

ECONOMIC, SOCIAL AND CULTURAL RIGHTS & THE RIGHT TO DEVELOPMENT



Briefing Note for the Regional Consultation on UPR II

International human rights law guarantees the progressive and full realization of Economic, Social and Cultural Rights (ESCR) to every Indian citizen under the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, to which India is a signatory.¹ Besides, ESCR are also guaranteed under the Constitution of India, national laws and other international instruments such as the Convention on Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The international legal framework notwithstanding, tangible realization of ESCR remains a challenge that the state needs to address. Four areas of particular concern are the right to food, the right to adequate housing and land, the right to education and the right to health.

RIGHT TO FOOD

India has the largest number of undernourished people in the world, and one of the highest levels of child malnutrition.² The Food Security Bill, to be tabled in the Parliament during its winter session, plans to give legal entitlement to highly subsidized foodgrains to 70% of India's population.³ However, the Bill is already criticised for being flawed at many levels. Some of the main points of contention are: (1) It cuts down the eligible households under the Public Distribution System (PDS), by setting a cap of 75% households BPL in rural India and just 50% in urban India. This effectively excludes lakhs of families with "Above Poverty Line" (APL) cards from the PDS. (2) It puts a cap on Below Poverty Line (BPL) households at 46% in the rural areas and 28% in the urban areas. This in the wake of State Governments' estimation of BPL households to be 11.03 Crores as opposed to 6.52 Crores recognized by the Central Government. (3) Section 21 of the Bill recognizes the same poverty line as set up by the Planning Commission (Central Government), which is Rs 13 for rural India and Rs 18 in urban India. (4) It cuts down on allocation by slashing the present quota of 35 kgs per family to 7 kgs per person. This system can prove to be counter-productive for households with fewer members. (5) Food prices under the Bill are more than what is available in some of the states.⁴

RIGHTS TO ADEQUATE HOUSING AND LAND

Although the right to adequate housing is an internationally recognized right, including under the ICESCR, majority of the Indian population continues to live in inadequate and insecure housing conditions. Some critical issues of concern regarding housing and land rights are summarised below.

Lack of low cost housing for urban poor: An average of 55% of the population in cities like Delhi and Mumbai live in slums/informal settlements, without legal security of tenure and access to basic services, including water and sanitation. The government has failed to provide low cost housing options to the urban poor. Schemes

1 Art 2 (1), ICESCR, 1966.

2 Report of the Special Rapporteur on the Right to Food: Mission to India, Page 2, 20th March 2006, available at <http://www.unhcr.org/ref-world/country,,MISSION,IND,,45377b210,0.html>

3 Food Security Bill to be tabled in winter session, Financial Express, available at <http://www.financialexpress.com/news/Food-security-Bill-to-be-tabled-in-winter-session--says-Thomas/833357/>

4 For example, rice is being provided for Rs 2/kg as opposed to the price under the Bill being set up at Rs 3/Kg. Brinda Karat, Food Security Bill needs amendments, The Hindu, 22nd July 2011, available at <http://www.thehindu.com/opinion/lead/article2285546.ece>

such as the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), have not invested adequately in basic services for the urban poor. While urban land is being diverted for profitable real estate and infrastructure projects, legislative tools are used to condemn the poor as 'illegal residents.'

Homelessness: There is no government data or policy on homeless people at either the national or state level. Even though homelessness across the country is increasing, homeless people are routinely criminalised and brutalized by the police who routinely commit violence against them. A large number of arrests of beggars and homeless persons took place in the run-up to the Commonwealth Games in Delhi in 2010.

Evictions and Displacement: Massive eviction drives have been mounted by state governments in India's large cities – generally without due process or any resettlement. In the few cases where resettlement is provided to displaced families, it is on the margins of the city, and the quality of housing and amenities is generally in violation of human rights standards. Evictions also directly increase homelessness, as the absence of rehabilitation and feasible alternate options for housing, forces many to live on the streets. Also development induced displacement due to urban renewal schemes, city 'beautification', sporting events, large infrastructure projects, including dams and mining, environmental conservation projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of families, most of whom have not received rehabilitation. Natural disasters like the 2004 tsunami and floods have also been responsible for displacing large sections of the population.

The forced acquisition of agricultural farmland, apart from pushing millions to urban areas, is also exacerbating the country's agrarian crisis and threatening food security. This practice continues in the context of almost 80% of the agricultural population in India owning only about 17% of the total agriculture land, making them near-landless workers. Land reform measures have not been successfully implemented, neither has surplus land been equitably distributed. Over 131 million people are landless as per figures from the Ministry of Rural Development.

Lack of adequate legislation and policy: Despite the dismal status of housing in the country, there is no comprehensive rights-based national housing legislation. The draft *National Housing and Habitat Policy 2007* while stating "shelter for all" as a goal does not consider housing to be a human right but focuses more on a market approach to housing. India also does not have a human-rights based rehabilitation policy. The current *National Rehabilitation and Resettlement Policy 2007* was approved without due process and did not take into account concerns of civil society and social movements. Further, it does not aim to minimize displacement or promote alternatives. The draft *Land Acquisition and Rehabilitation and Resettlement Bill 2011*, does not include adequate human rights safeguards, nor do they meet India's international legal commitments or standards expounded by international guidelines. It is also extremely weak with regards to urban evictions and displacement issues. The new central government scheme of *Rajiv Awas Yojana* also needs to be grounded in the human rights approach in order for it to be effective in providing affordable housing and legal security of tenure for the urban poor. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act)* while progressive in its provisions needs to be adequately implemented across the country.

RIGHT TO EDUCATION

The enforcement of the fundamental right to free and compulsory education guaranteed by the Indian constitution is facilitated by the *Right of Children to Free and Compulsory Education Act, 2009 (RTE)*, which provides for the right to free and compulsory elementary education to every child between 6 and 14 years of age. However, the *Child Labour Act 1986*, allowing children below the age of 14 to be employed in certain occupations and providing for non-formal education to them is in direct contradiction towards realization of the right to education of ALL children under RTE. After all, right to education means right to opportunity for equal access to education of equal quality. Also, limiting free and compulsory education to only this age group through the RTE and the 86th Amendment to the Constitution, is excluding millions of children below the age of 6 and above the age of 14 from educational opportunities, and makes the realization of this right contingent

upon the economic capacities of their families, thereby diluting the initial commitment in the Constitution that spoke about education for all children up to the age of 14 years.

The budgetary allocation for the provision of free and compulsory elementary education, although increasing every year, is still not adequate to ensure that every child is in school and stays there. The children out of school are evidence of that.

There are also serious problems with respect to infrastructure, lack of access to education and quality deficit. There is lack of an adequate number of schools and in several areas of the country, they are not located according to the SSA norm of having a primary school within one sq km and an upper primary school within 3 sq km of the domicile of every potential student. According to the District Information System for Education (DISE) flash statistics 2008-09, lakhs of teacher posts remain vacant. Besides, the laying down of the right to education cannot provide “quality” education in the absence of measurable standards and lack of accountability.

RTE also lacks a stringent enforcement mechanism, by providing for a complaint mechanism involving the local authorities, which also happen to be the implementation authorities. The Act empowers the National Commission for the Protection of Child Rights (NCPDR) and the State Commissions with the responsibility to monitor the RTE, but does not provide them with the statutory power to take direct action, other than investigate and receive complaints. Currently only seven states and Delhi have their own State Commissions. In any case, it is operationally complex for the commissions to monitor the quality of education.

RIGHT TO HEALTH

International recognition of the right to health can be found in the ICESCR,⁵ and has been explained to include the right to appropriate health care, access to healthcare facilities, access to safe and potable water, adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information – including sexual, maternal and reproductive health.⁶ Provision of preventive health care is also an important part of the right to health.

In India, the realization of this right has to side-step many roadblocks. The state spends only 1% of its GDP on the healthcare system which is very low as compared to other countries which spend almost 3%. There continues to be a general lack of a well-trained and sufficient health workforce, especially in rural areas. Even though the National Rural Health Mission (NRHM), has improved that to an extent by employing around 6000 workers, it has also suffered failures at achieving targets. In any case, the Government of India’s project under which it is running is ending in 2012.⁷

India continues to have one of the highest maternal mortality rates in the world.⁸ There is a wide gulf between setting up of policies for maternal healthcare and their implementation. India also has the second highest number of people living with HIV/AIDS and there isn’t any secure infrastructure to measure the virus’ spread and impact, particularly with women in rural areas. India also has the highest TB prevalence in the world; over 1.5 million children die each year before their first birthday; and nearly 500 millions lack sufficient nutrition. Another critical issue is the lack of national healthcare infrastructure. Public hospitals have insufficient funds to support their communities, and since only 15% of Indian citizens have health insurance, quality healthcare remains unattainable for millions in dire need. 49% of women are anaemic, and about a third of children are born with low birth weight.

Only 14% of children between twelve and twenty-three months receive the necessary vaccinations to prevent diseases such as small pox and polio. During the Bal Adhikar Samvad convention on 19th December 2006 in New Delhi, Nobel Prize winner and eminent welfare economist Professor Amartya Sen said, “It is now clearly

5 Article 2, ICESCR.

6 General Comment 14 of the Committee on Economic, Social and Cultural Rights.

7 <http://pib.nic.in/newsite/erelease.aspx?relid=51322>

8 Report of the Special Rapporteur on the Right to Health: Mission to India, 2007, available at <http://righttomaternalhealth.org/sites/iimmhr.civicaactions.net/files/India.pdf>

established reality that even after gaining high growth rate and increasing per capita income, we have failed to protect our children from hunger and diseases. I feel the question of resources is not the biggest one, a lot of money is being spent but the situation is not improving in accordance with the expenditure because our system delivery systems are worst, un-accountable and non-responsive towards the most marginalized like children".⁹

Nearly 80 per cent of the total health care costs are met through private expenditure and virtually all of the private expenditure is out-of-pocket (almost 97 per cent). The increased privatisation of health care in India seriously reduces the availability of health care for the poorest and most marginalized sectors of society. The economically deprived are bound to suffer in a private health system.¹⁰ The introduction of user fees and the increased privatisation of health care leads the poor to postpone seeking attention for medical conditions – and thus increases the probability of death from treatable illnesses.

According to a World Health Organisation survey, 16 per cent of Indian families have been pushed below the poverty line by high health costs. These families have been made more prone to ill-health by their inability to access or afford clean water, sanitation and nutritious food. Lacking any kind of health insurance, more than 40 per cent of low-income families in India had to borrow money from outside the family in order to meet their health care costs and 12 per cent of families had to sell their assets to cover the medical expenses of family members. While the average expenditure on health of a middle-class Indian family is Rs. 116.7 a month, the figure rises to Rs. 202 for the poor, which is half their monthly income.¹¹

The local administrations are lax in controlling the sale of spurious drugs, providing proper facilities for sanitation, and a safe and healthy environment. Exercise of reproductive rights by women and controlling illegal abortions also remain a challenge in view of the loose implementation of the PCPDNT and MTP Acts.

Apart from these broader rights, some other ESCR issues of importance include: (1) implementation of social security schemes (particularly in the unorganized sector where 90% of the workforce is employed), (2) employment guarantees and (3) livelihood. India has pledged to the UN General Assembly that it will expand the implementation of its National Rural Employment Guarantee Act, which provides for 100 days of assured employment annually to every rural household in the country, and also that it will strive for the full realisation of civil, political, economic, social and cultural rights, including the right to development.

RELATED UPR I RECOMMENDATIONS, 2008

There are constitutional and statutory guarantees which enable access to justice. These include:

- Recommendation n° 3: Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana).
- Recommendation n° 7: Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, the Netherlands, Sweden).
- Recommendation n° 9: Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands).
- Recommendation n° 10: Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria).
- Recommendation n° 18: Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multilingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).

9 Indian Express, Maternal audit project taken up in several districts, Sachin Jain, 18 February 2007.

10 Surinder Jindal, Privatisation of health care: new ethical dilemmas, Indian Journal of Medical Ethics, <http://www.issuesinmedicalethics.org/063or085.html>.

11 Hindustan Times, 5 February 2007, 16per cent of Indians pushed into poverty by rising health costs.