

# Issues of Social Justice: Rights and Freedom

## Introduction

The consultation paper entitled **Pace of Socio-economic Change under the Constitution** released by the NCRWC takes a critical look at India's development experience since 1950, when the Constitution came into force. This paper evaluates the successes and failures of the State in fulfilling its Constitutional obligation of assuring every citizen a life with dignity. The main concern of the paper is whether socio-economic progress made since independence has been fair, fast and equitable, particularly to those belonging to the vulnerable sections of the society like the Dalits, adivasis, women and children.

The paper notes that the Indian economy has grown considerably since independence with the introduction of new technologies, modernization of agriculture, rapid industrialization and the production of a whole new range of goods and services. The initiation of economic reforms in 1991, such as the abolition of the license-quota *raj*, privatization of several government owned enterprises, reducing restrictions on exports and imports and reforms in the banking and the financial sectors have led to further economic growth. Statistics pertaining to the size of the economy, the monetary value of the goods and services produced and growth in per capita income are provided in the paper.

Inspired by the ideas of the Nobel Laureate economist Amartya Sen, the paper considers the level of human development as the criterion for evaluating progress, rather than considering development merely in terms of economic growth and rising levels of per capita income. Human development means the expansion of freedom and rights of the people so that they may have the capacity to lead the kind of life they value. Human development therefore implies attaining freedom from fear, repression, discrimination and exploitation, freedom to lead a life of dignity, freedom from hunger and freedom to participate in decision-making in an informed and intelligent manner.

The paper notes that though the aim of the State has been to achieve overall economic stability, the experience of the past 50 years has shown that this growth has not trickled down. This is made worse by the persistence of social disabilities such as the caste system, untouchability, religious taboos, and discrimination against women. Development, therefore, has not benefited the poorer sections of the society, including the Scheduled Castes and Tribes and backward classes. The paper thus points out, that the only way to ensure sustained development and socio-economic change is to have a rights-based approach to development, founded upon the principles of equity and justice for all. Indeed this is the very foundation upon which the founding fathers have erected the Constitution of India. The rights based approach means: the consideration of human rights, equity, equality, social justice and accommodation of diversity as being central to the conceptualization, design, implementation,

delivery, monitoring and evaluation of all developmental processes. It was believed that the noble values of justice, liberty, equality and fraternity would serve to unify the diversity of India by dissolving the social inequities and assuring the dignity of the individual. Recognizing pluralism as the core of democracy, the paper points out that the Constitution seeks humanism, endurance and higher values as its ultimate goals, which can be achieved by ensuring its citizens a free and just world.

The paper states that the Constitution of India, reflects an “uncompromising” respect for human dignity, an “unquestioning” commitment to equality and an “overriding” concern for the poorest and weakest in society. This triad of concerns is enabled by the embodiment of a charter of fundamental rights and the directive principles of state policy. The constitution makers therefore embodied the principles of social justice in two parts of the constitution, i.e. Chapters III and IV. It is in fact the Constitutional mechanism for the realization of socio-economic goals, which is mandatory for the promotion of freedom and ensuring every citizen a decent standard of living. This views a regime of rights where the social and economic rights are interdependent with political and civil rights. Over the years, the Supreme Court has progressively widened the scope of the right to life to include several social and economic rights. The paper, however, comes to the firm conclusion that the social and economic justice guaranteed to all citizens by the Constitution still eludes majority of the people comprising of women, the Scheduled Castes, the Scheduled Tribes, backward classes, unorganized workers and the poor.

## **Chapter Five: Rights and Freedom**

A review of the fifty years reveals that the humanistic ideals of the Constitution have remained largely unrealized. The paper holds that the social and economic rights conferred upon the citizens by the Constitution of India have been systematically denied to them. The denial of rights has led to a condition of non-freedom. This conclusion is arrived at by the persistence of human deprivation over the last 50 years and by the existence of a series of non-freedoms, which has led to a condition of human poverty. In order to redress these deprivations, the paper has identified five major areas of socio-economic rights, which need to be instituted for the eradication of poverty. These socio-economic rights are the essential attributes of the right to life as guaranteed under Article 21 of the Constitution. The Supreme Court has emphasized this on many occasions. In its words, “we think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms.”<sup>1</sup> These basic socio-economic rights of food, water, shelter, clothing, education and a clean environment has eluded the vast majority of Indians despite 50 years of industrial growth and Constitutional assurance. These rights, as identified by the paper, and the corresponding socio-economic conditions created by them, are tabulated as follows:

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<sup>1</sup> Bhagwati, J., in Francis Coralie vs. Union Territory of Delhi (1981) 1 SCC 688.

Denied Right	Condition of Non-freedom
Right to life/survival	Low life expectancy, high mortality
Right to health	Ill health
Right to food	Malnutrition, starvation
Right to education	Illiteracy
Right to gender equality	Discrimination against women

With the help of statistics and tables, the paper portrays, that even after considerable growth in the economy and the liberalization of the market, India falls short, even below Sub-Saharan Africa (the entire continent of Africa excluding Egypt, Tunisia, Libya, Algeria and Morocco which constitute the Maghreb region) in terms of health and literacy. In all cases, rural areas have suffered more than urban areas, the Scheduled Castes and Tribes more than the upper castes, women more than men and states like Madhya Pradesh, Bihar and Orissa have on an average fared worse than the rest of the country. The statistics show that Kerala has the least socio-economic disparity in all aspects compared to the other states of India.

It is necessary to recognise the importance of political rights alongside social and economic rights. The relationship between the two sets of rights is important. Realisation of one is dependent on the availability of the other. The following sections will discuss the status of each of these socio-economic rights as enumerated in the above table.

### 5.1 Right to Survival

The paper looks at the right to survival from the point of view of life expectancy at birth and infant and maternal mortality. Life expectancy means the number of years an individual may expect to live in good health. Life expectancy increases when a safe and healthy living environment is available. This includes the availability of a good public health system, sanitation, access to safe drinking water and an adequate standard of living (which includes sufficient resources to buy these commodities and services and their availability at affordable prices). When the State fails to provide these basic civic amenities, the standard of living falls and the life expectancy of the citizens deteriorates. The paper shows that the rural poor, the lower castes and tribal communities, large numbers of women and children do not have access to these facilities, which the State has a responsibility to provide. This has contributed to their low standard of living, ill health and untimely and avoidable deaths.

In 1999, WHO (World Health Organization) scientists developed a new indicator to measure life expectancy, called DALE or Disability Adjusted Life Expectancy. DALE estimates the expected number of years to be lived, which is equivalent of full health. The years of ill health are measured according to severity and subtracted from the expected overall life expectancy to give the equivalent

years of healthy life. The years lost in disability or ill health are substantially higher in poorer countries because of injuries, blindness, paralysis and tropical diseases like malaria and tuberculosis. People in the healthiest nations lose 9% of their lives to ill health as compared to 14% in worse off countries.<sup>2</sup> In 24 countries, DALE equals or exceeds 70 years and is less than 40 years in 32 countries. Japan tops the list with a life expectancy of 74.5 years and Sierra Leone is in the bottom of the rung with a life expectancy of 25.9 years.<sup>3</sup> The bottom 10 countries are in Sub-Saharan Africa where HIV-AIDS epidemic is rampant and is the leading cause of death.

Life expectancy in India has increased from 32 years in 1950-51 to 63 years in 2000, yet it is less than that of Japan, China, Sri Lanka, Bangladesh and Nepal. The lowest life expectancy is in Madhya Pradesh with 57 years and the highest in Kerala with 75 years. Female life expectancy in Madhya Pradesh is one of the lowest in the world, 26 years lower than the life expectancy of Japan. In fact apart from Sub-Saharan Africa, only Sudan (56.4 years), Cambodia (55.2 years) and Lao P.D.R (55 years) have lower life expectancy than Madhya Pradesh does.

It is believed that if women and men have equal access to care, nutrition, medical and other health facilities, women tend to outlive men, as they are biologically stronger. They are also more health conscious, more active and less prone to diseases. Even female foetuses have greater chances of being born; i.e. they have a lower probability of miscarriage than male foetuses. Universally, though more male babies are born, as they increase in age, their proportion in the overall population begins to fall due to lesser chances of survival. As countries get richer, female mortality tends to decline faster than male mortality. In the industrialized nations, in the 1900s, the gap between female and male mortality was 2-3 years but by 1999 this gap had increased to 7-8 years.<sup>4</sup> However, on a global scale as a whole, women do not outnumber men. This 'shortfall' of women is largely observed in Asia and North Africa. In the OECD countries, the life expectancy of women exceed that of men by 5 years, while in India, it exceeds by only a year. In Bihar, U.P. and Orissa, the situation is worse as the trend is reversed with the men outliving the women.

Amartya Sen has spoken of the concept of 'missing women' to describe the phenomenon of "women who are simply not there, due to unusually high mortality compared with male mortality rates."<sup>5</sup> This would refer to the increased number of women one would expect to find in a given country if both men and women received equal benefits from the public health care system. In his study of 1986, Sen had estimated 37 million missing women in India.<sup>6</sup> This occurs when there is unchecked discrimination against women, as they receive much less attention and health care than men do. Women tend to work twice as much as men as they are active both within the domestic space as well as outside it,

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<sup>2</sup> WHO, 2000.

<sup>3</sup> WHO, 2001 estimates.

<sup>4</sup> WHO.

<sup>5</sup> Sen, Amartya, "The many faces of gender inequality" in *Frontline*, Nov. 9, 2001.

<sup>6</sup> Sen, Amartya, "Africa and India: What do we have to learn from each other?" in Kenneth J. Arrow, ed., *The Balance between Industry and Agriculture in Economic Development* (London, Macmillan, 1988).

helping the men in their livelihood, particularly in the agricultural field. They clean, cook, wash, look after the children, fetch water, as well as weed, thresh, weaving etc. Their intake of food both in terms of quantity and nutrition is far less than the male members of the household and they suffer regularly from a deficiency of protein, iron and iodine. Their decisions to undertake health care are usually governed and very often vetoed by their husbands and other senior male members of the household. So even if the State provides adequate health care, women very often are denied access to it.

The situation of missing women is enforced by the prevalence of female foeticide and infanticide. The paper presents statistics to show that Punjab, Haryana, Maharashtra, Uttar Pradesh, Gujarat, Rajasthan and Andhra Pradesh, all have a female infant mortality rate that is higher than the male infant mortality rate. The Pre-natal Diagnostics Techniques (Prevention and Misuse) Act, 1994, make sex selective abortions illegal. Despite the existence of such laws, public authorities continue to condone these inherent biases against women. Numerous women are made to go through it, as they are repeatedly humiliated at home for producing female babies. In a judgement delivered on 10<sup>th</sup> July, 2001 (Complaint no. 271/1993), the Consumer Disputes Redressal Commission, Ahmedabad has observed that “the male child is always a precious child for the mother...to her it is of more value”. This judgement serves to legitimize the inhuman gender bias against the girl child in our country and violates all norms of gender justice and equality. It is especially surprising as Gujarat has a high female IMR and the Commissioner has admitted that it is due to the sex selective abortions of female fetuses. The Consumer Commission’s judgement reflects the social attitude towards women in India and particularly, the girl child to the extent it reveals the mindset of government officials.

The Supreme Court, in a recent judgement, has served notices on the Union and State Governments to enforce the existing law forbidding sex determination and selection procedures and subsequent abortion. These procedures have been criminally misused in collusion with medicos and clinics, which have mushroomed all over the country. The apex court has also directed that Pre-natal Diagnostics Techniques (Regulation and Prevention of Misuse) Act, 1994 be implemented and even amended, if necessary, to plug any loopholes.

Infant Mortality Rate (IMR) is the probability of dying between birth and exactly one year of age expressed per 1,000 live births. India has one of the highest infant mortality rates (IMR) in South Asia at 70 per 1000<sup>7</sup>, although her per capita income may be higher than some of her neighbouring countries. This is despite the fact that the number of infants dying at birth or soon after birth has reduced by half since independence. The rate of improvement of child survival in India is very slow, in fact, slower than that of other South Asian countries. The first 28 days after a child is born, or the neonatal period, is critical. This is the time when fundamental health and feeding practices are established. It is during this time that the child is at the highest risk of death and requires protection against illnesses, including malnutrition and infections. One million children die each year from lack of breast-feeding. The paper states that IMR is a comprehensive development indicator, as it reflects the

quality of people's lives, specially, the income and education of the parents, the prevalence of malnutrition and disease, availability of sanitation and health facilities and the position of women. Most importantly, it reflects the unequal opportunities for survival faced by the child.

In India, the rate of maternal mortality (MMR) or the number of mothers dying while giving birth to children or soon after paints an even grimmer picture. Maternal death is the death of a woman while pregnant or within 42 days of termination of pregnancy, from any cause related to or aggravated by the pregnancy. Direct maternal deaths can result from medical complexities such as haemorrhage, unsafe abortion, obstructed labour, interventions, incorrect treatment etc. Indirect deaths occur from previously existing diseases such as malaria, anaemia or HIV/AIDS. Often diseases occur during pregnancy. The MMR measures the obstetric risk and the frequency with which they are exposed to this risk. It is calculated as the number of maternal deaths in a given period per 100,000 women of reproductive age (15-49 years). Maternal mortality rate was first estimated in 1980. In 1996, WHO and UNICEF discovered that the problem was significantly greater than they had calculated. They estimated that 600,000 maternal deaths occurred each year, with the overwhelming majority of them in developing countries.<sup>8</sup> In developing regions, one woman in 12 die compared to one in 4000 in industrialized countries. Of these deaths in the developing countries, 25% is from haemorrhage or excessive bleeding and 20% is from pre-existing diseases, significant of which is anaemia, an indicator of under nourishment and iron deficiency.

According to official estimates, the maternal mortality rate in India in 2000 was 408 per 100,000 live births.<sup>9</sup> Not only is maternal mortality extremely high but it is 100 times higher than in the developed countries of the West. It is also higher than most other less developed countries. The maternal survival rate is so low in Uttar Pradesh, that only five countries in the world claim to have a survival rate, which is higher. Poor access to safe reproductive health, emergency obstetric assistance and inadequate health care and nutrition for women are some of the main reasons for this high rate of mothers dying due to childbirth related complications.

The death of woman during pregnancy is not only a health issue but also a matter of social justice. Governments are not only required to ensure appropriate health care during pregnancy and childbirth, but women have rights to decide whether, when and how often to bear children. Governments must address these factors within the legal and health systems, which deny women these rights. These rights can be provided through the primary health care system and include information on reproductive health issues, include family planning, abortion and sex education. Government health care should be non-discriminatory, in that women should not be required to obtain consent of husbands or parental authorization in healthcare interventions. Laws should be reformed to bring about such change.

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<sup>7</sup> Draft National Health Policy, 2001; UNICEF.

<sup>8</sup> *Reduction of Maternal Mortality*, A Joint WHO/UNFPM/UNICEF/World Bank Statement, 1999.

<sup>9</sup> Draft National Health Policy, 2001; Ministry of Health Annual Report 2000.

## 5.2 Right to Good Health

Low life expectancy and high infant and maternal mortality rates reflect the status of health of citizens' in the country. Hence, the above discussion on the right to survival would remain incomplete unless it is linked to the debate on the right to good health. The paper states that there is a lack of systematic and reliable data on the state of citizens health in India, so it has relied on what it terms as 'surrogate' (or stand in) indicators. These include child malnutrition, low birth weight babies, anaemia and access to safe drinking water and sanitation as markers for identifying the status of health.

Bangladesh and India have the highest level of child malnutrition in the world. Despite a remarkable expansion in food production and good stock of food grains, 53% of children less than 5 years in India suffer from lack of appropriate, adequate and nutritious food. The level of malnutrition is twice that of Sub-Saharan Africa. The reduction in the level of child malnutrition has been painfully slow, with estimates showing that it reduced by 5% between 1992-3 and 1998-99. The reduction in the level of 'wasted' children was less than 4%. This sordid situation calls for an improvement in child health care, improved knowledge of childcare practices and better health care for mothers. Even primary health care like immunization is not accessible to all in India. The official survey of 1998-99 reveals that merely 42% babies were immunized against life threatening diseases, of which Bihar and Rajasthan have negligible records.

The child in India begins its life by being malnourished in the womb and therefore is born with low birth weight. The child continues to remain malnourished, as the mother may not be able to nurse the newborn baby with her own milk adequately, due to her own weak condition. This is because women in India do not get the required nutritious diet and rest, especially during pregnancy after childbirth. Data shows that only 1/3 of deliveries in the rural areas are attended by medical professionals. After 6 months, when the child is due to be weaned and introduced to eat solid food, the mother leaves the baby in the care of its elder siblings as she has to go to work in order to feed the whole family. The siblings being young themselves are unable to tend to the child, who thus continue to remain under nourished without any proper food or care. Hence it is not surprising that the proportion of low birth weight babies in India is 33%, making the level of child malnutrition in India twice that of Sub-Saharan Africa. This child is born malnourished and continues to remain unfed even during periods of bumper harvests, let alone during famine and droughts. **The paper observes that the root of child malnutrition therefore, does not lie in income levels or food availability but in the manner in which society treats its women and cares for its children.**

An indicator of the poor health of women is the existence of anaemia. Anaemia or chronic iron deficiency is the most prevalent kind of malnutrition in India. It is caused by low intake of food among the poor. Severe anaemia leads to the birth of premature babies, low birth weights and still births and causes 34.5% of maternal deaths. The National Family Health Survey in 1998-99 states that 52%

married women aged 15-49 years and 74% children below 3 years suffer from anaemia. Andhra Pradesh has 50% anaemia. A study done by James, Aitken and Subramaniam claim that anaemia in India is 88% and this has remained constant for a long time.<sup>10</sup>

Amartya Sen holds, that the gender bias reflected in the neglect of the girl child and women in general leads to under nourishment of pregnant women, which in turn leads to deprivation of nutrition to the foetus, the birth of underweight babies and subsequent child malnutrition. The child ultimately grows up to live in poor health and if a girl child, the vicious cycle is repeated. Therefore, Sen states that, the deprivation faced by women also adversely affects men.

Apart from medical facilities, access to safe drinking water and proper and adequate sanitation facilities are the pressing needs for the health of a nation. According to official estimates 90% of India's population have access to safe drinking water but the paper states that this is a mirage and not ground reality. Large numbers of people in both rural and urban areas do not have access to safe drinking water. This is due to lack of physical access for geographical reasons (such as the distant location of dwellings from water sources), social reasons (such as exclusion of dalits, tribals and other social outcastes) and contamination from chemical poisoning like arsenic or from industrial wastes being disposed into water bodies, prevalence of water-borne diseases and the gradual depletion of the water table due to indiscriminate drilling of borewells for water supply in urban areas and agricultural purposes in rural areas.

The combination of the abovementioned facts indicate that though there is an extensive network of public health care and sanitation system in India, it is poor in quality, inefficient and inaccessible to the vast majority of the population. Public health care has not been able to tackle widespread infectious diseases like Malaria, Tuberculosis, Hepatitis, HIV/AIDS. Thousands succumb to these diseases every year. The consultation paper holds that the spread of these infectious diseases cannot be contained without the active participation of civil society. Government run public hospitals have serious logistic and administrative problems which make them inefficient, while the honesty and integrity of government officials are also doubtful. As a result, people are losing faith in them. In such situations, civil society interventions appear to be the only way out of the imbroglio.

The Alma Ata Declaration which was signed by a majority of countries of the world including India, in 1978 had promised "health for all" by the year 2000. It was expected that with adequate investments in health infrastructures and an appropriate mix of public health strategies, the countries would be able to meet this goal. Despite the setting up of complex medical and health infrastructures involving teaching, training and research, drugs and medical instrument production in India, the general public remains dissatisfied with the services they receive in terms of both cost and quality. The truth of the matter is that a disproportionately large amount of health expenditure remains concentrated in urban, technologically intensive, curative medicare. There has been a proliferation of private medicare

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<sup>10</sup> James, K. S., Aitken, Iain N., and Subramaniam, S. V., *Neonatal mortality in India: emerging paradoxes*.



facilities and the setting up of super specialty hospitals in big cities and towns, while the primary and secondary health care systems, which are mainly found in rural areas, have declined steadily. The growing private sector has attracted more and more doctors and medical professionals trained using public funds, at the cost of the public health system. The bottom line is that access to both general and specialty health care, especially in the rural areas, remains unavailable to a large majority.

The Bhole Committee in 1946 had advocated a focus on preventive health, i.e. nutrition and clean drinking water, control of communicable diseases and the establishment of a rural medicare system. This was reiterated by the ICSSR (Indian Council of Social Science Research)-ICMR (Indian Council of Medical Research) Health for All Report of 1978. There has also been innumerable low cost, community based health care experiments conducted by voluntary organizations that have been successful, models from which the government could have drawn inspiration and lessons.

Structures of inequality and inequity within the system are being persistently ignored. State policy has remained obsessed with family planning and population control. The nomenclature may have changed in recent years to reproductive and child health and safe motherhood and child survival, but the underlying focus continues to be population control rather than a holistic approach to public health. A holistic approach can also profitably accommodate the non-allopathic systems of medicine, such as ayurveda, unani, homeopathy, folk and tribal medicine, which is still followed by the majority of the people in our country. These non-allopathic systems use medicinal plants and herbs available in plenty throughout India and are used in traditional ways. These indigenous systems of medicine have existed since time immemorial and the knowledge has been handed down over several generations. The rural poor, who comprise the majority of the country's population, are dependent on these traditional and folk systems of medicine for their primary health care.

The Draft National Health Policy 2001 released by the Ministry of Health and family Planning, Government of India, recognizes the lacunae in state policy as mentioned above. It has identified Kerala, Maharashtra and Tamil Nadu as the better performing states and Orissa, Bihar, Rajasthan, Uttar Pradesh and Madhya Pradesh as the low performing states as far as health is concerned. It advocates strongly, the role of civil society intervention and the complementary use of traditional medical systems such as Ayurveda and Unani. Most significantly, it focusses on the wide inter-state and rural/urban disparity in accessing public health care. The Policy observes that this implies that "for vulnerable sections of society in several states, access to public health services is nominal and health standards are grossly inadequate."<sup>11</sup> This persistence on social inequity is the message of the new Health Policy. In the words of the Policy as stated in Para 2.2.3, " it is a principal objective of NHP 2001 to evolve a policy structure which reduces these inequities and allows the disadvantaged sections of society a fairer access to public health services."

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<sup>11</sup> Draft National Health Policy, 2001.

**11.4.1 Question # 19: In your opinion, what special measures should be taken for improving the state of women's health?**

**Question # 20: Do you think the existing safeguards can prevent the misuse of sex determination tests? If not what further steps do you suggest to overcome this problem?**

**11.4.2 Question # 21: In your opinion what steps should be taken to effectively address the problems of infant mortality, child anaemia and child malnutrition?**

**Question # 22: In your opinion what steps are necessary to overcome the problems of maternal anaemia and low birth related health problems of children?**

**11.4.3 Question # 23: What measures do you suggest for ensuring civil society participation in effectively managing health care systems?**

**Question # 24: What statutory or non-statutory mechanism — needs to be evolved to ensure meaningful participation of civil society in health care?**

### **5.3 Freedom from Hunger**

The most fundamental of all socio-economic rights is an individual's right to food. Food constitutes an essential need and a basic right for all individuals. Without food the right to life loses meaning, as human lives are dependent on the consumption of food on a daily basis. In this sense, the right to food can be said to be centrally embedded in the most fundamental of all human rights namely, the right to life. While human society has achieved unprecedented scientific and technological progress during the last few centuries, millions of people around the world remain hungry every night. The gravity of the situation is put into perspective by a recent FAO (Food and Agricultural Organization) estimate. More than 800 million people face chronic undernutrition and 200 million children under the age of five suffer from chronic calorie and protein deficiencies in developing countries alone. In spite of the fact that the "right to food" has been frequently endorsed by nations with both unanimity and urgency, economists have pointed out that no other human right has been as comprehensively violated on such a wide scale in recent decades.

Right to food, as laid down in Article 11.2 of the International Covenant on Economic, Social and Cultural Rights refers to the "fundamental right of everyone to be free from hunger."<sup>12</sup> Hunger not only

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<sup>12</sup> Article 11.2 "The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or

means absence of food but also an inadequacy of food. To be free from hunger is to be adequately fed. For food to be adequate, it must be nutritious, safe and accessible. It must have sufficient nutritional content, be readily available and affordable and be free from harmful content like poisons. The state therefore has a duty to protect and ensure the food adequacy and food security of its citizens. Basic needs such as the need to eat in order to survive must be fulfilled and the state has a mandate to do so. Unless that right is first fulfilled, the protection of other human rights becomes a mockery for those who must spend all their energy to feed themselves in order to survive another day. Therefore citizens in such countries enjoy the right to food as a freedom which is justiciable.

Even after 50 years of independence and a tremendous increase in food production levels and the 'successful' ushering in of a Green Revolution, India has 260 million people living below the poverty line. According to official statistics, poverty has reduced from 47% to 27.09%, between the years 1951-2000, but this pace is too slow to ensure socio-economic justice to the entire population. The paper holds that the quality and reliability of official statistics regarding poverty levels in India is doubtful. The use of different methodologies to determine poverty levels by different government and statistical survey agencies throw up a variety of data that are difficult to compare with each other. Hence though the Planning Commission's Report shows there has been a reduction in the number of people living below the poverty line, other estimates arrived at by economists such as Suresh D. Tendulkar and S. P. Gupta show an increase between 1989-90 and 1998 which includes the first phase of economic reforms beginning in 1991. Newspaper reportage and independent studies show that states like Orissa, Bihar and Rajasthan harbor starvation deaths, although officially it has been denied.<sup>13</sup> In Orissa, the horror stories of parents selling their children in order to feed themselves have been prominent in the national dailies in recent times.

The reduction in the level of income poverty has not only been slow but uneven among the states. In the last three decades, although Kerala, Punjab and Haryana have managed to reduce income poverty by 75%, Orissa and Bihar have achieved less than 32%.

The government has tried to reduce poverty levels through its Anti Poverty programme, an important component of which is the Public Distribution System (PDS). The PDS is a food subsidy programme for the poor, where essential commodities like wheat, rice, sugar, edible oil and kerosene are distributed through a network of Fair Price Shops. There are 4.6 lakh Fair Price Shops across India, which serve 180 million Ration Cardholders. The PDS however has failed to deliver with Fair Price Shops largely remaining inoperative and one third of the food supply diverted to other channels flouting all ethical norms. Yet at the same time the Food Corporation of India hoards huge stocks of food grains in its godowns as the people do not have the money to buy them. To counter the failure of

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reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

the PDS, the system of Food Coupons had been introduced as an experimental measure in some areas. It has also been suggested that a percentage of Fair Price Shops be reserved for members of the Scheduled Castes and Scheduled Tribes.

The consensus arrived at by the consultation paper is that the PDS benefitted the urban areas and failed to serve the population that lives below the poverty line. It did not succeed in reaching out to the poorest of the poor and instead catered to those who live above the poverty line. Subsequently, the Chief Ministers' conference held in July 1996, recommended that the PDS should be revamped as the Targeted Public Distribution System (TPDS). The TPDS, which was adopted in June 1997, is a two tier subsidized pricing structure for families living below the poverty line (BPL) and those living above the poverty line (APL). The thrust of the TPDS is to include only the really poor and vulnerable sections of the society such as the agricultural labourers, marginal farmers, rural artisans/craftsmen, potters, tappers, weavers, blacksmiths, carpenters, porters, rickshaw-pullers, handcart pullers, and fruit and flower sellers on the pavement. In the BPL scheme, the government is committed to issue 10 kg. of foodgrain per month per family at 50% of the economic cost of the Food Corporation of India (FCI). In practice, this works out to be much less. Under the APL, foodgrain is available at 90% of the FCI cost. The amount of foodgrain currently in need per annum is 156.49 kilo tonnes for BPL families and 106.31 kilo tonnes for APL families. The states have the option of providing additional allocation of foodgrain in case there is a shortage. The budgeted provision for TPDS for 2000-2001 is Rs. 12.50 crores. In fact, the Union Budget for 2000-2001 doubled the monthly allocation of foodgrain for BPL families.

To make TPDS more targeted towards the poor, the Antyodaya Anna Yojana was launched in December, 2000. It aims at identifying 10 million poor families and providing them with 25 kg. of foodgrain per family per month at Rs. 2/kg. for wheat and Rs. 3/kg. for rice. The estimated annual allocation under this programme is 30 lakh tonnes of foodgrain involving a subsidy of Rs. 2315 crores. Despite these efforts, the quantity of foodgrain is insufficient. The supplies are not timely and the quality is often poor and nutritionally inadequate.

The PDS and the system of food coupons and mid-day meals are seen as temporary measures to overcome what is a more systemic problem. Eradication of poverty can only be achieved with food security, which is associated with a more ecologically oriented agricultural policy. The question needs to be addressed as to why the producer of food is the first to be denied his right to his basic need. The small farmer in India, who is the actual tiller of the soil, has remained marginalised, barely eking out an existence for himself and his family. This is the result of the unequal land holding pattern, which was brought about during the British rule. It created big landlords who own large tracts of land, which were then leased to middle farmers. The middle farmers, in turn, lease it out to the tillers who are the small and marginal farmers, at an extremely high rate of rent. Sometimes, when they cannot afford the rent, they are employed as labourers by the middle and big farmers to till their land. The small

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<sup>13</sup> See end of this section (5.3) for PUCL's case in the Supreme Court on starvation deaths.

farmers therefore often remain landless or are weighed under the burden of debt to the moneylender, the big and middle farmers. These marginal farmers, who are either tenants or landless agricultural labourers, are the actual tillers of the soil, who toil day and night to produce the crops and vegetables for the nation. Unfortunately, being caught in a vicious cycle of poverty and debt traps, they remain the poorest of the poor and very often, unfed. So, the provider of food is denied his right to food security.

In July 2001, PUCL filed a petition in the Supreme Court against the state governments of Orissa, Rajasthan, Chattisgarh, Maharashtra, Gujarat and Himachal Pradesh, alleging them responsible for starvation deaths in their respective states. PUCL raised the question whether or not the scope of right to life as provided in Article 21 of the Constitution of India, included the right to food. Right to food implies that the State has a duty to provide food, especially in situations of draught, to people who are affected by it and are not in a position to purchase food. The petition drew the Courts attention to the fact that a surplus of 50 million tons of food grain was lying unused and rotting in the godowns of the FCI, while the poor continued to starve because of lack of food. The Supreme Court, appalled and concerned, said that the government's priority should be to provide food to the aged, infirm, disabled, destitute, pregnant and lactating women in draught-prone areas and asked the state governments to devise schemes to tackle the situation. The Bench observed that though there was plenty of food, lack of distribution among the poor and an inefficient officialdom were responsible for creating a situation of scarcity. The Court asked the state governments to reopen closed public distribution shops within a week and to identify the poor families for food grain distribution under the Antyodaya scheme, which is reserved for the poorest of the poor. Most state governments not only failed to comply but those who did were unable to provide evidence of it to the Court. The Supreme Court took strong exception to this and described the situation as callous and horrendous. The matter is pending in the Court and is the first time that the right to food was discussed so substantively in the apex body as a necessary extension of the right to life.

**11.2 Question # 10: Which of the options mentioned above is the best for securing freedom from hunger? Or can you suggest any other better option?**

- **What can in your view be the possible problems in the scheme of cash subsidy or food coupons and how can those problems be remedied?**
- **Can you suggest improvements in the scheme of food coupons as outlined in this paper?**
- **What practical suggestions can you offer to make the Fair Price Shops function effectively and honestly? How can they successfully reach food grains to the needy at a subsidized cost?**

**Question # 11: Should reservation be provided in the allotment of Fair Price Shops to the Scheduled Castes, the Scheduled Tribes/the Other Backward Classes?**

## 5.4 Right to Education

A very essential socio-economic right is the right to education and together with the rights to shelter, food and health falls within the scope of right to life. Although most of the international covenants on human rights speak about the duty of the state to provide free and compulsory elementary education to all, right to education was originally not a part of the fundamental rights included in the Constitution of India. The founding fathers however, did endow the State with some responsibilities for the education of the nation. Article 45, which is a part of the Directive Principles of State Policy and hence is non-justiciable, gives the space to the State to attempt and provide free and compulsory education to all children until they complete the age of 14 years. This task was to be completed by 1960 but universal elementary education remains an unfulfilled dream. According to official statistics in 2001, India has a literacy rate of 65.38%. As many as 350 million people are still unable to either read or write. While the literacy rate for men is 75.96% it is a dismal 54.28% for women. The consultation paper throws up some more shocking facts. India's overall adult literacy rate of 52% (1991) and female literacy rate of 38% (1991) are lower than that of Sub-Saharan Africa and East Asia. The average years of schooling and completion of elementary education are considerably lower in India than other South Asian countries such as Sri Lanka, Indonesia, and Malawi in Africa. The literacy rate for Indian women is perhaps one of the lowest in the world, with further disparities across states and communities. Typically, the worst affected are women from rural areas. The literacy rate among Scheduled Tribe women in Rajasthan is an appalling 4% (1991). Bihar, one of the states with the lowest literacy level has 50% of female children attending schools (1998-99). Only 15 countries in the world have a lower literacy level among women than Bihar. This, despite the fact, that Article 46 of the Constitution directs the state to take special care of the educational interests of the weaker sections of the society, especially the Scheduled Castes and Scheduled Tribes.

Interestingly, almost 95% villages in India have a school within a walking distance of one kilometer, yet the national survey of 1997 reveal that half the proportion of Indian women and one-third of the men are illiterate. The paper notes that in many single teacher based village schools, the teacher appoints deputies, agents or senior students to do the teaching on his behalf, which contributes to the poor quality of education in these schools and lead to drop-outs. Quality in compulsory elementary education is of essence. The qualified and well-trained teaching personnel prefer to be employed in the better known schools in cities, rather than teach in village schools. The quality of education in wealthy schools located in urban areas is consequently, far superior than in rural educational institutions. This increases the hiatus between the 'better-educated-urban-rich' and 'poorly-educated-rural-poor'. The paper therefore suggests that civil society participation through voluntary organizations, self-help groups, neighbourhood committees, is necessary to address a task of this magnitude, rather than leaving it in the hands of the administrative officials who are usually perceived to be corrupt and inefficient.

Education does not merely train students to acquire skills so that they may secure jobs for a living. Education has many social benefits. Improved levels of education and awareness can be directly linked to improvement in hygiene, reduction in infant mortality rates, decline in population growth rates, increase in labour productivity, greater political empowerment and democratization. Yet, despite numerous commissions and experiments, universal education looks like a distant dream. The Shiksha Karmi<sup>14</sup> project in Rajasthan, which involved community and voluntary organizations, has shown that both quantitative and qualitative retention has been high. Even in rural and 'socially backward' areas, parents are keen to send their children to school, but these schools should be within walking distance, should have flexible timings to suit life cycles characteristic of specific communities for example those dependent on agriculture or those who migrate to nearby towns in search of jobs during the lean season, should have textbooks in local languages/dialects and at least one female teacher. Children from poor families often cannot afford to attend school, as they have to supplement the family income by working in the fields, in brick kilns, tending cattle or shepherding or simply looking after the household in the absence of parents especially if the girl child happens to be the eldest sibling. Keeping this in mind, many states initiated a mid-day meal programme to encourage parents to send their children to school. But these schemes have had varying degrees of success in increasing enrolment and reducing dropout rates.

The debate finally has led to the question of education as a fundamental human right by the Supreme Court. The Universal Declaration of Human Rights in Article 26<sup>15</sup> states unambiguously that "everyone has a right to education" and that elementary education should be free and compulsory. The Convention on the Rights of the Child states in Article 28<sup>16</sup>, that every child has a right to education and that such education should be free and compulsory. The International Covenant on Economic, Social and Cultural Rights, recognizes in Article 13<sup>17</sup>, the right of everyone to education and that

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<sup>14</sup> The Shiksha Karmi project hired young middle school educated youngsters to teach working children in accessible night schools by involving the community and local NGOs.

<sup>15</sup> Article 26.1 "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Teaching and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

<sup>16</sup> Article 28.1 "State Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of dropout rates."

<sup>17</sup> Article 13.1 "The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The State Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;

primary education should be compulsory and free to all. Though the constitution makers recognized the importance of providing universal primary education they did not go to the extent of making it a fundamental right, as they were aware of the meager volume of financial resources that India possessed at the time of independence. Yet they made the State responsible for providing free and universal elementary education to all children up to the age of 14 years within a decade by incorporating a guideline in the Directive Principles of State Policy. But citizens could not approach the courts demanding that the State honour its obligation, as the directive was not justiciable like a fundamental right. Despite the passage of more than four decades since the inauguration of the constitution this promise was not fulfilled. Hence it is not surprising that the Supreme Court of India in Unnikrishnan's<sup>18</sup> case, said, that education upto the age of 14 years should be considered a fundamental right. The 83<sup>rd</sup> Constitution Amendment Bill was introduced in the Rajya Sabha for that express purpose, but only as late as July 1997. The Bill was referred to the Parliamentary Standing Committee on Human Resource Development, which placed its recommendations in front of both Houses within three months but and yet the government did not act upon it. Educationists and voluntary organizations lobbied strongly for making education a fundamental right given the alarming levels of illiteracy and ignorance within the country. The National Alliance for Fundamental Right to Education (NAFRE), a coalition of hundreds of NGOs, was formed. These voluntary groups argued that constitutional commitment is a firm necessity in order to bring the school to the child. Without this commitment, political will remains ineffective despite promises ritualistically made by almost all parties at the time of every general election. Opinions vary on this point, the main criticism being that the State cannot take the burden of proving free education to all as it is difficult for it to marshal the necessary financial resources for quality education. **However, it is indisputable that unless the State is compelled to live upto its Constitutional commitment, the excuses for non-performances will continue to exist.**

Finally, in September 2001, the Parliament incorporated the recommendations of the Parliamentary Standing Committee and adopted the 93<sup>rd</sup> Amendment Bill. The Bill was passed on 28th November, 2001. The 93<sup>rd</sup> Amendment expanded the scope of right to life under Article 21 by including right to education as one of its essential components. It inserted Article 21A which provides that all children between the age of 6-14 years shall enjoy the fundamental right to free and compulsory education, especially those who were dropouts or were not enrolled at all. A majority of these children belonged to the Scheduled Castes and Tribes and other Backward Classes. It also amended Article 45 to include Early Childhood Care and Education (ECCE) which would be provided to all children between

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- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - (c) Higher education shall be made equally accessible to all on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
  - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.”



age 0-6 years. The 93<sup>rd</sup> Amendment however has been severely criticized by educationists and voluntary organisations. They claim that the Amendment dilutes Unnikrishnan's judgement, which speaks of a fundamental right to education for all, whereas the Amendment has granted it only to those between the age of 6-14 years. The crucial age group of 0-6 years has been left out. Educationists also feel that ECCE or early childhood care should be made a part of the fundamental right to education and not made part of the Directive Principles of State Policy. The Amendment has not made any provisions for financial allocation, which will have a bearing upon the quality of the education. Finally, the concept of free education is limited, as the parents in poor families will have to bear the costs of uniforms and textbooks. The 10<sup>th</sup> Five Year Plan claimed that Universal Elementary Education will be achieved by 2007 but the Union Human Resource Development Ministry has said that it will not be possible to attain this before 2010. It is indeed laudable that the scope of right to life in the Constitution of India has been expanded to incorporate this integral socio-economic right to education, but it remains to be seen how the people exercise it and the duration it will take the Government to act upon it.

**11.3.1 Question # 12: Do you agree that the State should provide free and compulsory education to all children upto the age of 14 years?**

**Question # 13: If so, what should be the appropriate Constitutional and legal framework for the purpose?**

- **India faces a serious problem of brain drain with professionals who are educated and trained in India but take jobs abroad. Will it be appropriate to fund elementary education from revenue collected from realization of a fee from these professionals?**

**11.3.2 Question # 14: Will civil society participation in the management of elementary education be beneficial?**

- **If so, how can this participation be made effective and beneficial? Is a statutory framework required for this purpose?**

**11.3.3 Question # 15: Should stakeholders – viz. parents, voluntary organizations, locally settled, retired or serving administrators, educationists, legal and medical professionals, philanthropists, etc. be involved in the evaluation of quality in elementary education programme?**

**Question # 15a: What should be the composition of teams to assess quality of education in the schools and to make an independent and neutral assessment of the educational standards?**

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<sup>18</sup> *Unnikrishnan, J.P. v. State of Andhra Pradesh* (1993 (1) SCC 645)

**Question # 15b: What should be the area or the number of schools each team should look into?**

**Question # 15c: What should be the specific tasks allotted to the teams?**

**Question # 16: How can schools be made accountable for student performance?**

- **How should the quality of education provided by the schools be assessed and rated?**
- **What should be the rewards for performance and sanctions for non-performance?**

**Question # 17: Is a statutory framework needed to improve the quality of education?**

### **5.5 Freedom from gender-based discrimination**

Of all the disadvantaged groups, women have been denied their socio-economic rights the most severely. This has taken the form of gender-based discrimination and has prevented women from participating in the process of development. In India, there are several forms of gender-based discrimination such as a discrepancy in the male and female levels of literacy, anti-female bias in mortality as expressed in rising levels of female foeticide and infanticide, a lack of freedom to make choices to a lack of decision making power. There is also the denial of a whole range of socio-economic rights from no equal opportunity to work to domestic violence and sexual harassment at the workplace. Following Amartya Sen, the paper holds that the crucial aspect of development is the political, economic and social participation as well as leadership of women.

Female infanticide and foeticide is one of the most appalling aspects of gender discrimination. The occurrence of these practices has increased with the advent of sex determination tests. The low female ratio in India's population was detected as early as 1951, when the first post independence census was undertaken. This deficit in the female population has increased over the years. While the cause of the earlier gender deficit was due to female infanticide traditionally prevalent in many States, the recent deficiency begins from the womb itself, soon after conception, after the sex of the foetus is identified in a laboratory. In European countries, USA, and Japan, there are 95-97 males per 100 females indicating a marginally higher proportion of women in the population. The obsessive preference for sons and a deeply entrenched patriarchal system has given South Asia one of the most distorted sex ratios in the world – 940 females for every 1000 males. Only in the SAARC countries and China is the ratio unfavourable for the female. In some Indian States, the ratio is as low as 800 females/1,000 males.

Kerala is the only State in India, where the gender ratio is comparable to that in European countries and USA. It is commendable, more so, as the state relates it to the highest female literacy rate. Kerala has the lowest birth rate in India despite having a very high population density. This confirms what

specialists have always indicated that female literacy goes hand in hand with population control. When women are educated, they are more aware of the choices that are before them and their consequences. They are conversant with health and family issues and have access to the necessary information about reproductive health and can therefore exercise their discretion and choose wisely. The NSSO estimates of 1997 show that half of the women population in India is illiterate while in the case of men it is only a quarter. The 2001 estimates quoted above (see section 5.4) reveal that of the total number of illiterates, approximately 76% are men, while only 54% are women. The number of dropouts among women is higher. The male-female ratio is higher in Rajasthan, Madhya Pradesh, Bihar, Uttar Pradesh and Orissa, crossing a differential gap of 25%. Rajasthan has a differential ratio of 38%, lower than all other countries of the world except Guinea-Bissau and Yemen.

If women are the worst sufferers of human deprivation in India, one of the main reasons has been their invisibility in the economy. Economic independence is significant as it enhances the social status of women, especially in rewarding occupations. This improves their lot in life considerably, enabling them to break out of discriminatory conditions voluntarily. There is a lack of economic empowerment of women as they are denied the freedom to work as well as equal opportunities at and to work. Among women belonging to the working age of 18-45 years, only 34% have jobs of which 75% is in the agricultural sector. Mechanization in the agriculture sector has marginalised women. In the organised sector, women work under contracts, which give them no rights. In the small industries, the hours of work are long and the income miserable. Women's salary is usually less than the prescribed minimum wages and they are denied maternity leave and crèche facilities. A small section of urban women have access to higher education, while the bulk of the work done by the women in the country remains unnoticed and unrecognized. This has been recognised by ILO recently as they realize that a large and silent majority of the labour force are women and are seeking to redefine 'work' as 'decent work', which is altogether a new concept. The trend so far has been to overlook and not see women as primary earners, their working conditions and rights as workers, the importance of informal work, the issue of sexual division of labour and the link between women's work, status and the market. Reproductive labour is another form of discrimination and is not accounted for while calculating national income figures. Sri Lanka includes it while computing GDP figures.

Sexual harassment at the workplace has become a common source of violence against women and a tool whereby they are denied equal opportunities at work. People who enjoy a certain position of power in a place of employment often try to coerce and intimidate those in a subordinate position, for sexual favour in exchange of employment benefits. The Supreme Court's landmark judgement in *Vishaka*<sup>19</sup>, states that,

- "Sexual harassment of women in the workplace results in the violation of the fundamental rights of gender equality and the right to life and liberty.
- It is a clear violation of the rights under Articles 14, 15, 21...and 19(1)(g)...

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<sup>19</sup> *Vishaka v. State of Rajasthan* (1997 6 SCC 241)

- Gender equality includes protection from sexual harassment and the right to work with dignity, which is a universally recognised basic human right.”

The judgement has laid down, that in the absence of domestic laws dealing with women’s rights and protection from sexual harassment, the judicial process would intervene to facilitate the process. Judicial activism is to be supplemented by international conventions and norms which guarantee these abovementioned rights of gender equality and the right to work in dignity such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The judgement also draws attention to the commitment made by the Government of India at the Fourth World Conference on Women in Beijing, to operationalise a national policy on women and to set up a Commission for Women’s Rights to “act as a public defender of women’s human rights...(and) therefore reliance can be placed (on it)...for the purpose of construing the nature and ambit of Constitutional guarantee of gender equality in our Constitution.” The judgement observes repeatedly, “the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment...particularly at workplaces...”. The Court for the first time in India laid down guidelines and norms in *Vishaka*,

- “for strict observance...until a legislation is enacted for the purpose...and (the Vishaka guidelines are to be) treated as the law declared by the Supreme Court.”
- It expanded the scope of the definition of “sexual harassment” by including indirect and implied sexually determined behaviour and sexually coloured remarks.
- It considered it discrimination when a woman’s work or employment is disadvantaged due to a hostile work environment.
- “That appropriate work conditions should be provided in respect of work, leisure, health and hygiene to ensure...that no woman employee...is disadvantaged in connection with her employment.”

The Vishaka judgement is therefore symbolic in ushering in judicial activism in the arena of gender justice.

Sexual harassment falls under the general rubric of crimes against women, which also includes another very large sector where there is gross discrimination against women, namely, domestic violence. In 1992, the Government of India coined the term “Crimes against Women” as a distinct category which includes, along with sexual harassment, rape, abduction, dowry deaths, torture and molestation. The term now used increasingly is domestic violence. The paper, citing the National Crimes Records Bureau states that there are almost 7000 complaints of domestic violence reported to the Delhi Police every year, out of which FIRs have been filed in only 10% of the cases.

The paper holds that it is only in the political sphere that women’s participation has been observed and where there has been significant gain. This has been enabled by the 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Constitution, which have created new institutions for local governance. These Panchayati Raj

institutions have opened new possibilities for women's participation in political decision-making, especially for the rural women. It has facilitated the building of linkages between voluntary organisations and the poor, rural women as well as the women's groups in the urban areas.

The Panchayat Raj institutions have seen the creation of 227,698-Gram Panchayats, 5906 Panchayat Samitis and 474 Zilla Parishads, where nearly 3 million members have been elected. The Constitution amendments have ensured that one third of the seats are reserved for women at all levels. The paper states that the impact of this has been phenomenal as by 1999, nearly 8,11,194 women had been elected as members of these bodies.

Contrarily, women have never been adequately represented at higher levels of policy and decision making namely, parliament, state legislatures, council of ministers and the cabinet at the state and central levels, and the civil services. The presence of women in Parliament is lower than the global average. Women are better represented in the parliaments of Bangladesh and Sub-Saharan African countries. Even neighbouring Sri Lanka has a higher representation of women in its cabinet. The participation of women in the judiciary is even worse where against 500 odd male high court judges, there are only 15 women judges. The Supreme Court, occasionally, has one woman judge amongst its 25 members. The involvement of women in the three central services namely, the Indian Administrative Service, IPS and IFS and those serving in the Government of India at the higher levels is abysmally low. The paper points out that even after 50 years of the working of the Constitution, women remain underrepresented at various levels of government services, denying them not only their share of income but also the space to enhance their status.

The paper states, that although women have begun to enjoy decision-making power in the political arena, at least at the rural level, there is a range of socio-cultural factors, which curb the freedom of women. Women on the whole do not enjoy the freedom to make decisions about their lives and live within the grip of a patriarchal culture. They do not enjoy the freedom of choosing whom to marry and when to marry or whether to pursue a career or education. The paper states that 50% of women in India are married before the legal age of 18 years. The National Family Health Survey-2 of 1998-99 show that in Uttar Pradesh, Andhra Pradesh, Madhya Pradesh, Rajasthan and Bihar, over 62% women are married below the age of 18 years. Women are also denied their reproductive rights, in that they do not make decisions regarding their health and bodies, especially when, where and how many children they should conceive or whether or not they choose to abort their pregnancies. Women cannot leave their houses without the permission of their husbands, fathers or brothers. The paper cites statistics to show that in Uttar Pradesh, Madhya Pradesh, Bihar and Haryana, 80-85% women require permission even to go to the market, let alone to visit friends or relatives. It therefore points to a need for an attitudinal change towards and among women, without which women cannot free themselves from discrimination. This may be judged from the level of autonomy they enjoy and their share in the decision making of their own lives and their household, their freedom to decide their

destiny and their freedom to make choices. It speaks of breaking out from a certain socio-cultural mindset, from the threshold of patriarchy towards true gender equality.

The focus of the government has now gradually changed from viewing women within the framework of family welfare to gender equity and oppression faced by women belonging to a wide spectrum of class/caste. The focus is on rape and wife battering, maintenance and child custody, legislative reform, opposing sexist curriculum in education and towards equal opportunity at work with equal pay. This shift in focus has been largely due to relentless lobbying and pressure from the voluntary organisations and the women's movement who have challenged as well as informed state policy, very often through the judicial process. They have also begun to enter into partnership with the government in order to bring about change from within. Women's groups have pointed out that the government's initiatives perceive women's empowerment as instrumental for development and not as gender equality per se. The ultimate aim is to see women's rights as human rights, which is what the Constitution delineated in the first place 50 years ago, but which remains unrealized.

**11.7.1 Question # 62: What steps need to be taken to enhance the representation of women at various levels of policy making and administration?**

**Question # 63: Should the process of empowerment of women that began with reservation of one-third seats in Panchayats and Municipalities need to be extended to state legislatures and Parliament?**

## **Conclusion**

It is clear from the above discussions on socio-economic rights, that the majority of the population of our country does not enjoy the basic amenities of a dignified life, namely food, shelter, clothing, health and education. This majority consists of the poorest of the poor, tribal communities, *Dalits*, lower and backward castes and women and children. In all areas, the poor have suffered more than the affluent, the rural regions fared far worse than the urban ones and women as a rule have borne the brunt of deprivation and discrimination. There is inter-state, inter-region and inter-class disparity, and it is this gross social inequity which has marked the history of economic development in India. To redress this social inequity a strong regime of rights is a primary prerequisite, for political empowerment can hasten the process of economic alleviation. The Constitution, as always, remains the modus operandi par excellence for strengthening and operationalising this regime of rights.