

SHADOW REPORT

**On
Government of India's II, III, IV & V
Combined Report on ICESCR**

**A Coalition Report of
152 NGOs in India in Partnership
with ActionAid**

**Submitted to:
Committee on Economic, Social and Cultural Rights, Geneva, April 2008**

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Preface

In the current globalised economy and shrinking state role, the importance and need to engage with the international legal regime to advocate for better human rights based development is more pronounced. ActionAid enjoys a special consultative status with the Economic and Social Council (ECOSOC) and has used this as an opportunity to facilitate a process of putting together a shadow report.

Shadow reports offer the opportunity to bring people's voices against human rights violations in their country at the international legal fora. This in turn builds pressure on the countries to take full cognisance of the violations and make way for the required social justice. The report preparation is also an opportunity to constructively engage with the Government and build solidarity with other civil society groups to improve human rights conditions. We hope for such an effort to fructify.

We held elaborate consultations (from December 2007 to March 2008) to examine each of the rights enshrined in the ICESCR in the context of the identified social groups (fisherfolk, dalits, indigenous communities, Muslims, people living with HIV&AIDS and the urban poor). These consultations were held with representatives from grass-roots NGOs, community based groups, directly affected community members and organic intellectuals who have been supporting ActionAid and its partners. We jointly examined India Government's combined (II to V) report on economic, social and cultural rights submitted in 2006, identified the gaps therein, shared the violations against each of these rights with the respective social groups and suggested recommendations for an improved human rights situation. This Shadow Report is thus a coalition report of 152 organisations, including ActionAid.

The report was submitted on 1 April 2008 to the Committee on Economic, Social and Cultural Rights. We now bring this report in print for wider circulation and sharing. We wish to admit of the few changes that had to be made to rectify typological errors and minor language edit; we have also taken liberties to add three footnotes (126a, 126b, 187a) as the information was not available then, during the submission period. But for the said changes, the entire body of the text has been retained. This report can be accessed at <http://www2.ohchr.org/english/bodies/cescr/cescrs40.htm>

Policy Unit

ActionAid India
Bangalore

Executive Summary

- I. ActionAid India works in 24 states and 2 union territories of India along with 178 partners. We have more than three and a half decades of experience working on issues of the impoverished. Every five years we review our work and prepare a new strategy paper for our work in the country. Through this process of evolution and experiential learning we now work primarily with the excluded sections of the Indian population. We focus on the dalits, tribals, Muslims, urban poor, and most backward communities, especially the fisherfolk. We espouse the cause of women, children and persons with disability and in all our work we use the rights based approach.
- II. We believe that the Constitution of India is a marvelous document, especially in so far as the Human Rights of Citizens are concerned. The chapters on Fundamental Rights and on the Directive Principles of State Policy together represent a high watermark so far as human rights are concerned. In addition, the instrumentality of public interest litigation accompanied with judicial activism created advanced human rights Jurisprudence of a pioneering nature, even at the global level. There have also been innumerable pieces of pro-people legislations supplemented through a plethora of policies, schemes and significant budgetary allocations.
- III. At the same time, all the above-mentioned achievements of the Indian State remain largely at the formal level and there remains a yawning gap between pious proclamations and the grounding of rights/entitlements. Even rights which have become highly tangible do not reach the hands of the most deprived and the most excluded and in this report it is this part of the story that we intend to share.
- IV. We must clarify, at the very outset that we believe in the Rule of Law. We are proud of democratic institutions like the Parliamentary democracy, the five-year election regime supervised efficiently by the Election Commission, the Executive led presently by a woman President and an Independent Judiciary led presently by a dalit Chief Justice. The ordinary people have always exercised their ballot with due diligence and often punished those who have forgotten constitutional promises and guarantees, be they in the realm of civil and political rights or economic, social and cultural ones.
- V. We have looked at the Second, Third, Fourth and Fifth Combined Report of the Indian State submitted in October 2006 to the Committee of Economic, Social and Cultural Rights very carefully. We conducted eight national level consultations¹ involving a total of 152 organisations in eight

¹ Eight consultations were held with different social group such as Fisherfolk (December 16–18, 2007), Tribals (January 8–10, 2008), Urban Poor (22–24 January, 2008), People living with HIV&AIDS/sexuality minorities (30 January–01 February, 2008) Dalits (5–7 February, 2008), Muslims (18–20 February, 2008), Women (4–6 March, 2008) and Indigenous communities from eight States in the North East (25–27 March, 2008)

different parts of India (see Annexure II) through a process of intense participation.² We explained the UN processes on the ICESCR. We jointly examined the Indian State report, took note of the fact that this report was submitted after a long gap of seventeen years, yet we welcomed it and went on to identify the gaps. We listened carefully to reports from the grassroots and took note of all relevant information and concerns that demonstrated violations and non-compliances, either through state omission or commission.

- VI To understand the core submission of this report, it is critical to emphasise that each social group experiences social exclusion for a reason which is very unique to that particular social group. Thus, the dalits experience untouchability and discrimination and their greatest humiliation is the denial of equality and dignity. The tribals experience unprecedented displacement from their ancestral homes, often deep in the forest with their own unique civilisational ways of living in harmony with nature as food gatherers or hunters. What they cherish very specially is their identity and respect for their customary practices and way of life. As for the Muslims, the richer sections are in Pakistan and the impoverished are largely in India. Their affinity to India is constantly questioned by communal forces and their human security is so precarious that unprecedented ghettoisation is currently on, especially in Western India. The fisherfolk are under constant threat of eviction from their traditional homestead, despite laws that recognise customary rights and guarantee in situ residence without disturbance. Among the farmers suicide has become a new epidemic with their agricultural operations having become unviable.
- VII. The common factor cutting across all these social groups is that they were self employed people. They lived with dignity and asked for little from the state. They now find that globalisation comes along, destroys their means of livelihood, and the State sometimes pretends to rehabilitate them after imposing massive involuntary displacement, uses force and violence and even denies every civil liberty, causing unprecedented destitution, breakdown of families, pushing men into unfavourable migratory patterns, denying even a subsistence wage, exposing women and little girls to trafficking, starvation, HIV and sexual abuse and rendering children homeless, often on the streets and abandoning the aged and the sick to conditions of absolute poverty, insecurity and unquantifiable risk.
- VIII. A major finding of our consultative process, therefore, was the discovery that the overwhelming majority of the excluded people of India were those who enjoyed the right to life through the deployment and utilisation of their own skills, abilities and capabilities. They never depended on state sponsored largesse. They had their own dignified livelihood. Indeed their forms of livelihood

2 Participants included representatives from the Non Government Organizations, representatives from the Community Based Organizations, survivor victims of violations, Human Rights activists, and organic intellectuals. Methodology of consultation included a three-day consultation process, sharing of the international legal regime, sharing the India Report with small group discussions on each of the rights examining the violations vis-à-vis the social groups consulted. Women, children and persons with disabilities were addressed as cross-cutting across groups. A separate consultation with women was additionally held.

not only varied widely but were experienced through myriad pluralistic forms of sustainability that ranged from access to natural resources, to common property resources of the sea, the lakes, the rivers, the streams, the forests, and above all, the land itself. They had opportunities for self employment through the use of their traditional skills, occupations, employments, services, vocations and other avenues of satisfying their livelihood needs.

- IX. And then comes the State and through it, and often indeed with it, come the agents of destruction. We are now referring to the destruction of livelihood in which the State is either a silent spectator or an active promoter. Sometimes, the State does it directly and at other times, through the instrumentality of private big businesses and their henchmen, especially the contractors and sub-contractors. They have consistently and in quick succession destroyed one form of livelihood after another without having any capacity whatsoever to create alternate conditions of livelihood that would provide even a modicum of human rights – let alone basic needs for human survival.
- X. Almost every single article of the convention stands violated. The number of people impacted is phenomenal. A cursory look at the numbers is illuminating. The informal sector consists of more than 420 million people. As percentage of the more than one billion population, the dalits constitute nearly 16.2%; the tribals 8.2%; the Muslims 13.4%; and the fisherfolk 1.2%. In addition, there are the small farmers, the weavers and other pauperised communities and all of them put together constitute the overwhelming majority of India. A creamy layer of insignificant proportion out of this vast humanity has benefited from the trickle down but that does not substantially alter the demographic profile of the excluded. We examine in disaggregated form the magnitude of the crisis that has hit the underbelly of 'Shining India' even as we march towards a double digit growth rate.

Structure of the Report: The report examines each one of Articles 1 to 15 from the perspective of the different social groups. The footnoting includes references to relevant general comments, to secondary literature, including government figures, and case studies shared during the consultations.

I. Right of Self Determination (Article 1)

Without prejudice to the declaration made by the Government of the Republic of India with reference to Article 1 of the Covenant regarding the words 'the right of self determination'. We submit that:

- a) While the right of self determination is so political in nature, we have found through our experience on the field that where conflicts around self determination issues emerge, the lives of ordinary people, including all their economic, social and cultural rights take a severe beating and all civil society processes to alleviate human suffering becomes impracticable because of the action/contra action of militants and the action/contra action of the security forces.
- b) We have seen this happening both in the North Eastern part of India and also in Jammu and Kashmir and more recently in Chattisgarh.
- c) Given the above mentioned interdependence indivisibility of all human rights, we strongly plead that:

The Government of India must explore constructive engagement strategies in order to creatively explore peaceful solutions to conflict situations even with those seeking 'self-determination'. The potential for finding solutions based on workable arrangements of 'autonomy' as provided for in Article 370 and also Part X of the Constitution through Schedules V and VI and the like, must be productively fostered.¹

1. The birth of many a terrorist organization is located within the demand for self-determination. After many years of bloodshed, quite often the state and non-state actors sit together to explore political solutions which anchor around different forms of 'autonomy' arrangements. When such is the historical experience world over, why can't parties sit together during the infancy of demands for self-determination and make serious efforts to find constitutionally sustainable arrangements for autonomy and thus preempt civil strife, armed insurrection, anti-terrorist armed state action and bloodshed.

II. Right to Work (Article 6)

III. Right to Just and Favourable Condition of Work (Article 7)

IV. Right to Trade Union (Article 8)

1. The right to work recognises the ability of an individual and/or group to gain a living by work that he/she freely chooses and accepts¹ and thereby live with dignity.² Right to work also has to ensure the right of everyone to enjoy just and favourable conditions of work (Article 7), including the right to safe working conditions.³ Further, the right of an individual to work is inclusive of the right to collective bargaining exercised through the right to trade union (Article 8). Consultations held from December 2007 to March, 2008 with the purpose of understanding the economic, social and cultural rights vis-à-vis the seven different social groups⁴ disclosed an utter state of despair and helplessness.
2. Discrimination is a recurring phenomenon that the urban poor, dalits,⁵ people living with HIV & AIDS (PLHWA), sexuality minorities and Muslims are constantly confronted with to exercise their right to

1 Article 6, Paragraph 1 of International Covenant on Economic, Social and Cultural Rights,(ICESCR), 1966

2 General Comment 18, Paragraph 1 on Right to Work

3 General Comment 18 Paragraph 2 on Right to Work

4 ActionAid India emphasises on its work with the excluded social groups such as Fisherfolk, Tribals, Dalits, Muslims, Urban Poor, People living with HIV and AIDS and Sexuality Minorities. Eight consultations were held with different social group such as Fisherfolk (December 16–18, 2007), Tribals (January 8–10, 2008), Urban Poor (22–24 January, 2008), People living with HIV & AIDS/sexuality minorities (30 Jan–1February, 2008) Dalits (5–7 February, 2008), Muslims (18–20 February, 2008), Women (4–6 March, 2008) and Indigenous communities from eight States in the North East (25–27 March, 2008)

5 Shared during the Consultation on Dalits (5–7 February, 2008).

Percentage of unfilled jobs reserved for Scheduled Castes: (a) In a survey done in 204 schools in 2 blocks of Bargarh district namely, Jharbandh block and Paikmal block, Orissa it was found that out of 204 cooks only 5 cooks were Scheduled Castes.

(b) Mid day Meal Cooks: Gouramma and Nagamma from the Self Help Group (SHG) were selected to cook the meals daily in the mid day meals scheme run in Upper Primary School of Annaram village, Pangal *mandal*, *Andhra Pradesh*. But the backward caste children(also studying in the same school) and their parents opposed and complained to Head Master of the school that our children don't eat the mid day meals in the school as the cooking women are dalits. They threatened to put their wards in different schools, but SDEP project team and Dalit Samakhya's intervention helped and now, both the Scheduled Castes and the backward castes children study and eat together.

(c) In the Upper Primary School (UPS) of Suryapalli village, Andhra Pradesh for the mid day meals scheme two Scheduled Castes women named Gunamma and Sayamma were selected to cook meals. After few weeks the strength of the children decreased from 170 to 70. Only the Scheduled castes children were taking meals and all other backward castes children shifted to Chandravancha school, Kosgi *mandal* as dalit women were cooking meals. So, the Head master of that school replaced the two dalit women with backward Caste women named Suramma and Mallamma.

work.⁶ This is in violation of the State obligation.⁷ PLHA and the sexuality minorities encounter stigma – a far deeper degree of discrimination – in almost every walk of their life to the extent of loosing their existing livelihood options. The Muslims, in the current context, particularly find themselves driven to a ghettoised situation, affecting their livelihood options with a complete collapse of their right to just and favourable conditions in work.

3. Experiences at the grassroots and consultations with groups documented the destruction of their traditional and/or customary decent⁸ work in the complete absence of an alternative economy to absorb their skills and labour.
4. Displacement from their natural and ancestral homestead (especially among the coastal community,⁹ tribals and Muslims¹⁰) and from their settlements (urban poor¹¹) is a regular phenomenon that the social groups are constantly threatened with, unsettling their very survival. The Family, an important first social unit ensuring emotional sustenance for any individual, stands completely destroyed with the indiscriminate forced displacement that various social groups have been encountering. The dalits, on the other hand, in their struggle to unchain the caste shackles find it increasingly difficult to organise and challenge the nature of alienation in the face of imposing and speedy modernisation processes in their caste associated domain of work, particularly in the absence of access to other forms of decent work that enables them to breakaway from the historical wrong. Women, girls and persons with disability from among the different social groups have particularly shared the current trend of being forced into either unsafe work conditions or being denied access to work.

6 General Comment 18, Non discrimination paragraph 1

7 Ibid

8 The ILO defines decent work as productive work in which rights are protected, which generates an adequate income with adequate social protection. Decent work, report of Mr Juan Somavia, ILO Director General, 87th Session of the International Labour Conference, 1999.

9 Shared during consultation on Fisherfolk (16–18 December, 2007). Pulicat, the lake between Tamilnadu and Andhra Pradesh is a source of livelihood for the local fishermen. In 1985, 10 villages were evicted for Sriharikota rocket launch purpose. They were resettled at Pulicat. During rocket launching time, the fishermen are not allowed for fishing and they do not get any compensation for that either. On the other side of the Pulicat lake, Ennore thermal power station exists. This power station takes the lake water for consumption and emits hot and polluted water to the lake. As a result, the water level in the lake is decreasing; a lot of living beings are dying. There is no other source of livelihood for the fishing community.

10 Nawab Ali Sayyed is one of thousands of refugees who have been pushed into confinement in Juhapura. He does not have the nerve to go back to his house in Rakhial (a mixed industrial area). It was the first time riots took place there in 2002. His old home was closer to the city. He worked as a car dealer. After riots, his business is totally destroyed. His old Hindu associates don't do business with him any longer. His new house is in a totally Muslim area. He feels his family is more safe here. But, finding work is far more difficult in the ghetto. Now getting even 10 days of work in a month has become difficult for him. He runs his family by resorting to loans from friends and relatives. *Frontline*, Volume 20, Issue 20, 2003

11 Shared during consultation on Urban Poor (22–24 January, 2008). Tes Lal Verma Nagar, Patna has been settled for the last 35 years and is inhabited by 274 families. The Govt. gave notice to the slum residents to vacate the place for the purpose of making a platform under the Ganga Rail Pul Pariyojana in 2003. The Govt. proposed to relocate them in Shahpur, 20kms away from the city. Lack of employment in the relocation site has been the main cause for resistance by the slum dwellers and a case has been lodged by Jhuggi Jhopdi Sangharsh Morcha in September 2006 against relocation. The Govt. stopped its eviction initiative for the moment, but again in Jan 2008 the slum dwellers requested the additional district Magistrate to look into proper resettlement before displacement. In this case, if the Govt. succeeds in its efforts, the slum dwellers will face lack of employment without proper resettlement.

5. The State, in perseverance of its commitment to opening its economy to the global market, has insensitively pursued, through acts of commission and omission, policies, programmes and legislations¹² that have pushed a large number of people, especially women, into the informal economy (unorganised sector, as defined in the Indian context), that is already bursting with a large section of the population,¹³ with unfavourable and unjust conditions of work and complete absence of social security measures for them.¹⁴ The State must take immediate measures to enable workers, especially those who have entered the informal economy out of need to survive and not out of choice, to enjoy rights of workers that are assured in Articles 6, 7 and 8.
6. The coastal community¹⁵ – including artisanal fishing community and women engaged in large proportion as fish vendors, including dalit and Muslim casual labourers, have been at loggerheads with the State for having introduced retrogressive amendments in its policies¹⁶ as this violated the rights they enjoyed for generations. The Tsunami disaster of 2004 has been used as an opportunity, through use of coercion and fear, taking advantage of the helpless situation of the tsunami affected families, to shift the coastal community farther from their natural homestead (the coast), to locations and houses that stand in complete contrast to their cultural practice.¹⁷ State parties have particularly to take caution of its non-discriminatory principle in its post disaster¹⁸ responses. It is also an opportunity to do away with historical wrongs and respond to situations guided by the principle of

12 Fish Import Policy, Coastal Aquaculture Authority Act, 2005, Land Acquisition Act, 1894, amended in 1984, repeal of the Urban Land Ceiling Act.

13 According to the 61st round of National Sample Survey (NSSO) the majority of the Indian workforce, numbering around 422.6 million out of a total workforce of 457.5 million are in the unorganised sector. (Construction workers, Street Vendors, Sex workers, Domestic Workers, Rag Pickers, Weavers, etc) Some of the characteristics of unorganised labour are absence of fixed working hours, lack of security of employment and other social security benefits, low scales of organization, involvement of family labourers, lack of support from Government, etc., Second National Commission on Labour, 2002.

14 Unorganised Sector Social Security Bill, 2007 pending before the Parliament.

15 According to Second National Commission on Labour, the total working population in the fisheries sector in India is estimated to be around 6 million.

16 Since 1991, there have been 19 amendments to Coastal Zone Regulation Notification (CRZ) and around 3 corrigenda (up to 24, July 2003)

17 Shared during the consultation (Fisherfolk, 16–18 December, 2008). The Tamil Nadu Government issued an order (No. 172) after Tsunami in March 2005, giving the families whose houses were partly or fully damaged and were settled within 200 metres of high tide line, the choice to relocate themselves in a Tamilnadu Slum Clearance Board constructed house worth Rs1.5 lakh beyond 200 metres of high tide line. For those unwilling to relocate themselves, the Government would not have any responsibility of repairing their house. The World Bank funded this Tsunami Recovery Project and advocated for the relocation, showing the clause of safety housing as mentioned in M S Swaminathan's Coastal Zone Management report. Most of these families had no option but to accede to the Government proposal. The World Bank paved way for private investors by funding this project and removing the coastal community from the coast.

18 General Comment 3 on the nature of State Obligations.

social justice and equality. A quick review of the State response post-tsunami reveals otherwise.^{19,20} Added to this is the imposing response by the World Bank and ADB for their support to reconstruction without resolving the local conflict of in-situ rehabilitation vs. off the coast resettlement, laying bare their vested interest. This is in complete violation of the State Obligation to protect through an act of commission where the State parties ought not to enter into any bi-lateral agreement or an agreement with International Finance Institutions (IFIs) that fails to respect local concerns.

7. The coastal community condemned in no simple terms the recommendations by the M S Swaminathan Committee to review the Coastal Regulation Zone notification, 1991.²¹ Completely disregarding the demands²² made by the coastal community, the Ministry of Environment and Forests accepted the recommendations²³ of the Expert Committee and the State Governments are wasting no time in executing the Committee's recommendations.²⁴

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- 19 One of the shortcomings in the recovery process was lack of consultation with the affected communities, in particular of the poor and disadvantaged, in the planning, design, implementation and monitoring of relief, recovery and rehabilitation efforts. Lack of consultation and participation has in some cases led to resources being used in an inefficient manner. There is a further conflict between the desire to 'return to normal' and 'building better, i.e. making improvements to the previously existing institutions and infrastructure. ('Local Governance and Tsunami Recovery: Lessons learnt and Emerging Principles', *UNDP, January 2006*)
 - 20 The relief and rehabilitation packages framed for the tsunami affected in Tamil Nadu have brought to light instances of discrimination that deny dalits and adivasis their rightful rehabilitation. Arvind Narrain et al, Relief and Rehabilitation, *Economic and Political Weekly*, Vol 40, No 15, April, 2005
 - 21 The MS Swaminathan Committee was constituted in July 2004 to review and make recommendations with regard to implementation and amendments of the CRZ Notifications, 1991. The MS Swaminathan Committee report recommendations of April 2005 include
 - (i) Implementation of Integrated Coastal Zone Management Plan rather than a uniform regulatory approach.
 - (ii) Development along the coastal stretches based on the vulnerability of the coast, taking into account the natural and manmade hazards.
 - (iii) Inclusion of the ocean zone for regulation.
 - (iv) Setting up of Institute for Coastal Zone Management to address the policy and legal issues.
 - (v) Abatement of the pollution of coastal areas and marine waters in a time-bound manner.
 - (vi) Identification and mapping of the coastal eco-sensitive areas such as mangroves, corals, turtle breeding areas.
 - (vii) Development of coastal bioshield.
 - 22 The demands include a) The strict implementation of the original CRZ 1991 notification with immediate effect.
 - b) That all coastal norm violations under the CRZ 1991 notification be booked and penalised immediately.
 - c) That no step be undertaken to change coastal policy and norms without a process of due consultation with all stakeholders, including and in particular, fish workers and their democratic organizations.
 - d) That immediate steps be taken to recognise and uphold the traditional and customary rights of fisher people to housing, coastal lands as well as sea and marine resources. (Petition submitted to Honourable Minister, Ministry of Environment and Forest, New Delhi by Kerala Swatanthara Matsya Tozhilali Federation, (KSMTF), 2007.)
 - 23 In response to the Lok Sabha starred question No. 160 Minister of State for Ministry of Environment and Forests replied on 22.08.2007: "The Ministry of Environment and Forests had constituted an Expert Committee under the Chairmanship of Prof. M S Swaminathan in July, 2004, to review and make recommendations with regard to implementation and amendments if necessary, of Coastal Regulation Zone Notification, 1991. The Expert Committee submitted its report along with the recommendations, which were accepted by the Ministry of Environment and Forests in April, 2005".
 - 24 As per the current budget of the Government of TamilNadu, it has proposed to setup a desalination plant at Nemmeli (Kancheepuram District) at the cost of Rs994 crore; an underwater aquarium as in Malaysia will be constructed at Muttukadu (Kancheepuram district) for which Rs300 crore is set aside.

8. Further, bringing in a legislation, such as the Coastal Aquaculture Authority Act, 2005²⁵ is not only a violation of the State's obligation to fulfill an earlier order of the Supreme Court, 1997²⁶ but application of the said Act has resulted in promotion of rampant and unregulated shrimp cultivation, violating the fourth generation rights.²⁷ Further unregulated enterprise of shrimp cultivation has left women workers who form a large workforce²⁸ in shrimp farms, with an unsafe and insecure work environment, exposing them to gender based violence.²⁹ Failed attempts³⁰ at organising themselves into a union, is in fact a complete violation of the Constitution³¹ and one among the Core Labour Standards recognised by ILO³² and Article 8 of the ICESCR; thus the claims in the Government of India report³³ stand challenged.

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- 25 Coastal Aquaculture Authority Act legislates that after it is passed all decisions of courts and tribunals in relation to the aquaculture farms are nullified, it seeks to amend and relax the Coastal Zone Regulation (CRZ) notification dated Feb 19, 1991 whose objective is to protect the coastal areas. All shrimp culture industries would continue provided they apply for a license within six months.
- 26 On December 11, 1996 the Supreme Court of India announced a landmark decision with important implications for large scale aquaculture in India. The Supreme Court held that no shrimp culture can be set within Coastal Regulation Zones (CRZ) 1991 issued by the Union Ministry of Environment and Forests; aquaculture farms, that do not meet the criteria of traditional and improved traditional shall be closed and demolished before March 31, 1997; No shrimp culture will be permitted within 1000 metres of the Chilika lake and Pulikat lake, including bird sanctuaries of Yadurappattu and Nellappattu. *Jagannath V Union of India*, (1997) 2 SCC 87.
- 27 (a) Shrimp cultivation, rising to over 8 billion tonnes a year in the year 2000, had already played havoc with the fragile eco-systems. The 'rape-and-run' industry, as the Food and Agricultural Organisation of the United Nations (FAO) once termed it, was largely funded by the World Bank. Nearly 72 per cent of the shrimp farming is confined to Asia. Sharma, D. Tsunami, mangroves and market economy, *India Together*, 11, Jan 2005.
- (b) According to Alagarwamy Report, cited in *Jagannath* case, the demand for shrimp seed is growing with the expansion of shrimp culture and hatchery production was unable to meet it. Exploitation of natural seed resources is growing unabated, particularly in West Bengal, Orissa, and Andhra Pradesh. Large quantity of fry by-catch (the very small fish fingerlings) are discarded by the fry collectors because their value is insignificant. The report states 'elimination of fry in the fryby-catch is not only detrimental to the predator thriving on them, but it also creates an ecological imbalance'. Moreover, the report noticed agitations by the environmentally conscious people of the coastal areas against polluting aquaculture technologies
- (c) Shared during Consultation (Fisherfolk, 16–18 December, 2007). The Nitish Govt. in Bihar has taken steps for Blue Revolution in the State of Bihar following the footsteps of Andhra Pradesh. But this has been widely opposed by the fisherfolk in Bihar. Previously, the local fisherfolk or their unions could catch fish from ponds, rivers and other water bodies. Now, on a flowing river putting fences and laying nets is prohibited so that fish population in the rivers could increase. Eggs cannot be gathered neither can plastic nets be put. Yet the non-fisherfolk continues to do this. In the name of Sons Sanctuary this prohibition has been put and the livelihood of these fishermen suffers. This policy encourages the big cultivators and private investors.
- 28 There are more than 1 lakh migrant women workers employed in the seafood processing industry, directly or indirectly, 2nd National Commission on Labour Report, 2002
- 29 *There is a Way Out – The Story of Suja Abraham*, National Campaign for Labour Rights, Centre for Education and Communication, New Delhi, 2000
- 30 Shared during Consultation (Fisherfolk, 16–18 December, 2008). Palayam Market in District Trivandrum had more than 200 women working as fish vendors. Five years back they were denied the right to register themselves as a union, stating their self-work as the reason.
- 31 Article 19 of the Constitution of India guarantees right to form association which includes right to form trade unions for lawful purpose
- 32 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98) are one among the Core Labour Standard recognized by International Labour Organisation (ILO).
- 33 Paragraph 138: Combined second, third, fourth and fifth periodic report of India, 2006

9. The tribals,³⁴ in a similar way, are today at crossroads. Tribal life is today marred with extreme economic deprivation with the tribals being pushed to the brink of survival. More than 18,42,541 families are displaced in the four states of Andhra Pradesh, Chattisgarh, Orissa and Jharkhand with project affected people numbering 27,02,315.³⁵ These displacements are a consequence of development induced displacement such as mining, industrialisation, power projects, etc., and the declaration of wild life sanctuaries, national parks, and reserved forests with weak rehabilitation and resettlement policies.
10. Forest dwellers and tribals are increasingly confronted with their inability to exercise their customary right over collection of non-timber forest produce (NTFP) as part of their right to work and livelihood option, which is basic to their sustenance and livelihood. Disregarding its own obligation to protect, the State has on the contrary restricted them from collecting forest produce³⁶ through a series of

34 Total population of Scheduled Tribes is 84,326,240 as per the Census 2001 which accounts for 8.2% of the total population of the country. The share of the Scheduled Tribe population in urban areas is a meager 2.4%. Madhya Pradesh, Maharastra, Orissa, Gujrat, Rajsthan, Jharkhand, Chhatishgarh, Andhra Pradesh, West Bengal, and Karnataka are the States having larger number of Scheduled Tribes. These states account for 83.2% of the total Scheduled Tribe population of the country. Assam, Meghalaya, Nagaland, Jammu & Kashmir, Tripura, Mizoram, Bihar, Manipur, Arunachal Pradesh, and Tamil Nadu, account for another 15.3% of the total Scheduled Tribe population. The share of the remaining states/Union Territories is negligible. <http://www.censusindia.gov.in/CensusAndYou/scheduledcastesandscheduledtribes.aspx>

35 'Resource Rich Tribal Poor' Study conducted by ActionAid, Indian Social Institute (ISI) Delhi and LAYA, Andhra Pradesh.

36 (a) Access to Non Timber Forest Produce: As the main objective of Kendu Leaf (KL) policy in Orissa is to maximise revenues, the poor are prohibited from selling leaves to anyone except the government. They are also not permitted to process the leaves into *bidis*. Raids are often organised against the people during the kendu season to ensure the compliance of these storage and sale restrictions. Although, according to law, if registered with the Forest Department private growers can keep up to 3.5 quintals of KL, in actual practice not a single grower is registered, and thus even farmers cannot stock kendu leaves collected from their own farms. N C Saxena, 'Livelihood Diversification and Non Timber Forest Products in Orissa: Wider Concerns on the Scope for Policy Change', Working Paper 223, ODI, UK, 2003

(b) Reporting on the Koya tribe of the Malkangiri district of Orissa, P. Sainath writes (*The Times of India*, March 15, 1994) 'Bamboo is the socio-economic oxygen for the Koyas. An oxygen which is being denied to them, thanks to forest laws that have removed their access to that material – while granting access to major corporates seeking huge quantities of bamboo for paper (via the Orissa Forest Corporation). Ironically, Koyas are hired sometimes to do the felling on a casual basis, (but) seldom get the government rate of Rs25 a day. With the denial of access, indebtedness – unlike the bamboo forests – appears to be growing in certain Koya pockets.'

state-level policies.³⁷ These policies usurp their right over the forest produce and compel them to become piece-rate wage labourers to contractors who, in turn, exploit not only the produce but also their labour. The forest, which for generations has been under the care and prudent use of the tribal as a collective, has been deliberately and gradually taken away from their possession and use by the State through a series of legislations over the years.³⁸ The newly enacted The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 that came into existence after a two-year long civil society battle between environmentalists and tribal rights activists, waits to be put into practice whereby the tribal get ownership over a piece of land³⁹ in the forest. Rules formulated under this Act still await proper implementation. The Forest Department on the other hand, being confronted with this legislation has come down heavily on the tribals evacuating them from the forests under some pretext or the other, precisely in order to prevent the new right holders from accessing their rights.⁴⁰ Juxtaposed against the backdrop of this Act that confers ownership rather than of possession of forests⁴¹ lies a series of land related amendments made by state governments to usurp the protected rights of tribal over their land.⁴² Such interventions by the State are pointers to their dubious intention to offer ownership and later usurp it for third party benefits.⁴³

37 According to Orissa's policy until 2000, the processing of hill brooms can only be done by the lease holder, Tribal Development Cooperative Corporation, (TDCC) and its traders. Gatherers can collect hill brooms, but cannot bind these into a broom, nor can they sell the collected item in the open market. Thus the poor are prevented from both, doing value addition through processing and the right to get the best price for their produce. In one particular case (Das, 1995; Saxena 1995), assurance was given by the Collector of Raygada to a women's cooperative society that it would be allowed to collect and market hill brooms, so that the primary gatherers, who are mostly poor tribal women, might get the benefit of higher prices in the market. The Society started functioning, but without a valid licence. After the Collector's transfer, rather than helping them with processing and finding the best price, the state government machinery decided to launch prosecution against the women and their organisation at the instance of Tribal Development Cooperative Corporation, Orissa (TDCC). Their stocks were seized, and even after a court order for release, the full stock was not released, causing a huge financial loss to the women.

(b) LAYA Study on Non Timber Forest Produce in tribal areas of Andhra Pradesh: A policy perspective, 2004: The Study found that the purchase of Non timber forest produce (NTFP) is monopolized by Girijan Cooperative Cooperation (GCC) in the Scheduled areas of Six villages of Kammam, East Godavari and Vishakapatnam. GCC purchased NTFP on a huge scale when the prices of these products go up in the market. Thereby endangering the availability of NTFP. It neither gives a minimum support price when the prices of the NTFP goes down in the market. Ex: Amla, Hill broom, adda leaves have been declining in availability and the tribals of these villages who are primarily dependant on NTFP are facing lack of security to livelihood.

38 Indian Forest Act 1926, The Wildlife Conservation Act, 1976, Forest Conservation Act, 1980

39 This Act recognizes right of ownership of tribal and forest dependant families residing inside the forest. The cut-off date of 13 December 2005 was decided for regularizing the encroachments of forest dwellers on forest land.

40 Dionne Bunsha, Targeting Tribes, *Frontline*, Volume 25 – Issue 05: Mar, 01-14, 2008

41 'Ownership' is... one strand in a bundle of rights such as the right to enjoy, to exclude, to pass on, to share, to possess and just because one strand is missing the 'right to property' does not cease to exist as a jurisprudential category. Property vested with a 'use value' and devoid of 'exchange value' would accrue to the long term benefit of tribals. Such an approach would protect enjoyment of property without making it a marketable commodity. We know only too well – how many vultures lie in wait!

42 Pradeep Baisakh, 'Orissa's Move to amend Tribal Land law dangerous', *India Together*, 21, December, 2006

43 Indiscriminate use of the Land Acquisition Act, 1894 further amended in 1984; a hurried Special Economic Zone (SEZ) Act, 2005 to acquire agricultural land at a time when the excluded are facing acute food insecurity, are indicative of a development paradigm in complete disregard to the citizens of the country.

A relatively better and pro-tribal legislation, the Panchayati Raj (Extension) in Scheduled Areas (PESA), 1996⁴⁴ suffers from state inaction to frame rules necessary for the operationalisation of the said law, thus depriving tribals of the benefit of a law made by Parliament after intense civil society efforts. The State's active intervention to enable the tribal to reap benefits of this Act; an early and determined effort by the State in making PESA a reality will resolve a number of unclassified and unwanted conflicts that tribals confront with the Forest Department.⁴⁵ There is a clear shift in the development paradigm which is certainly not pro-poor and thoroughly market driven, with the State favouring the third party to acquire land for the corporates, despite massive resistance.⁴⁶ The National Rural Employment Guarantee Scheme that had the objective of opening employment to build community assets is used to promote unsustainable land activities such as large scale plantation of jatropha detrimental to the interest of the people.⁴⁷ Jatropha plantation is further promoted through the joint forest management (JFM) scheme.⁴⁸ Thus UN Declaration on Right to Development, 1986 that also applies to the Indian State stands violated as local residents are not considered central to the development process nor does the State feel responsible to create conditions 'favourable to the development of people and individuals'.⁴⁹

44 The concept of self-rule contained in the Panchayat Raj Legislation (73rd and 74th Amendment to the Constitution) and the Bhuria Committee Report (for tribal areas) which was implemented through enactment of Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) embodies to an extent the rights of the people over national resources in a broader way., S.R Hiremath Community Control <http://www.india-seminar.com/2001/499/499%20s.r.%20hiremath.htm>;

The Panchayats Extension to Scheduled Areas (PESA) Act 1996 has made it mandatory for the State having scheduled areas to make specific provisions for giving wide-ranging powers to the tribals on matters relating to decision-making and development of their community. Technically, when the Act refers to extending the provisions of Part IX of the Constitution to the fifth schedule areas; politically, it gives radical governance powers to the tribal community and recognizes its traditional community rights over local natural resources. It not only accepts the validity of "customary law, social and religious practices, and traditional management practices of community resources", but also directs the state governments not to make any law which is inconsistent with these

45 Dionne Bunsha, Conflict of Interests, *Frontline*, Vol 25 Iss 04, 2008

46 The recent protest are the incidents in Nandigram, 2007, Singur, 2007 and anti mining struggle against Vedanta and its Indian subsidiary Sterlite, in Orissa, 2005

47 Large scale Jatropha plantation in Chhatisgarh (294.70 ha land); Rajasthan (10.56 million ha).

48 Sharing during Consultation (North East, 25–27 March, 2008)

A. Jatropha cultivation : Representatives of the environment and forest ministry in task force meeting, 2007 disclosed that 10% of forest land in the North eastern states will be utilized for jatropha plantation. All the acquisition of community land through various backdoor methods like the World Bank supported Joint forest management is to generate revenue for the department either by carbon trading or utilization for jatropha plantation.

B. Jhum cultivation/shifting cultivation: The threat to the livelihood of indigenous people came after the Supreme court interim order of 1996 in T.N Godavarman case defining forest as anything recorded as forest in Government record by any department and forest as per dictionary meaning irrespective of ownership. Different programmes have been introduced to discourage jhum cultivation. In the slogan of conservation and scientific management, traditional wisdom is completely ignored despite incomparable agrodiversity yielding upto 78 varieties in jhum areas and unique 4-tier farming system.

49 UN Declaration to the Right to Development, 1986

11. The tribal population would have secured their economic, social and cultural rights had the State not interfered in their way of life, but rather played a positive role of actively nurturing their rich cultural practices, and intervening in areas of violation, especially those related to women.^{50,51} In fact, the Indian State must revisit its declaration to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 5(b). Thus, in the situation where tribal communities enjoyed a fairly adequate standard of living, the State, through its intervention, destroyed this and forced them into situations of exploitative wage labour and bonded labour, classifying them as violators of forest laws, dispossessing them of their generational rights over the forest, and in effect, reducing their adequate standard of living, especially food and shelter, to a sub-standard, unsustainable, and culturally incongruent lifestyle. A large number of issues that plague tribal communities' economic, social and cultural rights will be resolved if the Indian State ratifies ILO 169, the Indigenous and Tribal Peoples Convention 1989.
12. Where tribal communities have been fighting eviction of various forms from their homestead, dalits and urban poor are fighting discrimination and indignity to exercise their right to decent work. Dignity in work is inherent in right to work⁵² and further to 'freedom of the individual's choice to work⁵³ where work is undertaken for lack of a suitable alternative and therefore not out of choice. Dignity in work is best ensured when at least work conditions are just and favourable. In the informal sector, which has least recognition of worker rights, a significant approach to ensure relatively better working conditions is, therefore, through collective bargaining recognised in the Covenant Article 8. Domestic workers, rag pickers and sex workers⁵⁴ who form a substantial women workforce in the informal economy have attempted to form trade unions which have been repeatedly turned down by the State.⁵⁵

50 Tribal communities have customary legal practice that has a strong gender bias. By making a declaration in Article 5 (b) while ratifying Convention on Elimination of Discrimination Against Women (CEDAW), the State is deliberately withholding its responsibility of bringing in gender justice to tribal women while respecting their rich cultural practices of the community.

51 General Comment 16 Article 3 clearly recognizes that 'obligation to protect requires States parties to take steps aimed directly at the elimination of prejudices, customary and all other practices that perpetuate the notion of inferiority or superiority of either of the sexes, and stereotyped roles for men and women'

52 According to the General Comment 18 Paragraph 1, the right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.

53 General Comment 18 on Right to Work.

54 There are 1.5 million domestic workers in India, 'The Dark Side of Indian Homes', Teresa Barat, <http://www.indiatogether.org/2004/nov/hrt-domhelp.htm>; according to National Domestic Workers Movement (NDWF) there are eight crore domestic workers in India; there are nearly two million sex workers in India: 'Centre to Give Licenses to Sex Workers', *The Times of India*, 15th June, 2004

55 Shared during Consultation (Urban poor, February 22–26, 2008 in Delhi and Women's groups in Kolkata from 4– 6 March 2008). Sex workers of Kolkata explained that non-recognition of sex-work as work was the reason behind denying them trade union rights; Nirmaan, working with domestic workers explained non-stipulation of minimum wages for domestic workers in Delhi has been one of the reasons, whereas State of Karnataka and Maharashtra by bringing in domestic workers in the Minimum Wages Act helped these states to form a union. Rag pickers from Bihar and Delhi explained lack of recognition of ragpicking as work was the reason, discussions also lead us to believe that presence of children to a large extent as ragpickers could be one of the reasons for denial of trade union. Exemplary initiative by Kagad Kach Patra Kashtakari Panchayat, Pune currently registered as a Savings linked credit co-operative comprising of 1560 members in 2002 could be promoted pro-actively in other states. Once they formed into a cooperative, they adopted self-regulatory norms of disallowing children as ragpickers, issuance of identity cards and life-insurance for their members.

13. Destruction of livelihood without proper rehabilitation to continue existing business, has been a major bone of contention of hawkers, street vendors and rickshaw pullers.⁵⁶ Zoning laws have been talked about but never adequately provided. All over the country, protests are being organised to bring an immediate close to the harassment meted out to vendors⁵⁷ and against the destruction of livelihood by inviting the Corporate Sector into their traditional occupations.⁵⁸
14. Migrant workers,⁵⁹ a floating population of the urban poor, enter the metropolitan cities in desperate search for work. Distress migrant workers suffer human rights violations on a daily basis.⁶⁰ Not only do families suffer separation, but work itself is ridden with exploitative wage labour in complete violation of the statutory Minimum Wages, with no provision for just and favourable conditions of work, especially for women and girls, who silently suffer sexual exploitation, lack of educational facilities for children of migrant families, child labour and other associated shelter related issues. Added to the regular woe, natural disasters further aggravate the situation, especially in absence of adequate State response, forcing families to migrate into further crisis.⁶¹ The State has made negligible inroads to mitigate the plight of migrant workers – a workforce that criss-cross the vast peninsula. The Indian State has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Considering the vast migrant workforce, the Indian State should seriously reconsider its position and ratify the Covenant.

56 *Shared during Consultation (Urban Poor, 22–24 Jan., 2008)*. Hawkers were forcefully evicted near railway station on 8 March 2004 by the police in Kolkata. They now face difficulty in earning their livelihood due to eviction

57 Vendors are regularly subjected to exploitation and extortion by multiple authorities – the municipal corporation, police, regional development authorities, district administration, local panchayats and so on.

(b) Rickshaw Pullers: In a study conducted by Calcutta Samaritans and ActionAid on 10% of the total rickshaw puller population in Kolkata in 2003, it was found that majority of the hand rickshaw pullers are caught by policemen for plying on certain roads legally barred since 1996 and then, they have to pay a bribe of Rs.75 to ply the streets again.

58 Indian Retail Chain closes stores, http://news.bbc.co.uk/2/1/south_asia/6966251.stm

59 Estimates based on the 1990–2000. NSS survey on Employment - unemployment show that of the poorest 40% workers, more than a quarter (26.4% in urban areas and 27.8% in rural areas) are migrants. <http://www.migrationindia.org/report/nuparray.pdf>

60 *Shared during Consultation (Urban Poor, 22–23 Jan., 2008)*.

(a) Domestic workers

Kavita, a 14 year old girl hailing from Chattisgarh district was placed in a house as a domestic worker by the placement agency in Delhi. She faced problems there, worked a lot and had food problem. After one year her employer asked her to stay and work at his sister's place. There she was ill treated, scolded frequently and did not get food properly. She asked her employer to send her home persistently. She did not let her go, but one day she brought another girl for work and sent Kavita back without paying her for the six months she worked there.

(b) Ragpickers

Lal Miyan, a 30 year old migrant from Assam to Delhi has been staying in Rangpuri Pahadi for the last two years and was working as a ragpicker when he found no other work. One day while he was moving around in his rickshaw picking up rags, a policeman asked him who had granted him permission to do so. When Lal Miyan said that he had been picking up rags from the same place everyday, the policeman became furious and took away Lal Miyan's rickshaw and demanded Rs5000 for its release. This case shows the harassment faced by the ragpickers. Lal Miyan's rickshaw was returned back by the intervention of the NGO Bal Vikas Dhara's officials.

61 The 2002 drought in Bolangir district of Orissa had resulted in many families enter into bonded labour as brick kiln workers turning them into seasonal migrants from Orissa to Andhra Pradesh. <http://www.reflect-action.org/Initiatives/ict/project/country/india/india-framework.htm#scenario>

15. The right to 'freely choose work and accept it' is a key caveat to right to work wherein individuals and communities are not forced into any form of labour,⁶² either by the State or third party. In such a situation, the State party has an obligation to abolish, forbid and counter all forms of forced labour. Dalits⁶³ in the Indian State most often are forced into certain forms of labour⁶⁴ because of their caste, thereby suffering irrevocable stigma. Manual Scavenging, akin to forced labour/bonded labour is one such abhorable work that is still prevalent⁶⁵ despite the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, that had the goal of complete abolition of the practice. The State fails in its obligation to fulfil the goal by a proper implementation of the law; in fact it goes to the extent of denying prevalence of manual scavenging.⁶⁶ Further, no sooner the families, especially women,⁶⁷ surrender the practice of manual scavenging, their children are denied scholarship in schools offered for children of families practicing unclean occupations thereby forcing children to drop out of schools.⁶⁸ Manual scavengers across the country face a strange dilemma. Under the

62 ILO defines Forced Labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

63 The word 'Dalit' literally means poor and 'oppressed' person. But it has acquired a new cultural connotation to mean 'those who have been broken, ground down by those above them in deliberate and active way' Zeliot, E, Dalit-New Cultural Context of an Old Marathi Word' In C Malon et al Language and Civilisation change in South Asia, Vol XI, 'Contribution to Asian Studies, 1978

64 Shared during the Consultation (Dalits, 5-7 February, 2008).

Orissa Goti Mukti Andolan demands the traditional drum beaters in a village to be recognized as bonded labourers and be given the right to live on the land they have been staying for generations. In Gorual panchayat of Puri district, the drum beaters in the temple belong to *pano* families and they beat drums solely as a customary obligation without any remuneration or wage. They beat drums every evening for an hour even after a day's toil. Under the leadership of Ramchandra Naik, these drum beaters refused to beat drums anymore. The non-dalits were aghast and asked these *pano* families to vacate their homestead land as this was temple land and given to them for drumbeating purpose. Around 200 non-dalits under the leadership of Bidyadhar Swain ransacked their houses. Now, the Orissa Goti Mukti Andolan demands recognition of their work as bonded labour and freedom from such bonded labour without losing their homestead lands. They are also demanding compensation for the loss of their valuables and punishment to the accused. On the other hand, Koraga Community who belong to the particularly vulnerable groups in Karnataka have been made to practice *Ajal* (Set of demeaning practices which furthers the subhuman living conditions of Koraga) by the upper caste community. The Koraga's are made to eat the left over food, mixed with nails, cut hair pieces and even the spit of the person suffering from fatal diseases, the Koraga's women have to feed the upper caste babies suffering from any chronic disease to get the disease transferred to themselves, Koraga's women must get Panchama Dhana (five alms), when the person of upper caste is experiencing difficulty or suffering from unknown diseases. The person who is undergoing trouble would give used clothes, left over of food eaten, oil, hair and nail to Koraga women. The belief again is that impurities would pass on to koragas and the upper caste will get bliss. This practice is yet to be wiped out completely in spite of the *Ajal* Abolition Act in force since 2000.

65 (a) Shared during the consultation with Dalits (February 5-7th, 2008) Lalli bai wife of Kanhaiyalal of Dhariakhedi village of Madhya Pradesh got married at the age of 13 and got into manual scavenging as a family occupation. She had to go to 30 to 35 houses to clean and carry human waste to earn livelihood. Besides she had to do her household work and due to overwork and lack of hygienic conditions she got severe skin disease. She sought medical treatment at several places but it was of no use and she was thrown out of her house by her husband. During this period she came in contact with Garima Abhiyaan of Madhya Pradesh and by persuasion quit the manual scavenging work. Subsequently she recovered and started working for Garima Abhiyaan as a volunteer. (b) There are 8 millions Manual scavengers in India, Ghansham Shah et al, *Untouchability in Rural India*, Sage, 2006

66 State government's response to Supreme Court's query on prevalence of MS writ petition (civil) No. 583/2003.

67 More than 95% of those engaged in Manual Scavengers are women, Garima Abhiyaan, Madhya Pradesh.

68 Pre-matric scholarship for children of families practicing manual scavenging (Scheme under Ministry of Social Justice).

influence of IFI-supported programmes such as JNNURM, cleaning of nullahs, streets, etc., done by the same community now stands in jeopardy. Community members are eager to give up caste-based practice, yet in the absence of alternative work and with shrinking institutional jobs, they find themselves in a dilemma to face this challenge.⁶⁹ The State must enunciate a pro-active policy in this regard.

16. Very similarly, women members of the Bedia and Bachhada community in Madhya Pradesh and Uttar Pradesh and the Joginis in Karnataka and Andhra Pradesh perform sex work as a consequence of their being born to a particular caste. Despite legal provisions,⁷⁰ the practice of caste-based sex work is prevalent in today's world in its most corrupt form with girl children trafficked into sex work.⁷¹
17. A substantial per cent of landless agricultural labourers are dalits.⁷² Through the historical process of caste based alienation, dalits were denied access and control over land. A number of measures are positively attempted in the provision of ownership of land to dalits.⁷³ A common complaint among the

69 Although privatisation of sanitation is breaking the caste ridden practice by bringing in involvement of members from other castes, ironically it is the contract of cleaning that goes to other castes while the primary cleaners continue to remain from the scavenging community. While they were previously accountable to the State as their employer and enjoyed certain benefits of a worker, the current practice has reduced them into exploited wage labour of other castes with no social security measures or status of a worker.

70 1. Karnataka Devadasi (Prohibition of Dedication) Act, 1982; Andhra Pradesh (Prohibition of Dedication) Act, 1988 The State of Madhya Pradesh has no preventive act on caste based sex work but poorly funded schemes, such as the Jabali Yojana provides institution based schooling for young girls. Tokenistic budget allotment with no real strategy is indicative of State's apathy towards trafficked girls. Since Bedia and Bacchada community have a customary law of marriage as a deterrent to sex work, the State Government came with a scheme 'Nirmal Abhiyan', introduced in 1992-93, that forcefully married girls. Field Experience report that of the 18 couples married under this scheme in Village Seekedi district Neemuch, Madhya Pradesh, only one couple continues to remain married, and rest of the 17 girls are practising sex work today. (2007)

71 Ramesh, Menon, Devadasis uniting to end "dedication", April, 2007

72 77% of the dalit workforce are agricultural workers. P Sainath, 'Dalits and Human Rights – the Battle ahead' – II, <http://www.pucl.org/from-archives/Dalit-tribal/battles.htm>

73 (a) The Bhopal Declaration, Govt of Madhya Pradesh: Ensure that each Dalit family will own enough cultivable land for socio-economic well-being. The government should pursue all possible measures including the distribution of surplus land, government revenue lands and temple lands within a specific timeframe. If need be, the government should purchase cultivatable land and distribute it among Dalits.

(b) Punjab village Common Land Act provides exclusive rights to Dalits on 1/3rd of the village land.

(c) As per July 1892 Movement of British Parliament, lakhs and lakhs of promboke lands, D.C lands also known as 'panchami' land that had been earmarked and allocated for Dalits were now under the occupation of High Caste Hindus. However, the laws to return all these lands of Dalits were really in favor of the High Caste Hindus. If all these lands were recovered, the life of all dalits would have improved. The realities and defense of human rights in South Tamil Nadu, <http://www.hrfdl.org.in/defenseofdalit.html>

dalits has been allocation of non-arable land with very little infrastructure support to turn the given barren land into productive asset. Moreover, despite positive legislations, dalits have not enjoyed complete access and control over their allotted land, often exposed to conflict from vested interests belonging to other caste hierarchies.⁷⁴ The State should fulfill its obligation through executive measures to ensure ownership and possession of lands by dalits, thereby undoing a historical wrong. But here too the attempt has been half-hearted. Conviction rate in the SC/ST (Prevention of Atrocities) Act, is extremely low,⁷⁵ indicating a lackadaisical attitude of the State and Judiciary to ensure ownership of land to dalits.

18. Dalits also form a sizeable percent of the unorganised sector as domestic workers, rickshawpullers, street vendors, hawkers and sex workers in the urban areas. In the organised sector, dalits enjoyed positive discrimination with a national level reservation of 18% as their right to development. The dismantling of the public sector units and further privatisation of public enterprises hitherto under state control, have had the negative fallout of reducing job opportunities to the dalits. A national policy for reservation in the private sector is still pending with business houses unable to commit themselves to such positive measures.⁷⁶ This further shrinks the opportunity for dalits to break away from their caste shackles and enter formal employment with full protection of workers' rights.
19. Muslims too, very much like the dalits, stand to loose the environs of a secure and protected work condition with the dismantling of the public sector undertakings, even though they share an abysmally low 4.9 per cent in government jobs and 7.2 per cent in Public Sector Undertakings.⁷⁷ Muslims, on the other hand also constitute a large number of self-occupied persons.⁷⁸ Unlike the dalits and tribal

74 Shared during Consultation (Dalits, 5–7, February) (a) Basudeipur, a village in Orissa has 44 households and of these households, three are dalit households. One such dalit household is headed by Manas Sethi. According to Orissa Government policy every landless person is supposed to get 4 decimals of wasteland in the village, if the villagers give no objection for such grant. After Manas got 4 decimals of land in the outskirts of the village from the Government a person belonging to upper caste of that village occupied the land. Seeing that an upper caste person has occupied the land, the villagers objected to the Government land grant to Manas. Then, the villagers socially restricted Manas from visiting the village. Manas and two other dalit families were also restricted from taking tube well water.

(b) Punjab Village Common Land Act provides exclusive rights to Dalits on 1/3rd of the village land, which does not happen as 'upper' castes do not allow this. Volunteers for Social Justice (VSJ) demanded execution of this Act and lodged a formal complaint to the Deputy Commissioner, Patiala who appointed a Block Development Panchayat Officer (BPDO) to enquire into the matter of irregularities in the auction of village common land reserved for the Dalits and cancelled the auctions calling for fresh and fair auction of the village common land for cultivation purpose. They have now launched a mass awareness campaign on the issue. Annual Report 2007, ActionAid International –India, 2008 at 17

75 The conviction rate under Scheduled Castes/Scheduled Tribes Prevention of Atrocities Act is 15.71% and pendency is as high as 85.37%. Of the 646 cases studied from Prevention of Atrocities courts of Karnataka, Andhra Pradesh and Tamil Nadu, 578 were disposed of and 68 are pending. Just 27 of the decided cases resulted in conviction; 551 in acquittal. On the whole, 13 acquittals were reported from AP and TN each, and one from Karnataka. Study Report on Working of the Designated Special Courts and exclusive Special Courts Under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 conducted by Centre for Casteism, Communalism and Law, National Law School of India University, 2004.

76 Rajinder Sachar, Reservation for Dalits, <http://www.pucl.org/Topics/Dalit-tribal/2004/reservation-provatesector.htm>

77 Sachar Committee Report, 2005, p. 124

78 According to Sachar Committee Report, 2005 taken together, the three self-employed categories (Own account worker / Employer/Unpaid family worker) constituted about 61 per cent of the total Muslim workforce as compared to about 55 per cent of the Hindu workers. Among women the share is as high as 73 per cent for Muslims and 60 per cent for Hindus.

communities who have faced the brunt of skewed development, Muslims have had to confront almost a nation-wide trauma of being singly and actively stigmatised as a community, leaving them completely helpless in being absorbed in other kinds of economy when their traditional/customary work suffered⁷⁹ thereby making it more difficult for them to adjust and cope with the challenges.

20. Post 2002, Muslims are facing a unique phenomenon of ghettoisation that is leaving them completely vulnerable to the insecure situation around them. Although, such a phenomenon is most prominent in western India, many cities in different parts of the States have also revealed the process of ghettoisation that is happening in a slow and gradual manner. Such ghettoisation has resulted in restricted work options for those in the informal sector, especially acutely faced by women workers.⁸⁰ With pre-existing low literacy levels, high instance of poverty and less representation in the formal economy, Muslims find it all the more difficult to upgrade their skills to other opportunistic areas or launch new enterprises, as credit facilities do not come easily to them.⁸¹
21. Another social group that faces traumatic stigma to its condition is People living with HIV and AIDS (PLHA) and Sexuality Minorities. During the consultations,⁸² participants from the affected community shared the trauma of being forced to leave secure jobs once their identification was known to employers and colleagues.⁸³ The stigma that they face was found to be too traumatic to continue to work. Women living with HIV had to further face the trauma of forced eviction from their family – both parental and in-laws – or desertion by their spouses putting their very survival at utter risk. They were left to themselves in not only coping with the ailment but even to fend for themselves.

79 Shika Trivedi, 'Between the grains', Purvanchal Circumstances, http://www.himalmag.com/2006/may/cover_story_1.html

80 Shared during our Consultation with Muslim (18–20 February, 2008)

Muslim beedi rolling workers narrated that availability of work shrank with the restriction of their mobility outside their ghetto. Increased and concentrated workforce in the ghetto allowed limited work for everyone.

81 Sachar Committee Report, 2005, p.124

82 Consultation held in Bangalore from January 30 –1 Feb. 2008.

83 Sharing during the Consultation on PLHA and Sexuality Minorities

(d) Ms Bapali Biswas is from a village name Goa Bari located at Lichi Pokuri Gram Panchayat in Phansidewa Block under Siliguri Subdivision. She is 26 yrs old & HIV positive, her husband expired of HIV/AIDS. She was working as a cook in a panchayat school since 4 yrs. After her husband's death, the school somehow came to know that her husband died of HIV/AIDS and she too was HIV positive. She was told to take rest for few days by the school authority. And instead a boy cook was appointed in her place. For two months the salary was given to her but after that she was neither given the salary nor did she get her job back.

(e) Uma Devi from Andhra Pradesh is HIV positive. She was not only thrown out of her house by her husband but was also thrown out of her job as a health worker, once her HIV status was known to her husband and villagers.

V. Right to Social Security (Article 9)

22. Articles 6, 7 and 8 discuss how 93%, of the total workforce of India is engaged in the informal sector. The Indian State does offer a wide-ranging package of poverty alleviation measures incorporated in the Ninth Year Plans. In addition, there are elaborate social security laws, but almost all of this exists only for the organised sector, which, in effect constitutes only 7% of the total workforce; the rest of the 93% are out of the purview of most of the social security benefits. The Unorganised Sector Social Security Bill, 2007⁸⁴ continues to be debated while the unorganised sector grows in number,⁸⁵ putting at risk the lives of hundreds of thousands, including women that occupy a large portion of this sector.
23. The Centrally Sponsored Schemes identify only three schemes, viz., National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS) and National Maternal Benefit Scheme (NMBS).⁸⁶ Our consultations with the women's group revealed not only the difficulty in accessing these schemes, but the schemes are implemented with a gender bias that keeps women away from benefiting. Since women have a shorter life expectancy, the age limit for women benefiting the NOAPS should be reduced to 55 years. NFBS does not recognise women as the head of the family, thereby, depriving benefits of the scheme to the surviving family members/spouse.⁸⁷

84 The Unorganised Social Security Bill, 2007 provides for an enabling framework for welfare schemes targeting unorganised sector workers. The Bill was introduced in the Rajya Sabha on 10th September, 2007 and it was referred to the standing committee on labour. The Central Government may formulate welfare schemes for different sections of unorganised sector workers regarding life and disability cover, health and maternity benefits, old age protection, and any other benefit decided by the government. The state government may formulate welfare schemes related to the provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation of workers, funeral assistance and old age homes. This bill establishes boards at the state and central levels to advise and assist in formulating, implementing and monitoring social welfare schemes for unorganised sector workers. Every worker shall be registered by the district administration and issued a portable smart card carrying a unique identification number.

85 According to the 61st round of National Sample Survey, the majority of the Indian workforce numbering 422.6 million are in the unorganised sector.

86 Under NOAPS, person over the age of 65 years is eligible for a pension of Rs75 per month. Under NFBS, survivor benefits with a cash of Rs5000 in case of natural death and Rs10000 in case of accidental death. Under NMBS, a lumpsum cash assistance of Rs500 is given to pregnant woman of the household living below the poverty line up to first two live births (provided she is 19 years and above).

87 Shared during the Consultation (Women, 4–6 March, 2008)

Draupadi, a dalit woman from Dumkha District, Jharkhand died when she fell off from a bus due to negligence of the driver. Asha Mahila Sangha demanded benefit for her deprived heirs under National Family Benefit Scheme but the block development officer denied giving any money to the family saying that she was a woman and the sole bread earner of the family. But the family with the support of Asha Mahila Sangh continued its protests and appeals and finally succeeded in getting Rs10,000 as per the mentioned scheme.

24. In a situation where unemployment is on the rise and the share in the unorganised sector is increasing by the day, the Indian State should take proactive and sincere efforts to pass the much touted Unorganised Sector Social Security Bill after taking in suggestions from all the primary stakeholders. This will go a long way in providing succour to the already stressed workers in the unorganised sector, thereby 'guaranteeing them human dignity' especially when faced with difficult circumstances.⁸⁸
25. As discussed in the earlier sections, the total number of days available for employment is seen to be fast declining. Increased migration in search of employment opportunities is discernible in all the excluded communities.⁸⁹ This is accompanied with erosion of daily wage. Statutory minimum wage still remains an illusion. A 'race to the bottom' is fast spreading. Any ill health completely destroys the delicate fabric of survival when no social security measures are available.
26. The situation is further aggravated for the aged and the widows who are left behind in the villages from where the able bodied set out on migratory paths. A situation of utter destitution is starkly visible in all the interior villages, especially among the excluded communities. It is under these circumstances that cry for minimum social security gets shriller by the day.
27. In the coming years, People Living with HIV and Aids (PLHA) need a comprehensive coverage in social security. Increasing cost of Anti-Retro Viral therapy (ART) and limited number of ART centres⁹⁰ require them to travel long distances, thereby increasing their travel cost and putting tremendous financial pressure on the PLHA. The recent announcement by the Indian Railway Minister of subsidising railway travel cost of the PLHA is welcomed with lot of jubilation, but there is an equal worry of exposing them to stigma once their identification is made known. The Indian State will thus have to, until society matures, to accept PLHA as part of their extended society, find innovative ways of offering comprehensive social security measures while maintaining adequate confidentiality during the course of implementing such new measures.⁹¹

88 The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realise their Covenant rights.

A. Shared during Consultations (North-East, 25–27 March, 2008)

1. Anita Das, a domestic worker, is a mother of three children. Her husband is a construction worker. She stays in the Six-mile area of Guwahati city. Her husband while painting a hostel wall of a veterinary college fell and fractured his left leg. The contractor did not pay a penny for the treatment but instead paid the wage for the 15 days he had worked, i.e., Rs500. Society for Social Transformation and Environment Protection (STEP), working for the rights of people of the unorganised sector took up the issue and asked the contractor to pay compensation. The contractor gave Rs2000 after 15 days as compensation. Due to delayed treatment, Anita's husband cannot walk properly. General Comment No 19, The Right to Social Security at Para 1.

89 Migration is largely invisible and ignored by policy makers due to lack of data. What data are available attest the substantial and growing scale of internal seasonal migrants drawn from tribals, muslims and dalits exceeding 500,000 people, Ravi Srivastav, 'An overview of migration in India, its impacts and key issues'. http://www.livelihoods.org/hot_topics/docs/Dhaka_CP_2.pdf

90 The total ART Centres in India are 137 in 31 States providing free ART to 118052 adults and 8347 children.

91 In compliance with General Comment 19: Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion

28. Persons with disability, (PWD) out of circumstances of poverty, social category and other indicators, are also included in schemes for the general public. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Protection) Act, 1995 Act has made legal provision for 3% reservations in all the centrally sponsored schemes, but field studies reveal that less than 3% of the PWDs manage to avail of this facility. This is largely because of the cumbersome procedure and lack of sensitive and proactive implementation with positive discrimination to the PWDs. As per the Act, PWDs are to be offered unemployment allowances ranging from Rs75–Rs500. Field experiences do not reveal even a single beneficiary. A monthly ‘social pension’ for destitute PWDs of cash benefit of Rs200–Rs500 (varying from State to State) is an entitlement which again has nationally an off-take of only 0.3%.⁹²

VI. Right to Protection of Family (Article 10)

29. Family, in most societies, is seen as a nurturing and supportive institution for human beings, providing warmth, love and care to each of its members. Large scale and indiscriminate displacements and evictions as discussed in Right to Work rupture this tender fabric of family apart rendering its members to cope with a plethora of tribulations that they are least equipped with to counter. Alienation from land forces men to migrate in desperate search for work, leaving behind women and children to cope with the poverty.
30. Indian State recognises family as the 'natural and fundamental group unit of society'; family is primarily understood as unit of a heterosexual married couple with the man as the head of the family. But the Indian society has from time to time challenged the conventional notion of family being that of a heterosexual married couple with children. Time and again there have been instances of lesbian couples seeking marriage,⁹³ gay couples wanting to live together,⁹⁴ unmarried couples having children and such others. But these are not granted legal status as family and often face the wrath of society at large, including that of other conventional families.

93 Shared during the Consultation (PLHA and Sexuality Minorities, 30 Jan.–1 Feb, 2008).

Two girls living in Gujarat ran away to get married. They were arrested in Vadodara and taken to Allahabad where they were presented before the Court. They said they want to get married. The court held that the marriage was not possible. The girls said that they had attained the age of majority. There is no law in India which forbids lesbian marriage.

94 Guru from Karnataka talked about a MSM who would go to the park after college and indulge in sex with other men. One day his father saw him with another boy, followed him and came to know about his activities. From that day, the boy was locked up in his house and allowed only to go to college. Everyone in his family shunned him. Guru came to know of this boy from his friend. He asked the boy to introduce him as his friend. Now after Guru's visit to the house, the family has understood a little about the boy's sexual orientation and to a certain extent allowed some freedom. Section 377 of Indian Penal Code (IPC) discriminates persons on the basis of their sexual orientation, and asserts that the offence is 'sodomy'. Section 377 was put into place for all the British colonies including, Pakistan, Bangladesh, Nepal and Bhutan, but has since been repealed in England, the rule's country of origin.

(b) The Naz Foundation, a non-governmental organisation (NGO) involved in HIV/AIDS prevention, filed a petition in the Delhi High Court in 2001 (*Naz Foundation vs Government of NCT, Delhi and others*) asking for Section 377 to be read down, in order to decriminalise private consensual sexual activity. The Naz petition argues that Section 377, by prohibiting private, consensual sex, violates the right to privacy and that the law discriminates on the basis of sexual orientation and further it says that the law is a threat to the right to life and right to health of homosexuals in India because it perpetuates social stigma and police abuse. Currently the case is pending before the Court.

31. Conventional Indian Society by and large promotes, protects and nurtures the notion of a heterosexual married couple. In addition, the manner in which marriage is entered into is also defined, with very few girls and boys being able to exercise their consent to marry.⁹⁵ Marriage, in all communities such as the Hindus, Muslims, Christians, Sikh, Parsees and other religions, and indigenous communities, is defined between families of equal lineage, social, economic and religious status and not 'merely' as a decision of a girl and a boy to live together. Hence, any attempt to deviate from the said path is met with dire consequences. Any measure to challenge this patriarchal notion of family has resulted in repression or violence against women. Further, family lineage is considered promoted only through the son; therefore the strong son preference, especially in Hindu societies. The State, in its patriarchal understanding of family, has also actively violated women's rights through acts of commission^{96,97} in its attempt to protect its notional family size.
32. On the question of consent of marriage, the State, in its belief in the patriarchal notion of family, often guards itself from taking a position on Articles 24 and 25 of the Constitution, thereby giving families and communities (often in connivance with extended State arms) a free hand to repress the right of consent to marriage.⁹⁸ Muslim women continue to face the ignominy of triple talaq⁹⁹ and

95 In violation of Article 10, that recognizes consent of marriage.

Shared during the Consultation (Women 4–6 March, 2008).

Umar, a Muslim guy and Priyanka Wadhwani, a Sindhi ran away from their homes on April 2, 2007 and went to Mumbai. There Umar changed his religion from Muslim to Hindu and they both got married on 5th April 2007. The charge of abduction was filed on Umar by the girl's family, so they had to seek protection from Mumbai High Court. Priyanka gave her statement that she is mature and marriage to Umar has been her own decision. Thus they were provided security by the High Court. The worst thing about the whole case is that it is being politicised. The members of Bajrang Dal, Bhagva Brigade, and other *Hindu Sangathans* have made lot of hue and cry over the issue. They even went to the extent of calling 'Bhopal Bandh' if the girl would not be brought back

96 Bihar State Cabinet has recently cleared the two-child policy that debars persons having more than two children from contesting elections for local bodies. Defending the government decision, Bihar Chief Minister Mr Nitish Kumar told the media that it was meant to increase awareness about the advantages of small families and check the population growth in the state. Such measures introduced in other States faced the wrath of feminist groups and health rights activist. After much advocacy, the Haryana Cabinet on July 21, 2006 decided to promulgate an Ordinance to amend Section 175(q) of the Haryana Panchayati Raj Act, 1994, retrospectively with effect from January 1, 2005 to omit the two-child policy. Similarly the Madhya Pradesh Government was forced to withdraw in 2006 the two-child policy introduced in 2001.

97 Recanalisation of tsunami affected women in Nagapattinam, Tamil Nadu. Post tsunami Tamil Nadu Government announced reverse sterilization scheme in 2005.

98 (a) In the case from West Bengal, Rizwanur, an adult boy from Muslim community, married Priyanka Todi from Hindu community. Priyanka's family resented her marriage and the couple feared family repression. Rizwan died of mysterious circumstances on September 21st, 2007; the case is pending before State inquiry (NDTV, Oct, 2007)

(b) Sheela used to study in class 12 when her family started preparing to send her into commercial sexual exploitation. She never wanted to enter into it but it was forced on her as per the customary practice of the Bachhada society to which she belongs. She met a client named Imraan and felt an attachment with him. One day she ran away with him to his village in Uttar Pradesh. She was happy there, but three months later her family members reached there and persuaded her to come back with them. She refused to go back with her family in her statement before the police. But later her family returned back with a false complaint against Imraan and got him arrested. They took Sheela with them and again forced her into a life of commercial sexual exploitation.

99 Shared during the Consultation (Women, 4–6 March, 2008).

seek active abolishment of this practice of triple talaq that has resulted in women being abandoned and deserted without any support. This practice is outdated even in Muslim countries.¹⁰⁰ The customary laws in tribal societies are gender biased, leaving tribal women completely at the mercy of 'judgements' by male members of the 'Jaati panchayats' (caste panchayat). Dalit women, especially devadasis, joginis and women from the Bedia and Bachhada community, are forced into sex work through customary sanction. The Indian State must revisit and reconsider its reservation to Article 5(b) of Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)¹⁰¹ as this would go a long way to mitigate violence against women arising out of consent to and choice of marriage. In the absence of State intervention, religious forces fill the vacuum, enforcing stricter codes of conduct that violate basic human rights.¹⁰²

33. Women living with HIV and AIDS shared extensively the violence meted out to them once their identification as a positive person is known.¹⁰³ The State will be required to take progressive measures to mitigate this before more women are made to suffer this.¹⁰⁴
34. Son preference¹⁰⁵ and low status accorded to women in society have resulted in a series of violence meted out to women, both within and outside the family, cutting across various communities, including tribal communities.¹⁰⁶ Civil society presence in India to promote women's rights is quite strong in utilising the available democratic space to seek progressive measures. However, it must be proudly acknowledged that the State in response has enacted a series of progressive legislations¹⁰⁷ that protect women from various forms of repression both in the private and public sphere. The implementation of these progressive measures need active monitoring and support by the State.

100 In Pakistan, 'triple talaq', or instantaneous verbal divorce, has been illegal since 1961, Again Turkey, Indonesia, Iraq, Iran and Bangladesh have legally banned one-sided divorces, which gave men arbitrary powers to break marriages, while countries like Egypt, Sudan, Jordan, Tunisia, Morocco, Pakistan and Bangladesh had banned the practice of triple talaq long ago. Amardeep, Update on Triple Talaq, Indian Express, December, 08, 2004

101 India Government's statement of reservation on Article 5(a) and 16(1) of the Convention on Elimination of Discrimination against Women(CEDAW) that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.

102 Shared during the consultation with women (4-6th March, 2008).

Women from Gujarat shared that post riots they now face extra dress code of wearing burkha, restriction on their mobility, withdrawal of older girls from schools.

103 Shared during the consultation with PLWHA (30-1st, Feb, 2008).

(a) Meena, a widow living with HIV in Karnataka was ousted by her in-laws from her husband's house. She has been denied the right to property of her dead husband and is now forced to live outside with her four children.

104 According to Railway Budget 2008-09, PLWHA would be able to travel on 50 per cent of ticket fare.

105 ActionAid Study (Unpublished) Addressing Adverse Sex ratio in the selected districts of Five States – Rajasthan, H.P, M.P, Punjab and Harayana.

106 The decline in child sex ratio in India is evident by comparing the census figures. In 1991, the figure was 947 girls to 1000 boys. Ten years later it had fallen to 927 girls for 1000 boys. There are alarming signs of decline in child sex ratio in tribal societies as well: Declining from 985 (1991) to 973 (2001);Rural 986 (1991) to 974 (2001)and Urban 971 (1991) to 951 (2001).

107 The Preconception and Prenatal Diagnostic Techniques (Regulation and Prevention Act), 1994 and amended in 2003 to counter son preference; The Protection of Women from Domestic Violence Act, 2005 to address violence against women within family; Dowry Prohibition Act, 1961, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; The Supreme Court has given mandatory guidelines, known as Vishaka Guidelines, for resolution and prevention of sexual harassment enjoining employers by holding them responsible for providing safe work environment for women

35. That a woman in India faces discrimination is reflected in the status¹⁰⁸ that she endures in society. This, despite the fact that she contributes more than her male counterpart in the state economy;¹⁰⁹ this in addition to the double burden that she fulfills in the domestic economy that finds no space in the Gross Domestic Product. Women in the unorganised sector which they contribute to significantly but with negligible social security measures, have nothing to fall back upon in critical circumstances, especially during maternity. The State, to repair this situation, has to take progressive and positively discriminating policies that ensure a gender just society.
36. Families in a militarised economy lead a very precarious life. Security for women and girls is at its nadir. There is no limit to the human rights violation.¹¹⁰
37. Status of children¹¹¹ is a reflection of the well-being – both economical and social – of society. The conservative notion and low value accorded to girls as discussed in the earlier section have stood as barriers to acquire competitive education to girl children. Growing economic insecurity in families¹¹² has increased the per cent of child labour,¹¹³ thereby impacting on child dropout from school. This has further led to child trafficking of young girls¹¹⁴ for work, often exposing them to sexual abuse.
38. The Indian State has from time to time enacted progressive measures and amended existing laws within the current context,¹¹⁵ but there is a long way to go before it achieves a society free of violence and repression to enable children to bloom to the fullest.

108 Male Literacy Rate is 75.96% and Female Literacy Rate is 54.28%(Census 2001). Female Life expectancy is 61.8 years (Sample Registration Survey 93–97) Maternal Mortality Ratio is 407 (SRS 1998). Sex ratio is 929 (Census 2001)

109 According to the Statistics of the Registrar General in India, the proportion of women in the workforce in 1981 was 19.67 per cent and it rose to 22.73 per cent in 1991, further rising to 25.68 per cent in 2001.

110 Shared during Consultation (North-East Region, 25–27 March 2008) A. The case of HMAR mass gang rape on 16th Jan, 2006 by militants namely the United Nation Liberation Front (UNLF) and Kangleipak Communist Party (KCP). 21 woman have testified for rape and another 6 for molestation to the Rajkhowa Commission, which was set up in March 2006, yet till date they have not submitted its report. State cabinet announced interim relief for 21 woman who were raped, the HMAR groups intervene to plead for inclusion of the other 6 victims as well, but none of the 27 women have received any money or any form of support till date.

B. Thingram Anjulika Samom, *Guns and Widows*, *India Together*, 24th July 2007

111 Child sex ratio in 2001 was 927. IMR was 68 in 2000.<http://www.censusindia.gov>.

112 See section on Right to Work

113 Whereas the Indian government affiliated V.V. Giri Labour Institute estimates that there are 12.5 million children younger than 14 working in India, UNICEF puts the figure at somewhere between 75 and 90 million.

114 Shadow Report Consultation (Women, 4–6th March, 2008) About 60,000 girls from various districts of Jharkhand were trafficked as domestic workers to Delhi, Kolkatta and Mumbai in a span of ten years. Majority of the girls were in the age-group 12–19 years and many complained of sexual exploitation (survey report by 'Patra', a Ranchi based NGO).

115 The Juvenile Justice (Care and Protection of Children) Act, 2000, The Child Marriage Restraint Act, 1929.

39. Recognising children as future leaders, the Indian State must refrain from any measures, through acts of omission or commission that mars a child's right to development. Particular reference is the use of child soldiers in the Salwa Judum operations in Chhatisgarh¹¹⁶ in further violation of the Convention on Rights of the Child (CRC)¹¹⁷ and International Humanitarian Law.¹¹⁸
40. The State must in full respect of the Constitution of India provide an education system that respects plurality in society.
41. In fulfilling its obligation to Article 10, the State should further refrain from forced evictions. These impact most on a child's right to development.¹¹⁹ However, if justified in relocation, the resettlement and rehabilitation have to happen in a timeframe that enables children and women to settle to a normal course of life devoid of fear, insecurity and an unsafe environment with a privacy that a family must have¹²⁰ without disrupting their right to livelihood and a life of dignity.

116 Turning a Blind Eye: Child Soldiers at war in Maoist Conflict of India, <http://www.ffdaindia.in/publications/text1/>

117 India has ratified Convention on Rights of the Child in 1992.

118 India may not be a party to the Geneva Convention Additional Protocols but it has a legal obligation to protect civilians caught in the cross-fire between the Maoists and state-sponsored vigilantes in Chhattisgarh; Siddharth Varadharajan, 'Salwa Judum and International Humanitarian Law', *The Hindu*, 8th September, 2007.

119 Refer to section on Right to Adequate Standard of Living.

120 Infra Note, para 52 'Right to Adequate Standard of Living.

VII. Right to Adequate Standard of Living (Food and Shelter) (Article 11)

42. **Right to Food** is closely linked with access and availability to work, as right to work enables purchasing power, such that no individual including women, children, old persons and persons with disability slip into a situation of hunger. Preventive measures for avoiding situations of hunger will require State Party to ensure adequate availability of food which is further intrinsically linked to sustainable ways of procuring food.¹²¹ Further, the notion of adequate food or food security is intrinsically linked to the notion of sustainability.¹²²

Claiming sustainable food... access and control over natural resources, including land.

43. Experiences reveal that relationships with land ranging from access to possession to ownership is critically important for dalits, tribal communities and women, as it ensures sustainable access to food¹²³ and other needs without the need to be mere recipients of food grains doled out through schemes and programmes by the government. Where land reform is implemented, especially the right to homestead land, quality of life of the poorest has improved.¹²⁴ Perhaps it is important to emphasise here that this one vital source of livelihood, especially for the excluded groups such as the dalits, Muslims, tribals and women, is becoming increasingly remote. Land is a source of feeling rooted and confers dignity for most rural populace in India^{125,126} and where women have

121 General Comment No. 12 The right to adequate food, para 6.

122 Ibid, para 7.

123 This is in contrast to claims in the GoI submission on ICESCR to the Committee which says at para 358, 'The low purchasing power among the poor is the main reason for hunger. The prevalence of malnutrition is because of the absence of education and lack of awareness and proper knowledge regarding child feeding among the masses.'

124 If Kerala's citizens enjoy high material quality of life achievements despite slow economic growth and low incomes, the reasons are not far to seek. They lie in the policies that took roots with the first government led by EMS Namboodiripad and later coalesced into the main elements of the 'Kerala model', namely, (as articulated by academics Richard W Franke and Barbara H Chasin): a land reform initiative that abolished tenancy and landlord exploitation; effective public food distribution that provides subsidised rice to low-income households; protective laws for agricultural workers; pensions for retired agricultural labourers; and a high rate of government employment for members of formerly low-caste communities. K G Kumar, '50 Years of Development', April 12, 2007; D Bandyopadhyay, 'Land Reforms and Agriculture: The West Bengal Experience', *Economic and Political Weekly*, 2003.

125 'Land has a great deal to do with both economic and social status', P Sainath, *Dalits and Human Rights: The battles ahead*, <http://www.pucl.org/from-archives/Dalit-tribal/battles1.htm>

126 Kapileshwar, Dalit Adhikar Manch, Bihar; Katta Swamidas, President of Dalit Samakhya; Durgesh Nandini, Jan Sangarsh Morcha, community member from Baiga tribes (Particularly Vulnerable Groups) in Madhya Pradesh, as shared during the consultations in 2008.

ownership over such land, it makes a world of difference.^[126a] Migrant workers who travel in distress to neighbouring cities in search of wage labour reconcile with great difficulty the compulsion to sell their land.

44. Unfortunately the history of land reforms in India is a history of its non-implementation, except in Kerala, West Bengal and Jammu and Kashmir. Landlessness has been further aggravated by ever increasing displacement, including 'development induced displacement'. Even where the impoverished have a small holding, there has not been enough support through assured irrigation, institutional credit and infrastructural support to make cultivation viable. Apart from all the above, there has been a very disturbing trend of undoing legislative protection which rendered void all transfer of land from scheduled castes and scheduled tribes. In a nutshell, the further commoditisation of land and the neo-liberal shift towards market-led land reform have aggravated the livelihood risk of the marginalised manifold. All this has precipitated a chronic situation of malnutrition, especially amongst the most vulnerable tribal communities. Large scale starvation deaths were reported from Madhya Pradesh and Rajasthan in 2002. The State response has been a consistent denial of starvation deaths followed by 'safety net' measures to ameliorate the situation. A quick survey of these schemes to arrest malnutrition revealed a plethora of implementation problems, gaps in coordination, loopholes and poor intent to arrest malnutrition.^[126b]

Food entitlements – broken promises

45. The Indian State has, in fact, a fairly comprehensive food management programme.¹²⁷ Having said this, it must be acknowledged that the judiciary and Indian State have responded overwhelmingly to ensure right to food as an enforceable entitlement. Justiciability has certainly enhanced crucial elements of food security,¹²⁸ especially for the marginalised and excluded social groups. Civil society initiatives contributed significantly to establish the link between right to food and the right to work,

[126a] Shared during Consultation (Tribals, 8–10 Jan, 2008).

After seven years of advocacy efforts by Samagra Grameen Ashram (an NGO) and Koraga Federation (federation of the Koraga PTG community groups) in Karnataka, the district administrations of Udupi and Dakshina Kannada granted 400 acres of land in the names of koraga women. Today one notices sea-change in the leadership in the federation. The Koraga women have better negotiating and decision-making powers in taking decisions at family level, expenditures in the family. There is an enhanced political awareness and Koraga women are playing a key role in the local panchayats. (Gauri, a Koraga woman from SGA)]

[126b] 'Kids steeped in hunger, while officials fiddle', Children in Danger Malnutrition Disaster and ICDS in Madhya Pradesh A sad picture of Chronic Hunger and UnAccountable System, Report by Right to Food support group, Madhya Pradesh.]

127 As described in the Government of India Report, ICESCR

128 The Rajasthan People's Union for Civil Liberties(PUCL) filed a writ Petition in the Supreme Court in 2001 pointing out that while the stocks of food grains in the country are more than the capacity of storage facilities, there are reports from various States alleging starvation deaths. The petition seeks the Court's intervention to give remedial directions to the Government. While the Petitioners focussed on the 'starvation deaths', the Supreme Court enlarged the scope of the Right to Food to include malnutrition, distribution and access to food and designed enforcement mechanisms and remedies to implement the right. The Supreme Court, in an unprecedented interim order on 28 November 2001, directed Union of India and all the State governments to effectively enforce eight different food schemes to the poor. These food schemes were not only declared as entitlements (rights) of the poor but the Apex Court also laid down very specific time limits for the implementation of these schemes with the responsibility on the States to submit compliance affidavits to the Court. These included the Antyodaya Anna Yojna, the Annapurna Anna Yojana, National Old Age Pension Scheme, National Fertility benefit Scheme, the Integrated Child Development Services (ICDS) programme, the National Mid-day Meals Programme (NMMP).

situating both in the context of right to information. Judicial activism has also put in place a mechanism¹²⁹ for monitoring food security, especially among socially excluded groups, including old people, persons with disability, most vulnerable communities, women and children.

46. Although ridden with bottlenecks,¹³⁰ the legally enforceable food entitlements are a great source of assured nutrition for the excluded communities that come into the orbit of such entitlements. Unfortunately, such rights are far from universal. They materialise only when civil society organisations and sympathetic bureaucrats or human rights lawyers and PIL processes work in tandem and draw attention to acute deprivation. It has been seven years since the recognition of the said schemes as entitlements. Even before these processes could help destituted people to draw down the benefits, there are policy shifts that seek to dismantle India's Public Distribution System. Public procurement of grains from farmers is sought to be replaced by private procurement and subsidised schemes like 'Antyodaya' are being withdrawn. Even before the expected results could be fully enjoyed, there are signs of amendment in the implementation of

129 Establishment of Supreme Court Commissioners and State-level Advisors to the Commissioners

130 Bottlenecks in some of the major schemes as shared in all the consultations include:

- a) PDS shops do not open on public time, but left to the whims of the shop owner, and quality of food grains is poor.
- I. Shared during Consultation (Urban Poor, 22–24 Jan, 2008). Munna Lal, who lives in E-286, J J Colony Bawana, Delhi has not been getting any ration for the last one year. This was revealed during a public audit done by Jagori on 7th July, 2007. Meena, also a resident of J.J Colony, Bawana has made a duplicate card for the last 3 months after losing her original card. Yet she has not been getting any ration for these 3 months. The public audit revealed that 24 families are not getting the allotted amount of grains. Of these families 3 of them have cards, where oil credit is shown but the name of the depot and its number is not shown. These families incur debt and enter into a vicious cycle of poverty as they lack employment due to eviction and the food ration is not distributed by the authorities to them even if they have the ration cards. In the three districts: Visakhapatnam, Vizianagaram and Srikakulam, majority of Particularly Vulnerable Tribal Groups (PTGs: Savara, Khond, Gadaba and Porja tribes) live in remote hilly regions. In order to access ration from DR depots they have to travel long distance as the depots are situated at a distance of 5 to 31 kilometres and they are open at a maximum of 8 days in a month. If people fail to release the ration under different grounds (shortage of money, depot not open etc.) during that period, they are not given any ration. The tribals are also not able to release full quota at a single point of time in a month because of the absence of financial resources. and there is no provision releasing the ration in instalments. There are malpractices in weighing by the sales personnel. Most often they are provided with poor quality rice.
- II. Shared during Consultation on Dalits (Feb 5–7, 2008). a) In Gottivada of Kurupam mandal, Vijayanagaram district, Andhra Pradesh there is a DR depot. One of the members of the Priyadarshini Mahila Sangham Ms Lalitha Devi took the responsibility of maintaining the depot. But she had difficulty in repaying the loan of ITDA from the income. Hence, she handed over the depot to her brother Sesha Rao for maintenance. For PTG AAY card holders, he gives 34 Kgs of rice instead of 35 Kgs, 2 litres of kerosene instead of 3 litres and collects Rs10/- per litre, when the actual price is Rs 9 per litre. If any one questions him he arrogantly answers and says go and ask the MRO. He was selling the rice and kerosene in the black market.
- b) In the three districts of Visakhapatnam, Vizianagaram and Srikakulam, majority of endangered tribal communities (PTGs: Savara, Khond, Gadaba and Porja tribes) live in remote hilly regions. In order to access ration from DR depots they have to travel long distances as these depots are situated very far.
- III. Shared during Consultation (Dalits, 5–7 February, 2008). Chinnamma and her husband, live in Kothapeta village of Pachipenta mandal, Andhra Pradesh. They belong to the Kondadora tribe. They live on podu in a small piece of land and are unable to provide even two square meals to their children. Their only hope is from the anganwadi centre run in Madamalasa village, a km away from their village. They send their children to the anganwadi. But the centre remains closed for 15 days in a month and children do not get any diet meant for them during those days. The anganwadi teacher takes away the food items supplied for the children in the centre. Because of lack of proper diet, Chinnamma shared, "My younger son is suffering from marasmus and this is happening to many children in our villages."

these that almost defeats the very intent of making right to food a justiciable entitlement in 'mitigating and alleviating hunger'.

47. Among recurrent complaints about the Integrated Child Development Scheme (ICDS) centres is the prevalence of discrimination:¹³¹ Physically location at an inaccessible distance, in the colony of higher castes that practice untouchability and appointment of non-dalit anganwadi workers who practice untouchability.¹³² Consequently children from the socially excluded groups such as dalits, Muslims, children with disability, feel discouraged from accessing the centre. Offtake of food grains require proof of residence, but this has been the very reason why urban poor find it difficult to access the entitlements. It is ironical that the very vulnerability of the urban poor¹³³ is made a tool to deny their entitlements. There are innovative initiatives, however, that show scope for replicability and thereby enhance off take of food grains.¹³⁴
48. Indigenous communities, have been raising concerns that indigenous food grains are not made available in the Public Distribution System, instead fortified wheat flour is distributed in the Public Distribution System in Gujarat. Using Gujarat as a model plan, distribution of fortified wheat flour in the state of Chattisgarh is underway,¹³⁵ paying little heed to the public outcry against adulterated wheat flour in the Public Distribution System. The Public Distribution System may perhaps be

131 A violation of the immediate obligation as mentioned in General Comment 15. The equal right of men and women. Shared during Consultation (Dalits, 5–7 February, 2008). In Kham Padva village of Madhya Pradesh, there are 400 dalit families but the Rajput and Gurjar families outnumber them. The dalits primarily work as wage labourers and their children go to the local primary school. Ambedkar Vichar Manch found severe discrimination against dalit children in such schools. The food was thrown from above to the dalit children instead of bending down and serving the food on their plates when the children were seated on the floor for lunch in schools.

132 Shared during Consultation (Dalits, 5–7 February, 2008). Dalits and Muslim children are made to carry their own plates when they come to centres, so that they do not 'pollute' other children. They are also made to clean the centre after distribution is over.

133 Urban poor, such as rickshaw pullers, street vendors, homeless, do not have a regular place of stay, for years they move from one pavement to the other. 85% of the households did not have ration cards, according to the report *Being with Nothingness*, published by The Calcutta Samaritans in 2006. 650 households formed the sample of the study and the sample size was 7.44% of the total homeless households in Calcutta.

134 Shared during Consultation on Urban Poor (22–24 January, 2008).

"I have not got work for the past 5 days. The food grain that I brought from my village is about to finish. I'm worried about my family; if I don't get work in the next few days, what we will eat, and how we will go back to our village?" (A man aged 32 years, who migrated with family to Peth Phata *naka*, Nasik) Access to subsidised food grain was the immediate priority as identified by the migrants. Unlike permanent residents of Nashik, migrant families witnessed fall in income below the poverty line. They did not have access to ration cards and thereby, to regular supplies of subsidised food grains. And irregular employment opportunities resulted in acute food scarcity and debt trap. Indeed, anaemia and malnutrition were commonly observed among migrants in all six *nakas*. Following consultations with the Department of Public Distribution and the Ration Department (Nashik Municipal Corporation) and on-site visits by the authorities, an order was issued to provide seasonal migrants with temporary ration cards for four months (extendable to 12 months) against their existing ration cards. Migrants must have the cards cancelled by the ration department when they depart for their areas of origin so that they are eligible once again for subsidised food grain in their home villages; the cards could be renewed on their return to Nashik. The PDS issued 250 temporary ration cards to homeless nomadic tribes who have been residing in Nasik since last 15 years. The facilitation was done by Bhatka Vimukta Mahasangh.

135 PDS consumption of wheat/atta was most common in Karnataka, rural areas of Gujarat and Maharashtra, and in Madhya Pradesh, Press Note on 'Public Distribution System and other sources of household consumption', 2004–05

infested with a number of problems that need to be addressed with a pro-poor intent; dismantling¹³⁶ this pro-poor outlet with a skewed wheat procurement policy under the influence of WTO is currently not at all the solution.

49. Very recently, there were attempts to introduce distribution of biscuits in the schools in place of a hot meal as stipulated in the Supreme Court order. Vigilance by the Civil Society groups and representation of the Supreme Court commissioners condemning such a move encouraged the Minister for Human Resource Development to issue a letter putting an end to such a move.¹³⁷ The States of Andhra Pradesh, Madhya Pradesh, Karnataka, and the North Eastern states have withdrawn Annapurna Yojana, one of the schemes identified under the right to food entitlements. The ostensible reasons for withdrawal, is poor offtake of the foodgrains.
50. All the above are pointers to a series of retrogressive measures by the State on such a crucial right. The landmark judgement of 2001 Supreme Court should be honoured and complied with to the fullest. And no tampering in the smallest form should be tolerated.

Right to Shelter... Uprooted and abandoned

51. Secure tenure of house without fear of being uprooted, enjoying a safe neighbourhood, having basic infrastructure facilities, located at a fairly easily accessible distance to place of work, are some of the standards recognised as adequate to define a place as shelter for a human being.¹³⁸ The poor and excluded live in houses that do not have basic facilities, yet familiarity with the location after long years of residence offers a certain sense of security. Our consultations with the excluded groups revealed that most of them are plagued with the fear of constant uproot.
52. In the last eight years forced evictions across various urban centres such as Mumbai, Chennai, Delhi, Kolkata, Hyderabad, and Ahmedabad have taken place leaving more than one crore families uprooted and abandoned to fend for themselves. Urban poor have faced a unique brunt of middle class distraught of slums as eyesores, often having to make way for broad roads, flyovers, bridges,

136 Jayati Ghosh, 'Wasted Food, Wasted Opportunities', *Frontline*, Vol 17, Issue 20, 2000

137 Letter of Minister of Human Resource Development, Mr Arjun Singh. Annexure 1

138 General Comment 4 on the Right to Adequate housing Para 8 Shared during Consultation (Urban Poor, 22–24 Jan , 2008). Evictions from Kanchanpuri and Balrampur to Bawana in 2005 resulted in loss of employment for men as well as women of the poor community.

manicured gardens – in general a beautiful city that does not have ‘ugly spots’ like the slums.¹³⁹ Most often these evictions are undertaken at an inappropriate time when it is raining or when children are appearing for exams. Slum dwellers are never considered an important stakeholder to hold consultations; eviction notices are either left stuck on the doors without much information or notices are not given at all. Urban poor are now facing heightened thresholds of insecurity post the introduction of the Jawaharlal Nehru National Urban Renewal Mission (JNNURM)¹⁴⁰ in about sixty cities. Eviction of urban poor has always remained a bone of contention and often intervention of the judiciary was sought. Until early ‘90s the judiciary was pro-poor,¹⁴¹ but subsequent judgements¹⁴² leave the urban poor hapless and homeless.

139 Shared during Consultation (Urban Poor, Jan 22–24, 2008).

- a) Gaighat jhuggi inhabitants in Patna are primarily Bakho and Dom community people. These residents were staying in Gaighat for the last 50 years. In January, 2006 they were forced by the district authorities to leave their houses in Gaighat citing the JNNURM guidelines. They protested and came back to Gaighat. But in September 2007, when most working men and women were out of their houses, their jhuggis were burnt to ashes.
- b) The slum settled behind Bankipur Jail, known as Bandar Bagicha, Patna was set on fire by the authorities in November 2006 as 300 families settled there protested against the govt. order to vacate the land for building an eco park, mall and a multiplex.
- c) In April, 2003 170 families were forcefully evicted from Lakdi depot located opposite Gandhi Bhavan in Hyderabad. Under TDP rule, this land was allotted to set up a BJP head office, even though these families had been staying there for 70 years.
- d) In July, 2004 eviction of slum residents was carried out to renovate the Gariahat market in Calcutta.
- e) 40,000 houses in Yamuna Pushta, Delhi were displaced during February and May 2004 and only 20% were relocated appropriately. Children, pregnant women, old people, and the disabled were left to the mercy of the streets in nearly 80% of the cases. Malls, SEZs have mobilised the government to take active interest in beautification of cities.

140 The Jawaharlal Nehru National Urban Renewal Mission (JNNURM) is a reform linked incentive scheme for providing assistance to State governments and Urban Local Bodies (ULBs) in selected 63 cities, comprising all cities with over one million population, State capitals and 23 other cities of religious and tourist importance for the purpose of reforming urban governance, facilitating urban infrastructure and providing basic services to the urban poor. With over Rs One crore at stake for a period of seven years, the mission is the single largest initiative of the Central government in the urban sector.

141 The Supreme Court of India has elaborated at great length on the right to adequate housing, shelter and livelihood as part of the all-encompassing Right to Life under Article 21 of the Constitution in the landmark case of *Olga Tellis v. Bombay Municipal Corporation*, 1985 (3) SCC 545 which was later upheld by cases like *Chameli Singh v. State of UP* [1996] 1 SCALE 101 and *Shantistar Builders v. Narayan Khimalal Totame and Ors* AIR 1990 SC 630

142 The Reversal of judicial activism on shelter rights can be seen in the following cases: In *Bombay Environment Action Group V Bharathi* (2000) the Court not only ordered mass eviction, but it explicitly ordered the demolition of homes and the destruction of all belongings and construction materials that, in the first wave of evictions, were gathered by the demolition squad.

In *Almitra Patel V Union of India* (2000), “Establishment or creating of slums, it seems, appears to be good business and is well organised. The number of slums has multiplied in the last few years by geometrical proportion. Large areas of public land, in this way, are usurped for private use free of cost. It is difficult to believe that this can happen in the capital of the country without passive or active connivance of the land owning agencies and/or the municipal authorities. Rewarding an encroacher on public land with free alternate site is like giving a reward to a pickpocket.” Further, in *NBA V UOI* (2000), despite full knowledge of the concerned authorities’ failure to determine the total number of people to be displaced or find adequate land for their resettlement, and the incomplete resettlement of those already displaced, the Supreme Court ruled that, ‘...displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights...’ and held that the construction of the dam would continue.

53. Post eviction resettlement sites are further discriminatory.¹⁴³ Residents forcefully evicted from their homes in Gujarat as protection from the rioters were promised they would return to their homes once the situation calms down. But little efforts were made to make it conducive for their return.¹⁴⁴

143 Supra note 131 on Eviction in Bawana, Delhi

144 Shared during Consultation (Muslims, Feb 18–20, 2008). a) During the riots, attacked by rioters, 47 families in Behrampura area in Gujarat were forced between 28 February and 1 March to vacate their rental houses where they had been staying for more than 30 years. But immediately after they vacated their houses, the owner of Ghasiram ki challi built a wall blocking the return of these tenants. However the residents did not give up their fight. With the effort of Aman Samudaya and the initiative of some tenants such as Sharifa, the Municipality authorities were convinced and eventually demolished the wall. But the owner Bholaram has approached the Metropolitan Court with a case against the tenants' illegal encroachment of the land through reconstruction of houses. The tenants fight against Bholaram's action continues as they struggle for their right to adequate standard of living.

Shared during Consultation (Fisherfolk, 16–18 Dec., 2007). a) Immediately after the tsunami many relief camps were set up on the coast, and the Irula community went to the relief camps. But after the 4th day of tsunami they were segregated and excluded and many of them were sent out of the camps and denied receiving food and other relief materials on the pretext that the Irulas have not lost anything due to tsunami and they are not a fishing community.

b) ITWWS and Bharati Trust during their work for Tsunami victims have found that the Irulas have been discriminated in many ways in the relief and rehabilitation process. There are cases where the fisherfolk prevented Irulas from receiving relief, did not allow them access to medical camps set up by the Govt and other charitable institutions, and did not allow them to draw water from common wells around relief camps. The fishing community prevented the Irulas from staying with them in the Camps as well.

54. Since the early 2000 there have been series of internal conflicts because of State omission¹⁴⁵ or commission¹⁴⁶ leaving a large number of internally displaced persons (IDPs) either in the wilderness of the forests¹⁴⁷ or in inadequate relief camps.¹⁴⁸ These relief camps show no adherence to the UN Guidelines on Internally Displaced Persons which we strongly recommend the Indian State to follow.
55. Muslim community is increasingly facing the phenomena of being forced into Ghettoisation.¹⁴⁹
56. Therefore, unless and until there is a clear rehabilitation plan arrived at through participation of all stakeholders, especially the people to be evicted, no form of eviction should be indulged in.

145 Fact Finding Mission on the Violence in Kandhamal district of Orissa against Dalits and Adivasis. Draft Note Observations and Demands.

- (1) From 25 to 27 December, 2007 frenzy mobs destroyed around 60 churches and other social and development institutions/organisations working for the development of Pana Christians and Adivasis.
- (2) Another thing that the team had observed is that the Dalits in this village are being terrorised living under great fear. Dalits of Bramanigaon left the village and most men and young boys are still in the forest (in hiding) and are very vulnerable to the backlash violence. All the members observed this during the visit.
- (3) In 27 December the houses of Hindus, primarily of General Castes, and OBC population in Bramanigoan (over 100 houses) and Godapur (over 50 shops and houses attached to them) have been fully or partially destroyed and/or torched allegedly by the Pano Christians and Adivasis. There were three sets of opinions that the team received.
 - a) It is counter attack by the Pano Christians and Adivasis.
 - b) Police allege that 'it is the work of Naxalites'.
 - c) As alleged by caste Hindu women 'local Panos do not have courage to destruct our houses'. The team could not come to any opinion on this matter within the evidence that was available; About 44,000 indigenous Karbis and Dimasas were displaced in a conflict which claimed over 90 lives. Away from the attention of the national media, Assam Chief Minister Tarun Gogoi stated that such macabre killings were bound to happen in the jungles. <http://www.achrweb.org/reports/india/AR06/preface.htm>

146 Nandini Sundar narrates: Let us take the bare facts of Nandigram, as scripted by the Chief Minister of West Bengal himself – villagers protesting against land acquisition formed the Bhumi Ucched Pratirodh Committee (BUPC) and drove out supporters of the CPM who were in favour of the proposed chemical hub. In November 2007, the CPM cadre 'reclaimed' their villages, and this time, it is the BUPC members who were driven out, their houses burnt and women raped. In essence, this is not very different from the Salwa Judum being run jointly by the Congress MLA of Dantewara, Mahendra Karma, and the BJP Government of Chhattisgarh, where armed vigilantes, some of them given official positions as special police officers, burn villages, kill people, and rape women with impunity, on the grounds that they are wresting these areas back from the Naxalites. Nandini Sundar, Nandigram and Salwa Judum. 'Is there a difference between left and right?,' sez.icrindia.org/2007/11/24/is-there-a-difference-between-left-and-right-nandigram-and-salwa-judum/; Nandigram, 'What really Happened', Report of the people's Tribunal on Nandigram, Dannish Books, 2007.

147 There is a huge variation in estimates of the numbers of Internally Displaced Persons (IDPs) in India. The latest World Refugee Survey put the total number of IDPs in India as 507,000; the Indian Social Institute in Delhi places it at 21.3 million (mainly development induced displacement) and the Global IDP Project places it at 3.9 million (conflict induced internal displacement), Mahendra Lama, 'Internal Displacement in India: Causes, protection and dilemmas', FMR 8 August 2000. In Andhra Pradesh officially, there are 54,768 people in 17 camps located on accessible black-top roads spread over Konta, Geedam, Bhairamgarh, Bijapur and Usoor blocks, and residential colonies are being built replacing these camps.

148 The Salwa Judum activists, with the support of Special Police Officers, the military force and the state police forced the tribals to shift to camps erected on roadside.

149 Shared during the Consultation (Muslims, 18– 20 Feb, 2008).

- a) In Sahiba Tapra, a village with a predominantly Muslim population in Madhya Pradesh, Muslims cannot use the handpump nearby as Hindus use it. Hence, the Muslims fetch water from a source 2kms away from the village.
- b) 58 families faced forced eviction from 14 November, 2007 around 12 noon to 16 November, 2007 at the railway track and railway bridge near Armenian Ghat, Ward no. 45 police station. Many of the victims were Muslims.

VIII. Right to Health (Article 12)

57. Grassroots experiences and the consultations¹⁵⁰ disclosed that destruction of livelihood options that confronted the different social groups due to development induced displacements or forced evictions, as discussed in the earlier sections, had a direct impact on the right to health. Our consultations clearly reflect the intrinsic link that right to health has with the other human rights, especially right to work, right to just and favourable conditions of work and right to adequate standard of living, as effectively recognised in general comments on right to the highest attainable standard of health;¹⁵¹ violation of any one right has an impact on the right to health which is an extremely expensive indulgence for an excluded community.
58. Right to health is a basic need and a constitutional guarantee. Article 47 of the Constitution of India enjoins upon the State to improve public health. The Supreme Court did recognise health as an integral part of right to life.¹⁵² Right to food has also been interpreted as intrinsically linked with right to life,¹⁵³ bringing the nine food schemes as entitlements furthering the cause of right to attain a certain standard of health.
59. The Indian State has been catering to the health need of its citizens, especially the poor and excluded groups through a network of health care systems and staff governed by the Ministry of Health and Family Affairs.¹⁵⁴ Since the 1990s, globalisation and privatisation have thrown the public health system out of gear, forcing people, especially the poor and marginalised to run to private practitioners and increasing their health expenditure. Health system of an earlier design needed regular review and improvement to cater to the needs of the poor and excluded communities. Instead the Indian State used the lethargic health system as an excuse to introduce privatisation, further breaking down the system. Introduction of user-fees in the early 1990s took the poor and

150 Shared during Consultation (People Living with HIV&AIDS and Sexuality Minorities, 30 Jan–1 Feb, 2008).

151 General Comment 14 on Right to the highest attainable standard of health, paragraph 3.

152 *Chameli Singh V State of U.P.*, 1996(2) SCC 549; *Paschim Bangal Khet Mazdoor Samity and Ors V State of West Bengal*, 1996(4) SCC 37

153 Supra note 129.

154 India has 144988 subcentres; 22669 PHCs and 3910 CHCs (Annual Report 2006–07, MoHFW)

excluded, especially women farther from the public health domain.¹⁵⁵ Further, distorted development¹⁵⁶ in the country, not only removed people from an indigenous health system they were used to, but even the public health system was not equipped to respond to ailments that accompanied such development.¹⁵⁷

60. In general, the different social groups shared an extension of the social discrimination in the health sector as well. Dalits and Muslims particularly did not feel encouraged accessing public health system. Tribals found the health centres physically inaccessible. PLHA and sexuality minorities encountered strong discrimination by health personnel. The health system, including the primary health centres, community health centres and the district hospitals were found to be increasingly inefficient with low motivation amongst the staff.
61. The right to the highest attainable standard of physical and mental health is a vast area and there were extensive sharing during the consultation across all the groups, but we find it relevant here to restrict ourselves to a few areas of violation, humbly accepting our inadequacy to identify and ascertain the violation of this right, lest we fail to capture the key strategic issues and thereby do injustice to the grave violations of health rights that the community must have encountered. We shall, therefore, in this section, concentrate only on a few key issues that are closely linked to the other human rights.¹⁵⁸
62. The *coastal community*, especially women, was confronted with an intrusive State scheme which incentivised women through a scheme who lost children in the Tsunami disaster to undergo recanalisation.¹⁵⁹ This was strongly opposed by tsunami affected women across and beyond the coastal borders.¹⁶⁰

155 S Sandhya, Health Financing Reform in India: lessons from other countries, 'Journal of Social and Economic Development', Vol 7(1) Jan–June, 2005: This article examines the circumstances under which various countries adopted reforms in health care. It also examines the experiences of other countries with regard to one financial strategy, i.e., user fee and its impact on cost recovery, utilisation, and equity and shows that user fee as a strategy did not give the expected results. It concludes that user fee in India may not be suitable because here 75 to 80 per cent of the users are from private sector. Also, user fees as a tool to reduce the financial burden may not be applicable in the Indian context with its high poverty levels, malnutrition, inequity in health facilities and low literacy levels.

156 Extensive shrimp cultivation, sand mining, thorium extraction, and displacement, forced people into unhygienic resettlement colonies.

157 Cholera outburst in Orissa; measles outburst in Madhya Pradesh; Tuticorin Health Department recorded 200 cases of kidney associated problems due to garment sand mining in Periyathalai, Tuticorin district.

158 General Comment 14, the Right to the highest attainable standard of health.

159 Shared during Consultation (Fisherfolk, 16–18 Dec, 2007). Chitra, a 36-year-old woman from Nagapattinam, Tamilnadu had lost both her children during Tsunami and was emotionally as well as physically unwilling to go through reverse sterilisation. Her in-laws verbal abuse became more once the Tamilnadu Govt. announced financial benefits to the beneficiaries of such schemes. Despite all her unwillingness she was forced to go through the reverse canalisation. After the physically demanding process, the money has not been paid to the family by the Tamilnadu Government and abuse of her in-laws has further increased. In spite of this, she showed determination, persuaded her husband and they adopted an orphan child of Tsunami.

160 Charter on Violence Against Women Post-Tsunami – Demanding an end to violence against women in disasters, Section 7, Right to Protection, Security and Bodily Integrity.

63. Malnutrition and Hunger are increasingly a chronic issue with the *particularly vulnerable tribal groups* (PTGs). Overall the key survival indicators amongst tribal communities are very low,¹⁶¹ indicating precarious health situation. The cycle of food insecurity, especially among the PTGs across the country demands to be arrested on a war footing and simultaneously bring in effective long-term measures to surmount the crisis of recurring starvation deaths. The Draft National Tribal Policy, currently pending approval, is a progressive step that could go a long way to achieve the desired goal.
64. The social discrimination faced by the *Dalit* communities is reflected in their inadequate standard of living, with most dalit houses situated usually in unhygienic localities, thus exposing them to plethora of hygiene related ailments. Even resettlement colonies offered to them after an eviction are as discriminatory. This is complete violation of their right to health.¹⁶²
65. National AIDS Control Organisation, under the Ministry of Health and Family Welfare (MoHFW official AIDS coordinating organisation) puts the figure of persons living with HIV and AIDS at 2 to 3.1 million (2007). A total budget of USD2574 is set aside for Phase III (2007–2012) of the National AIDS Control Programme with the budget being pooled in from most international financial and bilateral quarters in adherence to the three-ones approach.
66. Participants in the consultation shared the need for enhanced allocation and increase in number of ART Centres and CD4 testing. Currently there are 137 ART centres in 31 States providing free ART to 1,18,052 adults and 8,347 children. There is a crying need for full coverage of ART centre as it puts those from remote rural areas at disadvantage. Participants shared that travel cost was heavy on their purse strings thereby possibility of PLHA, especially women, giving up the required treatment. The recent announcement by the Ministry of Rail to subsidise the cost of rail travel of PLHA to 50 per cent was met with great joy, but most expressed their apprehension of increased stigma.
67. Participants also shared the need for enhanced nutrition without which survival is at risk. This particularly holds good for women who have been abandoned, deserted and denied any share in the property rights. Most often, PLHA are forced to quit their job unable to fight the severe stigma. Thus, in the absence of a regular income, acquiring nutritional care, a strong and essential component to support their immune, is distant from their reach. The poor and the excluded, such as sex workers, transgenders, MSM and Lesbians fight acute discrimination and subsequently there is lesser access to the required nutritional support.
68. PLHA feel the need for substantive social security measures which is currently non-existent. Thus, a strengthened health system with sensitive health personnel, a comprehensive social security and insurance measure to meet their required medical care and attention and nutritional support in an environment that extends and derives support from them will go a long way to heal the hurt that they regularly face.

161 Infant Mortality Rate 84.2 (National Family Health Survey); declining child sex ratio 973 (Census 2001)

162 As recognised in General Comments 14 on Right to the highest attainable standard of health, para 3.

IX. Right to Education (Articles 13 & 14)

69. Among the social, cultural and economic rights listed in the Constitution of India under chapter IV dealing with Directive Principles of State Policy (DPSP), the right to education occupied a very special position. It was the only right which was required to be implemented within a time-bound period of ten years from the date on which the Constitution came into force.¹⁶³
70. The Government of India made massive attempts in the education field. Over a period of time two streams emerged. One for the elite with further stratification and standards of education to suit each particular strata. The different types of schools for the elite which thus came into being are (a) International Schools (b) Integrated Certificate Secondary Education (c) Central Board of Secondary Education (d) Sainik schools and (e) Secondary Board Schools. All of them were provided with more than adequate infrastructure, libraries, play fields, and a host of facilities for curricular and extra-curricular activities. There was no shortage of teachers whether it was for science, English or mathematics. Children who went into these institutions came out with flying colours and joined the elite of India.
71. Simultaneously, there came into existence schools for the impoverished. Astonishingly enough, 700,000 schools¹⁶⁴ were established, thereby providing a centre for education within a walking distance of less than two kilometres from the residence of every child.
72. Unfortunately, the overwhelming majority of these schools were multi-grade. They did not have enough classrooms, nor do they have minimum number of teachers required. There were no toilets, no drinking water and no minimum facilities necessary for basic education. More than six decades after independence, the same state of affairs continues despite public pronouncement of the state to the contrary.

¹⁶³ Article 45 before it was amended read as follows: "Provision for free and compulsory education for children.—The State shall Endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years."

¹⁶⁴ Ministry of Human Resource Development, 2005–06.

73. Our consultation with the excluded social groups brought to light the following:
- a) Multi-grade teaching; (2) poor teacher student ratio; in addition nepotism prevailed in appointments in schools in many areas¹⁶⁵ (3) poor quality¹⁶⁶ (4) lack of facilities for girl students; (5) acute discrimination¹⁶⁷ (6) Mid Day Meals^{168,169} (7) assigning menial work to dalit children; (8) practising untouchability inside the classroom.
 - b) Blatant untouchability continues to be practiced both during class hours and during the mid day meals.^{170,171}
 - c) Even Muslim students are subjected to discrimination, especially Muslim girl children.¹⁷² Such discrimination, though different from those meted out to dalit children, is equally alienating and humiliating.

165 Shared during the Consultation (Indigenous Communities, North East, 25–27 March, 2008). It was reported that most of the teachers are spouses of government officials and remain on the rolls of the education department only to draw salaries, while assigning physical presence in the schools to unqualified substitutes through informal subcontracting. In Northern High School, Imphal there are 23 teachers and no students, in Mikola J B School, Imphal there are 20 teachers and 20 students and in Keishampat Hodan Leizak J. B School, Imphal there are 18 teachers and 22 students.

166 In a study conducted on the status of education, employment and health in the coastal area of Thiruvananthapuram corporation by Fisheries Research Cell Programme for Community Organisation in 2000, it was found that of the population of age 5 plus, 27% were illiterates. Focus Group Discussion (FGD) revealed that many students from the coastal area who had high school education could not read or write. 14% of the children (age group 5–14 years) in the survey were drop outs. Shared during the Consultation (Dalits, Hyderabad, 5–7th, February, 2008). In Somagandi Panchayat of Sitampeta Mandal, Andhra Pradesh there are 15 anganwadi schools. Most of the centres are opened for about 10 days in a month. The play items are left unused because most of the time, the centres are not open.

167 Shared during the Consultation (Dalits, 5–7 February, 2008). Kumhrar slum is settled since 1997 in Patna. In 2003, Nidan an NGO became successful in getting admission for 60 dalit children into primary school near the slum. Initially, the Principal refused, and the Block federation officer asked for Rs10 as admission charge. Then he also refused to give receipts for the money received and considered the admission of only 30 out of 60 students. But with the initiative of Nidan, the authorities had to ultimately give in to the demand and gave admission to all.

B. Shared during the Consultation (Indigenous Communities, North East, 25–27 March, 2008).

The girl child who has been discriminated in this case is a 11 year old who is HIV positive and whose mother is also positive. She is studying in Koinonia Training English School. She hails from Chander district, Manipur. The child faces numerous discrimination in all walks of life – i.e., while playing with her friends in the playground, and in school the teachers don't treat her well.

168 Shared during the Consultation (Dalits, 5–7 February, 2008). The anganwadi school run in Paliganj, Bihar bearing no.39 under the Samevit Balvikas Pariyojana does not benefit the musahar (dalit) children staying there as the food meant for the children is consumed by the teachers themselves. The teachers resort to the practice of shooing away the children from schools rather than encouraging them to regularly attend the classes.

169 Shared during the Consultation (Dalit, 5–7, February, 2008). The anganwadi centre in Madamalasa village, Andhra Pradesh caters to education needs of 3 villages and 50 children are registered under this centre. But this centre remains closed for 15 days in a month and children do not get any diet meant for them during those days. The anganwadi teacher takes away the food items supplied for the children in the centre.

170 Shared during Consultation (Dalits, 5–7, February, 2008). Case of discrimination in seating arrangements in Kukurabad Primary School of a dalit child Prakash was reported to Dalit Adhikaar Abhiyaan, Harda, Madhya Pradesh.

171 India Hidden Apartheid: Caste Discrimination against India's "Untouchables". Shadow Report submitted to the UN Committee on the Elimination of Racial Discrimination <http://www.chrgj.org/docs/IndiaCERDShadowReport.pdf>

172 After the pogrom in Gujarat, education of Muslim girl children in the neighborhood schools was discontinued by the parents out of fear for the safety of their daughters.

- d) Depriving tribal children of education in their mother tongue and compelling them to use a medium of instruction which is alien to them.^{173,174}
- e) Discrimination of sexuality minorities; children whose parents are HIV positive; and refusing education to children who are themselves HIV positive.¹⁷⁵
- f) Many muslim parents reluctantly send their children not because they prefer *madrasa* education but because there are no functioning government schools in the neighbourhood.¹⁷⁶
- g) Children exposed to the highest risks of non enrolment into schools are those whose parents are forced to become migrant labourers.^{177,178}

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- 173 Shared during the Consultation (Tribals, 8–10, Jan, 2008). (a) In forest areas, the schools are run by the Tribal Department and not the Department of Education, Tamilnadu. The enrolment ratio for adivasis at the primary level is 87.49% and the middle school level is 61.42%. The dropout rate of adivasis at the primary level is 49.51% and the middle school level is 59.89% and it continues to grow higher. Reasons for this include the lack of schools, language barriers and distance from Adivasi settlements. The syllabus in Adivasi schools is totally unrelated to their lives and attitudes and social torture by higher caste children and teachers is also a major deterrent to attendance.
- 174 Shared during the Consultation (Tribals, 8–10th, 2008). Central Model residential school at Madya Padavu, Mangalore was established in 1990 by Integrated Tribal Development Programme (ITDP) of Dakshina Kannada district for Koraga community. The school suffered from negligence and retired teachers were appointed for teaching. Even though it is a residential school, there were no permanent teachers, warden, cook and security guard. As a result, the performance of the students from Koraga community suffered and there was 0% result in Std.X in 2005–06 batch. Samagra Grameen Ashram, Udupi and Koraga Federation of Samagra Grameen Ashram jointly advocated for improvements in the school. This led to a hike in teachers' salary in 2006 from Rs2500 to Rs6000 and consequentially, 80% result in 2006–07 batch was achieved.
- 175 Shared during the Consultation (People living with HIV and AIDS and Sexuality Minorities, 30 Jan–1 February, 2008). Sneha Samudaya in Gujarat came across this case where 8-year-old Darshan and elder brother were dispelled from Arya Samaj school after being declared HIV positive. Their mother died in 2004 and father is mentally retarded. Media pressure and sensitisation of school management helped in enrolling back these children in school. An infected child from Andhra Pradesh was denied admission in school since the headmaster said that if he gives admission to the infected child, parents of the other children will remove their wards from the school as reported by WINS, Andhra Pradesh.
- 176 Shared during the Consultation (Muslims, 18 – 20 February, 2008). Post-riots and ghettoisation of Muslims appear to have an extremely deleterious impact on their overall economic and educational conditions. According to a study jointly done by Indian Social Institute and ActionAid in 2005, it was found that 32.5% of the children of the respondents were not attending any school. Of those children who were going to school, 6% were attending Urdu-medium schools, 17.7% English-medium schools, 15.4% Hindi-medium schools, and only 5.1% were enrolled in madrasas. A majority of the children were going to government schools, and the proportion of those in private schools was only 27.8%, indicating the high levels of poverty among the respondents. From these figures it emerges that the majority of parents in these localities prefer to send their children to regular 'mainstream' schools rather than to madrasas and Urdu-medium schools, contrary to widely-held notions as often depicted in the media; ghettoisation has affected Muslim children's education.
- 177 Shared During the Consultation (Dalits, 5–7, February, 2008). Ms Kavitha is the third child of Mr. Elisha & Mrs. Dhanamma. Her parents go for daily labour and frequently travel to Bombay in search of job as migrant workers. She has got two elder brothers and one sister. Her brothers have studied up to Std.III and IV and later had to discontinue their studies. Kavitha, with great difficulty studied up to Std VI but in the last 2 years she discontinued her studies. Now she is supporting her family by working as a daily labourer and doing grafting on a cotton field.
- 178 Shared During the Consultation (Urban Poor, 22–24 January, 2008). Ragpickers in Delhi, are primarily children of migrant labourers or are orphans. In September 2002 a PIL was done in High Court demanding right to education for rag picking children. It stated that land allotted for schools to provide free education to the children belonging to economically weaker sections was hardly complied to. Instead children such as ragpickers were frequently beaten up in schools and suffered from lack of care and attention in schools even if they leave ragpicking to attend schools.

- h) Even worse is the condition of children from households that are subject to displacement.
 - i) Taking over of government school premises by the security forces engaged in anti-insurgency operations. The Government has also utilised school premises for State supported initiatives, sidelining the education of underprivileged children.¹⁷⁹
74. Against this deplorable state of affairs there has been a plethora of civil society initiatives. The campaign against child labour, national alliance for the fundamental right to education, the activist intervention of MV Foundation, Bodh society, Doosra Dashak, Centre for Child and Law, National Law School of India University(NLSIU) and others brought about an environment which demanded attention from the authorities concerned. An outstanding judgement of the Supreme Court in the famous Unnikrishnan Judgement¹⁸⁰ converted a non-justiciable constitutional right into a justiciable one by reading Article 45¹⁸¹ along with Article 21.¹⁸²
75. Even as the civil society campaign for fundamental right to education was gathering momentum, the then government of India hastily introduced Article 21-A¹⁸³ by amending the Constitution. Interestingly enough, the text of Article 21-A diluted the ratio decidendi of the Unnikrishnan judgement. Even more interesting however remains the fact that Article 21-A, although popularized was never notified. Yet the right to education became a fundamental right and remains so by virtue of the Unnikrishnan judgement.
76. Meanwhile, several half-hearted measures to craft a statutory framework for operationalising the content of Article 21-A were made. Till today, however, no such statute has been adopted.

179 (1) Shared during the Consultation (Urban Poor, 22–24th January, 2008). Municipal Corporation of Delhi school in Bawana, Haryana was turned into a dispensary first and then, the boys were shifted out to make space for the office of the Deputy Commissioner of MCD. (2) Shared During the Consultation (Tribal, 8-10th January, 2008) The Chhatisgarh Government has vacated some of the schools in Dantewada to allow Salwa Judum activists under the protection of state Para Military forces, to occupy school premises.

180 Unnikrishnan V State of Andhra Pradesh (1993) 1 SCC 645. The present case concerned the challenge of the validity of certain state legislations regulating the charging of fees by private educational institutions and prohibiting the charging of capitation fees from students seeking information. The Court has recognized a fundamental right to education in the right to life under Article 21. Taking help of Art 41 and 45 it has held that 'every child/citizen of this country has a right to free education until he completes the age of fourteen years.

181 Supra note 172

182 No Person shall be deprived of his life or personal liberty except according to procedure established by law.

183 (a)The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

(b) Justice Rajendra Babu, Chairperson of National Human Rights Commission (NHRC) in a conference at New Delhi on the Right to Education observed as follows: Normally a statute is tested against a Fundamental Right. Here is a proposed fundamental right which seeks to be regulated by a statute.(Not a quote but a gist of his statement)

X. Right to Practice of Culture (Article 15)

77. Human beings derive tremendous strength and confidence from their culture.¹⁸⁴ And it is co-existence of plurality of cultural life that enriches a country or society's ability to respect one another and co-exist tolerantly. This article recognises the right of everyone to take part in cultural life.
78. Each social group we held consultations with enjoyed a certain cultural life that supported their social and economic life. They also explicitly expressed the need to uphold their right to practice this culture. The following captures the onslaught on their cultural practice that many of the groups face as a result of cultural insensitivity, hostility, and sheer inability by the State to appreciate the richness of cultural plurality.
79. The *coastal community* identifies itself as custodian of the sea. But increasingly its identity is being threatened with the kind of 'disaster capitalism' that is being promoted. Indiscriminate and unregulated use of bottom trawlers and 'modern' fishing techniques which destroy spawning as well as the fauna and flora is causing irreversible damage to marine ecology.¹⁸⁵ The modernisers are blissfully unconcerned with the fact that global fish stock itself is finite. This in turn impacts on the fourth generation rights and thereby violates the community's economic rights as the bursting sea is central to the bursting fishing economy.
80. The *indigenous/tribals* on a similar front are confronting onslaught on their very identity with active State participation. Tribals have been coerced to adopt the Hindu way of life, including dress, worship, social customs, etc., in an effort to systematically hinduise the tribal community.¹⁸⁶
81. In celebrations of tribal festivals and customs, the State has actively interfered and hindered full celebrations.¹⁸⁷ Orissa State Government, completely disregarding people's sentiments, entered into an agreement with Vedanta/Sterlite company to allow mining in Niyamgiri hills, a place of worship for the Dongaria Kond, an indigenous community of Orissa.^[187a]

184 The United Nations Educational, Scientific and Cultural Organization (UNESCO) (2002) described culture as follows: "... culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs".

185 Sourparna Lahiri, Imperialist Globalisation of the Indian Seas and the Fishworkers Struggles, www.revolutionarydemocracy.org/rdv4n2/fishwork.htm

186 Sharing during the different consultations from Jhabua, Madhya Pradesh; Rajasthan, Gujarat, Orissa, Chattisgarh. Distribution of statues of Hanuman and mass gathering in Gujarat eulogizing 'Shabari' indicate their assimilation of the tribal community in the lowest rung of the Hindu order, as *sevaks*.

187 Demogra Kaldevi, Gujarat; Rathowa tribe, Chhota Udaipur, Gujarat; Government of Madhya Pradesh set stalls rudely interfering in our Bhagoria celebrations, enticing young couples to register marriages through 'Kanyadaan scheme' that offers Rs. 5100 to the girl (Shankar Tadwale, Bhil tribal activist, Jhabua, MP)

[187a] Anjali Lal Guta, 'The Last Stand of Niyam Raja', *Tehelka*, Vol 5, Issue 15, 2008]

82. Yet, the Indian State finds it convenient not to intervene in tribal customary laws that are discriminatory of women.¹⁸⁸
83. Indigenous knowledge of seeds and medicinal herbs has been completely removed from the custody of the tribals. Instead, their knowledge has been put to use by companies with the active commission of the State to market 'natural' products, making a huge turnover but with absolutely no benefit to the indigenous people. Further, with restricted movement of the indigenous communities into the forest,¹⁸⁹ there is complete destruction of indigenous seeds, exotic forest vegetables, herbs and roots of medicinal value. Non-implementation of PESA is a reflection of the State's disrespect to tribal life.
84. The Muslims in India face a far greater onslaught on their culture and religion. This is enhanced extensively post-1992 with the demolition of Babri Masjid in Ayodhya. Opportunities are engineered to target places of worship for vandalism.¹⁹⁰
85. There have been series of deliberate intervention by State Governments to hurt Muslim sentiments that have further made them feel anxious and insecure.¹⁹¹ Calculated attempts are pushed at saffronising school syllabus, especially history.¹⁹²
86. Series of legislations have been passed in different States to threaten and stigmatise Muslim communities. National laws such as Prevention of Terrorist Act, and Unlawful Activities Prevention Act, 2005 have been used extensively against the Muslim community.¹⁹³ State laws such as the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), Chhatisgarh Public Safety Act 2005 and Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 (Madhya Pradesh State Security Act, 1990) have been used to book persons who have protested against State repressive measures against specific communities.

188 Rakesh Shukla. Succession, gender equality and customary tribal laws. <http://www.infochangeindia.org/analysis103.jsp>

189 The series of Act that restrict movement – Indian Forest Act 1926, Forest Conservation Act, 1980, wildlife (Protection Act) 1950.

190 In Gujarat during 2002, over 200 places of worship- shrines, mosques and even cemeteries were destroyed. Temples were planted in place of mosque at Bhatta and Vasna in Ahmedabad. *The Human Rights Watch* (New York, April 30, 2002) India: 'Gujarat Officials Took Part in Anti-Muslim Violence'.

191 Recitation of vandemataram in schools, imposition of yoga in schools in State of Madhya Pradesh and Gujarat, change of names of streets/institutions from Muslim names to Hindu names in Madhya Pradesh. *The Hindu* (26 Jan 2007) - 'Surya namaskar' programme held in Madhya Pradesh; D Jose. Kerala Muslims rise against Vandemataram. <http://ia.rediff.com/news/1998/aug/18vande.htm>

192 Hiren Gohain, On Saffronisation of Education, <http://www.epw.org.in/epw/uploads/articles/4757.pdf>

193 At the end of 2003, 286 muslims were booked under Prevention of Terrorist Act (POTA) on flimsy grounds and a deliberate attempt was made to make it appear that the Muslim community as a whole had taken to terrorism as a reaction to the post Godhra violence directed against it. Zakia Jowher et al, POTA in Gujarat and its meaning for India, www.sacw.net/Gujarat2002/DubeJowher15August2004.html

Conclusion and Recommendations

- I. The single most important contributory factor causing acute denial of the human rights guaranteed in the ICESCR, cutting across all the excluded groups, is the rampant destruction of livelihood. Reality at the grassroots reveals that this process is caused primarily through displacement. The nature of displacement may vary from one social group to another but the common factor is uprooting them either from the homestead or from their occupation. Almost all the excluded sections of society are from the self employed groups. In some cases displacement has destroyed their access to natural resources, including food and even medicine (through medicinal plants). This is especially true of the tribal population. In case of the Muslims, their artisanal occupations have been destroyed and they have become bankrupt citizens. In the case of the dalits, it is mechanisation of agriculture that has destroyed agricultural work and accentuated unemployment. In case of the fisherfolk, it is the threat of eviction from the coast line which destroys their access to the sea and their ability to catch fish. In case of the small farmers, it is the destruction of sustainable agriculture and subsistence farming that is responsible. In case of the urban poor, it is their continuous eviction and never ending peripheralisation from the city centres.
- II. In other words, all these segments of the population are displaced from their trade, or occupation or customary home. It must be remembered that such displacement is clearly destructive of livelihood, it breaks up the family, enhances risk of starvation, non-education, ill health, unemployment, acquiring deadly diseases, and causes danger to life itself. Women, children and the aged get reduced to sheer destitution. It creates conditions for violating every single right in the ICESCR.
- III. Even more disturbing is the fact that the magnitude and the scale at which this impoverishment is spreading are hidden from public visibility and the Government itself is oblivious of this reality. The government presumes that growth will address all these issues and chooses to close its eyes to the gross everyday violations of human rights. An alarming situation has therefore arisen, causing widespread desperation and frustration among multitudes and in turn has provided fertile ground for insurrectionary activity. A country with strong democratic institutions is thus exposed to the collapse of the rule of law and it is in this situation that the Government must take cognisance of the emerging crisis and act in order to immediately arrest the destruction of livelihood of the masses. It is now well known that the rate at which job-seekers is increasing is much higher than the rate at which employment is generated under neo-liberalism. The excluded therefore have no chance of finding employment in the near future. The solution therefore is not just a matter of budgetary allocations, but more a matter of safeguarding existing habitats, trades, professions and occupations.

IV. As a small step in this direction, we wish to make the following recommendations:

1. *Coastal Community:*

- a. Their *in situ* housing and their customary right to keep their fishing gear on the beach and access the sea unhindered must be protected.
- b. Withhold implementation of the M S Swaminathan Committee recommendations, have a consultation along with the primary stakeholders – the coastal community of fisherfolk, dalits, Irullahs, Yenadis and informal sector workers – and weigh the consequences and uphold the inherent values of the Coastal Regulation Zone Notification, 1991.
- c. The Coastal Aquaculture Authority Act, 2005 must be repealed to uphold the Supreme Court order of 1997 (*Jagannath Vs Union of India*).

2. *Tribal/Indigenous:*

- a. The Government of India must immediately halt the displacement of tribals from their forest lands and implement laws which already confer property rights and participatory rights.
- b. India must ratify ILO 169 Indigenous and Tribal People's Convention, 1989 in order to secure and nurture the rich indigenous culture and knowledge.
- c. India has nearly 507,000 numbers of Internally Displaced Families, who are languishing in poorly equipped and inadequate relief camps. Indian State must follow the UN Voluntary Guidelines for the Internally Displaced Persons and ensure dignity of life and take immediate measures for immediate return to their homestead for an early resettlement of the families.
- d. Public Distribution System to be enriched to ensure availability of millets and other local grains in the local public distribution shops.

3. *Dalits:*

- a. Each dalit household must be allotted viable landholdings with support for collective farming along organic lines, thereby assuring minimum food requirements for their families. Currently the limited land allocated is degraded in quality. The Government should upgrade such land by effectively modifying existing programme budgets for the purpose.
- b. The principal struggle for dalits is their fight for dignity while struggling to break away from the shackles of caste hierarchy. Ownership of land has been the core of dignity for the dalits, which the State can best ensure through an efficient and effective land redistribution process.

4. *Urban Poor:*

- a. Their homestead must be permanently guaranteed through adequate provision in all the urban master plans – if necessary, by revisiting them immediately.
- b. The Indian State must take immediate measures to pass a suitable Unorganised Sector Social Security Bill, 2007 and ensure that, at least, a need-based minimum wage is paid to all working people.
- c. Introduce Employment Guarantee Schemes (on similar grounds such as the National Rural Employment Guarantee Act, 2005) in urban areas.
- d. JNNUURM in its current structure and manner needs to be revisited and a pro-poor and people-centric programme needs to be evolved.

5. *Muslims:*
 - a. All processes that create ghettoisation must be thwarted and recommendations of the Sachar Committee must be implemented with immediate effect.
 - b. The Indian State must repeal laws which facilitate stereotyping, detention without trial and procedures that deny human rights in the post 9/11 situation, and ensure Constitutional guarantees.
6. *Women:*
 - a. All women must be enabled to acquire ownership of land in their names so as to vest property rights in them.
 - b. India must revisit her reservation on CEDAW Article 5(b) to arrest human rights violations of women's rights, across all the social groups, including tribal communities and Muslims.
 - c. 150-year-old outdated colonial section 377 of the Indian Penal Code must be immediately repealed.
 - d. The Indian State must have guidelines for the Federal States to review the outdated laws for Devadasis and Joginis, and have a more forward looking policy/act that arrests trafficking of young girl children and redeems women from forced sex work. This should be backed with substantial, gender just budgetary allocation
7. *Children:*
 - a. All forms of child labour should be banned and all children must have access to their fundamental right to education, for this, all government schools – numbering nearly 700,000 – must be made to function. Indian Government must ratify Optional Protocol II of Convention on Rights of the Child.
 - b. The Indian State must find innovative ways of promoting education for all children, initially in their mother tongue with ability to switch over to the regional language, in addition to Hindi and English in schools (Ashram schools); and promoting their culture, language and festivals, such that tribal children feel motivated to attend school.
8. *People Living with HIV and AIDS (PLHA)*
 - a. Second line treatment through ART Centres should be made available.
 - b. The PHCs should be strengthened in order to effectively reach out to HIV and AIDS cases. Adequate treatment facilities including free diagnostic and treatment centres with necessary supply of drugs should be made available.
 - c. Positive people should be encouraged to come together, form their own collectives and organise drop in centres which offer care, support and solidarity.
 - d. A special law should be enacted to comprehensively address all issues of the HIV and AIDS community, including an end to discrimination and stigmatisation.
9. *Persons with Disabilities (PWD)*
 - a) Indian laws dealing with PWDs must be brought into alignment with the International Convention on Disabilities ratified by the Government of India.
 - b) Special measures to create job opportunities for the PWD in the public and private sector must be enforced.
 - c) Effective measures for inclusive education must be provided to all children with disabilities.

Annexure I

अर्जुन सिंह
ARJUN SINGH



सत्यमेव जयते

D.O. No. F. 5-28/2007-EE.5(MDM)
मानव संसाधन विकास मंत्री
भारत
नई दिल्ली-११० ००१
MINISTER OF
HUMAN RESOURCE DEVELOPMENT
INDIA
NEW DELHI-110 001

08 JAN 2008

Dear Shri Azmi ji,

Please refer to your letter dated 4th September, 2007 regarding introduction of biscuits under the Mid-day Meal Programme.

2. The matter has been examined. After due deliberation, I bring to your notice the following issues:

- (i) The National Institute of Nutrition, a premier institution of the Government of India and Food and Nutrition Board of the Ministry of Women and Child Development have advised us that biscuits cannot fulfill the recommended dietary requirements because biscuits (sweet or salty) are empty calories. At best they are snacks made of refined maida, sugar and hydrogenated fats, which cannot replace a hot, cooked meal. Moreover, 100 grams of biscuits provide only 6.5 grams of protein; this does not fulfill the nutrition norms, fixed under Mid-day Meal Scheme. Adding 1, 2 or even 5 micronutrients to biscuits may, in fact, create problems because humans need at least 20 known vitamins, minerals and other protective substances, which can only be derived from fresh vegetables and fruits, and not from added chemicals. Chemical substances called micronutrients cannot replace natural foods; therefore, chemically laced biscuits should not replace a major meal of a growing child.
- (ii) You will understand that it is important for the children to appreciate the local foods and tastes. Biscuits will only prepare children to switch to fast foods as adults. This, we fear, could hasten the onset of diabetes, and obesity in children. With biscuits in the school lunch programme we will end up de-legitimizing food prepared by mothers everyday, a damage which cannot be quantified.

3. We have also discussed this proposal with State Education Secretaries, who are the nodal officers for implementation of the MDM programme. State Education Secretaries have pointed out that:

- (a) There is no protein in biscuits, since it consists only of maida and sugar.
- (b) Nutritionally, biscuits will load unnecessary sugar in the body, and could lead to obesity.
- (c) The possibility of pilferage/diversion of biscuits is much higher.
- (d) Social equity, an important component of the Mid-day Meal Programme, is not addressed.
- (e) Employment opportunities provided to cooks/helper from the marginalized sections of the society would be lost.
- (f) There is apprehension of violation of Hon'ble Supreme Court's rulings that only hot cooked Mid-day Meal is served.

4. I may add that the Commissioners appointed by the Hon'ble Supreme Court to monitor the implementation of the Mid-day Meal Scheme have opined that any proposal for introducing ready to eat food in the form of biscuits or any other form would violate the spirit of Hon'ble Supreme Court's order and also irreparably damage the Mid-day Meal scheme.

5. In view of the above, I am sure you will agree that replacement of the Mid-day Meal Programme through supply of biscuits would not be in the nutritional interest of children, since it does not fulfill the nutritional norms, dietary requirement and safety of children and further it also deprives many intrinsic benefits that are being derived through the present pattern of implementation.

With regards,

Yours sincerely,

(ARJUN SINGH)

Shri Abu Asim Azmi,
Member of Parliament (Rajya Sabha),
54, South Avenue,
New Delhi-110011.

Annexure II

List of Organisations Signatory to the Consultations

1. Adivasi Jeevan Vikas Kendra, Maharashtra
2. Aamhi Aamchya Aatmasaathe, Maharashtra
3. Abhaya, Davanagere, Karnataka
4. Abhaya, Shimoga, Karnataka
5. ActionAid India
6. Adventure, Orissa
7. Ahmedabad Daniswan, Gujarat
8. Akimbo Society, Nagaland
9. All India Trade Union Congress, Madhya Pradesh
10. Aman Samudaya, Gujarat
11. Ambedkar Vichar Manch, Orissa
12. Ambedkar Welfare Society, Bihar
13. Ankita, Nalgonda, Andhra Pradesh
14. Annai Theresa Welfare Trust, Tamilnadu
15. Annasuraksha Sahmat, Gujarat
16. Andhra Pradesh Dalit Samakhya, Andhra Pradesh
17. Association for People's Initiative for Liberation, West Bengal
18. Action in Rural Technology and Services, Andhra Pradesh
19. Arunodyaya, Tamilnadu
20. Arundathiar Coordination Forum, Tamilnadu
21. Ashray Adhikar Abhiyan, Delhi
22. Ashraya Evam Rojgar Bachaavo Andolan, Bihar
23. Association for Social and Health Advancement, West Bengal
24. Astha, Rajasthan
25. Bal Vikas Dhara, Delhi
26. Banchita Jana Jagran Adhikar Samiti, West Bengal
27. Bharatiya Muslim Mahila Andolan, Gujarat
28. Bhor Abhiyan Morena Society, Madhya Pradesh
29. Bhor Project, ActionAid, Madhya Pradesh
30. Center for Health & Resource Management, Bihar
31. Center for Integrated Development, Madhya Pradesh
32. Centre for Community Service, Tamilnadu
33. Centre for Peace and Development, Mizoram
34. Cheshire Home, Tamilnadu
35. Center for Health and Social Justice, Delhi
36. Chaupal, Chattisgarh
37. Christian Institute for Study on Religion and Society, Karnataka
38. Coastal Community Protection Movement, Kerala
39. Commitments, Andhra Pradesh
40. Community Development Forum, Assam
41. Community Development Organization Trust, Tamilnadu
42. CORO for Literacy, Maharashtra
43. Dalit Adhikar Morcha, Jharkhand
44. Dalit Hakka Abhiyan, Maharashtra
45. Dalit Handloom Weavers Development Society, Andhra Pradesh
46. Digambarpur Angikar, West Bengal
47. Disha, Ahmedabad
48. Dalit Adhikar Morcha, Bihar
49. Dalit Mannurimi Kootamaippu Network, Tamilnadu
50. Dhimsa, Andhra Pradesh
51. Durbar Mahila Samanway Committee, West Bengal

52. Don Bosco Social Welfare Centre, Manipur
53. Dr.Shambhunath Singh Research Foundation,Uttar Pradesh
54. East Zone Displacement Project, Orissa
55. Eastern Action Socio Economic Development Trust, Assam
56. Andhra Pradesh Samprathaya Machikara Sangam, Andhra Pradesh
57. Fishermen Youth Welfare Association, Andhra Pradesh
58. Forum for Fact Finding Documentation and Advocacy, Chattisgarh
59. Garima Abhiyan, Madhya Pradesh
60. Gram Sudhar Samiti Sidhi, Madhya Pradesh
61. Gram Swaraj Abhiyan, Jharkhand
62. Gramya Vikash Mancha, Assam
63. Gujarat State Network of Positive People, Gujarat
64. Gandhian Unit for Integrated Development, Tamilnadu
65. Human Rights Alert, Manipur
66. Indigenous Peoples Foundation, Arunachal Pradesh
67. Indigenous Tribal People's Development Centre, Tripura
68. Indo Global Social Service Society, NERO, Assam
69. Institute for Peace Studies and Conflict Resolution, Maharashtra
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97. National Union of Fishermen, Tamilnadu
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104. ODD Foundation, Bhubaneswar
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106. People's Alliance for National Integration, Uttar Pradesh
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111. Praxis, Delhi
112. Prayas Grameen Samiti, Bihar
113. Prayatna Foundation, Uttar Pradesh
114. Rehthan Adhikar Manch, Gujarat

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| 134. South Indian Fishermen Welfare Association, Tamilnadu | |

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