in curtailing corruption in public life.”

The right to information has also been provided for in Article 19 of the Universal Declaration of Human Rights, Article 9, 14 and 19 of International Covenant on Civil and Political Rights. It also finds expression in International Covenant on Economic, Social and Cultural Rights, Guiding Principles for Internally Displaced Persons and many other international documents. Internationally, in recent years, many Commonwealth countries like Canada, Australia, and New Zealand have passed laws providing for the right of access to administrative information. USA, France and Scandinavian countries have also passed similar laws. This has not been limited to developed countries, but similar trends are seen in the developing countries as well. The new South Africa Constitution specifically provides the Right to Information in its Bill of Rights - thus giving it an explicit constitutional status. Malaysia operates an on-line data base system known as Civil Services Link, through which a person can access information regarding functioning of public administration. There is thus a global sweep of change towards openness and transparency.

However, in spite of innumerable instances and provisions of right to information, the reality has been in complete contrast, as we shall see later, there has been often great resistance on the part of authorities to share information. The effort has been stifled by the provisions contained in colonial Official Secrets Act (OSA) enacted in 1923, partially amended in 1967, Central Civil Service Conduct Rules, 1964 and Indian Evidence Act, 1872 which continue to guide the functioning of government at various levels. This has resulted in large-scale corruption, travesty of justice and denial of development opportunities and participation of communities in decision-making processes in governance. The worst victims have been millions of poor who are yet to witness freedom after 57 years of Independence.

Leading the Way : MKSS and NCPRI³

The right to information demand formulated initially by members of the Mazdoor Kisan Shakti Sangathan (MKSS) is indeed a story of the extraordinary efforts of ordinary people. A combination of their clarity of thought and purpose and their instinctive understanding of the problems they faced in their lives has led to simple and straightforward translations of their ideas into practice. An NGO, the MKSS consists of poor farmers and workers, men and women alike, many of whom have never been to school. Yet their organisation has not only raised the issue of RTI in such a potent manner, but also changed the discourse on what had been seen for many years largely as an academic issue.

When the MKSS was formed in 1990, its stated objective was to use modes of struggle and constructive action to change the lives of its primary constituents: the rural poor. In the period leading up to the formulation of this objective, the group had

taken up issues of land redistribution and minimum wages. These are seen traditionally as the two basic issues of the rural landless poor, and it was only natural that an organisation of peasants and workers would initiate struggles on minimum wages and land.

The MKSS staged two hunger strikes – one in 1990 and the other the following year – to push for just pay. But it was also in this fight for the payment of the statutory minimum wages under government-sponsored public works programmes that the group first understood the significance of transparency and the right to information. Every time the workers asked to be paid the minimum wages, they were told that they had not done the work, a claim that, they were also told, was based on records. When the MKSS demanded to see the records, the reply was that these were government accounts and therefore secret.

And so it was that a simple demand for minimum wages became a fight for the right to information. It all started from their experience in August 1994 when BDO Nirmal Wadhvani conducted extensive enquiry on behalf of MKSS in Kot Kirana Panchayat of Raipur Block of Pali District and filed FIR against the junior engineer and gram sewak for rampant corruption in development works and fudging of muster rolls. However, they went scot free because of police inaction and all attempts at cover-up through their influence by filing false counter-affidavits and rulings through powerful Jati Panchayats (caste panchayats).

Jan Sunwais : Government in Public

It was to counter such blatant attempts at cover-up that the MKSS and the people of the area thought of a Jan Sunwai or public hearing as a mode of bringing the matter out into the open or public domain, so to speak. The Public hearing was visualised as a form of social audit – the ‘best form’, as the MKSS press note called it – and of public debate with and among the local villagers on the ‘development’ being carried out for them. The following considerations went into this visualisation of the public hearing:

- The Gram Sabha was non-functional and in any case would relate to only one gram panchayat or village council. But the impact of development works affected adjoining panchayats too and relevant information could only be collected through collective sharing across these adjoining villages.
- Most of the information on development work in villages was zealously guarded by government officials at the panchayat, block and district levels. The disclosure of even the smallest amount of such information to the villagers would result in laying bare the true detailed account of money spent as shown by the MKSS campaign preceding the Jan Sunwai. Since people in a village have a first-hand knowledge and understanding of all development activities in the village, even a little information shared would generate a plethora of data.

The important milestones in the right to information campaign led by MKSS were Jan Sunwais held at many places finally leading up to dharna (sit-in) at Beawar on April 6 1996 which lasted for forty days and ended on May 16 2004 after the state government announced that it would set up a five-member committee under the then additional chief secretary Arun Kumar to suggest ways to implement the then chief minister, Bharon Singh Shekhawat's announcement on the Right to Information made in the State Assembly more than a year earlier. The chief minister had earlier announced to give to the people of the state the Right to information with respect to all the affairs of the Panchayati Raj Institutions. The announcement promised

- Transparency regarding development works by Panchayati Raj institutions since 1990
- Access to photocopies of bills, vouchers and muster rolls and other records related to rural development expenditure on payment of photocopying charges
- Instituting an enquiry wherever fraud was detected
- Punishment to the guilty and recovery of embezzled funds.

Beawar dharna was an important landmark in the struggle for right to information in the country. Journalist Nikhil Chakravartty, who came to Beawar during the dharna, said in a speech that the struggle was like a second battle for independence. Leaders of the independence movement, he said, exposed how the riches of the people were looted by foreign rulers. This struggle showed the way to uncover how the home-grown rulers were now robbing them. These were dramatic words, especially for a small struggle in such a huge country. But what had apparently drawn Chakravartty's attention was the fight's potential to allow ordinary citizens to address many of the fundamental shortcomings of parliamentary democracy as practised in India. The demand was not to do away with democracy but to create opportunities for more meaningful and appropriate democratic practice. Prabhas Joshi, the editor of a leading Hindi national daily, summed it up in an article titled, '*Janana Jine Ke Liye*' (The Right to Know is the Right to Live).

Before we move on to discuss the legislation in Rajasthan and other states, some important points highlighted need for the struggle and testified the relevance of the method of Jan Sunwais. Every Public Hearing "transferred meaningless figures into actual reality," says an MKSS document, "as two types of information began to be compared: the records and the reality." The MKSS document further says, "As the story of the gap between the two unfolded at the hearing, the people began to understand the need and value of tools for increasing their control over processes."

The Jan Sunwais gave shape to certain demands relating to transparency in rural development programmes:

- The administration should print documents like the Below Poverty Line lists and make them available to the public at a price.

- The district rural development authority should make available to the public computer printouts of quarterly, half yearly and annual sanctions and expenditure related to poverty alleviation programmes.
- Photocopies of bills, vouchers and muster rolls of rural development works should be made available on demand to citizens on payment of fees.
- Printed copies of allotment lists of panchayat and revenue land should be made available to citizens on payment of a fee.

The Jan Sunwai showed that a gram sabha/ward sabha (statutory village assembly) could be an ideal forum for social audit of rural development expenditure and, through this, a tool of fighting corruption at the grassroots level. If transparency was one important issue raised by these public hearings, accountability was another. In the context of accountability, the initial public hearings threw up certain important requirements :

- It should be clearly indicated which official is accountable to provide the beneficiaries of poverty alleviation programmes with their entitlements.
- There should be an appellate authority for complaints related to development works in villages.
- Recovery of funds must be a part of the punitive action against those responsible for embezzlement.
- Grievances should be addressed and disposed of in a specific time period.
- A grievance cell should be set up, consisting of eminent and concerned citizens of the area to oversee all such complaints.

These initial public hearings were premised on the formulation, and also succeeded in establishing it, that any money meant for development, taken away by graft denied the people their right to development. In this way the hearings became an attempt to reclaim development. This was instrumental in forging a convergence of interests, which gave a public hearing “a sense of power beyond its immediate attendance,” says an MKSS document. The strong demand for ethics in public expenditure generated a great deal of energy in an otherwise cynical environment. The idea born in these Hearings that people had a right to monitor public expenditure and development work in their area was simple, but revolutionary. It empowered communities in ways which have never happened and contributed a lot towards the evolution of a draft Right to Information Bill.

These public hearings succeeded to large extent because of two factors :

- Wages - their non-payment or underpayment - are vital issues for the village poor. Poverty alleviation and drought relief programmes of the government are the main sources of employment in the villages of central Rajasthan. These programmes and Panchayati Raj institutions did not provide effective fora for the poor to seek redressal of wage-related grievances; hence the idea of a public forum for voicing complaints aroused their enthusiasm. Since women form the major part of the work

force in these programmes and wage-related grievances were as much theirs, they too were equally enthusiastic about the hearings.

- The rural middle classes, who are not direct beneficiaries of government delivery schemes, were able to see the link between corruption in development works and the absence or low quality of infrastructure in their villages. A little persuasion made them acknowledge their responsibility in ensuring that development funds were properly spent and that there was need for them to play an active role in the development of their village.

An important characteristic of these hearings was that they derived their power, legitimacy and sanctity from the villagers themselves and not the distinction of the panel. The panel, consisting of lawyers, jurists, writers, intellectuals and other such people, merely provided a link, like the press, with the enlightened urban intelligentsia and lent seriousness to the Jan Sunwai proceedings - for the local community and the outside world. Yet it is important to remember that these Jan Sunwais were not courts or tribunals nor a public rally to agitate for a set of demands. Even then it proved beyond doubt that right to information can be an effective tool in empowering people, instilling a sense of confidence, making governance truly democratic, transparent and accountable.

National Campaign for People's Right to Information (NCPRI)

The struggle in Rajasthan led to the birth of NCPRI in 1997 with activists, intellectuals and professionals from various states which then set up a small group to finalise a draft Bill. The Press Council of India and NCPRI finally submitted to the Union government a comprehensive draft Right to Information Bill, also known as Press Council Bill. It was later revised at a workshop hosted by the National Institute of Rural Development and was thereafter called the Press Council- NIRD Bill. Intensive advocacy by the NCPRI helped forge an atmosphere that made various political formations in the country pledge support to the idea of a Right to Information law at the central level and in various states. It resulted in the United Front government at the centre appointing the H D Shourie Committee, which included senior secretaries of the Government of India apart from the chairperson who is a well known consumer rights activist. The government referred the Press Council- NIRD draft to the Shourie Committee, which finally produced its own draft Freedom of Information Bill. This was revised by the Union government and passed by Parliament as the Freedom of Information Act, 2002. The atmosphere created by NCPRI advocacy also provided the context wherein several state governments, beginning with Tamil Nadu and Goa in 1996-97, produced their own Right to Information laws, orders and acts.

Right to Information Legislation : in States

Tamil Nadu is credited to be the first state to pass a Right to Information Act in May 1997 but suffered from severe lacunae on count of various provisions which restricted the citizens in many ways from seeking information. The Act excluded private bodies independent of the government and also those who received government aid and not technically owned or controlled by the state government. It also left too much discretion in the hands of the officials to provide the information by including provisions, “if the competent authority thinks that the disclosure is likely to cause violence, or disharmony among a section of the religion, caste, language, caste, creed, community or if it is prejudicial to public interests”. The innumerable restrictions of exemptions and grounds of refusal in fact makes it more like a *prohibitive* ‘Official Secrets Act’ rather than a law that makes information accessible, as Neelabh Mishra calls it. Another lacunae is that it lacks any provisions of penalty for officials willfully holding or delaying information. Though it does provide provision of appeal, this is also within the government which doesn’t provide the law much teeth and ultimately leaves it completely at the mercy of government.

Goa : The Act was passed by the Assembly in December 1997 and drew much of its provisions from NCPRI draft Bill. It defined information in such a way as to expand the scope of the Act beyond Tamil Nadu’s to include - apart from State government departments, local bodies, government controlled and owned organizations – any other organisation executing any public work or service on behalf of, or authorised by, the government. So this would also include private bodies engaged in public works. The Goa Act also has a wider definition of the Right to Information that includes the right to inspect and obtain copies of any document or record and even “taking samples of material”. One of the important provisions later emulated by others which says, “information which cannot be denied to the State Legislature shall not be denied to any person”. It also led the way by introducing disciplinary action against erring officials and a levy of personal fine of Rs 100 per day for every day of delay beyond the stipulated 30 working-day period. It also introduced a provision of appeal against any denial of information to the Administrative Tribunal as compared to Tamil Nadu’s provision of internal appeal. It also stipulated a fee for obtaining information with a ceiling of Rs 100 as processing fee and establish a State Council for the Right to Information which would proactively engage in dissemination of information and train the government employees to bring in the culture of openness and transparency. In case of emergency it provided a time limit of 48 hours for the information to be provided ignoring the normal time period of 30 working days.

Rajasthan the Act was finally passed in 2000 after the struggle led by MKSS. But it failed to lead the way and suffered from lacunae which excluded the private sector and NGOs. The definition of information is close to that of Goa and goes a step beyond by providing for internal and external appeal, if a request for information is denied for any reason. It provides for internal departmental action against erring officials which is not sufficient given the experience of MKSS. Though it shortens

the time limit for obtaining information 30 days instead of 30 working days as stipulated by Goa, it includes insidious clauses which provides ground for refusal of information. The Information can be withheld on the ground that the request is too general and the volume of information required would involve disproportionate diversion of resources of a public authority or adversely interfere with the functioning of such authority.

Maharashtra : though the initial Act passed in July 2000 was much similar to that of Tamil Nadu later it was amended under pressure from social activists like Anna Hazare and civil society organisations in the second half of 2002. the Act brings not only government and semi-government bodies under its purview, but also state public sector-units, co-operatives, registered societies (including educational institutions) and public trusts. It provided that the public information officers who fail to perform their duties may be fined up to Rs 250 for each day's delays in furnishing information. If it is proved that the information provided has been wilfully delayed or misled, the appellate authority may impose a fine of up to Rs 2,000 and it may also be subject to internal disciplinary action. Apart from making provision for setting up a council it also reduced the exemption clauses to a minimum of 10, as against 24 in Tamilnadu.

Karnataka : The Act is somewhere nearer to that of Rajasthan and has less number of exemption clauses, but doesn't include the inspection of public works and obtaining samples of material from a public work site in its definition of information. However, keeping with its techno savvy image it extends to all sorts of electronically stored information. The Act shortens the time limit to 15 working days and mandates disposal of any appeal in 30 days. The appeal can be made internally as well as to an external Appellate Tribunal. It also entails setting up of a council for proactive sharing of information and ensuring smooth functioning of the Act and propose any review in the Act.

Delhi : The Act is nearer to that of Goa and advocates for a fine of Rs 50 per day subject to a maximum of Rs 500 per application for delay beyond stipulated 30 normal days. Disciplinary action can also be initiated against the erring officials. It provides for only external appeal against any denial of information to the Public Grievances Committee. The Act combines the best of Rajasthan, Goa and Karnataka provisions and covers private bodies to the extent that they are funded substantially by the government and also cover all constitutional bodies such as courts, lokayukt's office, etc. It also allows citizens to collect samples from a work site and access any information stored electronically.

Assam, Madhya Pradesh and Jammu Kashmir are other state governments which have enacted a right to Information Act.

Right to Information Legislation: at Centre

The government of India was rather late and enacted the legislation after 5 years of appointing the H D Shourie Committee. It was called *Freedom of Information Act, 2002* as against Right to Information Act called by all other states. Talking about the nomenclature, Neelabh Mishra in his study points out that it means that though one is free to access information, it is not a natural right i.e. a right a human being is born with. The Act covers only the organs of the state which include the legislature, executive and judiciary. It leaves out private actors, including the corporate world and NGOs. Though theoretically it is possible to access information about them under the regulatory, monitoring and enforcement agencies of the government, the Act goes in great length to protect their interests. The Act demands proactive display of information from the public authorities regarding its officials, powers, their functions, facilities available, rules and regulations, etc. The important provision in such regard is the compulsory display of important decisions and policies that affect the public and reasons behind them. It also requires prior notification to people affected by any projects keeping in line with natural justice and promotion of democratic principles.

The deadline for providing information on request is subject to 30 days, but has to be provided within 48 hours where matters of life and death are involved. The provision of two appeals within the system do not leave much scope for justice and provides a time limit of 30 days for each appeal to the authorities which central and state government may decide. The significant lacunae in the Act are its failure to introduce provisions of penalty for erring officials. The Act remained non-functioning for most of the time since its inception and didn't have much weight because of the long list of exemptions. These exemptions can be put in three categories : theme or subject restrictions wherein certain thematic areas or subjects have been made inaccessible for information; institutional restrictions wherein certain agencies has been exempted; and procedural restrictions wherein information is restricted on grounds of procedure. These exemptions went beyond the constitutional restrictions imposed by the state relating to a) defamation, b) contempt of court, c) decency or morality, d) security of the state, e) friendly relations with foreign states, f) incitement to an offence, g) public order, h) maintenance of the sovereignty and integrity of India. The restriction went beyond the principle that "information which cannot be denied to the State Legislature shall not be denied to any person". The glaring principles are the blanket protection to the security agencies in the name of public and national security interest, but they are the ones who are involved in instances of gross human rights violation. For instance, Assam Rifles which was in centre of controversy very recently in Manipur for human rights abuses, is also in the list of security organizations. The interesting thing is the inclusion of vigilance bureaus, anti-corruption bureaus and revenue collection departments. The only

consolation is that the Act provides for declassification of information in most of the cases after a period of 25 years.

The Act has been recently put for amendment under the name the *Right to Information Bill 2004*⁴. If passed it may be called *Right to Information Act, 2004*. It is an improvement over the previous Act and lays detailed guidelines for the public authorities to proactively engage in dissemination of information about procedures, its functions, and officials through all the means available at its disposal. An important provision in subsection 5 (1) is, “Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as public information officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act”. This provision coupled with the *suo motu* dissemination of information puts the onus on the authorities to make information available. The Act also scores over the previous one in its detailed laid out procedures and provisions which require the Public Information Officers to render all reasonable assistance to the person making the request either by way of framing it in right language, guiding to the department concerned, processing fee applicable and keeping her posted of the progress of application. In case the matter is to be referred to another department, it’s the duty of the public authority to do the same and intimate it to the applicant. There are other such provisions which make the task of seeking information less arduous.

The Act further creates the office of information commissioner along the lines of central vigilance commissioner for the implementation of the provisions of this Act and also to deal with any appeal against denial of information to citizens. It further extends the time for appeal by the appellant for the first time to 30 days and for the second time to 90 days. Unless any third party is involved all the appeals are to be cleared within 30 days. Another important provision is, ‘in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority which denied the request’. It has also corrected the anomaly in the previous Act by introducing the provisions of filing a legal complaint in the court of judicial magistrate of first class against the information officer by the commission and shall be liable on conviction to fine which may extend to Rs 25,000 or a term of imprisonment which may extend to 5 years.

On the contrary, the Act still retains its ambit to public authorities only and doesn’t extend to private bodies and NGOs and makes no change in the previous provision. The list of exemptions has remained more or less the same, but it has been laid out in more detail now. It includes the provision that ‘the Information which cannot be denied to Parliament or legislature of a state, as the case may be, shall not be denied to any person. It also reduces the time period for an event or occurrence in past for which special clearance is required from 25 years to 10 years. But, it has failed to bring out any changes - except for brining in directorate of vigilance including anti corruption branch, National Capital Territory of Delhi within its ambit - in the long list of security organisations, which were outside the ambit of the

previous Act, and remains so in this as well. This continues to remain an area of concern because of the whole culture of secrecy, which surrounds the functioning of these organisations, and numerous instances of gross human rights violations on their part.

For that reason the Act will have to deal with the various exemptions granted on different grounds to the security agencies and must make necessary provisions to bring them to account and introduce transparency in their functioning. Nevertheless, the new Act is an improvement over the old one and should go a long way in introducing a culture of accountability, transparency and root out corruption in the development programmes.

Information and Economic Globalisation

The economic reforms since 90s have turned out to be a predatory process and very often brought havoc to the lives of people. This has been illustrated in the complete economic collapse in countries like Argentine, South-East Asian crisis and more recently in the agrarian crisis throughout the country due to crop failure coupled with the economic reforms and agrarian policy. There is a direct relation of the Right to Information with the processes of economic globalisation due to these reasons; withdrawing of the state from basic services; increased privatisation; giving away of common property resources to MNCs for 'development' and investment; decreasing employment opportunities and increased informalisation of labour. In such a scenario when the governments are mercilessly privatising various publicly owned assets at favourable terms to private sector, the right to information would provide power to challenge these deals and make the system more transparent. We have already witnessed the deals in Dhabol power project, privatisation of a river portion in Chattisgarh, contract for Maheshwar dam to S. Kumar's with guarantee to purchase power at much higher rates, and many others.

Due to the huge demand of land, water and other resources for infrastructure development and moving in of private sector in a big way, it has become very important to keep check on the ways in which these organisations function and the terms and conditions on which they are allotted these projects and are provided resources. In such a scenario, right to information can play an important role and it has done so in both rural and urban settings as shown in Rajasthan, Maharashtra, Madhya Pradesh and Delhi. In Rajasthan, buoyed by the success of MKSS in checking corruption in rural development work, Bharat Gyan Vigyan Samiti and Bisalpur Bandh Samanway Samiti organised Jan Sunwais in 1996-97 on eviction from land and homes because of industrialisation and construction of a dam at Sare Khurd in Alwar district and Bisalpur in Tonk district respectively. Then URMUL used it to check corruption in food for work programme for famine relief in other parts of Rajasthan. Parivartan⁵ has also used it to check corruption in PDS, and election procedure in Delhi and then Hazards Centre and Sajha Manch⁶ have

constantly used it to question the demolition of slums and relief and rehabilitation in Delhi. Similarly, Narmada Bachao Andolan has used it in Madhya Pradesh to check the legality of various provisions related to Maheshwar dam. All these hearings have shown that right to information is an important tool in the hands of people to hold the governments and private sectors involved in the process of governance and development.

At most of these public hearings the people have asked for explanations from the authorities and questioned the whole development paradigm, government officials have always shied away. The hesitation and reluctance in sharing the information by the authorities testify the power inherent in such a right. However, it has also come to light that the exercise of such a right can only be effective if it is pursued tenaciously for which people need to organise themselves and become aware of their rights.

To conclude, no matter whatever deficiencies the provisions of Right to Information Act, 2004 might have one, cannot deny the latent power of such a right. It has been an established fact that a more effective Act would go a long way in providing sustainability to the socio-economic rights of marginalised communities. This would also ensure access to various other entitlements by holding the authorities accountable and responsible to the public. This would also promote a culture of openness and transparency in public life leading to evolution of mutual trust and faith between government and society.

Notes

- ¹ For details of the significant provisions of the Right to Information Bill, 2004, see Appendix 4 towards the end of this volume.
- ² In 'Right to Information', RIS/3/2000. Published by National Documentation Center on Mass Communication Research, Reference and Training Division (Ministry of Information and Broadcasting) Website : <http://www.nic.in/rtrtd>
- ³ I have built this section on Aruna Roy's and Nikhil dey's, 'Fighting for the Right to Know in India' and the detailed study done by Neelabh Mishra for UNDP titled, People's Right to Information Movement : Lessons from Rajasthan. 2003.
- ⁴ The Act can be accessed at [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-90855&als\[theme\]=Freedom%20of%20Information](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-90855&als[theme]=Freedom%20of%20Information)
- ⁵ Parivartan is an NGO active in New Delhi working for transparency and checking corruption in PDS and civic governance.
- ⁶ Sajha Manch is a coalition of various grass-roots organisations, individuals and NGOs working for downtrodden sections mainly on the issues of displacement and development in the city of Delhi.

National Environment Policy, 2004¹ : An Appraisal²

Ashish Kothari the noted environmentalist writing about the draft National environment Policy says,

‘A bold, forward-looking policy dealing with India’s environmental crisis, is an urgent necessity. The Government of India is to be commended for initiating the process. The draft NEP makes an attempt to tackle what is undoubtedly a complex subject, for environmental destruction and conservation are intricately linked to economic, social, and political aspects of life in India.’ (Kothari, 2004)

True, the draft needs a commendation of its efforts in formulating and taking in account a host of issues such as emphasis on intra generational and inter generational equity, environmental governance, precautionary approaches, integration of economic efficiency and environmental efficiency which are of concern for the environment conservation, planning, and resource use not only for the present generation development but for generations to come. However, as argued by Videh Upadhyay, ‘If one believes in calling a spade a spade, the draft policy should be appropriately renamed the draft national policy on sustainable development and not the draft national environment policy!’(Upadhyay, 2004). He is not wrong in calling it so. It is visible from the underlying principles of the policy document, as we shall see later. The policy has an anthropocentric bias which is visible through out the document in all the sections and especially the ‘Strategies and Actions’ section which needs attention. The holistic approach to environment conservation can’t be confined only to the need of human development and has to consider the welfare and survival of other species who co-habit the space.

In this paper we would discuss the various features of the proposed policy under the proposed heads and try and delineate the issues which needs attention in the sequence as proposed by the policy. But before that some general comments.

General points

1. The manner in which the current draft has been prepared needs attention. The government has prepared it in a very arbitrary manner and the actors who have a stake in the process have not been consulted. The government seems to have forgotten the methods it used for preparation of National Biodiversity Strategy Action Plan (NBSAP), perhaps one of the most exhaustive participatory exercises in policy formation in India.³ The policy in *English* and *Hindi* though made available on the website for comments till October 2004⁴ is in no way adequate. It should

have been widely distributed in regional languages and sufficient time made available for comments from various communities. This is important because the policy is of utmost concern to everybody and India is one of the 12 'mega' biodiversity countries and holds 8.1 per cent of the world's total biodiversity (Geevan, 2004).

2. The principles incorporated in the draft are borrowed from the United Nations Conference on Environment and Development (UNCED) that is a welcome sign. The principles under the Rio Declaration included sustainable utilisation of natural resources; the integration of environmental protection and economic development; the right to development; the pursuit of equitable allocation of resources both within the present generation and between present and future generation (intra and inter-generational equity) and the internalisation of environment costs through application of the 'polluter pays' principle.⁵ This is commendable because each one of them can be better applied in the national context as their applicability internationally continues to be problematic because of the differences in the opinion internationally, as was witnessed in the failure of the Kyoto Protocol. But what is needed is formulation of clear guidance on the choice of instruments and methods for specific applicability in the national and sub-national contexts (Upadhyay, 2004).
3. It is also encouraging to see that this document has included and recognized several important aspects such as mainstreaming environmental concerns into economic development, livelihood security for the poor and equity, natural resource accounting and environmental governance.
4. Although the principle objective of the policy, as explicitly formulated, is the conservation of critical environment resources, there is a distinct development and anthropocentric bias. It says, that conserving critical ecological systems is "essential for life support, livelihoods, economic growth and a broad conception of human well-being". The principles, identified by the draft that is to guide various 'actors' in executing the policy are also notable. See especially the first three principles – (1) human beings are at the centre of sustainable development concerns, (2) right to development and (3) environment protection is an integral part of development process. The section on causes and impacts of 'key environment challenges' in the draft policy again begins with the assertion, "the key environment challenges that the country faces relate to the nexus of environment degradation with poverty in many dimensions, and economic growth". Putting all this together one cannot but say that the preamble, objectives and the principles laid down by the draft are for a national policy for sustainable development and not for a national environment policy.
5. Even though one can identify the need for integrating environment concerns with development imperatives and the dire need to emphasise the aspects of 'environment of the poor' and 'environment against the poor', the draft environment policy fails to balance these critical concerns with the larger imperative of saving and improving the degraded environment and ecology. The point one is making here is that while the linkages between development and the environment and poverty are critical for the

- country today, the national policy on environment needs to do this without any substantive dilution of concerns for conserving biodiversity.
6. The draft NEP does not challenge the fundamental nature of the current model of 'development', even though it is now widely recognised that this model is at the heart of environmental destruction.
 7. The strategy and actions fails to provide a blueprint for an overall long-term plan for the use of India's land and water resources, which has been a dire necessity for decades.

Objectives and Principles

The objectives and principles mentioned in the policy do not in anyway stem from a genuine interest to protect the interests of the poorest sections of Indian society who are most dependent on the environment for their livelihood and survival. This is evident from its focus on the environment and development, and a model based on 'national interests' (read *interest of privileged section*) which has often displaced the poor and brought suffering on the marginalised communities.

The objective of ensuring the Right to Development (4.ii) is basic, but even more basic is the right to human well-being and welfare, which is not to be equated to 'development'. Indeed humans can be happy and well without necessarily being subject to constant 'development', especially when (as in this draft), 'development' is seen primarily in terms of material growth. More broadly speaking, all humans should have a right to well being, not to 'development', which is only one tool (not even necessarily the most appropriate one in all circumstances) towards achieving this well being. (Kothari, 2004)

The most controversial underlined principal is that of 'polluter pays'. This concept of the 'internalisation of costs of pollution' - sounds highly equitable - but given the highly skewed and iniquitous society both nationally and internationally, will clearly work in favour of the rich and against the interests of the poor. The balance of power and terms of trade are already highly iniquitous. This principle can be used dangerously to argue that the 'poor' (who are viewed as primary agents in polluting) have to pay for their polluting ways. The worst sufferers will be the tribals because they are the one who will bear the burnt of it. As mentioned in the National Policy on Tribals (draft), it says that though shifting cultivation is basis of life for tribals the practice is hazardous to environment. In the same vein it says, 'the tribals involved in shifting cultivation do not seem to have any emotional attachment to the land as an asset or property needing care and attention as in non-tribal areas. In shifting cultivation lands, no attention is paid to the replenishment of soil fertility. Tribals merely believe in harvesting crops without putting in efforts or investments. Land is just left to nature to recoup on its own.' If the government has such contemptuous views of indigenous culture and knowledge then there is no doubt that

in the name of environment conservation they will be further evacuated from the forests and will be forced to join 'mainstream' farming and culture. The recommendation for introducing 'cost-recovery for communal water and grazing for livestock' which is translated into imposition of grazing fees, and other monetary ways in which people will be forced to 'adjust' their flock sizes. They believe that such economic deterrents will force people to make rational decisions about keeping 'productive' animals and selling 'non-productive animals'. However, the realities of the micro-livelihood situations of poor communities cannot narrowly be confined and described in such neo-liberal economic jargon. Their economics for stocking more number of animals in good years, so as to compensate for inevitable losses and sales of animals experienced in 'drought years', defies conventional 'cost-benefit' analysis. In-fact over twenty years of research on pastoral communities in the Sahara has made people realise that forcing livestock rearing communities to artificially keep their animals at a fixed level is in fact disastrous, both for their livelihood and the environment. (ANTHRA, 2004)

The policy violates the principle of equity which it promotes because the polluter pays principle legitimises the fact that those who have the means pay they can go on damaging the environment. Further extended Bhopal Gas tragedy can be repeated if the MNCs or governments involved who have the means to pay for the damage. And those who have no money they will be harassed in the names of conservation and development. This would mean farmers told that a tax is being levied on them for the 'CO₂ and Methane emissions' produced by dung of their animals and the burning of paddy fields. Woman who collects fuel wood will be told she has to 'pay' for having access to the forests. This principle in one stroke challenges the basic constitutional rights of individuals and converts these rights to natural resources to 'needs' which can be met in the market place, by selling and buying 'environmental' goods.

The "Public Trust" principle is very important, and it is commendable that it has been stated in the NEP. However, the rest of the NEP does not really reflect this principle. Similarly, it is good that the "Decentralisation" principle (4.x) is included here. However, the concept of decentralisation needs to be refined, to go beyond even "local authorities" (such as panchayats) to a participatory democracy form, in which all citizens are able to participate in decision-making of relevance to them. The gram sabha, or equivalent village or town assembly, needs to be the basic unit of decision-making, not only the 'authorities' that are elected by such assemblies.

Strategies and Actions

The regulatory, process related and substantive reforms approach is very comprehensive but needs a critical examination. Though the policy tries and incorporate many issues but in end it plays to its bias for human development and that to for one section of the population. They still suffer from the notion of trickle down theory of development and seem to neglect the principles of equity and justice.

Regulatory reforms are indeed very necessary but it fails to take in account the reforms and provisions provided in the draft National Biodiversity Strategy and Action Plan (NBSAP) formulated through a exhaustive process of consultation and participation from various actors. The process related reforms perhaps could seek more institutionalised space for the citizens to participate at all levels of decision-making regarding the environment (and development processes that impact on the environment).

The important point to note is the alarming emphasis on “reviewing existing procedures for granting clearances and other approvals”, especially to “reduce delays and levels of decision-making”. In the past few years, most such moves to “review” procedures have resulted in dilution of environmental standards (as many as 30 dilutions of the CRZ and EIA notifications under the Environment Protection Act, for instance), rather than their strengthening. The logic has always been that environment is standing in the way of development, rather than that stringent application of environmental standards and processes is one effective tool towards ensuring sustainable development. The draft NEP cites the Govindarajan Committee as having identified environment and forest clearances as being the “largest source of delays in development projects”....it is astounding that the NEP takes this as gospel truth, completely ignoring the fact that (a) ‘development’ projects are in fact the largest source of environmental destruction, and that (b) a considerable part of the delays are caused because project proponents simply do not furnish adequate or timely information that would allow systematic decision-making. (Kothari, 2004)

The provision under ‘substantive reforms’ which prohibit the diversion of dense natural forests for non-forest use and asks for no further regularizations of encroachments on forests is in complete contradiction to the ongoing struggle of the adivasi and other forest dwelling communities to challenge the eviction orders and the case on encroachment IA 703 which is up for hearing in the Supreme Court.

The NEP should recognize shifting cultivation areas as ‘natural fallows’ and given it is agriculture, the adivasis should be entitled to the land, as is any other agriculturist entitled to their land. Unfortunately by classifying shifting agriculture as a ‘non-forestry activity’, the NEP too will fall into the same trap as all previous policies and acts, that of depriving the adivasis their right to livelihood. The NEP instead should recognize shifting cultivation areas as ‘natural fallows’, as does the FAO, and this should no longer be classified as a ‘non-forestry activity’.

Living Modified Organisms : the emphasis on introduction of LMOs seems to be a decision in haste. The biggest problem with this technology is that it is imprecise and irreversible once released into the environment. The effects of the technology are not known enough for it to receive greater and short cut support from the governments. Genetic Engineering, with the little information available as of now, has the potential of causing environmental problems like genetic contamination thus damaging biodiversity, creation of uncontrollable weeds, unintended impacts on non-target species

etc., along with potential health problems. Once genetic engineering is used in a commercial situation, then segregation of GE and other crops is not practically possible - this has already been experienced in contamination scandals in many countries. LMOs also are in complete contradiction to ecological and organic farming practices, which the NEP is promoting in the same breath. There are enough evidences of contamination of indigenous gene pool from Mexico, Canada, USA, and other places. Therefore, the NEP - should infact be invoking the internationally accepted Precautionary Principle and call for a complete moratorium on the commercial release of GMOs into the environment, until it is convincingly proved that GMOs are safe both from a bio-safety and health angle.

Environmentally sensitive zones, Incomparable Value : the provisions for declaration and conservation of these zones are ambiguous and also alternatives for the communities who would be displaced because of these pronouncements. We need to know, what becomes of the people and their livelihoods once the state declares an area environmentally sensitive? This could be yet another reason to displace people from their livelihoods and homes, added to the already long list of reasons to displace people for 'National Interest' such as dams, mines, military establishments, protected areas and wild-life sanctuaries.

The provisions for the Partnerships with investors or public private partnership in conservation efforts need more examination. There is sufficient experience of private investments in wasteland and their impact. Private investors are only interested in their own profits and thus the plantations they would invest in and would give them profits (such as bio-fuel energy plantations, timber, pulp plantations, carbon trade plantations), are a far cry and in complete opposition to bio-mass required for people livelihoods- fuel wood, fodder, agriculture equipments, building materials. This is precisely what is already happening in areas such as Bhadrachalam, Andhra Pradesh where the Bhadrachalam Paper mills are raising Clonal Eucalyptus plantations on farmer's agriculture lands.

Though the draft recognises the need for recognition of customary rights of tribals on the forest but makes no provisions to give it a legality which has become necessary when they have become renewed target of eviction in the name of conservation and economic development of remote areas and the common property resources are under threat. Further, nowhere does the NEP make any mention of other communities (pastoralists, dalits certain backward classes) -who may not necessarily be forest dwelling tribes - but who are equally dependant on the forests and the commons as they have historically been landless and do not have any other resource to depend on for their essential fuel, fodder and medicinal needs. The responsibility of providing fodder, fuel and medicinal plants to marginal communities especially those who have historically been landless and have depended on the forests and the commons continues to be under the purview of the Forest Department. All these factors need to be taken in account.

The policy goes on to talk of formulating innovative strategies for increasing tree cover in which multi stakeholder partnership and the JFM approach are seen as effective approaches. However given the dismal history of plantations in the country especially plantations which have been useful to the poor (of fodder, fuel and medicinal plant varieties) and given that JFM itself is viewed rather sceptically in a number of areas for despite its commitment to participation and participatory methods, in many areas it has conveniently forgotten certain sections of society, it remains to be seen if this policy will achieve its stated objectives of restoring rights to forest dwellers or increase tree cover of value.

The section on ‘Wildlife’ is perhaps one of the NEP’s weakest sections. Though it rightly identifies “non-involvement of relevant stakeholders in identification and delineation of PAs” as one source of human-wildlife conflicts. But in its prescriptions, it does not promote such involvement of people within national parks and sanctuaries; it only recommends “eco-development programmes” in “fringe areas of PAs”. The need is to address the rights of those who are staying in these areas and look after their interests. In fact, other than the above recommendation regarding Community Reserves, the NEP completely ignores the very many ongoing initiatives that communities have taken, to conserve wildlife and biodiversity. These include several hundred sites where forests, wetlands, coastal/marine areas, grasslands, etc. are being conserved, or populations of wildlife species that are being protected by communities.

On ‘Biodiversity, Traditional Knowledge, and Natural Heritage’, the NEP is shockingly shallow. The Policy only further re-endorses extremely contentious Acts like the Bio Diversity Act that come from a position that biodiversity and its associated genetic resources and knowledge is a tradable commodity that should be bought, sold and patented. The importance of biodiversity and traditional knowledge for the sheer survival, livelihood security, and cultural sustenance of tens of millions of people is ignored. This section needs a drastic overhaul to point to the basic values of biodiversity, the importance of traditional knowledge first and foremost to local people themselves, the links with culture and livelihoods, and so on.

In short this is a policy replete with controversial recommendations, which are essentially anti-poor. It doesn’t take in account the lessons drawn from the peoples struggle and alternatives proposed based on their traditional wisdom and practices. The silence and plea for dilution of the environment norms is well planned given the disastrous national river linking project, Sethusamudran project and many major infrastructure plans in pipeline to be implemented by big multinationals. It also gives credence to the national agriculture policy pushing for industrial farming model which would further contribute to the devastating effects of Green Revolution in many areas. The policy in order to be effective will also have to propose a vision for future on natural resources conservation and its sustainable use. Lastly, the greater emphasis is required at challenging the existing notions of the development which has already caused a large destruction of the environment and has proved antithetical

to the concepts of sustainable development. It needs to take in account alternative models of development, water conservation, farming, conservations of seeds and indigenous knowledge system rather than just trying to reform the existing norms and guidelines.

Notes

¹ For details of the significant provisions of the National Environment Policy (draft), see Appendix 5 towards the end of this volume.

² This policy appraisal draws from the facts and alternatives suggested by Ashish Kothari and ANTHRA, an NGO based in Hyderabad.

³ As pointed by Ashish Kothari of kalpavriksh who played significant role in formulating the NBSAP.

⁴ Later extended till December 31 2004.

⁵ See principles 3 to 8 and 16 of the Rio Declaration. As cited in (Upadhyay, 2004)

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Section II: Summaries of Other Policies

National Policy on Education (NPE)

Department: Department of Education

Date of Issue: 1986 updated in 1992

Source: <http://www.education.nic.in/htmlweb/natpol.htm#1>

Policy Area: Education

Acts, Programmes and Projects under the Policy

- Mid-day Meal Scheme
- Operation Blackboard
- Non-formal Education
- Teacher Education
- Post Literacy and Continuing Education
- Vocational Education

Context/ Background of the Policy

The commitment of the Indian government to provide education is enshrined in its *Constitution*. The Directive Principle contained in Article 45 states that “the State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for *free and compulsory education* for all children until they complete the age of fourteen years”. It is an obligation of the State to provide education to the *under-privileged sections*, particularly *the SC/ST* even they have a distinct language and script etc. National Policy on Education in 1968 put emphasis on *quality improvement* and a planned, more equitable expansion of educational facilities and the need to focus on the education of girls. NPE 1986 provided a *comprehensive policy framework* for the development of education assigning specific responsibilities for organising, implementing and financing its proposals.

Target Groups

Children and students are the major target groups of the NPE.

Policy Goals/ Objectives

No policy objective is set out in the document.

Salient Features of the Policy

- The national language, Hindi, is not the teaching medium in all the States in India. Mother tongue or regional language is the medium of instruction at the primary stage of education in most of the States/UTs. Teaching of Hindi is compulsory only in most of the non-Hindi speaking State/UTs but not in the States of Tamil Nadu, Tripura and Karaikal region of Pondicherry.
- *Compulsory education* has been enforced in *four* States and Union Territories at the *primary stage* of education while in *eight* States/ URs there is compulsory education covering the entire *elementary* stage of education. As many as 20 States/UTs have not introduced any measure of compulsion upto the year 1997-98.
- A majority of States of Union territories have introduced free education in Classes I – XII of their schools.
- Some issues are going to be examined for example establishing *women's universities* in every district and improving the condition of *hostels for SC/ ST*.

Limitations

- The document does not mention the problems in the education field in India. Without a *problem setting*, measures to be taken are unclear.
- *Financial assistance* to children from vulnerable groups like SC/ST and poor families is not mentioned in the document.

Right to Education in National and International Laws

Prior to 2002, Articles 41, 45, and 46, all directive principles of the Indian Constitution, were the only articles pertaining directly to the right to education. Arguably the most important of these was Article 45, which stated

The state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Despite the ratification of the Constitution over fifty years ago, the goal of Article 45 was yet to be attained. However, two Supreme Court rulings moved the right to education from a directive principle to a fundamental right. The first of these was the 1992 *Mohini Jain v. State of Karnataka*¹, and the second was the *Unni Krishnan v. State of A.P.*², each of which found the right to education to be directly connected to the fundamental right to life (Article 21). In each case, the Court used the Universal Declaration of Human Rights (UDHR) to support its statements, and in *Unni Krishnan*, the Court also called upon Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to further justify the understanding of right to education as a fundamental right.

The codification of the right to education as a fundamental right occurred with the ratification of the ninety-third amendment, which came into effect in 2002.

This amendment introduced Article 21A, amended Article 45, and added a clause to Article 51A.

•After article 21 of the Constitution the following article shall be inserted, namely: “21A. The State shall provide free and compulsory education to all children of the age six to fourteen years in such manner as the State may, by law, determine”.

•For article 45 of the Constitution, the following shall be substituted:- “45. The State shall endeavour to provide early childhood care and education for all children until they complete the age six years”.

•In the article 51A of the Constitution, after clause (j) the following clause shall be added, namely,”(k) who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years”.³

To date, the enforcement of the acts given by the ninety-third amendment has remained problematic. The Central Government places the responsibility of education on each state rather than on the parents or some other more regional governing body, consequently making it difficult to enforce accountability.

International law states

•Everyone has the right to an education. Elementary education should be free and compulsory; secondary education should be accessible to all; higher education should be equally accessible to all on the basis on merit (ICESCR 12.2a; CEDAW 12.2; CRC 24.1df)

•Women and girls have the same rights to all forms of education as men and boys (CEDAW 10; CRC 28)

As mentioned before, the Indian Supreme Courts have utilized international law to justify the mandation of right to education as a fundamental right. With the implementation of the ninety-third amendment, India’s policy became consistent with that dictated by international law.

Compiled by Dr. Louis, People’s Watch, Tamil Nadu

National Forest Policy

Ministry: Ministry of Environment and Forests

Date of issue: 7th December 1988

Source: <http://envfor.nic.in/>

Policy area: Forest

Structure of the National Forest Policy 1998

1. Preamble
2. Basic Objectives
3. Essentials of Forest Management
4. Strategy

Act, Projects, Schemes, Programmes under the Policy

- The Indian Forest Act, 1927
- Forest (conservation) Act, 1980, amended 1988
- Afforestation and trees plantation programmes
- Production forestry programmes
- Family oriented schemes

Context/ Background of the Policy

A National Forest Policy was issued by the former Ministry of Food and Agriculture in 1952 for the management of State Forests. However, over the years, forests depletion, relentless pressure on resources and deforestation etc. problems still persist. The present Policy was designed to review and revise the previous one.

Target Groups

The Forest Policy concerns all walks of life in the country but people who live within and nearby forests such as SC/ST are directly affected by it.

Policy Goals/ Objectives

The fundamental aim of the Policy is to ensure *environmental stability* and maintain *ecological balance* including atmospheric equilibrium. Apart from protecting the environment, increasing productivity of forests *to meet the needs* of the whole nation particularly the tribals is another objective of the Policy. It encourages efficient utilisation of forest produce and maximises substitution of wood. To achieve these objectives and to minimise pressure on existing forests, the Policy aims at creating *a massive people's movement* with the involvement of *women*.

Salient Features of the Policy

- The *customary rights and concessions* enjoyed by the real users e.g. the SC and the poor and especially the tribals living inside and near forests will be protected subject to the capacity of forests. *Forest villages* are developed on par with revenue villages. *Family oriented schemes* are carried out to improve the status of the tribal beneficiaries.
- The Policy recognises the need to improve *employment*. It protects *minor forest produce*, which generates employment and income to tribal population. *Forest-based industries* are encouraged so as to provide employment to local people and involve them in raising trees and raw-materials.
- Apart from afforestation in rural areas, the Policy emphasises the necessity to set up green belts and trees planting alongside the roads in urban areas.

Limitations

- The Policy does not define the term, “forests”, that is vital for an effective protection and management. The omission may give rise to grey areas or loopholes.
- Limiting the use of the resources of forests, local people need to spend money on *purchasing substitute domestic resources*. The Policy does not address sufficient financial assistance to local people. Another burden is the cost of *security and maintenance of trees*. Under afforestation programmes, individuals, particularly from the weaker sections (e.g. SC/ST and women), who are vested usufruct of the trees are responsible for their security and maintenance.
- Mass involvement of people remains an objective only. The Policy says that the primary task of all agencies responsible for forest management should *associate* the tribal people closely in the protection, regeneration and development of forests. Instead of granting a right to participate, the Policy lets agencies take the initiative to *connect* people. Besides, no solid action is set out to involve other groups e.g. women in the Policy. Diversion of forest land for non-forest purpose is subject to the examinations by *specialists* but the role of local people is not considered.
- Regarding afforestation, the Government provides technical assistance but the duty to cover other costs stemming from afforestation programmes is unclear.

National Conservation Strategy and Policy Statement on Environment and Development Government of India

Ministry: Ministry of Environment and Forest

Date of issue: June 1992

Source: www.envfor.nic.in

Policy Area: Environment and Development

Structure of the National Conservation Strategy and Policy Statement on Environment and Development Government of India

1. The Preamble
2. Environmental Problems: Nature and Dimensions
3. Actions Taken
4. Constraints and Agenda for Action
5. Priorities and Strategies for Action
6. Development Policies from Environmental Perspectives
7. International Cooperation
8. Support Policies and Systems
9. Conclusion

Policies, Acts, Programmes and Projects under the policy

- Forest Policy 1988
- The Wildlife (Protection) Act, 1972, amended in 1983, 1986 and 1991

- The Water (Prevention and Control of Pollution) Act, 1974, amended in 1988.
- The Water (Prevention and Control of Pollution) Cess, Act, 1977, amended in 1991.
- The Forest (Conservation) Act, 1980, amended in 1988.
- The Air (Prevention and Control of Pollution) Act, 1981, amended in 1988.
- The Environment (Protection) Act, 1986.
- The Motor Vehicle Act, 1938, amended in 1988.
- The Public Liability Insurance Act, 1991.
- The Notification on Coastal Regulation Zone, 1991.
- National Wildlife Action Plan
- National Forestry Action Programme
- National River Action Plan
- Ganga Action Plan

Context/ Background of the Policy

The importance of environmental protection is reflected by the *Indian constitution*, which assigns the duties for the State and all citizens to protect the environment.⁴ In the past twenty years, actions have been taken in the *legal* and *institutional* fields. Various *measures* have been adopted. Despite these efforts, there are continuous pressure on natural resources and a tension between development and environmental conservation. For example the absence of an integrated land and water use policy for the country is taking a heavy toll on these basic natural assets. The conservation strategy is to serve as a *management guide* for integrating environmental concerns with developmental imperatives.

Target groups

As the Statement points out that “[t]he survival and well-being of a nation depend on sustainable development”, environment and development policy actually pertain to *everyone* in the country. Groups particularly highlighted in the Statement are *women*, and the poor who are directly dependent on natural resources, such as the *tribal people*.

Purpose and Strategy

“The primary purpose of the strategy and the policy statement is to include and reinforce the traditional ethos and to build up a *conservation society* living in harmony with Nature and making frugal *efficient use of resources* guided by the best available scientific knowledge”.

Salient Features of the Policy

- The Statement sets *population control* as one of the priorities and strategies with increased support for *female education*, *female employment* and adoption of

- decentralised renewable energy devices that enhanced quality of life in remote pockets while taking special care of the *health needs of women* etc.
- The Statement recognises that the problems of *women* in villages are compounded in this whole scenario of energy, environmental and developmental imbalance. Women at the grassroots level are encouraged to be actively involved in the conservation programmes which should be income generating and self financing and sustainable on a long term basis.
 - The Statement emphasises that the foremost need on *domestic resources* like fuel wood, timber, fodder, fibre etc. of the rural people should be specially addressed from first point of view of the biomass requirements of the *rural poor*.
 - The Statement identifies the *participation* of people in programmes as one of the instruments for action and emphasises the importance of the participation of (local) people and (grassroots) NGOs for the implementation of conservation strategy and in the afforestation programme and for protection of existing forests

Limitations

- Projects should be made to *avoid displacement* of local people. If it is unavoidable such as establishing national parks etc. to conserve the biodiversity, a full complete and comprehensive rehabilitation measure of the rural poor/tribals displaced should be taken . However, the right of local people to participate in deciding these projects are not recognised.
- A monitoring mechanism involving central and state government representatives to be set up for interaction as required for implementation of the policy initiatives. Nonetheless, a policy review mechanism is not called upon by the Statement.

National Policy For the Empowerment of Women

Ministry: Ministry of Human Resource Development
Department: Department of Woman and Child Development
Date of Issue: 2001
Source: <http://wcd.nic.in>

Structure of the National Policy for the Empowerment of Women 2001

- 1 Introduction
- 2 Goal and Objectives
- 3 Policy Prescriptions
- 4 Operational Strategies

Acts, Programmes and Projects under the Policy

- National Commission for Women Act, 1990

Context / Background of the Policy

General equality and *positive discrimination* in favour of women are stipulated in the Indian Constitution. The *National Commission for Women* was set up in 1990 to safeguard the rights and entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution have provided *reservation of seats in the local bodies* of Panchayats and Municipalities. Plans and programmes aiming at women's advancement in different spheres have been carried out. Internationally, India has ratified various *human rights instruments* committing to secure equal rights of women e.g. CEDAW. However, *gender disparity* together with social stereotype and discrimination still exists. Consequently, the access of women—particularly those belonging to weaker sections including SC/ ST/ OBC and minorities — to education, health and productive resources is inadequate. Women remain largely marginalised, poor and socially excluded.

Target Group(s)

Women are the target group of the Policy.

Policy Goals/ Objectives

The goal of this Policy is to bring about the *advancement, development and empowerment* of women. Other objectives are:

- to ensure that women enjoy all human rights and fundamental freedoms *equal with men*
- to bring equal access to women to *participation and decision making* of women in social, political and economic life and to *health care, equality education* at all levels, *career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office* etc.
- strengthen legal systems aimed at elimination of all forms of discrimination against women
- changing social attitudes and community practices
- mainstreaming a gender perspective in the development process
- elimination of discrimination and all forms of violence against women and the girl child; and
- building and strengthening partnerships with civil society, particularly women's organisations

Salient Features

- The Policy aims at implementing *international obligations/ commitments* in all sectors on empowerment of women such as CEDAW, CRC and International Conference on Population and Development etc. instruments.

- Instead of providing welfare, the Policy focuses on *development and empowerment* of women in India. To enhance women's *capacity* in various aspects e.g. through education is one of the strategies.
- All measures will be taken to guarantee women's equality in *power sharing* and *active participation* in decision making including in political process at *all* levels.
- In the field of education, policies will be achieved with a special focus on girls and women, particularly those belonging to weaker sections including *SC/ST/OBC and minorities*.

Limitations

- Instead of *repealing* the provisions which discriminate against women (such as property rights and personal laws related to marriage, divorce, maintenance and guardianship), the Policy just *encourages changes* of these laws.
- The establishment and strengthening of existing micro-credit mechanisms and micro-finance institution may provide an *easy access to credit* to women below poverty line. But no supportive measures are addressed by the Policy to help borrowers avoid the problem of debts.

Rights of Women and Children in National and International Laws

Perhaps the most important component of meaningful livelihood discourse concerns the rights and initiatives that promote and protect women and children, who make up over half of the functioning economy. Along with the rest of the world, India continues to face discrimination and exploitation of women and children but has made moves, if not only legally, to address these problems. All of the constitutional provisions and acts relating to women and children are too numerous to describe here, but this summary will hopefully frame the context of women, children, and their access to livelihoods.

Constitutional rights and directive principles relating to women and children include

- Article 14 (equality for men and women before the law)
- Article 15(3) (assures that nothing in Article 15 can prevent the creation of special provisions for women and children)
- Article 39 (a directive principle ensuring equal access to livelihoods for men and women (39a), equal pay for men and women (39d), protection from unsuitable work for women and children (39e), children are protected from exploitation and given freedom and dignity while growing up (40f))
- Article 42 (secures just and humane working conditions and maternity leave)
- Article 51A(e) (renounce practices derogatory to the dignity of women)
- Affirmative action schemes (Article 243D(3,4), 73rd, 74th, and 84th Amendments)

The Indian Penal Code (IPC) and National Commission for Women (NCW) have many sections that explicitly protect women's ownership of property, of due process in police-related affairs, and against abuse and dowry demands. These same rights are also secured in a variety of Acts including the Hindu Marriage Act (amended 1976), the Immoral Traffic (Prevention) Act (1956), and the Dowry Prohibition Act (1961) among others. Despite the great efforts made by NGOs and the State in codifying these laws and acts, lack of enforceability and inefficiency in the courts prevent this legislation from being fully realized.

Much of the litigation directed at children's right to livelihood comes in the form of mandatory schooling and protection from child labour. The Employment of Children Act (1938), The Factories Act (1948 amended in 1949, 1950, 1954), and the Beedi and Cigar Workers Act (1966), all outlaw children below the age of fourteen from doing hazardous work and the Children (Pledging of Labour) Act (1933), bans parents from promising their children to labour as a means to clear loans or get advances.

International law remains consistent with India's policies on protecting women and children. The United Nations Fourth World Conference on Women (FWCW) states: the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international community, and other conventions grant : the right to freedom from all forms of gender based violence (UNHR 3; ICCPR 7; Convention Against Torture 1)

The UN convention on the Rights of the Child thoroughly details the following rights:

- The Right to survival - Ensures that the children have nutritious food, potable drinking water, a secure home and access to health facilities.
- The Rights to Protection – This includes freedom from all forms of exploitation, abuse and inhuman or degrading treatment in order to protect vulnerable children from those who would take advantage of them and to safeguard their minds and bodies.
- The Right to development – This includes the right to be educated, to receive support for development and care during early childhood and to social security. It also includes the right to leisure, to recreation and to cultural activities.
- The Right to participation – This secures the freedom of thought and expression, conscience and religion.

India ratified this convention in 1992 and maintains legislation that is consistent with this international law. In fact, India's Mine's Act (1983) and Factories Act (1948) provides further protection to children by putting stricter age requirements on employment. Again, enforceability is India's largest obstacle to providing adequate protection for children's right to livelihoods.

Compiled by Dr. Louis, People's Watch, Tamil Nadu

National Water Policy

Ministry: Ministry of Water Resources

Date of Issue: 1 April 2002

Source: <http://cwc.nic.in/nwp2002.pdf>

Policy Area: Water

Acts, Programmes and Projects under the Policy

- Ground water recharge projects
- Catchments and watershed projects

Context/ Background of the Policy

Water is a scarce and precious national resource in India. One-sixth area of the country is drought-prone. Demands on water in terms of *quality* and *quantity* for diverse purposes are increasing in India. Equity and social justice in regard to *water distribution* is vital. The present Policy reviews and updates the National Water Policy adopted in 1987.

Target Groups

Water is a basic human need. Thus the Policy affects everyone in the nation especially SC/ST or other specially disadvantaged groups who are economically weak and marginalised.

Policy Goals/ Objectives

The Policy does not clearly spell out its goals or objectives.

Salient Features of the Policy

- A *participatory approach* is adopted for the management of water resources for diverse uses. The Policy notes that Government agencies, the users and other stakeholders should be involved in an effective and decisive manner, in various aspects of planning, design, development and management of the water resources schemes. The appropriate role of *women* should be duly ensured. Water Users Associations and the local bodies such as municipalities and gram panchayats should particularly be involved in the operation, maintenance and management of water infrastructures/ facilities at appropriate levels progressively, with a view to eventually transfer the management of such facilities to the user groups/ local bodies.
- The involvement and participation of beneficiaries and *other stakeholders* should be encouraged right from the project planning stage itself.
- Special efforts should be made to investigate and formulate projects either in, or for the benefit of areas inhabited by *tribal* or other *specially disadvantaged groups* such

as socially weak, scheduled castes and scheduled tribes. In other areas also, project planning should pay special attention to the needs of SC/ST and other weaker sections of the society. The economic evaluation of projects benefiting such disadvantaged sections should also take these factors into account.

- Optimal use of water resources, necessities, construction of storages and the consequent *resettlement* and *rehabilitation* of population. A skeletal national policy in this regard needs to be formulated so that the project affected persons share the benefits through proper *rehabilitation*. States should accordingly evolve their own detailed resettlement and rehabilitation policies for the sector, taking into account the local conditions. Careful planning is necessary to ensure that the construction and rehabilitation activities proceed simultaneously and smoothly.

Limitations

- The Policy does not address the water problems of the vulnerable groups in the country and reflects an urban bias.
- “Polluter pays” is put forward by the Policy. However, it is not clear whether it covers industrial or domestic polluters. And no special attention is given to vulnerable groups like SC/ST who are poor and may not afford the cost.

National Health Policy

Ministry: Ministry of Health and Family Welfare

Department: Department of Health

Date of Issue: 2002

[Source](http://mohfw.nic.in/np2002.htm) <http://mohfw.nic.in/np2002.htm>

Structure of the National Health Policy

- 1 Introduction
- 2 Current Scenario
- 3 Objectives
- 4 NHP – 2002 – Policy Prescriptions
- 5 Summation

Acts, Programmes and Projects under the Policy

- RCH
- Universal Immunisation Programme

Context/ Background of the Policy

A National Policy was last formulated in 1983. It set out the target of “Health for All by the year 2000” through the universal provision of comprehensive primary health care services. However, communicable and life-style diseases, macro and micro

nutrient deficiencies especially in the category of *women and the girl child*, unequal access to health care, in terms of states, *rural-urban* and *economic classes* etc. problems still persist in India.

Target groups

National health policy particularly affects the poor who are usually vulnerable to sickness and diseases but cannot afford medical care. NHP - 2002 slightly emphasises women, the tribals and the under-privileged.

Policy Goals / Objectives

- To evolve a policy structure which allows the disadvantaged sections of society a *fairer access to public health services* is a principal objective of NHP-2002.
- To maximise the broad-based availability of *health services* to the citizens of the country on the basis of realistic considerations of capacity.
- To set out a new policy framework for the accelerated achievement of Public health goals in the socio-economic circumstances currently prevailing in the country.
- To define the *role* of the Central Government and the State Governments in the public health sector of the country.

Salient Features of the Policy

- In order to translate the policy into the actual needs of people, power is *decentralised* to State and District levels. State Health Departments may be limited to monitoring of programmes and other technical aspects. Public health programmes are designed to be implemented through local self-government, autonomous bodies, the management boards of which are composed by state Government officials, social activists, private health professionals and MLAs/MPs in order to facilitate well-informed decision-making.
- NHP – 2002 suggests that a *social health insurance scheme*, funded by the Government with service delivery through the private sector, would be a better solution than an exclusive Government mechanism to provide health services to the very large number of poor in the country. But the administrative and financial implications are still unknown.
- NHP – 2002 envisages the identification of specific programmes targeted at *women's health* and notes that women, along with *other under-privileged groups*, are significantly handicapped due to a disproportionately low access to health care. The Policy commits the *highest priority* of the Central Government to the funding of the identified programmes relating to woman's health. Also, the policy recognises the need to review the staffing norms of the public health administration to meet the specific requirements of women in a more comprehensive manner.
- NHP - 2002 identifies the need to tighten and upgrade the standards of *food* items.

Limitation

- NHP – 2002 emphasises more on health issues at high level like funding, medical personnel education and recruitment etc. measures than solid actions to respond to the medical *needs of vulnerable groups*, although their needs are mentioned as primary in the Policy. Besides, there is no direct answer to solve the problem of inequality in health care access in different fields.
- The Policy shifts the responsibilities to provide *secondary and tertiary medical care* to an insurance system, which the poor can not afford.
- The right of *participation* of vulnerable groups is not recognised by the Policy.

Right to Health in National and International Laws

India's Supreme Court recognizes the right to health as intrinsically protected by both the Preamble and Article 21 of the Constitution.⁵ Article 47 goes on to state,

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

The Courts have also found that Articles 38 (social security), 39e (health of workers, men, women and children must be protected against abuse), 41 (right to public assistance) and 48A (the State's duty to protect the environment) all have relevance to the right to health.⁶

The move to consider the right to health as an unalienable fundamental right happened only in 1995 with the *Consumer Education and Research Centre v. Union of India* ruling.⁷ Recent discourse has focused largely on HIV/AIDS patients and the difficulty in securing the right to health for these people who are so often marginalized. In general, this right guarantees that the State will make efforts to help those who are facing health challenges and who otherwise would not have access to the needed resources.

Much like the current perspective of the Indian Supreme Court, the bodies that have shaped international law have found the right to health to be fundamentally tied to the right to life.

•Everyone has the right to the highest attainable level of physical and mental health and the right to equal access to health services, including family planning (ICESCR 12; CEDAW 12; CRC 24)

•Women have the right to special health services with respect to pregnancy, childbirth and the postnatal period (ICESCR 12.2a; CEDAW 12.2; CRC 24.1df)

India's policy remains consistent with international law, each striving for well-organized and efficient methods that ensure healthcare for those who need it.

Compiled by Dr. Louis, People's Watch, Tamil Nadu

Rights of Physically Challenged Persons in National and International Laws

While all of the rights to livelihood granted to the general population certainly apply to physically challenged people, special provisions, particularly in regards to the right to work, are governed by Article 41 of the Constitution and the relatively new Persons with Disability (equal opportunities, protection of rights and full participation) Act, 1995. Article 41 states,

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

In recent years efforts to provide special protection to physically challenged people has resulted in some landmark legislation. Internationally, the Economic and Social Commission for Asia and Pacific (ESCAP) named 1993-2002 the Asian and Pacific Decade of Disabled Persons. This move prompted India to write and pass the aforementioned act, which seeks to humanize physically challenged people by encouraging their role in nation building.

The Persons with Disability Act has wide sweeping provisions that provide special protection and privileges related to education, employment, affirmative action, non-discrimination, and social security among other things.⁸ Despite the implementation of this act, there has been a failure in advertising its creation, and consequently it is not being used to its full potential.

There is a battery of international law that protects physically challenged and disabled people. This includes the World Program of Action Concerning Disabled Persons (1982), the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993), the Declaration of the Rights of Disabled Persons (1975), and the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability among others.⁹ With the ratification of India's Persons with Disability Act (1995), India came into alignment (at least legislatively) with many of these international decrees.

Compiled by Dr. Louis, People's Watch, Tamil Nadu

National Policy on Safety, Health and Environment at Work Place, [Draft]

Ministry: Ministry of Labour

Department: Directorate General, Factory Advice Service and Labour Institutes

Date of Issue: Not known

Source: <http://www.dgfasli.nic.in/nationalpolicy.htm>

Structure of the National Policy on safety, health and environment at work place

- 1 Preamble
- 2 Goals
- 3 Objectives
- 4 Action Programme
 - Enforcement
 - National Standards
 - Compliance
 - Awareness
 - Research and Development
 - Occupational Safety and Health Skills Development
 - Data Collection
 - Practical Guidance
 - Incentives
 - Review
- 5 Summary

Context / Background of the Policy

Directive Principles of State Policy in the Constitution of India provide a) for securing the health and strength of workers, men and women, b) that the tender age of children are not abused c) that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, d) just and humane conditions of work and maternity relief are provided, and e) that the Government shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. In past one decade due to globalisation process there has been an increase in the informalisation of labour and change in job patterns and working relationships. The rise in self employment, greater sub-contracting, outsourcing of work and the increasing number of employees working away from their establishment and home now pose the problem of management of occupational safety and health risks. In addition, many of the well known conventional hazards will continue to be present at the workplace many years ahead till the risks arising from exposure to these hazards are brought under adequate control. It is in this context that the formulation of this policy is undertaken in consultation with the social partners

i.e. employees' organisations, employers organisations, autonomous & voluntary organisations, public etc.

Target Group(s)

All the workers in formal and informal sector, employers, and employee organisations.

Policy Goals / Objectives

The goal of this Policy is to bring improvement in occupational safety and health performance. Other objectives are:

- providing statutory framework including enactment of General Enabling Legislation on OSH in respect of all sectors of economic activities, designing suitable control systems of compliance, enforcement and incentives for better compliance.
- providing administrative and technical support services.
- providing a system of incentives to employers and employees to achieve higher health and safety standards .
- establishing and developing the research and development capability in emerging areas of risk and effective control measures.
- developing a proper interface between the work and the human resource through a system of skill improvement.
- focusing prevention effort and monitor performance through improved data collection system on work related injury and disease.

Salient Features

- To ensure effective enforcement a “National Safety, Health and Environment at Workplace Fund” would be created and the existing laws dealing with safety, health and environment would be amended progressively in line with the international instruments.
- It calls for the cooperation of social partners in supervision of the application of legislations and regulations relating to safety, health and environment at work place.
- It calls for sufficient awareness by providing forums for consultations with employers' representatives, workers' representatives and community on matters of national concern relating to safety, health and environment at work place and thereby enhancing national productivity. It also encourages joint labour-management efforts to preserve, protect and promote national assets and to reduce injuries and disease arising out of employment.
- It calls for occupational safety and health skills development by integrating health and safety into workplace, industry and professional training programme, vocational, professional and enforcement agencies training arrangements.
- It talks of providing innovative financial and non-financial incentives in order to promote a safe and health environment at workplace.

Limitations

- The concept of safety, health and environment is limited to physical aspects only and ignores mental harassment, and exploitation under various contractual obligations.
- It doesn't address the specific needs of women workers such as provisions of crèche facilities, and other basic minimum infrastructure which is generally absent in most of the informal work places.
- It also doesn't take in to account the cases of sexual harassment to which women are often subjected at their work place.
- The policy lacks on details and is rather mere prescriptive in nature. Hence one is not sure to what extent the policy will achieve its stated objectives.

National Charter for Children

Ministry: Ministry of Human Resource Development
Department: Department of Woman and Child Development
Date of issue: 2003
Source: <http://wcd.nic.in/>

Structure of the National Charter for Children

- 1 Survival, Life and Liberty
- 2 Promoting High Standards of Health and Nutrition
- 3 Assuring Basic Minimum Needs and Security
- 4 Play and Leisure
- 5 Early Childhood Care for Survival, Growth and Development
- 6 Free and Compulsory Primary Education
- 7 Protection and Economic Exploitation and All Forms of Abuse
- 8 Protection of the Girl Child
- 9 Empowering Adolescents
- 10 Equality, Freedom of Expression, Freedom to Seek and Receive Information, Freedom of Association and Peaceful Assembly
- 11 Strengthening Family
- 12 Responsibilities of Both Parents
- 13 Protection of Children with Disabilities
- 14 Care, Protection, Welfare of Children of Marginalised and Disadvantaged Communities
- 15 Ensuring Child Friendly Procedures

Context/ Background of the Policy

Protection of the interests of children is enshrined in the Constitution of India, which for example, prohibits child under 14 from working in factory, mine or any other hazardous employment (Article 24). Dignity and development of children should be protected (Article 39 f). India has acceded to the *United Nations Convention on*

Rights of the Child in 1992, wherein it has committed itself to realise the best interests of the child through the maximum extent of its available resources.

Target group(s)

Children are the target group of the present Policy. Special attention is given to those whose families are below poverty line, with disabilities, girls, the refugees and mothers.

Purposes and Strategy

To remove the structural causes related to all issues affecting children's rights in the wider societal context and to awaken the conscience of the community to protect children from violation of their rights, while strengthening the family, society and the Nation.

Salient Features of the Policy

- The State and community will undertake all appropriate measures to address the problems of infanticide and foeticide, especially of female child and all other emerging manifestations that deprive the girl child of her right to survive with dignity.
- The State shall take measures to ensure that all children enjoy the highest attainable standards of health, and provide for preventive and curative facilities at all levels especially immunisation and prevention of micronutrient deficiencies for all children.
- The State shall take steps to provide all children from families below the poverty line with adequate supplementary nutrition and undertake adequate measures for ensuring access to safe drinking water and environmental sanitation and hygiene.
- State and community shall try and remove the fundamental causes which result in abandoned children and children living on streets, and provide infrastructural and material support by way of shelter, education, nutrition and recreation.
- The State shall in partnership with the community provide early childhood care for all children and encourage programmes which will stimulate and develop their physical and cognitive capacities.
- The State recognises that all children shall have access to free and compulsory education. Education at the elementary level shall be provided free of cost and special incentives should be provided to ensure that children from disadvantaged social groups are enrolled, retained and participate in schooling.
- The State shall ensure that education is child-oriented and meaningful. It shall also take appropriate measures to ensure that education is sensitive to the healthy development of the girl child and to children of varied cultural backgrounds.
- The State shall move towards a total ban of all forms of child labour.
- All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.

- The State shall in partnership with the community take up steps to draw up plans for the identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society.
- The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. The State in partnership with the community shall ensure that such children are rescued and immediately placed under appropriate care and protection.
- The State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.
- The State and community shall take all steps to provide the necessary education and skills to adolescent children so as to equip them to become economically productive citizens. Special programmes will be undertaken to improve the health and nutritional status of the adolescent girl.
- Every child has a right to a family. In case of separation of children from their families, the State shall ensure that priority is given to re-unifying the child with its parents. In cases where the State perceives adverse impact of such a re-unification, the State shall make alternate arrangements immediately, keeping in mind the best interests and the views of the child.
- The State and community recognise that all children with disabilities must be helped to lead a full life with dignity and respect. All measures would be undertaken to ensure that children with disabilities are encouraged to be integrated into the mainstream society and actively participate in all walks of life.
- The State recognises that children from disadvantaged communities and weaker/vulnerable sections of the society are in need of special interventions and support in all matters pertaining to education, health, recreation and supportive services. It shall make adequate provisions for providing such groups with special attention in all its policies and programmes.
- All matters and procedures relating to children, viz. judicial, administrative, educational or social, should be child friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child-friendly.

Limitations

- The Policy expressed in a format of Charter clearly sets out the rights of children and obligations of the government. However, concrete actions are not included in every right. For instance, for the right to be protected from economic exploitation, except for protection and prohibition, no plan in details is addressed.
- Monitoring and review mechanism of the Policy is not included

National Policy on Tribals, [Draft]

Ministry : Ministry of Tribal Affairs

Date of Issue: September 2004

[Source : http://tribal.nic.in/national_st_policy_1.html](http://tribal.nic.in/national_st_policy_1.html)

Structure of the National Policy for the Empowerment of Women 2001

1. Introduction
2. Formal education
3. Traditional wisdom
4. Health
5. Displacement and Resettlement
6. Forest villages
7. Shifting Cultivation
8. Land Alienation
9. Intellectual Property Rights
10. Tribal Languages
11. Primitive Tribal Groups (PTGs)
12. Scheduled Tribes and Scheduled Areas
13. Administration
14. Research
15. Participatory Approach
16. Assimilation

Context/ Background of the Policy

There are 67.8 million Scheduled Tribe people, constituting 8.08 per cent of India's population. There are 698 Scheduled Tribes spread all over the country barring States and Union Territories like Chandigarh, Delhi, Haryana, Pondicherry and Punjab. Orissa has the largest number – 68—of Scheduled Tribes. Till now Nehruvian Panchasheel principals spelt out in 1952 have been guiding the administration of tribal affairs. They are:

1. Tribals should be allowed to develop according to their own genius
2. Tribals' rights in land and forest should be respected
3. Tribal teams should be trained to undertake administration and development without too many outsiders being inducted
4. Tribal development should be undertaken without disturbing tribal social and cultural institutions
5. The index of tribal development should be the quality of their life and not the money spent

However, according to the Ministry of Tribal Affairs, the Nehruvian Panchasheel was long on generalities and short on specifics, which necessitated formation of Ministry

of Tribal Affairs for the first time in October 1999 to accelerate tribal development. The Ministry of Tribal Affairs is now coming out with the draft National Policy on Tribals which will be finalized based on the feedback from tribal leaders, the concerned States, individuals, organisations in the public and the private sectors, and NGOs. The policy was also desired in order to safeguard their control over the natural resources and habitat from the increased industrial activities and penetration in hitherto unexplored regions for development projects.

Target Group(s)

It extends to all the scheduled tribes as recognised by the President of India under Article 342 of the Constitution.

Policy Goals/ Objectives

The policy seeks to bring Scheduled Tribes into the mainstream of society through a multi-pronged approach for their all-round development without disturbing their distinct culture.

Salient Features

- To reach the benefit of education to tribals various incentives will be provided, model schools and hostels will be opened and financial assistance, pocket allowance, free distribution of textbooks and school uniforms will also be provided. The provisions will be made for education in tribals' mother tongue at least up to the primary level.
- The National Policy seeks to preserve and promote tribals traditional knowledge and wisdom and document it at special centers which will also train tribal youth in areas of traditional wisdom.
- The National Policy seeks to strengthen the allopathy system of medicine in tribal areas with the extension of the three-tier system of village health workers, auxiliary nurse mid-wife and primary health centres. It will also try to expand the number of hospitals in tune with tribal population and validate identified tribal remedies (folk claims) used in different tribal areas. The policy will also encourage, document and patent tribals' traditional medicines
- When displacement becomes inevitable, each scheduled tribe family having land in the earlier settlement shall be given land against land and effort should be made to resettle them close to their natural habitat by treating all the people so displaced as one group to let them retain their ethnic, linguistic and socio-cultural identity and the network of kinship and mutual obligations.
- The National Policy suggests that any forceful displacement should be avoided in the forest villages. Tribals' rights in protection, regeneration and collection of minor forest produce (MFP) be recognised and institutional arrangements made for marketing such produce
- Land tenure system will be rationalised giving tribals right to land ownership so that they will invest their energy and resources in checking soil erosion and fertility –

- which have hitherto been neglected as land belonged to no one but was subject to exploitation by every one. Training and extension programmes will be organised to sensitise tribals about alternative economic strategies so that they can come out of shifting cultivation.
- To tackle tribal land alienation by stipulating that they have access to village land records, necessary information is displayed at the panchayat and in the absence of records in the disposal of tribals' land disputes Oral evidence be considered. It will also be ensured that transfer of lands from tribals to non-tribals is prohibited.
 - The National Policy recognizes the traditional wisdom of tribals and therefore will aim at making legal and institutional arrangements to protect their intellectual property rights and curtailing the rights of corporate and other agencies to access and exploit their resource base.
 - The National Policy would aim at preserving and documenting tribal languages. Books and other publications in tribal languages will be promoted.
 - Special efforts will be made to bring primitive tribal groups at par with other Scheduled Tribes in a definite time frame. Developmental efforts would be tribe-specific and suit the local environment and also effective preventive and curative health systems shall be introduced.
 - Tribal Advisory Councils will be established in States which have Scheduled Areas and even in States where a substantial number of tribal people live although Scheduled Areas have not been declared.
 - The National Policy, will seeks to enlist and encourage NGOs in tribal development activities. It recognizes that they can play an important role in the opening of residential and non-residential schools, hostels, dispensaries, hospitals and vocational training centres, promotion of awareness programmes and capacity building.
 - The geographical isolation of tribals shall be minimised through development of roads, transport and means of communication and provision of concessional travel facility.

Limitations

- The basic principal of the policy is faulty which seeks to bring Scheduled Tribes into the mainstream of society through a multi-pronged approach without defining at any point what it means by mainstream. The concept of mainstream and margins suffers from arrogance and denigrates the tribal culture and traditions.
- The policy calls these communities as scheduled tribes rather than indigenous peoples and peoples.
- The policy emphasises the need to conserve their traditional wisdom and culture but shows least respect for their role in forest conservation and hold their practice of shifting agriculture responsible for deteriorating conditions in the environment. Though it is a well-known fact that they have played important role in soil conservation and also have fought on many occasions against deforestation and illegal hunting.
- The policy merely reiterates the insufficient provisions of National R & R policy and makes no provisions to stop their displacement from natural habitat.

- The advice to encourage horticulture and cash crop farming is ill conceived and lacks any understanding of their ways of life and the process of industrial farming. The fails to recognise the ill effects of industrial farming model on the farmers through out the country in the era of economic reforms.
- The policy although emphasise participation of NGOs but provides no space for the participation by these communities themselves.
- The whole process of policy formulation is faulty because the government has unilaterally brought it without consulting the communities in questions and NGOs whose role it recognises in implementation of its various programmes.

Rights of Dalits and Tribals in National and International Laws

While nearly every country has a history of persecuting particular ethnic, racial, or religious groups, India has a unique history of discrimination against Dalits and Tribal people, who are products of religious ideology and colonialism. Legally, discrimination against Dalits, also known as “untouchables”, has been banned since the Indian Constitution was put into effect on January 26, 1950. Article 17 of the Constitution abolishes “untouchability” and makes any form of its practice punishable by law. In order to make this article more justiciable, a series of acts have been passed throughout the past fifty years. This includes the Untouchability (Offences) Act (1955), which was amended in 1976 and renamed the Protection of Civil Rights Act 1955, as well as the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) (1989), which expands the protection of Dalits to other lower castes and tribes that historically have faced discrimination. These Acts serve as social safeguards that explicitly secure the Dalits and Tribals right to life (Article 21) and the associated livelihoods that fall under the right to life.

Despite these efforts, Dalit and Tribal discrimination continues to this day, largely because the majority of Dalit and Tribal people have little political power and are often unaware of these Acts that protect them. In any case, general legal protection is given by Articles 15 (Prohibition of Discrimination on grounds of religion, race, caste, sex or place of birth) and 16 (Equality of Opportunity in matters of public employment), each of which are fundamental rights that explicitly express their pertinence to the Dalit, Scheduled Caste, and Scheduled Tribe people. Because even these fundamental rights were not being adequately secured, affirmative action schemes were created and codified in the Constitution to guarantee a political voice for Dalits and Tribals as well as equal access to employment. This includes

Article 46 - Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

Article 243D - Reservation of seats for Scheduled Caste and Scheduled Tribe in every Panchyat

Article 330 - Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People

Article 332 - Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States

Article 335 - Claims of Scheduled Castes and Scheduled Tribes to services and posts

Article 338 - National Commission for Scheduled Castes, Scheduled Tribes
There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

Article 340 - Appointment of a Commission to investigate the conditions of backward classes
Because Dalit and Tribal discrimination is a domestic issue, there is no international law that directly addresses their position. However, all of the international law surrounding right to life and right to work will provide protection for their access to livelihoods.

Compiled by Dr. Louis, People's Watch, Tamil Nadu

Notes

¹ <http://www.ebc-india.com/lawyer/articles/2004v6a4.htm> 19 November 2004.

² Ibid.

³ <http://www.indiatogether.org/education/const2001.htm> 19 November 2004.

⁴ See Section on Directive Principles of State Policy Article 48A. And Article 51 A(g) states that the “State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife in the country” and “ to protect and improve the natural environment including forests, lakes and rivers and wildlife, and to have compassion for the living creatures”.

⁵ <http://www.ebc-india.com/lawyer/articles/2004v6a4.htm> 16 November 2004

⁶ Ibid.

⁷ Ibid.

⁸ See <http://www.dinf.ne.jp/doc/english/intl/z15/z150071e/z1500704.htm#india> 22 November 2004.

⁹ See <http://www.worldenable.net/hongkong99/cluster1.htm> 22 November 2004

Section III: Appendices

Appendix One National Agriculture Policy

Ministry: Ministry of Agriculture

Department: Department of Agriculture and Co-operation

Date of Issue: July 28 2000

Source: <http://rrtd.nic.in/agriculture.html>

Structure of the National Agriculture Policy

- 1 Introduction
- 2 Sustainable Agriculture
- 3 Food and Nutritional Security
- 4 Generation and Transfer of Technology
- 5 Inputs Management
- 6 Incentives for Agriculture
- 7 Investments in Agriculture
- 8 Institutional Structure
- 9 Risk Management
- 10 Management Reforms

Acts, Programmes and Projects under the Policy

- A new Bill has been formulated and introduced in Parliament for replacing the existing Multi-State Cooperative Societies Act, 1984
- Grain Bank Scheme

Context / Background of the Policy

Agriculture is a way of life, a tradition, which, for centuries, has shaped the thought, the outlook, the culture and the economic life of the people of India. Agriculture, therefore, is and will continue to be central to all strategies for planned socio-economic development of the country. Rapid growth of agriculture is essential not only to achieve self-reliance at national level but also for household food security and to bring about equity in distribution of income and wealth resulting in rapid reduction in poverty levels.

Agriculture has also become a relatively unrewarding profession due to generally unfavourable price regime and low value addition, causing abandoning of farming and increasing migration from rural areas. The situation is likely to be

exacerbated further in the wake of integration of agricultural trade in the global system, unless immediate corrective measures are taken. [*As mentioned in the policy document, Introduction*]

However, the policy has been necessitated by the fact that there has been a general decline in the growth of agriculture after the Green Revolution of 70s. The rural economy has been collapsing due to the linkage of the domestic economy with the global systems and the question of livelihood for millions of small and marginal farmers, landless labourers needs attention in continuing crop failures, declining soil fertility, and environmental degradation. The farm sector has been witnessing a general crisis across the spectrum and has contributed to large scale unemployment and growing poverty impacting the overall socio-economic infrastructure of the nation.

Target Group(s)

Mainly farmers and those related to agriculture sector but will impact all the sectors because of importance of agriculture in national economy.

Policy Goals / Objectives

The National Policy on Agriculture seeks to actualise the vast untapped growth potential of Indian agriculture, strengthen rural infrastructure to support faster agricultural development, promote value addition, accelerate the growth of agro business, create employment in rural areas, secure a fair standard of living for the farmers and agricultural workers and their families, discourage migration to urban areas and face the challenges arising out of economic liberalization and globalisation. Over the next two decades, it aims to attain:

- A growth rate in excess of 4 per cent per annum in the agriculture sector
- Growth that is based on efficient use of resources and conserves our soil, water and bio-diversity;
- Growth with equity, i.e., growth which is widespread across regions and farmers;
- Growth that is demand driven and caters to domestic markets and maximises benefits from exports of agricultural products in the face of the challenges arising from economic liberalization and globalisation;
- Growth that is sustainable technologically, environmentally and economically

Salient Features

- The policy will seek to promote technically sound, economically viable, environmentally non-degrading, and socially acceptable use of country's

natural resources – land, water and genetic endowment to promote sustainable development of agriculture.

- Survey and evaluation of genetic resources and safe conservation of both indigenous and exogenously introduced genetic variability in crop plants, animals and their wild relatives will receive particular attention.
- Sensitisation of the farming community with the environmental concerns will receive high priority. Balanced and conjunctive use of biomass, organic and inorganic fertilizers and controlled use of agro chemicals through integrated nutrients and pest management (INM & IPM) will be promoted to achieve the sustainable increases in agricultural production.
- Special efforts will be made to raise the productivity and production of crops to meet the increasing demand for food generated by unabated demographic pressures and raw materials for expanding agro-based industries.
- Development of animal husbandry, poultry, dairying and aqua-culture will receive a high priority in the efforts for diversifying agriculture, increasing animal protein availability in the food basket and for generating exportable surpluses. An integrated approach to marine and inland fisheries, designed to promote sustainable aquaculture practices, will be adopted.
- A major thrust will be given to development of rainfed and irrigated horticulture, floriculture, roots and tubers, plantation crops, aromatic and medicinal plants, bee-keeping and sericulture, for augmenting food supply, exports and generating employment in the rural areas.
- A very high priority will be accorded to evolving new location-specific and economically viable improved varieties of agricultural and horticultural crops, livestock species and aquaculture as also conservation and judicious use of germplasm and other biodiversity resources.
- Mainstreaming gender concerns in agriculture will receive particular attention. Appropriate structural, functional and institutional measures will be initiated to empower women and build their capabilities and improve their access to inputs, technology and other farming resources.
- Adequate and timely supply of quality inputs such as seeds, fertilizers, plant protection chemicals, bio-pesticides, agricultural machinery and credit at reasonable rates to farmers will be the endeavour of the Government.
- Development, production and distribution of improved varieties of seeds and planting materials and strengthening and expansion of seed and plant certification system with private sector participation will receive a high priority. A National Seed Grid will be established to ensure supply of seeds especially to areas affected by natural calamities. The National Seeds Corporation (NSC) and State Farms Corporation of India (SFCI) will be restructured for efficient utilization of investment and manpower.
- Consequent upon dismantling of Quantitative Restrictions on imports as per WTO Agreement on Agriculture, Commodity-wise strategies and arrangements for protecting the grower from adverse impact of undue price fluctuations in world markets and for promoting exports will be formulated. The domestic agricultural market will be liberalized and all controls and

regulations hindering increase in farmers' income will be reviewed and abolished to ensure that agriculturists receive prices commensurate with their efforts, investment.

- Rural electrification will be given a high priority as a prime mover for agricultural development. The quality and availability of electricity supply will be improved and the demand of the agriculture sector will be met adequately in a reliable and cost effective manner.
- Emphasis will be laid on development of marketing infrastructure and techniques of preservation, storage and transportation with a view to reducing post-harvest losses and ensuring a better return to the grower. Setting up of agro-processing units in the producing areas to reduce wastage, especially of horticultural produce, increased value addition and creation of off-farm employment in rural areas will be encouraged.
- Indian agriculture is characterized by pre-dominance of small and marginal farmers. Institutional reforms will be so pursued as to channelize their energies for achieving greater productivity and production. The approach to rural development and land reforms will focus on the following areas:
 - o Consolidation of holdings all over the country on the pattern of north western States.
 - o Redistribution of ceiling surplus lands and waste lands among the landless farmers, unemployed youth with initial start up capital;
 - o Tenancy reforms to recognize the rights of the tenants and share croppers;
 - o Development of lease markets for increasing the size of the holdings by making legal provisions for giving private lands on lease for cultivation and agri business;
 - o Updating and improvement of land records, computerization and issue of land pass-books to the farmers; and
 - o Recognition of women's rights in land.
- National Agriculture Insurance Scheme covering all farmers and all crops throughout the country with built in provisions for insulating farmers from financial distress caused by natural disasters and making agriculture financially viable will be made more farmer specific and effective.
- The objective will be to engage in a meaningful continuous dialogue with the external environment in the changing scenario and to have on-line and real time system of 'Agriculture on line' capacity to analyse the signals emanating from the farms and the markets for the benefit of the farmers.

Limitations

- The policy in general is geared towards developing agriculture on the lines of *industrial farming model*, however, the policy lacks in developing a plan for creation of the required infrastructure.
- The foremost priority of the policy is to develop agriculture to be able to cater to the manufacturing sector rather than develop policy measures to

provide employment and nutritional security to the millions of marginal farmers and landless labourers in stress due to repeated crop failures.

- The emphasis on the application of genetic engineering and biotechnology seems to be ill conceived. The emphasis is more on the development of new location-specific and economically viable improved varieties of agricultural and horticultural crops, livestock species and aquaculture but less on the conservation and judicious use of existing germ stock of seeds, cattle and other biodiversity resources which are more resistant to germs and suited to Indian conditions. There has been no learning from the past experiences of GM cotton seeds in Karnataka, Andhra, and Maharashtra where farmers have suffered immensely.
- The emphasis on technology without introducing strict measures for preventing contamination of natural seed reserves and indigenous resources is a measure lacunae which in the long run is detrimental to the health of overall environment and ecology.
- The emphasis on the public-private partnership in all the sectors of agriculture without any safeguards are a dangerous proposition. The policy seems to have ignored the experiences of the farmers in Andhra Pradesh and Karnataka.
- The establishment and strengthening of existing micro-credit mechanisms and micro-finance institution may provide an *easy access to credit* to women below poverty line. But no supportive measures are addressed by the Policy to help borrowers avoid the problem of debts.
- The policy doesn't provide provisions and fails to evolve a mechanism for the further revisions in a participatory process involving all the concerned parties to the process.

Appendix Two

National Rural Employment Guarantee Act, 2004 [Draft]¹

National Advisory Council, Government of India

Date of Issue: September 2004

Source:<http://www.sacw.net/Labour> and

<http://nac.nic.in/concept%20papers/Rural%20Employment%20.pdf>

Structure of the National Rural Employment Guarantee Act

1. Short title, extent and commencement
2. Definitions.
3. Guarantee of employment to all households in rural areas.
4. Central Council and its functions.
5. State Council and its functions.
6. Officers responsible for implementation of the Programme.
7. Essential features of the Programme.
8. Conditions for guaranteed employment.
9. Entitlements of labourers employed under the Programme.
10. Unemployment allowance.
11. Functions of the Programme Officer and Gram Panchayat.
12. Transparency and accountability.
13. Penalties for non-compliance with the provisions of the Act
14. Extension of work entitlements
15. Establishment and utilisation of National Employment Guarantee Fund.
16. Establishment and utilisation of State Employment Guarantee Funds.
17. Delegation of powers.
18. Act to have overriding effect.
19. Power to make Rules.

Acts, Programmes and Projects under the Policy

- National Rural Employment Guarantee Act, 2004

Context/ Background of the Policy

General equality and positive discrimination in favour of women are stipulated in the Indian Constitution. The *National Commission for Women* was set up in 1990 to safeguard the rights and entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution have provided *reservation of seats in the local bodies* of Panchayats and Municipalities. Plans and programmes aiming at women's advancement in different spheres have been carried out. Internationally, India has

ratified various *human rights instruments* committing to secure equal rights of women e.g. CEDAW. However, *gender disparity* together with social stereotype and discrimination still exists. Consequently, the access of women—particularly those belonging to weaker sections including SC/ ST/ OBC and minorities — to education, health and productive resources is inadequate. Women remain largely marginalised, poor and socially excluded.

Target Group(s)

It extends to all rural areas of India, including Fifth and Sixth Schedule areas, except the State of Jammu and Kashmir. In particular the communities living below poverty line who are mainly landless labourers, marginal farmers, indigenous people, scheduled castes and backward classes.

Policy Goals/ Objectives

Guarantee of employment to all households in rural areas - Every household in the rural areas of India shall have a right to at least 100 days of guaranteed employment every year for at least one adult member, for doing casual manual labour at the statutory minimum wage, and to receive the wages thereof within 7 days of the week during which work has been done, in accordance with the provisions of this Act and the Programme made there under.

Salient Features

- Every adult person who (i) resides in any rural area; (ii) is willing to do casual manual work at the statutory minimum wage; on registration with Gram Panchayat will be issued a job card with photograph which would entitle her/him to employment at the statutory minimum wage, in accordance with the Programme for the time being in force, for as many days as the applicant requests, up to 100 days per household in a given financial year within 15 days of submitting his application with the assigned authority for the purpose.
- Persons getting employment under this programme will be entitled for free of charge medical treatment, and a daily allowance not less than half of the statutory minimum wage of agricultural labourers. In case of death or disability of such a person, an ex-gratia payment shall be made to his legal heirs in the manner laid down in the Workmen Compensation Act.
- These provisions will be made available at worksites, (1) safe drinking water; (ii) shade for small children and periods of rest; (iii) a first-aid box with adequate material for emergency treatment of minor injuries, strokes, body aches and other health hazards connected with the work being performed and (iv) crèches for women with one of them especially assigned to look after children if more than 20 women employed at the worksite.
- Wages may be paid in cash or in kind or both, taking into account the guidelines and recommendations of the State Council on this matter. In case of any

delay in the payment of wages, that is, in the event where wages are paid later than 7 days beyond the week during which work has been done, labourers shall be entitled to the payment of compensation as per the Payment of Wages Act. A proportion of the wages, not exceeding 5 per cent, may be deducted as a contribution to welfare schemes organized for the benefit of labourers employed under the Programme, such as health insurance, accident insurance, survivor benefits, maternity benefits and social security schemes.

- In no circumstances shall there be any discrimination on the basis of gender in the provision of employment or the payment of wages, as per the provisions of the Equal Remuneration Act 1976.
- If any person who doesn't get employment within 15 days of date of application state government will be liable to pay an unemployment allowance as fixed by the Act.
- District Collector and all implementing agencies in the District shall be responsible for the funds placed at their disposal by the Central Government through the State Government and will maintain the accounts of employment and expenditure in such manner as may be prescribed. This will have to be made available to anyone requiring the information on these programmes.
- Any Programme Officer who has, without any reasonable cause, failed to carry out his or her obligations under this Act, will be liable upon summary conviction to a fine of not less than Rs 1,000 or imprisonment up to six months or both.
- Under this Act a non-lapsable fund to be called the National Employment Guarantee Fund at centre and State Employment Guarantee Fund at state levels will be established to ensure the implementation of the programme.

Limitations

- The proposed Act only covers millions of people in rural areas and excludes those in urban areas.
- There has been questions raised on the finances required for the scheme, the draft is silent on the sustainability of the programme.
- The period of 100 days may not be adequate and the effort should be to make it applicable for 365 days.
- There is no obvious benchmark for the "unemployment Allowance".
- There are some doubts that the draft in its current form may not achieve its objectives given the problems with the Employment Guarantee Scheme of Maharashtra on which this Act is modelled.
- The provision to make timely payments within a week is a welcome step but provisions for some advance after a day's work in time of need would be of immense help for rural poor.
- Provisions for some wage payment in kind should be made mandatory rather than the leaving vagueness in the scheme.

- The Act needs to make tighter provisions which would prevent government from finding loopholes and escape routes in implementation process and divert funds for other purposes or avoid payment of unemployment allowance.
- There should be no limit on the beneficiaries per household under the Act because it may result in only men getting the work and women being left out of the process.

Notes

¹ Please note that this summary is based on the draft prepared by the national Advisory Council based on which Government of India tabled an employment Bill in December 2004. Since at the time of preparation of this summary the Bill wasn't tabled it has not been included here.

Appendix Three

National Policy on Resettlement and Rehabilitation For Project Affected Families – 2003

Ministry: Ministry of Rural Development
Department: Department of Land Resources

Date of issue: 17th February 2004

Source: <http://rural.nic.in/rrpolicy.doc>

Policy Area: Resettlement and Rehabilitation

Structure of the National Policy on Resettlement and Rehabilitation For Project Affected Families – 2003

Chapter I: Policy— Preamble

Chapter II: Objective of the Policy

Chapter III: Definitions

Chapter IV: Appointment of Administration and Commissioner For Resettlement and Rehabilitation and Their Powers and Functions

Chapter V: Schemes/ Plans For Resettlement and Rehabilitation

Chapter VI: R&R Benefits For Project Affected Families

Chapter VII: Dispute Redressal Mechanism

Chapter VIII: Monitoring Mechanism

Context/ Background of the Policy

Compulsory acquisition of land for public purpose displaces people, forcing them to give up their home, assets and means of livelihood and leading to psychological and socio-cultural consequences. In India, some States and Central Ministries/ Departments have their own Policies and Guidelines for Resettlement and Rehabilitation (R&R). However, a national policy was not formulated till the National Policy on Resettlement and Rehabilitation for Project Affected Families – 2003 (the Policy), which lays down basic broad guidelines and executive instructions for guidance in the shape of a Policy at national level.

Target Groups

The Policy covers *all* Project Affected Families (PAFs). Special care is given to the resource-poor sections in particular *Scheduled Tribes* (ST).

Policy Objectives

The objectives of the Policy are:

- To minimise displacement and to identify non-displacing or least displacing alternatives;

- To plan the resettlement and rehabilitation of Project Affected Families, including special needs of the Tribals and vulnerable sections;
- To provide better standard of living to PAFs; and
- To facilitate harmonious relationship between the Requiring Body and PAFs through mutual cooperation ;

Salient Features of the Policy

- The Policy provide benefits to PAFs belong to BPL and non-BPL but only applicable to Projects displacing 500 families or more en masse in plain areas and 250 families en masse in hilly areas, Desert Development Programme (DDP) blocks, and areas mentioned in Schedule V and Schedule VI of the Constitution of India. PAFs.
- Apart from properties loss (houses and agricultural land), R&R benefits are also provided to compensate (non-) agricultural labourers, rural artisan/ small traders, self-employed persons and construction of cattle shed.
- SC and ST enjoying reservation benefits in the affected zone shall be entitled to get the reservation benefits at the resettlement zone. Each PAF of ST category shall be resettled close to their natural habitat in a compact block; and be given preference in allotment of land, additional financial assistance, land free of cost for community and religious gathering, fishing rights in the river/pond/dam in the reservoir area and 25% higher R&R benefits in monetary terms if resettled out of the district/ taluka.

Limitations

- The Policy does not address families affected by projects in smaller scale.
- Ceilings are imposed on the actual allotted land: for houses, 150 sq. m. of land in rural areas and 75 sq. m. of land in urban areas; for agricultural land, a maximum of one hectare of irrigated land or two hectares of un-irrigated land/cultivable waste land but subject to availability of Government land in the districts.
- For compensation, ambiguities arise out of the terminology “financial assistance”, the mode of which can be either grants or loans.
- Training facilities for self-employment projects at the resettlement zone may not be an appropriate support to PAFs.
- The composition, power and functions of the Grievance Redressal Cell are not spelt out in the Policy but subject to the Appropriate Government, which can mean either Central or State Government.
- Since most members of the SC/ST and family BPL are illiterate and not well educated, they may not fully understand their rights in the Policy. More efforts should be made to guarantee that all these vulnerable groups can enjoy the R&R benefits.

Rights of Displaced People in National and International Laws

The fundamental rights described in both the right to life summary and the right to adequate standard of living summary have immediate relevance to the protection of displaced people. However, because of India's often aggressive moves to develop industry and technology, complimentary acts have been ratified to ensure that these economic developments (often in the form of land acquisition) do not exploit the inevitably displaced people. Challenges to these acts have been raised by those who find them to be a violation of the former fundamental right to acquire and hold property.¹ Examples of displacement can be seen throughout Indian history from pre-independence privatisation of land to the recent construction of the Narmada dam. The relevant acts include the Land Acquisition Act (1894), the Slum Clearance Board Act (1956), the Land Ceiling Act (1960, repealed in 1998), the National Housing Policy (1994), the Draft National Slum Policy (1999), the Land Leasing Act, and the Land Donation Act.

The Land Acquisition Act - Allows land acquisition in the national interest for water reservoirs, canals, plants, fly-ash ponds, transmission lines and highways to be carried out by the respective States, in accordance with its provisions. Compensation is in cash for the loss of land, other productive assets (such as standing crops and fruit and fodder trees), house plots and residences.²

National Housing Policy - Highlights the prevention of forced eviction, promotion of in-situ upgradation, slum renovation and conferment of occupancy rights.

Draft National Slum Policy - Advocates the integration of informal settlements in the city and the right of citizens to participate in decision-making.

There is no specific international convention that protects internally displaced people (IDP's), but if the country is in armed conflict either internally or externally, international humanitarian law is applicable. This explicitly states that nobody can compel people to leave their homes unless the State finds their security in immediate danger.³ While India maintains some protection extraneous to that given by international law, protecting displaced people remains problematic without a national policy to hold the State federally accountable.

Compiled by Dr. Louis, People's Watch, Tamil Nadu

Notes

¹ The 42nd Amendment changed this fundamental right to a less powerful legal right.

² <http://www.his.com/~mesas/resindia.htm> 22 November 2004

³ <http://www.icrc.org/Web/eng/siteeng0.nsf/html/5DHD82> 22 November 2004

Appendix Four

Right to Information Bill, 2004

Presented by Govt of India on December 17 2004 the draft prepared by National Advisory Council

Department: Department of Personnel and Training

Date of Issue: 2004

Source:[http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-90855&als\[theme\]=Freedom%20of%20Information](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-90855&als[theme]=Freedom%20of%20Information)

Structure of the Right to Information Bill, 2004

Chapter I Preliminary

1. Short title, extent and commencement
2. Definitions.

Chapter II Right To Information And Obligations Of Public Authorities

3. Right to information.
4. Obligations of public authorities.
5. Designation of Public Information Officers.
6. Request for obtaining information.
7. Disposal of requests.
8. Exemption from disclosure of information.
9. Grounds for rejection to access in certain cases.
10. Severability.
11. Third party information.

Chapter III The Central Information Commission

12. Constitution of Central Information Commission.
13. Term of office and conditions of service.
14. Removal of Information Commissioner or Deputy Information Commissioner.
15. Powers and functions of the Commission.
16. Appeal.
17. Penalties.

Chapter IV Miscellaneous

18. Protection of action taken in good faith.
19. Act to have overriding effect
20. Bar of jurisdiction of courts.
21. Act not to apply to certain organisations.
22. Monitoring and reporting.

23. Central Government to prepare programmes.
24. Power to make rules by Central Government.
25. Power to make rules by competent authority.
26. Laying of rules.
27. Power to remove difficulties.
28. Repeal.

Acts, Programmes and Projects under the Policy:

- Earlier Freedom of Information Act, 2002
- Right to Information Act, 2004 (proposed)

Context / Background of the Policy

Right to information is a basic requirement for the good governance and to ensure accountability and transparency in the administration. The Supreme Court has interpreted it on many occasions to be enshrined in Art 19 (1), which says everybody has the Right to Freedom of Speech and Expression. The government of India under the pressure from National Campaign for Peoples' Right to Information (NCPRI) has earlier enacted Freedom of Information Act in 2002. However, its provisions were far from satisfactory and the law mostly remained on paper and was never put to practice. NCPRI has been campaigning since then for an amendment which didn't happen and the draft Bill couldn't be put to parliament because of various reasons in past and erstwhile National Democratic Alliance (NDA) government kept shifting the dates for its amendment. Finally in December 2004 the United Progressive Alliance (UPA) government introduced a version of the draft bill prepared by National Advisory Council.

Target Group(s)

Citizens of India, Public authorities and especially the poor and marginalized sections of population.

Policy Goals / Objectives

- to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities.
- to promote transparency and accountability in the working of every public authority,
- the constitution of a Central information Commission and for matters connected there with or incidental there to.

Salient Features

- Every public authority shall maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
- Publish before the commencement of this Act, the particulars of its organisation, functions and duties; the powers and duties of its officers and employees; the monthly remuneration each of them receive, decision making processes and any special procedures for consultation etc.
- Public Information Officer appointed under the Act on receipt of a request in due procedure shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9 of the Act with due intimation to the applicant.
- The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act. The Commission shall consist of- the Information Commissioner; and such number of Deputy Information Commissioners not exceeding ten as may be deemed necessary appointed by the President on the recommendation of a committee.
- Any person who, does not receive a decision within thirty days of his application, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer in each public authority. A second appeal against the decision can be made within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission.
- Any Public Information Officer who is in default shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

Limitations

- Though this Act is to amend the previously existing Freedom of Information Act, 2002 it doesn't include private sector and NGOs within its ambit which limits its efficacy.
- It further lays down a big list of exemptions from this Act which have a bearing on the overall functioning of the government.
- The Act keeps the functioning of the security agencies and some other agencies out of its ambit which is not at all required because of the fact that many a times these agencies are involved in gross abuses of human rights.

Appendix Five

National Environment Policy 2004 (NEP 2004) (Draft)

Ministry: Ministry of Environment and Forests

Date of issue: 2004

Source: <http://envfor.nic.in/nep.htm>

Structure of the National Environment Policy 2004:

1. Preamble
2. Key Environmental Challenges: Cases and Impacts
3. The Objectives of NEP 2004
4. Principles
5. Strategies and Actions

Policies, Acts, Programme and Schemes under the Policy

- National Forest Policy, 1988,
- National Conservation Strategy and Policy Statement on Environment and Development, 1992; Policy Statement on Abatement of Pollution, 1992
- National Water Policy, 2002,

Context/ Background of the Policy

The present national policies for environmental management are contained in various policies. Despite these policy documents a need for *a comprehensive policy statement* has been evident for some time in order to infuse a common approach to the various sectoral, cross-sectoral, including fiscal, approaches to environmental management. As the development challenges have evolved, there is a need to review the earlier objectives, policy instruments, and strategies.

Target groups

National Environment Policy concerns *all* sectors of the country but practically the tribals and the *poor communities*, which are most dependent on environmental resources for their livelihoods.

Policy Goals/ Objectives

- *Conservation* of critical environmental resources
- To ensure *equitable access* to environmental resources and quality
- To ensure judicious use of environmental resources to meet the needs and aspirations of present and future generations
- To integrate environmental concerns in economic and social development
- To ensure efficient use of environmental resources in the sense of reduction

- To apply the principles of *good governance* to the management and regulation of use of environmental resources

Salient Features

- NEP – 2004 includes principles derived from policy pronouncements, jurisprudence, international environmental law, or International State practice to guide the activities of different actors in relation to this policy. Some of them are:
 - o Human beings are at the centre of concerns for sustainable development and are entitled to a *healthy* and productive life in harmony with nature (right to health).
 - o The *right to development* must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
 - o *Environmental protection* is an integral part of the development process so as to attain *sustainable development*.
 - o Precautionary Approach
 - o Entities with “Incomparable” values
 - o Economic Efficiency: “Polluter Pays” and cost minimisation
 - o Equity e.g. “procedural equality” and “intra-generational equality”
 - o Decentralisation: transfer of power from a Central Authority to State and Local Authorities
- Forest dwelling tribes are given legal recognition of the traditional right so as to secure their livelihoods, reduce conflict with the Forest Departments, and provide long-term incentive to conserve the forests.

Limitations

- The right of people to participation in decision-making, review of policy and review of implementation should be recognised.
- NEP- 2004 does not provide any solid action to ensure the equitable access to environmental resources and quality for all sections of society.

Environmental Rights in National and International Laws

The broad scope of Article 21 has been ruled by the Supreme Court to implicitly include the right to a wholesome environment.¹ Along with this ruling, the Constitution explicitly guarantees in Article 48A:

The State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country.

And Article 51A charges each citizen:

To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures....

Article 39 also provides pertinent litigation, namely in its first three addendums:
The State shall, in particular, direct its policy towards securing –
that the citizen, men and women equally, have the right to an adequate means of livelihood;
that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

Articles 48A, 51A, and 39C serve as the primary Constitutional provisions for environmental protection. In effect, these articles provided the Constitutional foundations for the creation of the Department of Environment (1980), which went on to become the Ministry of Environment and Forests (1985). Currently, there are a vast number of laws dealing with particular parts of the environment or particular matters that have environmental impact.

Articles 39a and 39b mandate equality in access to livelihoods and material resources and have been used to ensure individual rights to environmental resources. These articles can be utilized to mandate equal distribution of land and resources in areas typically exploited by a monopolizing industry. In practice, state jurisprudence has dominantly shaped schemes for control of material resources and the regional courts are often the final authority in determining the “common good.”

India’s course towards environmental protection has been shaped by international movements. The Forty-Second Amendment to the Constitution (1977), which includes Articles 48 and 51, was a response to the Stockholm Declaration and the International Conference on Human Environment (1972). The UN now recognizes the National Environmental Council to be the key sustainable development coordinating mechanism in India.² International organizations have worked closely with the Indian government and Indian NGOs to construct environmental policy that is consistent with Agenda 21³, the worldwide environmental plan drafted at the United Nations Conference on Environment and Development (UNCED) in 1992. While India has been seen favourably by the international community for ratifying nearly every multilateral environmental convention⁴, implementation remains problematic.

Compiled by Dr. Louis, People’s Watch, Tamil Nadu

Notes

¹ The 1991 Supreme Court ruling in *Subash Kumar and M.C. Mehta v Union of India* articulate Article 21's protection of a wholesome environment and the need for the government to proactively work to improve the plight of the world environment.

² See <http://www.un.org/esa/earthsummit/india-fp.htm> 6 November 2004.

³ See <http://www.un.org/esa/sustdev/documents/agenda21/index.htm> 7 November 2004.

⁴ See <http://www.un.org/esa/agenda21/natlinfo/countr/india/inst.htm#law> 7 November 2004.1